

# SENATE BILL No. 323

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.

**Synopsis:** State income tax matters. Beginning June 30, 2017, provides that the decrease in corporate adjusted gross income tax rates occurs one year earlier than provided by current law. Requires taxpayers conducting a unitary business to file and pay adjusted gross income taxes in Indiana on the combined income of the unitary business group. Repeals provisions applying to the state adjusted gross income taxation of passive investment companies and captive real estate investment trusts. Makes conforming changes.

**Effective:** January 1, 2017.

---

---

## Hershman

---

---

January 7, 2016, read first time and referred to Committee on Tax & Fiscal Policy.

---

---



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

# SENATE BILL No. 323

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3-1-3.5, AS AMENDED BY P.L.250-2015,
- 2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JANUARY 1, 2017]: Sec. 3.5. When used in this article, the term
- 4 "adjusted gross income" shall mean the following:
- 5 (a) In the case of all individuals, "adjusted gross income" (as
- 6 defined in Section 62 of the Internal Revenue Code), modified as
- 7 follows:
- 8 (1) Subtract income that is exempt from taxation under this article
- 9 by the Constitution and statutes of the United States.
- 10 (2) Add an amount equal to any deduction or deductions allowed
- 11 or allowable pursuant to Section 62 of the Internal Revenue Code
- 12 for taxes based on or measured by income and levied at the state
- 13 level by any state of the United States.
- 14 (3) Subtract one thousand dollars (\$1,000), or in the case of a
- 15 joint return filed by a husband and wife, subtract for each spouse
- 16 one thousand dollars (\$1,000).
- 17 (4) Subtract one thousand dollars (\$1,000) for:



- 1 (A) each of the exemptions provided by Section 151(c) of the  
2 Internal Revenue Code;
- 3 (B) each additional amount allowable under Section 63(f) of  
4 the Internal Revenue Code; and
- 5 (C) the spouse of the taxpayer if a separate return is made by  
6 the taxpayer and if the spouse, for the calendar year in which  
7 the taxable year of the taxpayer begins, has no gross income  
8 and is not the dependent of another taxpayer.
- 9 (5) Subtract:
- 10 (A) one thousand five hundred dollars (\$1,500) for each of the  
11 exemptions allowed under Section 151(c)(1)(B) of the Internal  
12 Revenue Code (as effective January 1, 2004); and
- 13 (B) five hundred dollars (\$500) for each additional amount  
14 allowable under Section 63(f)(1) of the Internal Revenue Code  
15 if the adjusted gross income of the taxpayer, or the taxpayer  
16 and the taxpayer's spouse in the case of a joint return, is less  
17 than forty thousand dollars (\$40,000).
- 18 This amount is in addition to the amount subtracted under  
19 subdivision (4).
- 20 (6) Subtract any amounts included in federal adjusted gross  
21 income under Section 111 of the Internal Revenue Code as a  
22 recovery of items previously deducted as an itemized deduction  
23 from adjusted gross income.
- 24 (7) Subtract any amounts included in federal adjusted gross  
25 income under the Internal Revenue Code which amounts were  
26 received by the individual as supplemental railroad retirement  
27 annuities under 45 U.S.C. 231 and which are not deductible under  
28 subdivision (1).
- 29 (8) Subtract an amount equal to the amount of federal Social  
30 Security and Railroad Retirement benefits included in a taxpayer's  
31 federal gross income by Section 86 of the Internal Revenue Code.
- 32 (9) In the case of a nonresident taxpayer or a resident taxpayer  
33 residing in Indiana for a period of less than the taxpayer's entire  
34 taxable year, the total amount of the deductions allowed pursuant  
35 to subdivisions (3), (4), and (5) shall be reduced to an amount  
36 which bears the same ratio to the total as the taxpayer's income  
37 taxable in Indiana bears to the taxpayer's total income.
- 38 (10) In the case of an individual who is a recipient of assistance  
39 under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7,  
40 subtract an amount equal to that portion of the individual's  
41 adjusted gross income with respect to which the individual is not  
42 allowed under federal law to retain an amount to pay state and



- 1 local income taxes.
- 2 (11) In the case of an eligible individual, subtract the amount of
- 3 a Holocaust victim's settlement payment included in the
- 4 individual's federal adjusted gross income.
- 5 (12) Subtract an amount equal to the portion of any premiums
- 6 paid during the taxable year by the taxpayer for a qualified long
- 7 term care policy (as defined in IC 12-15-39.6-5) for the taxpayer
- 8 or the taxpayer's spouse, or both.
- 9 (13) Subtract an amount equal to the lesser of:
- 10 (A) two thousand five hundred dollars (\$2,500); or
- 11 (B) the amount of property taxes that are paid during the
- 12 taxable year in Indiana by the individual on the individual's
- 13 principal place of residence.
- 14 (14) Subtract an amount equal to the amount of a September 11
- 15 terrorist attack settlement payment included in the individual's
- 16 federal adjusted gross income.
- 17 (15) Add or subtract the amount necessary to make the adjusted
- 18 gross income of any taxpayer that owns property for which bonus
- 19 depreciation was allowed in the current taxable year or in an
- 20 earlier taxable year equal to the amount of adjusted gross income
- 21 that would have been computed had an election not been made
- 22 under Section 168(k) of the Internal Revenue Code to apply bonus
- 23 depreciation to the property in the year that it was placed in
- 24 service.
- 25 (16) Add an amount equal to any deduction allowed under
- 26 Section 172 of the Internal Revenue Code.
- 27 (17) Add or subtract the amount necessary to make the adjusted
- 28 gross income of any taxpayer that placed Section 179 property (as
- 29 defined in Section 179 of the Internal Revenue Code) in service
- 30 in the current taxable year or in an earlier taxable year equal to
- 31 the amount of adjusted gross income that would have been
- 32 computed had an election for federal income tax purposes not
- 33 been made for the year in which the property was placed in
- 34 service to take deductions under Section 179 of the Internal
- 35 Revenue Code in a total amount exceeding twenty-five thousand
- 36 dollars (\$25,000).
- 37 (18) Add an amount equal to the amount that a taxpayer claimed
- 38 as a deduction for domestic production activities for the taxable
- 39 year under Section 199 of the Internal Revenue Code for federal
- 40 income tax purposes.
- 41 (19) Subtract an amount equal to the amount of the taxpayer's
- 42 qualified military income that was not excluded from the



1 taxpayer's gross income for federal income tax purposes under  
2 Section 112 of the Internal Revenue Code.

3 (20) Subtract income that is:

4 (A) exempt from taxation under IC 6-3-2-21.7; and

5 (B) included in the individual's federal adjusted gross income  
6 under the Internal Revenue Code.

7 (21) Add an amount equal to any income not included in gross  
8 income as a result of the deferral of income arising from business  
9 indebtedness discharged in connection with the reacquisition after  
10 December 31, 2008, and before January 1, 2011, of an applicable  
11 debt instrument, as provided in Section 108(i) of the Internal  
12 Revenue Code. Subtract the amount necessary from the adjusted  
13 gross income of any taxpayer that added an amount to adjusted  
14 gross income in a previous year to offset the amount included in  
15 federal gross income as a result of the deferral of income arising  
16 from business indebtedness discharged in connection with the  
17 reacquisition after December 31, 2008, and before January 1,  
18 2011, of an applicable debt instrument, as provided in Section  
19 108(i) of the Internal Revenue Code.

20 (22) Add the amount excluded from federal gross income under  
21 Section 103 of the Internal Revenue Code for interest received on  
22 an obligation of a state other than Indiana, or a political  
23 subdivision of such a state, that is acquired by the taxpayer after  
24 December 31, 2011.

25 (b) In the case of corporations, the same as "taxable income" (as  
26 defined in Section 63 of the Internal Revenue Code) adjusted as  
27 follows:

28 (1) Subtract income that is exempt from taxation under this article  
29 by the Constitution and statutes of the United States.

30 (2) Add an amount equal to any deduction or deductions allowed  
31 or allowable pursuant to Section 170 of the Internal Revenue  
32 Code.

33 (3) Add an amount equal to any deduction or deductions allowed  
34 or allowable pursuant to Section 63 of the Internal Revenue Code  
35 for taxes based on or measured by income and levied at the state  
36 level by any state of the United States.

37 (4) Subtract an amount equal to the amount included in the  
38 corporation's taxable income under Section 78 of the Internal  
39 Revenue Code.

40 (5) Add or subtract the amount necessary to make the adjusted  
41 gross income of any taxpayer that owns property for which bonus  
42 depreciation was allowed in the current taxable year or in an



- 1 earlier taxable year equal to the amount of adjusted gross income  
 2 that would have been computed had an election not been made  
 3 under Section 168(k) of the Internal Revenue Code to apply bonus  
 4 depreciation to the property in the year that it was placed in  
 5 service.
- 6 (6) Add an amount equal to any deduction allowed under Section  
 7 172 of the Internal Revenue Code.
- 8 (7) Add or subtract the amount necessary to make the adjusted  
 9 gross income of any taxpayer that placed Section 179 property (as  
 10 defined in Section 179 of the Internal Revenue Code) in service  
 11 in the current taxable year or in an earlier taxable year equal to  
 12 the amount of adjusted gross income that would have been  
 13 computed had an election for federal income tax purposes not  
 14 been made for the year in which the property was placed in  
 15 service to take deductions under Section 179 of the Internal  
 16 Revenue Code in a total amount exceeding twenty-five thousand  
 17 dollars (\$25,000).
- 18 (8) Add an amount equal to the amount that a taxpayer claimed as  
 19 a deduction for domestic production activities for the taxable year  
 20 under Section 199 of the Internal Revenue Code for federal  
 21 income tax purposes.
- 22 ~~(9) Add to the extent required by IC 6-3-2-20 the amount of~~  
 23 ~~intangible expenses (as defined in IC 6-3-2-20) and any directly~~  
 24 ~~related intangible interest expenses (as defined in IC 6-3-2-20) for~~  
 25 ~~the taxable year that reduced the corporation's taxable income (as~~  
 26 ~~defined in Section 63 of the Internal Revenue Code) for federal~~  
 27 ~~income tax purposes.~~
- 28 (10) Add an amount equal to any deduction for dividends paid (as  
 29 defined in Section 561 of the Internal Revenue Code) to  
 30 shareholders of a captive real estate investment trust (as defined  
 31 in section 34.5 of this chapter).
- 32 ~~(11)~~ (9) Subtract income that is:
- 33 (A) exempt from taxation under IC 6-3-2-21.7; and  
 34 (B) included in the corporation's taxable income under the  
 35 Internal Revenue Code.
- 36 ~~(12)~~ (10) Add an amount equal to any income not included in  
 37 gross income as a result of the deferral of income arising from  
 38 business indebtedness discharged in connection with the  
 39 reacquisition after December 31, 2008, and before January 1,  
 40 2011, of an applicable debt instrument, as provided in Section  
 41 108(i) of the Internal Revenue Code. Subtract from the adjusted  
 42 gross income of any taxpayer that added an amount to adjusted



1 gross income in a previous year the amount necessary to offset the  
2 amount included in federal gross income as a result of the deferral  
3 of income arising from business indebtedness discharged in  
4 connection with the reacquisition after December 31, 2008, and  
5 before January 1, 2011, of an applicable debt instrument, as  
6 provided in Section 108(i) of the Internal Revenue Code.

7 ~~(13)~~ **(11)** Add the amount excluded from federal gross income  
8 under Section 103 of the Internal Revenue Code for interest  
9 received on an obligation of a state other than Indiana, or a  
10 political subdivision of such a state, that is acquired by the  
11 taxpayer after December 31, 2011.

12 (c) In the case of life insurance companies (as defined in Section  
13 816(a) of the Internal Revenue Code) that are organized under Indiana  
14 law, the same as "life insurance company taxable income" (as defined  
15 in Section 801 of the Internal Revenue Code), adjusted as follows:

16 (1) Subtract income that is exempt from taxation under this article  
17 by the Constitution and statutes of the United States.

18 (2) Add an amount equal to any deduction allowed or allowable  
19 under Section 170 of the Internal Revenue Code.

20 (3) Add an amount equal to a deduction allowed or allowable  
21 under Section 805 or Section 832(c) of the Internal Revenue Code  
22 for taxes based on or measured by income and levied at the state  
23 level by any state.

24 (4) Subtract an amount equal to the amount included in the  
25 company's taxable income under Section 78 of the Internal  
26 Revenue Code.

27 (5) Add or subtract the amount necessary to make the adjusted  
28 gross income of any taxpayer that owns property for which bonus  
29 depreciation was allowed in the current taxable year or in an  
30 earlier taxable year equal to the amount of adjusted gross income  
31 that would have been computed had an election not been made  
32 under Section 168(k) of the Internal Revenue Code to apply bonus  
33 depreciation to the property in the year that it was placed in  
34 service.

35 (6) Add an amount equal to any deduction allowed under Section  
36 172 or Section 810 of the Internal Revenue Code.

37 (7) Add or subtract the amount necessary to make the adjusted  
38 gross income of any taxpayer that placed Section 179 property (as  
39 defined in Section 179 of the Internal Revenue Code) in service  
40 in the current taxable year or in an earlier taxable year equal to  
41 the amount of adjusted gross income that would have been  
42 computed had an election for federal income tax purposes not



1           been made for the year in which the property was placed in  
2           service to take deductions under Section 179 of the Internal  
3           Revenue Code in a total amount exceeding twenty-five thousand  
4           dollars (\$25,000).

5           (8) Add an amount equal to the amount that a taxpayer claimed as  
6           a deduction for domestic production activities for the taxable year  
7           under Section 199 of the Internal Revenue Code for federal  
8           income tax purposes.

9           (9) Subtract income that is:

10           (A) exempt from taxation under IC 6-3-2-21.7; and

11           (B) included in the insurance company's taxable income under  
12           the Internal Revenue Code.

13           (10) Add an amount equal to any income not included in gross  
14           income as a result of the deferral of income arising from business  
15           indebtedness discharged in connection with the reacquisition after  
16           December 31, 2008, and before January 1, 2011, of an applicable  
17           debt instrument, as provided in Section 108(i) of the Internal  
18           Revenue Code. Subtract from the adjusted gross income of any  
19           taxpayer that added an amount to adjusted gross income in a  
20           previous year the amount necessary to offset the amount included  
21           in federal gross income as a result of the deferral of income  
22           arising from business indebtedness discharged in connection with  
23           the reacquisition after December 31, 2008, and before January 1,  
24           2011, of an applicable debt instrument, as provided in Section  
25           108(i) of the Internal Revenue Code.

26           (11) Add an amount equal to any exempt insurance income under  
27           Section 953(e) of the Internal Revenue Code that is active  
28           financing income under Subpart F of Subtitle A, Chapter 1,  
29           Subchapter N of the Internal Revenue Code.

30           (12) Add the amount excluded from federal gross income under  
31           Section 103 of the Internal Revenue Code for interest received on  
32           an obligation of a state other than Indiana, or a political  
33           subdivision of such a state, that is acquired by the taxpayer after  
34           December 31, 2011.

35           (d) In the case of insurance companies subject to tax under Section  
36           831 of the Internal Revenue Code and organized under Indiana law, the  
37           same as "taxable income" (as defined in Section 832 of the Internal  
38           Revenue Code), adjusted as follows:

39           (1) Subtract income that is exempt from taxation under this article  
40           by the Constitution and statutes of the United States.

41           (2) Add an amount equal to any deduction allowed or allowable  
42           under Section 170 of the Internal Revenue Code.





- 1 (3) Add an amount equal to a deduction allowed or allowable  
2 under Section 805 or Section 832(c) of the Internal Revenue Code  
3 for taxes based on or measured by income and levied at the state  
4 level by any state.
- 5 (4) Subtract an amount equal to the amount included in the  
6 company's taxable income under Section 78 of the Internal  
7 Revenue Code.
- 8 (5) Add or subtract the amount necessary to make the adjusted  
9 gross income of any taxpayer that owns property for which bonus  
10 depreciation was allowed in the current taxable year or in an  
11 earlier taxable year equal to the amount of adjusted gross income  
12 that would have been computed had an election not been made  
13 under Section 168(k) of the Internal Revenue Code to apply bonus  
14 depreciation to the property in the year that it was placed in  
15 service.
- 16 (6) Add an amount equal to any deduction allowed under Section  
17 172 of the Internal Revenue Code.
- 18 (7) Add or subtract the amount necessary to make the adjusted  
19 gross income of any taxpayer that placed Section 179 property (as  
20 defined in Section 179 of the Internal Revenue Code) in service  
21 in the current taxable year or in an earlier taxable year equal to  
22 the amount of adjusted gross income that would have been  
23 computed had an election for federal income tax purposes not  
24 been made for the year in which the property was placed in  
25 service to take deductions under Section 179 of the Internal  
26 Revenue Code in a total amount exceeding twenty-five thousand  
27 dollars (\$25,000).
- 28 (8) Add an amount equal to the amount that a taxpayer claimed as  
29 a deduction for domestic production activities for the taxable year  
30 under Section 199 of the Internal Revenue Code for federal  
31 income tax purposes.
- 32 (9) Subtract income that is:
- 33 (A) exempt from taxation under IC 6-3-2-21.7; and  
34 (B) included in the insurance company's taxable income under  
35 the Internal Revenue Code.
- 36 (10) Add an amount equal to any income not included in gross  
37 income as a result of the deferral of income arising from business  
38 indebtedness discharged in connection with the reacquisition after  
39 December 31, 2008, and before January 1, 2011, of an applicable  
40 debt instrument, as provided in Section 108(i) of the Internal  
41 Revenue Code. Subtract from the adjusted gross income of any  
42 taxpayer that added an amount to adjusted gross income in a



1 previous year the amount necessary to offset the amount included  
2 in federal gross income as a result of the deferral of income  
3 arising from business indebtedness discharged in connection with  
4 the reacquisition after December 31, 2008, and before January 1,  
5 2011, of an applicable debt instrument, as provided in Section  
6 108(i) of the Internal Revenue Code.

7 (11) Add an amount equal to any exempt insurance income under  
8 Section 953(e) of the Internal Revenue Code that is active  
9 financing income under Subpart F of Subtitle A, Chapter 1,  
10 Subchapter N of the Internal Revenue Code.

11 (12) Add the amount excluded from federal gross income under  
12 Section 103 of the Internal Revenue Code for interest received on  
13 an obligation of a state other than Indiana, or a political  
14 subdivision of such a state, that is acquired by the taxpayer after  
15 December 31, 2011.

16 (e) In the case of trusts and estates, "taxable income" (as defined for  
17 trusts and estates in Section 641(b) of the Internal Revenue Code)  
18 adjusted as follows:

19 (1) Subtract income that is exempt from taxation under this article  
20 by the Constitution and statutes of the United States.

21 (2) Subtract an amount equal to the amount of a September 11  
22 terrorist attack settlement payment included in the federal  
23 adjusted gross income of the estate of a victim of the September  
24 11 terrorist attack or a trust to the extent the trust benefits a victim  
25 of the September 11 terrorist attack.

26 (3) Add or subtract the amount necessary to make the adjusted  
27 gross income of any taxpayer that owns property for which bonus  
28 depreciation was allowed in the current taxable year or in an  
29 earlier taxable year equal to the amount of adjusted gross income  
30 that would have been computed had an election not been made  
31 under Section 168(k) of the Internal Revenue Code to apply bonus  
32 depreciation to the property in the year that it was placed in  
33 service.

34 (4) Add an amount equal to any deduction allowed under Section  
35 172 of the Internal Revenue Code.

36 (5) Add or subtract the amount necessary to make the adjusted  
37 gross income of any taxpayer that placed Section 179 property (as  
38 defined in Section 179 of the Internal Revenue Code) in service  
39 in the current taxable year or in an earlier taxable year equal to  
40 the amount of adjusted gross income that would have been  
41 computed had an election for federal income tax purposes not  
42 been made for the year in which the property was placed in



1 service to take deductions under Section 179 of the Internal  
 2 Revenue Code in a total amount exceeding twenty-five thousand  
 3 dollars (\$25,000).

4 (6) Add an amount equal to the amount that a taxpayer claimed as  
 5 a deduction for domestic production activities for the taxable year  
 6 under Section 199 of the Internal Revenue Code for federal  
 7 income tax purposes.

8 (7) Subtract income that is:

9 (A) exempt from taxation under IC 6-3-2-21.7; and

10 (B) included in the taxpayer's taxable income under the  
 11 Internal Revenue Code.

12 (8) Add an amount equal to any income not included in gross  
 13 income as a result of the deferral of income arising from business  
 14 indebtedness discharged in connection with the reacquisition after  
 15 December 31, 2008, and before January 1, 2011, of an applicable  
 16 debt instrument, as provided in Section 108(i) of the Internal  
 17 Revenue Code. Subtract from the adjusted gross income of any  
 18 taxpayer that added an amount to adjusted gross income in a  
 19 previous year the amount necessary to offset the amount included  
 20 in federal gross income as a result of the deferral of income  
 21 arising from business indebtedness discharged in connection with  
 22 the reacquisition after December 31, 2008, and before January 1,  
 23 2011, of an applicable debt instrument, as provided in Section  
 24 108(i) of the Internal Revenue Code.

25 (9) Add the amount excluded from federal gross income under  
 26 Section 103 of the Internal Revenue Code for interest received on  
 27 an obligation of a state other than Indiana, or a political  
 28 subdivision of such a state, that is acquired by the taxpayer after  
 29 December 31, 2011.

30 SECTION 2. IC 6-3-1-6.5 IS ADDED TO THE INDIANA CODE  
 31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
 32 JANUARY 1, 2017]: **Sec. 6.5. "Entity" means a corporation,**  
 33 **partnership, or person.**

34 SECTION 3. IC 6-3-1-27.8 IS ADDED TO THE INDIANA CODE  
 35 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
 36 JANUARY 1, 2017]: **Sec. 27.8. "Combined group" means the group**  
 37 **of entities whose income and apportionment factors are required**  
 38 **to be taken into account under IC 6-3-2.3 in determining a**  
 39 **taxpayer's share of net business income or loss apportionable to**  
 40 **Indiana.**

41 SECTION 4. IC 6-3-1-34.5 IS REPEALED [EFFECTIVE  
 42 JANUARY 1, 2017]. **Sec. 34.5: (a) Except as provided in subsection**



1 (b); "captive real estate investment trust" means a corporation, a trust;  
2 or an association:

3 (1) that is considered a real estate investment trust for the taxable  
4 year under Section 856 of the Internal Revenue Code;

5 (2) that is not regularly traded on an established securities market;  
6 and

7 (3) in which more than fifty percent (50%) of the:

8 (A) voting power;

9 (B) beneficial interests; or

10 (C) shares;

11 are owned or controlled, directly or constructively, by a single  
12 entity that is subject to Subchapter C of Chapter 1 of the Internal  
13 Revenue Code.

14 (b) The term does not include a corporation, a trust, or an  
15 association in which more than fifty percent (50%) of the entity's voting  
16 power, beneficial interests, or shares are owned by a single entity  
17 described in subsection (a)(3) that is owned or controlled, directly or  
18 constructively, by:

19 (1) a corporation, a trust, or an association that is considered a  
20 real estate investment trust under Section 856 of the Internal  
21 Revenue Code;

22 (2) a person exempt from taxation under Section 501 of the  
23 Internal Revenue Code;

24 (3) a listed property trust or other foreign real estate investment  
25 trust that is organized in a country that has a tax treaty with the  
26 United States Treasury Department governing the tax treatment  
27 of these trusts; or

28 (4) a real estate investment trust that:

29 (A) is intended to become regularly traded on an established  
30 securities market; and

31 (B) satisfies the requirements of Section 856(a)(5) and Section  
32 856(a)(6) of the Internal Revenue Code under Section 856(h)  
33 of the Internal Revenue Code.

34 (c) For purposes of this section, the constructive ownership rules of  
35 Section 318 of the Internal Revenue Code, as modified by Section  
36 856(d)(5) of the Internal Revenue Code, apply to the determination of  
37 the ownership of stock, assets, or net profits of any person.

38 SECTION 5. IC 6-3-1-37 IS ADDED TO THE INDIANA CODE  
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
40 JANUARY 1, 2017]: Sec. 37. "Common control" has the meaning  
41 determined under 26 CFR 1.414(c)-2 (as in effect on January 1,  
42 2016) for two (2) or more trades or businesses under common



1 **control.**

2 SECTION 6. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
4 JANUARY 1, 2017]: **Sec. 38. (a) "Unitary business" means a single  
5 economic enterprise that is made up of either:**

- 6 (1) separate parts of a single business entity; or  
7 (2) a group of business entities that are under common  
8 control;

9 that are sufficiently interdependent, integrated, and interrelated  
10 through their activities so as to provide a synergy and mutual  
11 benefit that produces a sharing or exchange of value among them  
12 and a significant flow of value to the separate parts.

13 (b) The business conducted by a partnership that is directly or  
14 indirectly held by a corporation shall be considered the business of  
15 the corporation to the extent of the corporation's distributive share  
16 of the partnership income, inclusive of guaranteed payments to the  
17 extent prescribed by rule adopted under IC 4-22-2 by the  
18 department.

19 (c) Any business conducted by a partnership shall be treated as  
20 conducted by its partners, whether directly held or indirectly held  
21 through a series of partnerships, to the extent of the partner's  
22 distributive share of the partnership's income, regardless of the  
23 percentage of the partner's ownership interest or its distributive or  
24 any other share of partnership income.

25 (d) A business conducted directly or indirectly by one (1)  
26 corporation is unitary with the part of a business conducted by  
27 another corporation through its direct or indirect interest in a  
28 partnership if:

- 29 (1) the conditions of a unitary business are satisfied; and  
30 (2) the two (2) corporations are members of the same group  
31 of business entities that are under common control.

32 SECTION 7. IC 6-3-2-1, AS AMENDED BY P.L.80-2014,  
33 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JANUARY 1, 2017]: **Sec. 1. (a) Each taxable year, a tax at the  
35 following rate of adjusted gross income is imposed upon the adjusted  
36 gross income of every resident person, and on that part of the adjusted  
37 gross income derived from sources within Indiana of every nonresident  
38 person:**

- 39 (1) For taxable years beginning before January 1, 2015, three and  
40 four-tenths percent (3.4%).  
41 (2) For taxable years beginning after December 31, 2014, and  
42 before January 1, 2017, three and three-tenths percent (3.3%).



- 1 (3) For taxable years beginning after December 31, 2016, three  
 2 and twenty-three hundredths percent (3.23%).
- 3 (b) Except as provided in section 1.5 of this chapter, each taxable  
 4 year, a tax at the following rate of adjusted gross income is imposed on  
 5 that part of the adjusted gross income derived from sources within  
 6 Indiana of every corporation:
- 7 (1) Before July 1, 2012, eight and five-tenths percent (8.5%).  
 8 (2) After June 30, 2012, and before July 1, 2013, eight percent  
 9 (8.0%).  
 10 (3) After June 30, 2013, and before July 1, 2014, seven and  
 11 five-tenths percent (7.5%).  
 12 (4) After June 30, 2014, and before July 1, 2015, seven percent  
 13 (7.0%).  
 14 (5) After June 30, 2015, and before July 1, 2016, six and  
 15 five-tenths percent (6.5%).  
 16 (6) After June 30, 2016, and before July 1, 2017, six and  
 17 twenty-five hundredths percent (6.25%).  
 18 (7) After June 30, 2017, and before July 1, 2018, ~~six percent~~  
 19 ~~(6.0%)~~; **five and seventy-five hundredths percent (5.75%)**.  
 20 (8) After June 30, 2018, and before July 1, 2019, five and  
 21 ~~seventy-five hundredths percent (5.75%)~~; **five-tenths percent**  
 22 **(5.5%)**.  
 23 (9) After June 30, 2019, and before July 1, 2020, five and  
 24 ~~five-tenths percent (5.5%)~~; **twenty-five hundredths percent**  
 25 **(5.25%)**.  
 26 (10) After June 30, 2020, and before July 1, 2021, five and  
 27 ~~twenty-five hundredths percent (5.25%)~~; **four and nine-tenths**  
 28 **percent (4.9%)**.  
 29 ~~(11) After June 30, 2021, four and nine-tenths percent (4.9%)~~.
- 30 (c) If for any taxable year a taxpayer is subject to different tax rates  
 31 under subsection (b), the taxpayer's tax rate for that taxable year is the  
 32 rate determined in the last STEP of the following STEPS:
- 33 STEP ONE: Multiply the number of months in the taxpayer's  
 34 taxable year that precede the month the rate changed by the rate  
 35 in effect before the rate change.  
 36 STEP TWO: Multiply the number of months in the taxpayer's  
 37 taxable year that follow the month before the rate changed by the  
 38 rate in effect after the rate change.  
 39 STEP THREE: Divide the sum of the amounts determined under  
 40 STEPS ONE and TWO by twelve (12).  
 41 However, the rate determined under this subsection shall be rounded  
 42 to the nearest one-hundredth of one percent (0.01%).



1 SECTION 8. IC 6-3-2-2, AS AMENDED BY P.L.250-2015,  
 2 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 3 JANUARY 1, 2017]: Sec. 2. (a) With regard to corporations and  
 4 nonresident persons, "adjusted gross income derived from sources  
 5 within Indiana", for the purposes of this article, shall mean and include:

6 (1) income from real or tangible personal property located in this  
 7 state;

8 (2) income from doing business in this state;

9 (3) income from a trade or profession conducted in this state;

10 (4) compensation for labor or services rendered within this state;

11 and

12 (5) income from stocks, bonds, notes, bank deposits, patents,  
 13 copyrights, secret processes and formulas, good will, trademarks,  
 14 trade brands, franchises, and other intangible personal property to  
 15 the extent that the income is apportioned to Indiana under this  
 16 section or if the income is allocated to Indiana or considered to be  
 17 derived from sources within Indiana under this section.

18 Income from a pass through entity shall be characterized in a manner  
 19 consistent with the income's characterization for federal income tax  
 20 purposes and shall be considered Indiana source income as if the  
 21 person, corporation, or pass through entity that received the income had  
 22 directly engaged in the income producing activity. Income that is  
 23 derived from one (1) pass through entity and is considered to pass  
 24 through to another pass through entity does not change these  
 25 characteristics or attribution provisions. In the case of nonbusiness  
 26 income described in subsection (g), only so much of such income as is  
 27 allocated to this state under the provisions of subsections (h) through  
 28 (k) shall be deemed to be derived from sources within Indiana. In the  
 29 case of business income, only so much of such income as is  
 30 apportioned to this state under the provision of subsection (b) shall be  
 31 deemed to be derived from sources within the state of Indiana. In the  
 32 case of compensation of a team member (as defined in section 2.7 of  
 33 this chapter), only the portion of income determined to be Indiana  
 34 income under section 2.7 of this chapter is considered derived from  
 35 sources within Indiana. In the case of a corporation that is a life  
 36 insurance company (as defined in Section 816(a) of the Internal  
 37 Revenue Code) or an insurance company that is subject to tax under  
 38 Section 831 of the Internal Revenue Code, only so much of the income  
 39 as is apportioned to Indiana under subsection (r) (p) is considered  
 40 derived from sources within Indiana.

41 (b) Except as provided in subsection (l), if business income of a  
 42 corporation or a nonresident person is derived from sources within the



1 state of Indiana and from sources without the state of Indiana, the  
 2 business income derived from sources within this state shall be  
 3 determined by multiplying the business income derived from sources  
 4 both within and without the state of Indiana by the following:

5 (1) For all taxable years that begin after December 31, 2006, and  
 6 before January 1, 2008, a fraction. The:

7 (A) numerator of the fraction is the sum of the property factor  
 8 plus the payroll factor plus the product of the sales factor  
 9 multiplied by three (3); and

10 (B) denominator of the fraction is five (5).

11 (2) For all taxable years that begin after December 31, 2007, and  
 12 before January 1, 2009, a fraction. The:

13 (A) numerator of the fraction is the property factor plus the  
 14 payroll factor plus the product of the sales factor multiplied by  
 15 four and sixty-seven hundredths (4.67); and

16 (B) denominator of the fraction is six and sixty-seven  
 17 hundredths (6.67).

18 (3) For all taxable years beginning after December 31, 2008, and  
 19 before January 1, 2010, a fraction. The:

20 (A) numerator of the fraction is the property factor plus the  
 21 payroll factor plus the product of the sales factor multiplied by  
 22 eight (8); and

23 (B) denominator of the fraction is ten (10).

24 (4) For all taxable years beginning after December 31, 2009, and  
 25 before January 1, 2011, a fraction. The:

26 (A) numerator of the fraction is the property factor plus the  
 27 payroll factor plus the product of the sales factor multiplied by  
 28 eighteen (18); and

29 (B) denominator of the fraction is twenty (20).

30 (5) For all taxable years beginning after December 31, 2010, the  
 31 sales factor.

32 (c) The property factor is a fraction, the numerator of which is the  
 33 average value of the taxpayer's real and tangible personal property  
 34 owned or rented and used in this state during the taxable year and the  
 35 denominator of which is the average value of all the taxpayer's real and  
 36 tangible personal property owned or rented and used during the taxable  
 37 year. However, with respect to a foreign corporation, the denominator  
 38 does not include the average value of real or tangible personal property  
 39 owned or rented and used in a place that is outside the United States.  
 40 Property owned by the taxpayer is valued at its original cost. Property  
 41 rented by the taxpayer is valued at eight (8) times the net annual rental  
 42 rate. Net annual rental rate is the annual rental rate paid by the taxpayer





1 less any annual rental rate received by the taxpayer from subrentals.  
 2 The average of property shall be determined by averaging the values at  
 3 the beginning and ending of the taxable year, but the department may  
 4 require the averaging of monthly values during the taxable year if  
 5 reasonably required to reflect properly the average value of the  
 6 taxpayer's property.

7 (d) The payroll factor is a fraction, the numerator of which is the  
 8 total amount paid in this state during the taxable year by the taxpayer  
 9 for compensation, and the denominator of which is the total  
 10 compensation paid everywhere during the taxable year. However, with  
 11 respect to a foreign corporation, the denominator does not include  
 12 compensation paid in a place that is outside the United States.  
 13 Compensation is paid in this state if:

- 14 (1) the individual's service is performed entirely within the state;
- 15 (2) the individual's service is performed both within and without  
 16 this state, but the service performed without this state is incidental  
 17 to the individual's service within this state; or
- 18 (3) some of the service is performed in this state and:
  - 19 (A) the base of operations or, if there is no base of operations,  
 20 the place from which the service is directed or controlled is in  
 21 this state; or
  - 22 (B) the base of operations or the place from which the service  
 23 is directed or controlled is not in any state in which some part  
 24 of the service is performed, but the individual is a resident of  
 25 this state.

26 (e) The sales factor is a fraction, the numerator of which is the total  
 27 sales of the taxpayer in this state during the taxable year, and the  
 28 denominator of which is the total sales of the taxpayer everywhere  
 29 during the taxable year. Sales include receipts from intangible property  
 30 and receipts from the sale or exchange of intangible property. However,  
 31 with respect to a foreign corporation, the denominator does not include  
 32 sales made in a place that is outside the United States. Receipts from  
 33 intangible personal property are derived from sources within Indiana  
 34 if the receipts from the intangible personal property are attributable to  
 35 Indiana under section 2.2 of this chapter. Regardless of the f.o.b. point  
 36 or other conditions of the sale, sales of tangible personal property are  
 37 in this state if:

- 38 (1) the property is delivered or shipped to a purchaser that is  
 39 within Indiana, other than the United States government; or
- 40 (2) the property is shipped from an office, a store, a warehouse, a  
 41 factory, or other place of storage in this state and the purchaser is  
 42 the United States government.



1 Gross receipts derived from commercial printing as described in  
 2 IC 6-2.5-1-10 and from the sale of computer software shall be treated  
 3 as sales of tangible personal property for purposes of this chapter.

4 (f) Sales, other than receipts from intangible property covered by  
 5 subsection (e) and sales of tangible personal property, are in this state  
 6 if:

- 7 (1) the income-producing activity is performed in this state; or
- 8 (2) the income-producing activity is performed both within and  
 9 without this state and a greater proportion of the  
 10 income-producing activity is performed in this state than in any  
 11 other state, based on costs of performance.

12 (g) Rents and royalties from real or tangible personal property,  
 13 capital gains, interest, dividends, or patent or copyright royalties, to the  
 14 extent that they constitute nonbusiness income, shall be allocated as  
 15 provided in subsections (h) through (k).

16 (h)(1) Net rents and royalties from real property located in this state  
 17 are allocable to this state.

18 (2) Net rents and royalties from tangible personal property are  
 19 allocated to this state:

- 20 (i) if and to the extent that the property is utilized in this state; or
- 21 (ii) in their entirety if the taxpayer's commercial domicile is in this  
 22 state and the taxpayer is not organized under the laws of or  
 23 taxable in the state in which the property is utilized.

24 (3) The extent of utilization of tangible personal property in a state  
 25 is determined by multiplying the rents and royalties by a fraction, the  
 26 numerator of which is the number of days of physical location of the  
 27 property in the state during the rental or royalty period in the taxable  
 28 year, and the denominator of which is the number of days of physical  
 29 location of the property everywhere during all rental or royalty periods  
 30 in the taxable year. If the physical location of the property during the  
 31 rental or royalty period is unknown or unascertainable by the taxpayer,  
 32 tangible personal property is utilized in the state in which the property  
 33 was located at the time the rental or royalty payer obtained possession.

34 (i)(1) Capital gains and losses from sales of real property located in  
 35 this state are allocable to this state.

36 (2) Capital gains and losses from sales of tangible personal property  
 37 are allocable to this state if:

- 38 (i) the property had a situs in this state at the time of the sale; or
- 39 (ii) the taxpayer's commercial domicile is in this state and the  
 40 taxpayer is not taxable in the state in which the property had a  
 41 situs.

42 (3) Capital gains and losses from sales of intangible personal



1 property are allocable to this state if the taxpayer's commercial  
2 domicile is in this state.

3 (j) Interest and dividends are allocable to this state if the taxpayer's  
4 commercial domicile is in this state.

5 (k)(1) Patent and copyright royalties are allocable to this state:

6 (i) if and to the extent that the patent or copyright is utilized by  
7 the taxpayer in this state; or

8 (ii) if and to the extent that the patent or copyright is utilized by  
9 the taxpayer in a state in which the taxpayer is not taxable and the  
10 taxpayer's commercial domicile is in this state.

11 (2) A patent is utilized in a state to the extent that it is employed  
12 in production, fabrication, manufacturing, or other processing in  
13 the state or to the extent that a patented product is produced in the  
14 state. If the basis of receipts from patent royalties does not permit  
15 allocation to states or if the accounting procedures do not reflect  
16 states of utilization, the patent is utilized in the state in which the  
17 taxpayer's commercial domicile is located.

18 (3) A copyright is utilized in a state to the extent that printing or  
19 other publication originates in the state. If the basis of receipts  
20 from copyright royalties does not permit allocation to states or if  
21 the accounting procedures do not reflect states of utilization, the  
22 copyright is utilized in the state in which the taxpayer's  
23 commercial domicile is located.

24 (l) If the allocation and apportionment provisions of this article do  
25 not fairly represent the taxpayer's income derived from sources within  
26 the state of Indiana, the taxpayer may petition for or the department  
27 may require, in respect to all or any part of the taxpayer's business  
28 activity, if reasonable:

29 (1) separate accounting;

30 (2) for a taxable year beginning before January 1, 2011, the  
31 exclusion of any one (1) or more of the factors, except the sales  
32 factor;

33 (3) the inclusion of one (1) or more additional factors which will  
34 fairly represent the taxpayer's income derived from sources within  
35 the state of Indiana; or

36 (4) the employment of any other method to effectuate an equitable  
37 allocation and apportionment of the taxpayer's income.

38 (m) In the case of two (2) or more organizations, trades, or  
39 businesses owned or controlled directly or indirectly by the same  
40 interests, the department shall distribute, apportion, or allocate the  
41 income derived from sources within the state of Indiana between and  
42 among those organizations, trades, or businesses in order to fairly



1 reflect and report the income derived from sources within the state of  
2 Indiana by various taxpayers.

3 (n) For purposes of allocation and apportionment of income under  
4 this article, a taxpayer is taxable in another state if:

5 (1) in that state the taxpayer is subject to a net income tax, a  
6 franchise tax measured by net income, a franchise tax for the  
7 privilege of doing business, or a corporate stock tax; or

8 (2) that state has jurisdiction to subject the taxpayer to a net  
9 income tax regardless of whether, in fact, the state does or does  
10 not.

11 ~~(o) Notwithstanding subsections (l) and (m), the department may~~  
12 ~~not, under any circumstances, require that income, deductions, and~~  
13 ~~credits attributable to a taxpayer and another entity be reported in a~~  
14 ~~combined income tax return for any taxable year, if the other entity is:~~

15 ~~(1) a foreign corporation; or~~

16 ~~(2) a corporation that is classified as a foreign operating~~  
17 ~~corporation for the taxable year by section 2.4 of this chapter.~~

18 ~~(p) Notwithstanding subsections (l) and (m), the department may not~~  
19 ~~require that income, deductions, and credits attributable to a taxpayer~~  
20 ~~and another entity not described in subsection (o)(1) or (o)(2) be~~  
21 ~~reported in a combined income tax return for any taxable year, unless~~  
22 ~~the department is unable to fairly reflect the taxpayer's adjusted gross~~  
23 ~~income for the taxable year through use of other powers granted to the~~  
24 ~~department by subsections (l) and (m):~~

25 ~~(q) (o) Notwithstanding subsections (o) and (p), One (1) or more~~  
26 ~~taxpayers may petition the department under subsection (l) for~~  
27 ~~permission to file a **combined separate** income tax return for a taxable~~  
28 ~~year. The petition to file a **combined separate** income tax return must~~  
29 ~~be completed and filed with the department not more than thirty (30)~~  
30 ~~days after the end of the taxpayer's taxable year. A taxpayer filing a~~  
31 ~~**combined separate** income tax return must petition the department~~  
32 ~~within thirty (30) days after the end of the taxpayer's taxable year to~~  
33 ~~discontinue filing a **combined separate** income tax return.~~

34 ~~(r) (p) This subsection applies to a corporation that is a life~~  
35 ~~insurance company (as defined in Section 816(a) of the Internal~~  
36 ~~Revenue Code) or an insurance company that is subject to tax under~~  
37 ~~Section 831 of the Internal Revenue Code. The corporation's adjusted~~  
38 ~~gross income that is derived from sources within Indiana is determined~~  
39 ~~by multiplying the corporation's adjusted gross income by a fraction:~~

40 (1) the numerator of which is the direct premiums and annuity  
41 considerations received during the taxable year for insurance  
42 upon property or risks in the state; and



1 (2) the denominator of which is the direct premiums and annuity  
 2 considerations received during the taxable year for insurance  
 3 upon property or risks everywhere.

4 The term "direct premiums and annuity considerations" means the  
 5 gross premiums received from direct business as reported in the  
 6 corporation's annual statement filed with the department of insurance.

7 ~~(s)~~ **(q)** This subsection applies to receipts derived from motorsports  
 8 racing.

9 (1) Any purse, prize money, or other amounts earned for  
 10 placement or participation in a race or portion thereof, including  
 11 qualification, shall be attributed to Indiana if the race is conducted  
 12 in Indiana.

13 (2) Any amounts received from an individual or entity as a result  
 14 of sponsorship or similar promotional consideration for one (1) or  
 15 more races shall be in this state in the amount received, multiplied  
 16 by the following fraction:

17 (A) The numerator of the fraction is the number of racing  
 18 events for which sponsorship or similar promotional  
 19 consideration has been paid in a taxable year and that occur in  
 20 Indiana.

21 (B) The denominator of the fraction is the total number of  
 22 racing events for which sponsorship or similar promotional  
 23 consideration has been paid in a taxable year.

24 (3) Any amounts earned as an incentive for placement or  
 25 participation in one (1) or more races and that are not covered  
 26 under ~~subdivisions~~ **subdivision** (1) or (2) or under IC 6-3-2-3.2  
 27 shall be attributed to Indiana in the proportion of the races that  
 28 occurred in Indiana.

29 This subsection, as enacted in 2013, is intended to be a clarification of  
 30 the law and not a substantive change in the law.

31 **(r) Except as otherwise provided by this article, IC 6-3-2.3**  
 32 **applies to a taxpayer member of a controlled group.**

33 SECTION 9. IC 6-3-2-2.1, AS ADDED BY P.L.190-2014,  
 34 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JANUARY 1, 2017]: Sec. 2.1. (a) This section applies only to taxable  
 36 years beginning after December 31, 2013.

37 (b) The following definitions apply throughout this section:

38 **(1) "Affiliated group" has the meaning provided in Section**  
 39 **1504 of the Internal Revenue Code, except that the ownership**  
 40 **percentage in Section 1504(a)(2) of the Internal Revenue Code**  
 41 **shall be determined using fifty percent (50%) instead of**  
 42 **eighty percent (80%).**



1           (+) (2) "Qualified logistics services" means the provision of the  
2           warehousing, management, distribution, transportation, or other  
3           services on behalf of an unrelated party with respect to, but  
4           without taking title to, the qualified property of the unrelated  
5           party.

6           (±) (3) "Qualified property" means legend drugs (as defined in  
7           IC 16-18-2-199), devices (as defined in IC 16-18-2-94), or  
8           medical supplies.

9           (±) (4) "Qualified third party logistics provider" means an entity  
10          that:

11           (A) is licensed under IC 25-26-14;

12           (B) is certified by the Indiana economic development  
13           corporation under subsection (d); and

14           (C) provides qualified logistics services.

15          (±) (5) "Unrelated party" means an entity that, with respect to a  
16          qualified third party logistics provider:

17           (A) is not a member of the same affiliated group; ~~within the~~  
18           ~~meaning of IC 6-3-2-20(a)(1);~~

19           (B) is not related within the meaning of Section 267 of the  
20           Internal Revenue Code; and

21           (C) is not related within the meaning of Section 707(b) of the  
22           Internal Revenue Code.

23          (c) Notwithstanding any other provision of this article, with respect  
24          to an entity that has contracted with a qualified third party logistics  
25          provider for qualified logistics services, the:

26           (1) ownership or leasing by that entity of tangible or intangible  
27           property located at the Indiana premises of the qualified third  
28           party logistics provider;

29           (2) sale by that entity of qualified property shipped or distributed  
30           from the Indiana premises of the qualified third party logistics  
31           provider;

32           (3) activities of any kind performed by or on behalf of that entity  
33           at the Indiana premises of the qualified third party logistics  
34           provider; and

35           (4) activities performed by the qualified third party logistics  
36           provider in Indiana for or on behalf of that entity;

37          shall not cause that entity to have adjusted gross income derived from  
38          sources within Indiana for purposes of the taxes imposed by this  
39          chapter, unless that entity engages in other activities in Indiana away  
40          from the premises of the qualified third party logistics provider that  
41          exceed the protection of 15 U.S.C. 381.

42          (d) The Indiana economic development corporation shall develop



1 and administer a program through which it certifies logistics providers  
2 as qualified third party logistics providers.

3 (e) This section expires January 1, 2016.

4 SECTION 10. IC 6-3-2-2.4 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 2.4. (a) For  
6 purposes of section 2(o) of this chapter, a corporation is a foreign  
7 operating corporation for a particular taxable year. The following  
8 definitions apply throughout this section:

9 (1) "Tax haven" means a jurisdiction that, during the taxable  
10 year in question:

11 (A) has no or nominal effective tax on the relevant income;  
12 and

13 (B) has or does any of the following:

14 (i) Has laws or practices that prevent effective exchange  
15 of information for tax purposes with other governments  
16 on taxpayers benefitting from the tax regime.

17 (ii) Has a tax regime that does not have tax regime  
18 transparency.

19 (iii) Facilitates the establishment of foreign owned  
20 entities without the need for a local substantive presence  
21 or prohibits these entities from having any commercial  
22 impact on the local economy.

23 (iv) Explicitly or implicitly excludes the jurisdiction's  
24 resident taxpayers from taking advantage of the tax  
25 regime's benefits or prohibits enterprises that benefit  
26 from the regime from operating in the jurisdiction's  
27 domestic market.

28 (v) Has created a tax regime that is favorable for tax  
29 avoidance, based upon an overall assessment of relevant  
30 factors, including whether the jurisdiction has a  
31 significant untaxed offshore financial/other services  
32 sector relative to its overall economy.

33 (2) "Tax regime transparency" means that:

34 (A) details of legislative, legal, or administrative provisions  
35 are open and apparent and are consistently applied among  
36 similarly situated taxpayers; or

37 (B) information needed by tax authorities to determine a  
38 taxpayer's correct tax liability, such as accounting records  
39 and underlying documentation, is adequately available.

40 (3) "Water's edge election" refers to an election under this  
41 section.

42 (b) Taxpayer members of a unitary group that meet the



1 requirements of this section may elect to determine each of their  
 2 apportioned shares of the net business income or loss of the  
 3 combined group under a water's edge election under this section.

4 (c) Under a water's edge election, taxpayer members shall take  
 5 into account only the following income and apportionment factors  
 6 of members that otherwise would be included in the taxpayer  
 7 member's combined group:

8 (1) The entire income and apportionment factors of any  
 9 member incorporated in the United States or formed under  
 10 the laws of any state (excluding any foreign country).

11 (2) The entire income and apportionment factors of any  
 12 member, regardless of the place incorporated or formed, if it  
 13 has ~~eighty twenty~~ percent (~~80%~~) (20%) or more of its total  
 14 business activity occurring ~~outside~~ within the United States  
 15 during the taxable year.

16 (3) The entire income and apportionment factors of any  
 17 member that is:

18 (A) a domestic international sales corporation as described  
 19 in Sections 991 through 994 of the Internal Revenue Code;

20 or

21 (B) an export trade corporation, as described in Sections  
 22 970 through 971 of the Internal Revenue Code.

23 (4) The income derived from or attributable to sources within  
 24 the United States, as determined under the Internal Revenue  
 25 Code without regard to federal treaties, and its related  
 26 apportionment factors, for any member not described in  
 27 subdivisions (1) through (3).

28 (5) The income and the apportionment factors related to the  
 29 income of a member that is a controlled foreign corporation  
 30 (as defined in Section 957 of the Internal Revenue Code), to  
 31 the extent of the income of that member that is defined in  
 32 Section 952 of Subpart F of the Internal Revenue Code, not  
 33 excluding lower-tier subsidiaries' distributions of such income  
 34 that was previously taxed, determined without regard to  
 35 federal treaties. However, any item of income received by a  
 36 controlled foreign corporation shall be excluded if the income  
 37 was subject to an effective rate of income tax imposed by a  
 38 foreign country greater than ninety percent (90%) of the  
 39 maximum rate of tax specified in Section 11 of the Internal  
 40 Revenue Code.

41 (6) The income and apportionment factors related to the  
 42 income of a member earned, directly or indirectly, from





1           **intangible property or service related activities that are**  
 2           **deductible against the business income of other members of**  
 3           **the combined group if the member earned more than twenty**  
 4           **percent (20%) of its income from these intangible property or**  
 5           **service related activities.**

6           **(7) The entire income and apportionment factors of any**  
 7           **member that is doing business in a tax haven, whenever:**

8                   **(A) the member is engaged in activity sufficient for the tax**  
 9                   **haven jurisdiction to impose a tax under United States**  
 10                   **constitutional standards; and**

11                   **(B) the member's business activity within a tax haven is not**  
 12                   **entirely outside the scope of the laws, provisions, and**  
 13                   **practices that cause the jurisdiction to qualify as a tax**  
 14                   **haven.**

15           **(b)(d)** For purposes of determining the amount of a ~~corporation's~~ **an**  
 16           **entity's** business activity that occurs within the United States, the  
 17           department shall determine the sum of ~~that corporation's~~ **the entity's**  
 18           United States property factor and its United States payroll factor and  
 19           divide that sum by two (2). If the quotient exceeds two-tenths (0.2),  
 20           then less than eighty percent (80%) of the ~~corporation's~~ **entity's**  
 21           business shall be considered to have occurred outside the United  
 22           States. If the quotient equals or is less than two-tenths (0.2), then eighty  
 23           percent (80%) or more of the ~~corporation's~~ **entity's** business shall be  
 24           considered to have occurred outside the United States. If a ~~corporation's~~  
 25           **the entity's** United States property factor or its United States payroll  
 26           factor has a denominator of zero (0), then the sum of the two (2) factors  
 27           shall be divided by one (1) and not by two (2).

28           **(c)(e)** The United States property factor of a ~~corporation~~ **an entity**  
 29           is a fraction. The numerator of the fraction is the average value of the  
 30           ~~corporation's~~ **entity's** real and tangible personal property owned or  
 31           rented and used in the United States during the taxable year, and the  
 32           denominator of the fraction is the average value of all the ~~corporation's~~  
 33           **entity's** real and tangible personal property owned or rented and used  
 34           anywhere in the world during the taxable year. Property owned by the  
 35           ~~corporation~~ **entity** shall be valued at its original cost. Property rented  
 36           by the ~~corporation~~ **entity** shall be valued at eight (8) times the net  
 37           annual rental rate. The corporation's net annual rental rate is the annual  
 38           rental rate paid by the ~~corporation~~ **entity** less any annual rental rate  
 39           received by the ~~corporation~~ **entity** from subrentals. The average value  
 40           of property shall be determined by averaging the values at the  
 41           beginning and ending of the taxable year, but the department may  
 42           require the averaging of monthly values during the taxable year if



1 reasonably required to reflect properly the average value of the  
2 ~~corporation's~~ **entity's** property.

3 ~~(d)~~ **(f)** The United States payroll factor of a ~~corporation~~ **an entity** is  
4 a fraction. The numerator of the fraction is the total compensation to  
5 individuals paid in the United States during the taxable year by the  
6 ~~corporation,~~ **entity,** and the denominator of the fraction is the total  
7 compensation to individuals paid anywhere in the world during the  
8 taxable year by the ~~corporation,~~ **entity.** Compensation to an individual  
9 is paid in the United States if:

10 (1) the individual's service is performed entirely within the United  
11 States;

12 (2) the individual's service is performed both within and outside  
13 the United States, but the service performed outside the United  
14 States is incidental to the individual's service within the United  
15 States; or

16 (3) the individual is a resident of the United States, some of the  
17 service is performed in the United States, and:

18 (A) the base of operations or, if there is no base of operations,  
19 the place from which the service is directed or controlled is in  
20 the United States; or

21 (B) the base of operations or, if there is no base of operations,  
22 the place from which the service is directed or controlled is not  
23 in a jurisdiction that is outside the United States and that is  
24 where some part of the service is performed.

25 **(g) A water's edge election is effective only if made on a timely**  
26 **filed, original return for a taxable year by every member of the**  
27 **unitary business subject to tax under this article. The department**  
28 **shall adopt rules under IC 4-22-2 to govern the impact, if any, on**  
29 **the scope or application of a water's edge election, including**  
30 **termination or deemed election, resulting from a change in the**  
31 **composition of the unitary group, the combined group, or the**  
32 **taxpayer members, and any other similar change.**

33 **(h) A water's edge election constitutes consent to the reasonable**  
34 **production of documents and taking of depositions in accordance**  
35 **with Indiana law.**

36 **(i) At the discretion of the department, a water's edge election**  
37 **may be disregarded in part or in whole, and the income and**  
38 **apportionment factors of any member of the taxpayer's unitary**  
39 **group may be included in the combined report without regard to**  
40 **this section if any member of the unitary group fails to comply with**  
41 **any provision of this article or IC 6-8.1 or if a person otherwise not**  
42 **included in the water's edge combined group was availed of with**



1 a substantial objective of avoiding state income tax.

2 (j) A water's edge election is binding for and applicable to the  
3 tax year it is made and all tax years thereafter for a period of ten  
4 (10) years. It may be withdrawn or reinstated after withdrawal  
5 before the expiration of the ten (10) year period:

6 (1) only upon written request for reasonable cause based on  
7 extraordinary hardship due to unforeseen changes in state tax  
8 statutes, law, or policy; and

9 (2) only with the written permission of the department.

10 If the department grants a withdrawal of election, the department  
11 shall impose reasonable conditions as necessary to prevent the  
12 evasion of tax or to clearly reflect income for the election period  
13 before or after the withdrawal. Upon the expiration of the ten (10)  
14 year period, a taxpayer may withdraw from the water's edge  
15 election. The withdrawal must be made in writing within one (1)  
16 year of the expiration of the election and is binding for a period of  
17 ten (10) years, subject to the same conditions as applied to the  
18 original election. If no withdrawal is properly made, the water's  
19 edge election is in place for an additional ten (10) year period,  
20 subject to the same conditions as applied to the original election.

21 SECTION 11. IC 6-3-2-3.3 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
23 JANUARY 1, 2017]: Sec. 3.3. This section does not apply to an  
24 entity described in section 2.8(2) of this chapter. To the extent that  
25 an entity's adjusted gross income is not subject to tax under this  
26 article:

27 (1) the income, deductions, credits, and apportionment factors  
28 of the entity described in section 2.8 of this chapter must be  
29 eliminated for purposes of determining the income,  
30 deductions, credits, or apportionment factors of a combined  
31 group and the taxable members of a combined group; and

32 (2) the provisions of this article concerning combined groups  
33 and combined income tax returns do not apply to an entity  
34 described in section 2.8 of this chapter.

35 SECTION 12. IC 6-3-2-16 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JANUARY 1, 2017]: Sec. 16. If an entity is  
37 subject to taxation under this article and is a member of a unitary group  
38 of which a taxpayer subject to taxation under IC 6-5.5 is a member, all  
39 income and deductions attributable to transactions between the entity  
40 and the unitary taxpayer **under IC 6-5.5** shall be eliminated in  
41 determining the amount of tax imposed under this article. This section  
42 does not prohibit the elimination of income and deductions between



1 two (2) or more entities that are not members of a unitary group.

2 SECTION 13. IC 6-3-2-20 IS REPEALED [EFFECTIVE  
3 JANUARY 1, 2017]. Sec. 20: (a) The following definitions apply  
4 throughout this section:

5 (1) "Affiliated group" has the meaning provided in Section 1504  
6 of the Internal Revenue Code, except that the ownership  
7 percentage in Section 1504(a)(2) of the Internal Revenue Code  
8 shall be determined using fifty percent (50%) instead of eighty  
9 percent (80%).

10 (2) "Directly related interest expenses" means interest expenses  
11 that are paid to; or accrued or incurred as a liability to; a recipient  
12 if:

13 (A) the amounts represent, in the hands of the recipient,  
14 income from making one (1) or more loans; and

15 (B) the funds loaned were originally received by the recipient  
16 from the payment of expenses by any of the following:

17 (i) The taxpayer.

18 (ii) A member of the same affiliated group as the taxpayer.

19 (iii) A foreign corporation.

20 (3) "Foreign corporation" means a corporation that is organized  
21 under the laws of a country other than the United States and  
22 would be a member of the same affiliated group as the taxpayer  
23 if the corporation were organized under the laws of the United  
24 States.

25 (4) "Intangible expenses" means the following amounts to the  
26 extent these amounts are allowed as deductions in determining  
27 taxable income under Section 63 of the Internal Revenue Code  
28 before the application of any net operating loss deduction and  
29 special deductions for the taxable year:

30 (A) Expenses, losses, and costs directly for, related to; or in  
31 connection with the acquisition; use; maintenance;  
32 management; ownership; sale; exchange; or any other  
33 disposition of intangible property.

34 (B) Royalty, patent, technical, and copyright fees.

35 (C) Licensing fees.

36 (D) Other substantially similar expenses and costs.

37 (5) "Intangible property" means patents; patent applications; trade  
38 names; trademarks; service marks; copyrights; trade secrets; and  
39 substantially similar types of intangible assets.

40 (6) "Interest expenses" means amounts that are allowed as  
41 deductions under Section 163 of the Internal Revenue Code in  
42 determining taxable income under Section 63 of the Internal



1 Revenue Code before the application of any net operating loss  
2 deductions and special deductions for the taxable year.

3 (7) "Makes a disclosure" means a taxpayer provides the following  
4 information regarding a transaction with a member of the same  
5 affiliated group or a foreign corporation involving an intangible  
6 expense or a directly related interest expense with the taxpayer's  
7 tax return on the forms prescribed by the department:

8 (A) The name of the recipient.

9 (B) The state or country of domicile of the recipient.

10 (C) The amount paid to the recipient.

11 (D) A copy of federal Form 851, Affiliation Schedule, as filed  
12 with the taxpayer's federal consolidated tax return.

13 (E) The information needed to determine the taxpayer's status  
14 under the exceptions listed in subsection (c):

15 (8) "Recipient" means:

16 (A) a member of the same affiliated group as the taxpayer; or

17 (B) a foreign corporation;

18 to which is paid an item of income that corresponds to an  
19 intangible expense or a directly related interest expense.

20 (9) "Unrelated party" means a person that, with respect to the  
21 taxpayer, is not a member of the same affiliated group or a foreign  
22 corporation.

23 (b) Except as provided in subsection (c); in determining its adjusted  
24 gross income under IC 6-3-1-3.5(b); a corporation subject to the tax  
25 imposed by IC 6-3-2-1 shall add to its taxable income under Section 63  
26 of the Internal Revenue Code:

27 (1) all intangible expenses; and

28 (2) all directly related interest expenses;

29 paid; accrued; or incurred with one (1) or more members of the same  
30 affiliated group or with one (1) or more foreign corporations:

31 (c) The addition of intangible expenses or directly related interest  
32 expenses otherwise required in a taxable year under subsection (b) is  
33 not required if one (1) or more of the following apply to the taxable  
34 year:

35 (1) The taxpayer and the recipient are both included in the same  
36 consolidated tax return filed under IC 6-3-4-14 or in the same  
37 combined return filed under IC 6-3-2-2(q) for the taxable year.

38 (2) If the recipient receives an item of income that corresponds to  
39 the directly related interest expenses and the recipient:

40 (A) is subject to the financial institutions tax under IC 6-5-5;

41 (B) files a return under IC 6-5-5; and

42 (C) apportions the items of income that correspond to the



- 1           intangible expenses and the directly related interest expenses  
2           in accordance with IC 6-5.5:
- 3           (3) The taxpayer makes a disclosure and, at the request of the  
4           department, can establish by a preponderance of the evidence  
5           that:
- 6           (A) the item of income corresponding to the intangible  
7           expenses or the directly related interest expenses was included  
8           within the recipient's income that is subject to tax in:
- 9           (i) a state or possession of the United States; or  
10          (ii) a country other than the United States;  
11          that is the recipient's commercial domicile and that imposes a  
12          net income tax; a franchise tax measured, in whole or in part,  
13          by net income, or a value added tax;
- 14          (B) the transaction giving rise to the intangible expenses or the  
15          directly related interest expenses between the taxpayer and the  
16          recipient was made at a commercially reasonable rate and at  
17          terms comparable to an arm's length transaction; and
- 18          (C) the transactions giving rise to the intangible expenses or  
19          the directly related interest expenses between the taxpayer and  
20          the recipient did not have Indiana tax avoidance as the  
21          principal purpose.
- 22          (4) The taxpayer makes a disclosure and, at the request of the  
23          department, can establish by a preponderance of the evidence  
24          that:
- 25          (A) the recipient regularly engages in transactions with one (1)  
26          or more unrelated parties on terms substantially similar to  
27          those of the subject transaction; and
- 28          (B) the transaction giving rise to the intangible expenses or the  
29          directly related interest expenses between the taxpayer and the  
30          recipient did not have Indiana tax avoidance as the principal  
31          purpose.
- 32          (5) The taxpayer makes a disclosure and, at the request of the  
33          department, can establish by a preponderance of the evidence  
34          that:
- 35          (A) the payment was received from a person or entity that is an  
36          unrelated party, and on behalf of that unrelated party, paid that  
37          amount to the recipient in an arm's length transaction; and
- 38          (B) the transaction giving rise to the intangible expenses or the  
39          directly related interest expenses between the taxpayer and the  
40          recipient did not have Indiana tax avoidance as the principal  
41          purpose.
- 42          (6) The taxpayer makes a disclosure and, at the request of the



1 department; can establish by a preponderance of the evidence  
2 that:

3 (A) the recipient paid; accrued; or incurred a liability to an  
4 unrelated party during the taxable year for an equal or greater  
5 amount that was directly for; related to; or in connection with  
6 the same property giving rise to the expenses; and

7 (B) the transactions giving rise to the intangible expenses or  
8 the directly related interest expenses between the taxpayer and  
9 the recipient did not have Indiana tax avoidance as the  
10 principal purpose.

11 (7) The taxpayer makes a disclosure and; at the request of the  
12 department; can establish by a preponderance of the evidence  
13 that:

14 (A) the recipient is engaged in:

- 15 (i) substantial business activities from the acquisition; use;  
16 licensing; maintenance; management; ownership; sale;  
17 exchange; or any other disposition of intangible property; or  
18 (ii) other substantial business activities separate and apart  
19 from the business activities described in item (i);

20 as evidenced by the maintenance of a permanent office space  
21 and an adequate number of full-time; experienced employees;

22 (B) the transactions giving rise to the intangible expenses or  
23 the directly related interest expenses between the taxpayer and  
24 the recipient did not have Indiana tax avoidance as the  
25 principal purpose; and

26 (C) the transaction was made at a commercially reasonable  
27 rate and at terms comparable to an arm's length transaction.

28 (8) The taxpayer and the department agree; in writing; to the  
29 application or use of an alternative method of allocation or  
30 apportionment under section 2(t) or 2(m) of this chapter.

31 (9) Upon request by the taxpayer; the department determines that  
32 the adjustment otherwise required by this section is unreasonable.

33 (d) For purposes of this section; intangible expenses or directly  
34 related interest expenses shall be considered to be at a commercially  
35 reasonable rate or at terms comparable to an arm's length transaction  
36 if the intangible expenses or directly related interest expenses meet the  
37 arm's length standards of United States Treasury Regulation  
38 1.482-1(b).

39 (e) If intangible expenses or directly related interest expenses are  
40 determined not to be at a commercially reasonable rate or at terms  
41 comparable to an arm's length transaction for purposes of this section;  
42 the adjustment required by subsection (b) shall be made only to the



1 extent necessary to cause the intangible expenses or directly related  
 2 interest expenses to be at a commercially reasonable rate and at terms  
 3 comparable to an arm's length transaction:

4 (f) For purposes of this section, transactions giving rise to intangible  
 5 expenses or the directly related interest expenses between the taxpayer  
 6 and the recipient shall be considered as having Indiana tax avoidance  
 7 as the principal purpose if:

8 (1) there is not one (1) or more valid business purposes that  
 9 independently sustain the transaction notwithstanding any tax  
 10 benefits associated with the transaction; and

11 (2) the principal purpose of tax avoidance exceeds any other valid  
 12 business purpose:

13 SECTION 14. IC 6-3-2.3 IS ADDED TO THE INDIANA CODE  
 14 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 15 JANUARY 1, 2017]:

16 **Chapter 2.3. Net Business Income or Loss**

17 **Sec. 1. This chapter applies to an entity that is part of a**  
 18 **combined group.**

19 **Sec. 2. A member's net business income is determined by**  
 20 **removing all but business income, expense, and loss from that**  
 21 **member's total income.**

22 **Sec. 3. Each taxpayer member is responsible for a tax under this**  
 23 **article based on its taxable income or loss apportioned or allocated**  
 24 **to Indiana. A taxpayer's taxable income or loss apportioned or**  
 25 **allocated to Indiana includes the following:**

26 (1) The taxpayer's share of any business income  
 27 apportionable to Indiana of each of the combined groups of  
 28 which the taxpayer is a member, as determined under section  
 29 5 of this chapter.

30 (2) The taxpayer's share of any business income  
 31 apportionable to Indiana of a distinct business activity  
 32 conducted within and without Indiana wholly by the taxpayer  
 33 member, as determined under IC 6-3-2-2.

34 (3) The taxpayer's income from a business conducted wholly  
 35 by the taxpayer member entirely within Indiana.

36 (4) The taxpayer's income sourced to Indiana from the sale or  
 37 exchange of capital or assets, and from involuntary  
 38 conversions, as determined under section 13 of this chapter.

39 (5) The taxpayer's nonbusiness income or loss allocable to  
 40 Indiana, as determined under IC 6-3-2-2.

41 (6) The taxpayer's income or loss allocated or apportioned in  
 42 an earlier year, required to be taken into account as state





1 source income during the income year, other than a net  
2 operating loss.

3 (7) The taxpayer's net operating loss carryover or carryback.  
4 If the taxable income computed under this chapter results in  
5 a loss for a taxpayer member of the combined group, that  
6 taxpayer member has a state net operating loss, subject to the  
7 net operating loss limitations, carryforward, and carryback  
8 provisions of IC 6-3-2-2.6. The net operating loss is applied as  
9 a deduction in a prior or subsequent year only if that taxpayer  
10 has state source positive net income, whether or not the  
11 taxpayer is or was a member of a combined reporting group  
12 in the prior or subsequent year.

13 Sec. 4. Except where otherwise provided, no tax credit or  
14 post-apportionment deduction earned by one (1) member of the  
15 combined group, but not fully used by or allowed to that member,  
16 may be:

17 (1) used in whole or in part by another member of the  
18 combined group; or

19 (2) applied in whole or in part against the total income of the  
20 combined group.

21 A post-apportionment deduction carried over into a subsequent  
22 year as to the member that incurred it, and available as a  
23 deduction to that member in a subsequent year, shall be considered  
24 in the computation of the income of that member in the subsequent  
25 year, regardless of the composition of that income as apportioned,  
26 allocated, or wholly within Indiana.

27 Sec. 5. (a) A taxpayer's share of the business income  
28 apportionable to Indiana of each combined group of which it is a  
29 member is the product of:

30 (1) the business income of the combined group, as determined  
31 under section 6 of this chapter; multiplied by

32 (2) the taxpayer member's apportionment percentage, as  
33 determined under IC 6-3-2-2.

34 (b) The taxpayer member shall:

35 (1) include in the sales factor numerator under IC 6-3-2-2, the  
36 taxpayer's sales that are associated with the combined group's  
37 unitary business in Indiana; and

38 (2) include in the denominator under IC 6-3-2-2, the sales of  
39 all members of the combined group, including the taxpayer,  
40 that are associated with the combined group's unitary  
41 business wherever located.

42 (c) The sales of a partnership shall be included in the



1 determination of a partner's apportionment percentage in  
2 proportion to a ratio. The numerator of the ratio is the amount of  
3 the partner's distributive share of the partnership's unitary income  
4 included in the income of the combined group in accordance with  
5 section 9 of this chapter. The denominator is the amount of the  
6 partnership's total unitary income.

7 Sec. 6. (a) The business income of a combined group is  
8 determined in conformity with subsections (b) and (c).

9 (b) From the total income of the combined group, determined  
10 under subsection (c), subtract any income and add any expense or  
11 loss, other than the business income, expense, or loss of the  
12 combined group.

13 (c) Except as otherwise provided, the total income of the  
14 combined group is the sum of the income of each member of the  
15 combined group determined under federal income tax laws, as  
16 adjusted for state purposes, as if the member were not consolidated  
17 for federal purposes. The income of each member of the combined  
18 group shall be determined under sections 7 through 14 of this  
19 chapter.

20 Sec. 7. For any member incorporated in the United States, or  
21 included in a consolidated federal corporate income tax return, the  
22 income to be included in the total income of the combined group  
23 shall be the taxable income for the corporation after making  
24 appropriate adjustments under this article.

25 Sec. 8. (a) For any member not included in section 7 of this  
26 chapter, the income to be included in the total income of the  
27 combined group shall be determined as follows:

28 (1) A profit and loss statement shall be prepared for each  
29 foreign branch or corporation in the currency in which the  
30 books of account of the branch or corporation are regularly  
31 maintained.

32 (2) Adjustments shall be made to the profit and loss statement  
33 to conform the statement to the accounting principles  
34 generally accepted in the United States for the preparation of  
35 the statements except as modified by this article and the rules  
36 adopted under IC 4-22-2 by the department.

37 (3) Adjustments shall be made to the profit and loss statement  
38 to conform the statement to the tax accounting standards  
39 required by Indiana law and the rules adopted under  
40 IC 4-22-2 by the department.

41 (4) Except as otherwise provided by rule adopted under  
42 IC 4-22-2 by the department, the profit and loss statement of



1 each member of the combined group, and the apportionment  
2 factors related to each member of the combined group,  
3 whether United States or foreign, shall be translated into the  
4 currency in which the parent company maintains its books  
5 and records.

6 (5) Income apportioned to Indiana must be expressed in  
7 United States dollars.

8 (b) Instead of the procedures set forth in subsection (a) and  
9 subject to the determination of the department that it reasonably  
10 approximates income as determined under this article and the  
11 rules adopted under IC 4-22-2 by the department, any member not  
12 included in section 7 of this chapter may determine its income on  
13 the basis of the consolidated profit and loss statement that:

14 (1) includes the member; and

15 (2) is prepared for filing with the Securities and Exchange  
16 Commission by related corporations.

17 If the member is not required to file with the Securities and  
18 Exchange Commission, the department may allow the use of the  
19 consolidated profit and loss statement prepared for reporting to  
20 shareholders and subject to review by an independent auditor. If  
21 the statements do not reasonably approximate income as  
22 determined under this article and the rules adopted under  
23 IC 4-22-2 by the department, the director may accept those  
24 statements with appropriate adjustments to approximate that  
25 income.

26 **Sec. 9.** If a unitary business includes income from a partnership,  
27 the income to be included in the total income of the combined  
28 group is the direct and indirect distributive share of the member  
29 of the combined group of the partnership's unitary business  
30 income.

31 **Sec. 10.** All dividends paid by one (1) to another of the members  
32 of the combined group shall, to the extent those dividends are paid  
33 out of the earnings and profits of the unitary business included in  
34 the combined income tax report, in the current or an earlier year,  
35 be eliminated from the income of the recipient. This section does  
36 not apply to dividends received from members of the unitary  
37 business that are not a part of the combined group.

38 **Sec. 11.** Except as otherwise provided by rule adopted under  
39 IC 4-22-2 by the department, business income from an  
40 intercompany transaction between members of the same combined  
41 group shall be deferred in a manner similar to 26 CFR 1.1502-13.  
42 Upon the occurrence of any of the following events, deferred



1 business income resulting from an intercompany transaction  
 2 between members of a combined group shall be restored to the  
 3 income of the seller and shall be apportioned as business income  
 4 earned immediately before the event:

5 (1) The object of a deferred intercompany transaction is:

6 (A) resold by the buyer to an entity that is not a member of  
 7 the combined group;

8 (B) resold by the buyer to an entity that is a member of the  
 9 combined group for use outside the unitary business in  
 10 which the buyer and seller are engaged; or

11 (C) converted by the buyer to a use outside the unitary  
 12 business in which the buyer and seller are engaged.

13 (2) The buyer and seller are no longer members of the same  
 14 combined group, regardless of whether the members remain  
 15 unitary.

16 Sec. 12. A charitable expense incurred by a member of a  
 17 combined group shall, to the extent allowable as a deduction under  
 18 Section 170 of the Internal Revenue Code, be added back in  
 19 conformity with IC 6-3-1-3.5 first to the business income of the  
 20 combined group. Any remaining amount shall then be added back  
 21 to nonbusiness income allocable to the member that incurred the  
 22 expense.

23 Sec. 13. Gain or loss from the sale or exchange of capital assets,  
 24 property described by Section 1231(a)(3) of the Internal Revenue  
 25 Code, and property subject to an involuntary conversion must be  
 26 removed from the total separate net income of each member of a  
 27 combined group and apportioned and allocated as follows:

28 (1) For each class of gain or loss (short term capital, long term  
 29 capital, Section 1231 property, and involuntary conversions),  
 30 all members' business gain and loss for the class must be  
 31 combined (without netting between the classes) and each class  
 32 of net business gain or loss separately apportioned to each  
 33 member using the member's apportionment percentage  
 34 determined under section 5 of this chapter.

35 (2) Each taxpayer member shall then net its apportioned  
 36 business gain or loss for all classes, including any such  
 37 apportioned business gain and loss from other combined  
 38 groups, against the taxpayer member's nonbusiness gain and  
 39 loss for all classes allocated to Indiana, using the rules of  
 40 Sections 1231 and 1222 of the Internal Revenue Code, without  
 41 regard to any of the taxpayer member's gains or losses from  
 42 the sale or exchange of capital assets, Section 1231 property,



1 and involuntary conversions that are nonbusiness items  
2 allocated to another state.

3 (3) Any resulting state source income (or loss, if the loss is not  
4 subject to the limitations of Section 1211 of the Internal  
5 Revenue Code) of a taxpayer member produced by the  
6 application of subdivisions (1) and (2) must then be applied to  
7 all other state source income or loss of that member.

8 (4) Any resulting state source loss of a member that is subject  
9 to the limitations of Section 1211 of the Internal Revenue  
10 Code shall be carried forward or carried back by that  
11 member and shall be treated as state source short term capital  
12 loss incurred by that member for the year for which the  
13 carryover or carryback applies.

14 **Sec. 14. Any expense of one (1) member of the unitary group**  
15 **which is directly or indirectly attributable to the nonbusiness or**  
16 **exempt income of another member of the unitary group shall be**  
17 **allocated to that other member as corresponding nonbusiness or**  
18 **exempt expense, as appropriate.**

19 SECTION 15. IC 6-3-4-18 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
21 JANUARY 1, 2017]: **Sec. 18. (a) Except as provided by this article,**  
22 **a taxpayer engaged in a unitary business with one (1) or more**  
23 **other corporations shall file a combined income tax return. The**  
24 **combined return must include:**

25 (1) the:

26 (A) income determined under IC 6-3-2.3-6; and

27 (B) apportionment factors determined under IC 6-3-2-2  
28 and IC 6-3-2.3-5;

29 of all corporations that are members of the unitary business;  
30 and

31 (2) any other information required by the department.

32 (b) Except as provided by this article, the department may, by  
33 rule adopted under IC 4-22-2, require that a combined income tax  
34 return include the income and associated apportionment factors of  
35 any entities that:

36 (1) are not included under subsection (a); but

37 (2) are members of a unitary business;

38 to reflect proper apportionment of income of entire unitary  
39 businesses. Subject to IC 6-3-2-2.4, IC 6-3-2-2.8, and IC 6-3-2-3.3,  
40 the authority under this subsection includes authority to require  
41 combination of entities that are not, or would not be if doing  
42 business in Indiana, subject to tax under this article.



1 SECTION 16. IC 6-3-4-19 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 3 JANUARY 1, 2017]: **Sec. 19. As a filing convenience, and without**  
 4 **changing the respective liability of the group members, members**  
 5 **of a combined group may annually elect to designate one (1)**  
 6 **taxpayer member of the combined group to file a single return in**  
 7 **the form and manner prescribed by the department, instead of**  
 8 **filing their own respective returns, if the taxpayer designated to file**  
 9 **the single return:**

10 (1) consents to act as surety with respect to the tax liability of  
 11 all other taxpayers properly included in the combined income  
 12 tax report; and

13 (2) agrees to act as agent on behalf of those taxpayers for the  
 14 year of the election for tax matters relating to the combined  
 15 income tax report for that year.

16 **If, for any reason, the surety is unwilling or unable to perform its**  
 17 **responsibilities, tax liability may be assessed against the taxpayer**  
 18 **members of the combined group.**

19 SECTION 17. [EFFECTIVE JANUARY 1, 2017] (a) **The following**  
 20 **apply only to taxable years beginning after December 31, 2016:**

21 (1) IC 6-3-1-3.5, as amended by this act.

22 (2) IC 6-3-1-6.5, as added by this act.

23 (3) IC 6-3-1-27.8, as added by this act.

24 (4) IC 6-3-1-37, as added by this act.

25 (5) IC 6-3-1-38, as added by this act.

26 (6) IC 6-3-2-2.4, as amended by this act.

27 (7) IC 6-3-2-3.3, as added by this act.

28 (8) IC 6-3-2-16, as amended by this act.

29 (9) IC 6-3-2.3, as added by this act.

30 (10) IC 6-3-4-18, as added by this act.

31 (11) IC 6-3-4-19, as added by this act.

32 (12) The repeal of IC 6-3-2-20 by this act.

33 (13) The repeal of IC 6-3-1-34.5 by this act.

34 (b) **This SECTION expires July 1, 2020.**

