

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 565

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 6-1.1-2-7, AS AMENDED BY P.L.188-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) As used in this section, "nonbusiness personal property" means personal property that is not:

- (1) held for sale in the ordinary course of a trade or business;
- (2) held, used, or consumed in connection with the production of income; or
- (3) held as an investment.

(b) The following property is not subject to assessment and taxation under this article:

- (1) A commercial vessel that is subject to the net tonnage tax imposed under IC 6-6-6.
- (2) A vehicle that is subject to the vehicle excise tax imposed under IC 6-6-5.
- (3) A motorized boat or sailboat that is subject to the boat excise tax imposed under IC 6-6-11.
- (4) Property used by a cemetery (as defined in IC 23-14-33-7) if the cemetery:
 - (A) does not have a board of directors, board of trustees, or other governing authority other than the state or a political subdivision; and
 - (B) has had no business transaction during the preceding

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calendar year.

- (5) A commercial vehicle that is subject to the annual excise tax imposed under IC 6-6-5.5.
- (6) Inventory.
- (7) A recreational vehicle or truck camper that is subject to the annual excise tax imposed under IC 6-6-5.1.
- (8) The following types of nonbusiness personal property:
 - (A) All-terrain vehicles.
 - (B) Snowmobiles.
 - (C) Rowboats, canoes, kayaks, and other human powered boats.
 - (D) Invalid chairs.
 - (E) Yard and garden tractors.
 - (F) Trailers that are not subject to an excise tax under:
 - (i) IC 6-6-5;
 - (ii) IC 6-6-5.1; or
 - (iii) IC 6-6-5.5.

(9) For an assessment date after December 31, 2018, heavy rental equipment (as defined in IC 6-6-15-2) that is rented or held in inventory for rental or sale, the rental of which is or would be subject to the heavy equipment rental excise tax provisions under IC 6-6-15; **provided, however, that a rentee that is exempt under IC 6-6-15-4(a)(3) from such excise tax shall be subject to the provisions of this article on such equipment.**

SECTION 2. IC 6-2.3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. (a) The receipt of taxable gross receipts from transactions is subject to a tax rate of:

- (1) for taxable years beginning before January 1, 2021, one and four-tenths percent (1.4%); and
- (2) for taxable years beginning after December 31, 2020, a rate determined by the department under subsection (b).

(b) Before September 1, 2020, and before September 1 of each year thereafter, the department shall determine the tax rate that applies in taxable years beginning in the following calendar year and shall publish the tax rate in the Indiana Register. The department shall determine the tax rate by calculating a tax rate that if applied to the taxable gross receipts for the immediately preceding state fiscal year would have resulted in two hundred two million one hundred forty-nine thousand one hundred seventy-two dollars (\$202,149,172) of net utility receipts and utility services use taxes, after the application of any coal gasification technology investment tax credit, being owed for the immediately preceding



state fiscal year.

SECTION 3. IC 6-2.3-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) A taxpayer who fails to keep records of the taxpayer's gross receipts and any other records that may be necessary to determine the amount of utility receipts tax the taxpayer owes for a period of ~~three (3) years~~, as required by IC 6-8.1-5-4, commits a Class C infraction.

(b) A taxpayer who fails to permit records described in subsection (a) to be examined at any time by the department in accordance with IC 6-8.1-5-4 commits a Class C infraction.

(c) A taxpayer who knowingly fails to produce or permit the department to examine records described in subsection (a) or (b) commits a Class B misdemeanor.

SECTION 4. IC 6-2.5-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. An Indiana governmental entity, agency, instrumentality, or political subdivision (including a state college or university) is a retail merchant making a retail transaction when it performs private or proprietary activities that would constitute retail transactions under this article if those activities were performed by a retail merchant. However, this section does not apply to a political subdivision ~~that~~ **when it** performs an activity that is related to an annual festival, carnival, fair, or similar event.

SECTION 5. IC 6-2.5-8-1, AS AMENDED BY P.L.212-2018(ss), SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business listed on the application. The retail merchant shall also provide such security for payment of the tax as the department may require under IC 6-2.5-6-12.

(c) The retail merchant shall list on the application the location (including the township) of each place of business where the retail merchant makes retail transactions. However, if the retail merchant does not have a fixed place of business, the retail merchant shall list the retail merchant's residence as the retail merchant's place of business. In addition, a public utility may list only its principal Indiana office as its place of business for sales of public utility commodities or service, but the utility must also list on the application the places of business where it makes retail transactions other than sales of public utility



commodities or service.

(d) Upon receiving a proper application, the correct fee, and the security for payment, if required, the department shall issue to the retail merchant a separate registered retail merchant's certificate for each place of business listed on the application. Each certificate shall bear a serial number and the location of the place of business for which it is issued.

(e) The department may deny an application for a registered retail merchant's certificate if the applicant's business is operated, managed, or otherwise controlled by or affiliated with a person, including a relative, family member, responsible officer, or owner, who the department has determined:

(1) failed to:

(A) file all tax returns or information reports with the department for listed taxes; or

(B) pay all taxes, penalties, and interest to the department for listed taxes; and

(2) the business of the person who has failed to file all tax returns or information reports under subdivision (1)(A) or who has failed to pay all taxes, penalties, and interest under subdivision (1)(B) is substantially similar to the business of the applicant.

~~(e)~~ **(f)** If a retail merchant intends to make retail transactions during a calendar year at a new Indiana place of business, the retail merchant must file a supplemental application and pay the fee for that place of business.

~~(f)~~ **(g)** Except as provided in subsection ~~(h)~~; **(i)**, a registered retail merchant's certificate is valid for two (2) years after the date the registered retail merchant's certificate is originally issued or renewed. If the retail merchant has filed all returns and remitted all taxes the retail merchant is currently obligated to file or remit, the department shall renew the registered retail merchant's certificate within thirty (30) days after the expiration date, at no cost to the retail merchant. Before issuing or renewing the registered retail merchant certification, the department may require the following to be provided:

(1) The names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transaction.

(2) The location of all of the retail merchant's places of business in Indiana, including offices and distribution houses.

(3) Any other information that the department requests.

~~(g)~~ **(h)** The department may not renew a registered retail merchant



certificate of a retail merchant who is delinquent in remitting withholding taxes required to be remitted under IC 6-3-4 or sales or use tax. The department, at least sixty (60) days before the date on which a retail merchant's registered retail merchant's certificate expires, shall notify a retail merchant who is delinquent in remitting withholding taxes required to be remitted under IC 6-3-4 or sales or use tax that the department will not renew the retail merchant's registered retail merchant's certificate.

~~(h)~~ **(i)** If:

- (1) a retail merchant has been notified by the department that the retail merchant is delinquent in remitting withholding taxes or sales or use tax in accordance with subsection ~~(g)~~; **(h)**; and
- (2) the retail merchant pays the outstanding liability before the expiration of the retail merchant's registered retail merchant's certificate;

the department shall renew the retail merchant's registered retail merchant's certificate for one (1) year.

~~(i)~~ **(j)** A retail merchant engaged in business in Indiana as defined in IC 6-2.5-3-1(c) who makes retail transactions that are only subject to the use tax must obtain a registered retail merchant's certificate before making those transactions. The retail merchant may obtain the certificate by following the same procedure as a retail merchant under subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

The department may also require that this information be updated before renewal of a registered retail merchant's certificate.

~~(j)~~ **(k)** The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, the out-of-state retail merchant must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that the out-of-state retail merchant knows is intended for use in Indiana.

~~(k)~~ **(l)** Except as provided in subsection ~~(h)~~; **(m)**, the department



shall submit to the township assessor, or the county assessor if there is no township assessor for the township, before March 15 of each year:

- (1) the name of each retail merchant that has newly obtained a registered retail merchant's certificate during the preceding year for a place of business located in the township or county; and
- (2) the address of each place of business of the taxpayer in the township or county.

~~(h)~~ **(m)** If the duties of the township assessor have been transferred to the county assessor as described in IC 6-1.1-1-24, the department shall submit the information listed in subsection ~~(h)~~ **(l)** to the county assessor.

SECTION 6. IC 6-2.5-8-7, AS AMENDED BY P.L.153-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection. Good cause for revocation may include the following:

- (1) Failure to:
 - (A) file a return required under this chapter or for any tax collected for the state in trust; or
 - (B) remit any tax collected for the state in trust.
- (2) Being charged with a violation of any provision under IC 35.
- (3) Being subject to a court order under IC 7.1-2-6-7, IC 32-30-6-8, IC 32-30-7, or IC 32-30-8.
- (4) Being charged with a violation of IC 23-15-12.
- (5) Operating as a retail merchant where the certificate issued under section 1 of this chapter could have been denied under section 1(e) of this chapter prior to its issuance.**

The department may revoke a certificate before a criminal adjudication or without a criminal charge being filed. If the department gives notice of an intent to revoke based on an alleged violation of subdivision (2), the department shall hold a public hearing to determine whether good cause exists. If the department finds in a public hearing by a preponderance of the evidence that a person has committed a violation described in subdivision (2), the department shall proceed in accordance with subsection (i) (if the violation resulted in a criminal conviction) or subsection (j) (if the violation resulted in a judgment for an infraction).

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:



- (1) file the returns required by IC 6-2.5-6-1; or
- (2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

- (1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and
- (2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.

(d) The statement filed under subsection (c) must state that:

- (1) information obtained by the board, bureau, or commission under IC 6-8.1-7-1 indicates that the certificate holder has not complied with IC 6-9; and
- (2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.

(e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

- (1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and
- (2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.

(f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.

(g) The department shall revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if the department finds in a public hearing by a preponderance of the evidence that the certificate holder has violated IC 35-45-5-3, IC 35-45-5-3.5, or IC 35-45-5-4.

(h) If a person makes a payment for the certificate under section 1 or 3 of this chapter with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment of the check, credit card, debit card, or electronic funds transfer for its full



face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has five (5) days after the notice is mailed to pay the fee in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the five (5) day period, the department shall revoke the certificate.

(i) If the department finds in a public hearing by a preponderance of the evidence that a person has a conviction for a violation of IC 35-48-4-10.5 and the conviction involved the sale of or the offer to sell, in the normal course of business, a synthetic drug or a synthetic drug lookalike substance by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

- (1) shall suspend the registered retail merchant certificate for the place of business for one (1) year; and
- (2) may not issue another retail merchant certificate under section 1 of this chapter for one (1) year to any person:

(A) that:

- (i) applied for; or
- (ii) made a retail transaction under;

the retail merchant certificate suspended under subdivision (1); or

(B) that:

- (i) owned or co-owned, directly or indirectly; or
- (ii) was an officer, a director, a manager, or a partner of;

the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

(j) If the department finds in a public hearing by a preponderance of the evidence that a person has a judgment for a violation of IC 35-48-4-10.5 as an infraction and the violation involved the sale of or the offer to sell, in the normal course of business, a synthetic drug or a synthetic drug lookalike substance by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

- (1) may suspend the registered retail merchant certificate for the place of business for six (6) months; and
- (2) may withhold issuance of another retail merchant certificate under section 1 of this chapter for six (6) months to any person:

(A) that:



- (i) applied for; or
 - (ii) made a retail transaction under;
- the retail merchant certificate suspended under subdivision (1); or
- (B) that:
- (i) owned or co-owned, directly or indirectly; or
 - (ii) was an officer, a director, a manager, or a partner of;
- the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

(k) If the department finds in a public hearing by a preponderance of the evidence that a person has a conviction for a violation of IC 35-48-4-10(d)(3) and the conviction involved an offense committed by a retail merchant in a place of business for which the retail merchant has been issued a registered retail merchant certificate under section 1 of this chapter, the department:

- (1) shall suspend the registered retail merchant certificate for the place of business for one (1) year; and
- (2) may not issue another retail merchant certificate under section 1 of this chapter for one (1) year to any person:

- (A) that:
- (i) applied for; or
 - (ii) made a retail transaction under;
- the retail merchant certificate suspended under subdivision (1); or
- (B) that:
- (i) owned or co-owned, directly or indirectly; or
 - (ii) was an officer, a director, a manager, or a partner of;
- the retail merchant that was issued the retail merchant certificate suspended under subdivision (1).

SECTION 7. IC 6-3-1-3.5, AS AMENDED BY P.L.214-2018(ss), SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Except as provided in subsection (c), add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of



the United States.

(3) Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000).

(4) Subtract one thousand dollars (\$1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code (as effective January 1, 2017);

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) one thousand five hundred dollars (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code (as effective January 1, 2004);

(B) one thousand five hundred dollars (\$1,500) for each exemption allowed under Section 151(c) of the Internal Revenue Code (as effective January 1, 2017) for an individual:

(i) who is less than nineteen (19) years of age or is a full-time student who is less than twenty-four (24) years of age;

(ii) for whom the taxpayer is the legal guardian; and

(iii) for whom the taxpayer does not claim an exemption under clause (A); and

(C) five hundred dollars (\$500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars (\$40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(7) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).



- (8) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.
- (9) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), and (5) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.
- (10) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.
- (11) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.
- (12) Subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.
- (13) Subtract an amount equal to the lesser of:
- (A) two thousand five hundred dollars (\$2,500); or
 - (B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.
- (14) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.
- (15) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.
- (16) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).
- (17) Add or subtract the amount necessary to make the adjusted



gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand dollars (\$25,000)~~. **the sum of:**

(A) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(18) Subtract an amount equal to the amount of the taxpayer's qualified military income that was not excluded from the taxpayer's gross income for federal income tax purposes under Section 112 of the Internal Revenue Code.

(19) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

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

(20) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after



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

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

(22) Subtract an amount as described in Section 1341(a)(2) of the Internal Revenue Code to the extent, if any, that the amount was previously included in the taxpayer's adjusted gross income for a prior taxable year.

(23) For taxable years beginning after December 25, 2016, add an amount equal to the deduction for deferred foreign income that was claimed by the taxpayer for the taxable year under Section 965(c) of the Internal Revenue Code.

(24) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(25) Subtract the amount ~~included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code~~ **that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code** for taxable years ending after December 22, 2017.

(26) Subtract any other amounts the taxpayer is entitled to deduct under IC 6-3-2.

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



follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code (concerning charitable contributions).
- (3) Except as provided in subsection (c), add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.
- (4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).
- (5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.
- (6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).
- (7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand~~ **dollars (\$25,000): the sum of:**
 - (A) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and**
 - (B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:**
 - (i) the exchange would have been eligible for**



nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;
(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code;
and
(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

- (8) Add to the extent required by IC 6-3-2-20:
- (A) the amount of intangible expenses (as defined in IC 6-3-2-20) for the taxable year that reduced the corporation's taxable income (as defined in Section 63 of the Internal Revenue Code) for federal income tax purposes; and
 - (B) any directly related interest expenses (as defined in IC 6-3-2-20) that reduced the corporation's adjusted gross income (determined without regard to this subdivision). ~~The amount of interest that is considered to have reduced the corporation's adjusted gross income equals:~~
 - ~~(i) the directly related interest expense that reduced the taxpayer's federal taxable income (as defined in Section 63 of the Internal Revenue Code); plus~~
 - ~~(ii) any directly related interest expenses for which a subtraction is allowable under subdivision (15); minus~~
 - ~~(iii) any directly related interest expenses required to be added back under subdivision (15).~~

For purposes of this subdivision, any directly related interest expense that constitutes business interest within the meaning of Section 163(j) of the Internal Revenue Code shall be considered to have reduced the taxpayer's federal taxable income only in the first taxable year in which the deduction otherwise would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

- (9) Add an amount equal to any deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to



shareholders of a captive real estate investment trust (as defined in section 34.5 of this chapter).

(10) Subtract income that is:

- (A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and
- (B) included in the corporation's taxable income under the Internal Revenue Code.

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

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

(13) For taxable years beginning after December 25, 2016:

(A) for a corporation other than a real estate investment trust, add:

- (i) an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1; **or**
- (ii) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code; and**

(B) for a real estate investment trust, add an amount equal to the deduction for deferred foreign income that was claimed by the taxpayer for the taxable year under Section 965(c) of the Internal Revenue Code, but only to the extent that the taxpayer included income pursuant to Section 965 of the Internal Revenue Code in its taxable income for federal income tax purposes or is required to add back dividends paid under



subdivision (9).

(14) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.

(15) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(16) Subtract the amount ~~included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code~~ for taxable years ending after December 22, 2017.

(17) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

(c) The following apply to taxable years beginning after December 31, 2018, for purposes of the add back of any deduction allowed on the taxpayer's federal income tax return for wagering taxes, as provided in subsection (a)(2) if the taxpayer is an individual or subsection (b)(3) if the taxpayer is a corporation:

(1) For taxable years beginning after December 31, 2018, and before January 1, 2020, a taxpayer is required to add back under this section eighty-seven and five-tenths percent (87.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(2) For taxable years beginning after December 31, 2019, and before January 1, 2021, a taxpayer is required to add back under this section seventy-five percent (75%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(3) For taxable years beginning after December 31, 2020, and



before January 1, 2022, a taxpayer is required to add back under this section sixty-two and five-tenths percent (62.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(4) For taxable years beginning after December 31, 2021, and before January 1, 2023, a taxpayer is required to add back under this section fifty percent (50%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(5) For taxable years beginning after December 31, 2022, and before January 1, 2024, a taxpayer is required to add back under this section thirty-seven and five-tenths percent (37.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(6) For taxable years beginning after December 31, 2023, and before January 1, 2025, a taxpayer is required to add back under this section twenty-five percent (25%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(7) For taxable years beginning after December 31, 2024, and before January 1, 2026, a taxpayer is required to add back under this section twelve and five-tenths percent (12.5%) of any deduction allowed on the taxpayer's federal income tax return for wagering taxes.

(8) For taxable years beginning after December 31, 2025, a taxpayer is not required to add back under this section any amount of a deduction allowed on the taxpayer's federal income tax return for wagering taxes.

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

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

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

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

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).



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

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand dollars (\$25,000)~~: **the sum of:**

(A) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.



- (8) Subtract income that is:
- (A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and
 - (B) included in the insurance company's taxable income under the Internal Revenue Code.
- (9) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.
- (10) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code that is active financing income under Subpart F of Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.
- (11) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.
- (12) For taxable years beginning after December 25, 2016, add:
- (A) an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1; **or**
 - (B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code.**
- (13) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.



(14) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(15) Subtract the amount ~~included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code~~ **that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code** for taxable years ending after December 22, 2017.

(16) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

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

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

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

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

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code (concerning foreign tax credits).

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



service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand dollars (\$25,000)~~; **the sum of:**

(A) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and

(B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:

(i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;

(ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and

(iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

(8) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and

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

(9) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business



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

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

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

(12) For taxable years beginning after December 25, 2016, add:
(A) an amount equal to the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1; or

(B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code.

(13) Add an amount equal to the deduction that was claimed by the taxpayer for the taxable year under Section 250(a)(1)(B) of the Internal Revenue Code (attributable to global intangible low-taxed income). The taxpayer shall separately specify the amount of the reduction under Section 250(a)(1)(B)(i) of the Internal Revenue Code and under Section 250(a)(1)(B)(ii) of the Internal Revenue Code.

(14) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first



taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(15) Subtract the amount ~~included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code~~ for taxable years ending after December 22, 2017.

(16) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;

under IC 6-3-2.

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

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

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

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

(4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code (concerning net operating losses).

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand~~



dollars (\$25,000): the sum of:

- (A) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in clause (B); and
- (B) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if:
 - (i) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;
 - (ii) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and
 - (iii) the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service.

The amount of deductions allowable for an item of property under this clause may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.

- (6) Subtract income that is:
 - (A) exempt from taxation under IC 6-3-2-21.7 (certain income derived from patents); and
 - (B) included in the taxpayer's taxable income under the Internal Revenue Code.
- (7) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.
- (8) Add the amount excluded from federal gross income under Section 103 of the Internal Revenue Code for interest received on



an obligation of a state other than Indiana, or a political subdivision of such a state, that is acquired by the taxpayer after December 31, 2011.

(9) For taxable years beginning after December 25, 2016, add an amount equal to:

(A) the amount reported by the taxpayer on IRC 965 Transition Tax Statement, line 1;

(B) if the taxpayer deducted an amount under Section 965(c) of the Internal Revenue Code in determining the taxpayer's taxable income for purposes of the federal income tax, the amount deducted under Section 965(c) of the Internal Revenue Code; and

~~(B)~~ (C) with regard to any amounts of income under Section 965 of the Internal Revenue Code distributed by the taxpayer, the deduction under Section 965(c) of the Internal Revenue Code attributable to such distributed amounts **and not reported to the beneficiary.**

For purposes of this article, the amount required to be added back under clause (B) is not considered to be distributed or distributable to a beneficiary of the estate or trust for purposes of Sections 651 and 661 of the Internal Revenue Code.

(10) Subtract any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code. Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year. For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(11) Add an amount equal to the deduction for qualified business income that was claimed by the taxpayer for the taxable year under Section 199A of the Internal Revenue Code.

(12) Subtract the amount ~~included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code~~ for taxable years ending after December 22, 2017.

(13) Add or subtract any other amounts the taxpayer is:

(A) required to add or subtract; or

(B) entitled to deduct;



under IC 6-3-2.

(g) Subsections (a)(26), (b)(17), (d)(16), (e)(16), or (f)(13) may not be construed to require an add back or allow a deduction or exemption more than once for a particular add back, deduction, or exemption.

(h) For taxable years beginning after December 25, 2016, if:

(1) a taxpayer is a shareholder, either directly or indirectly, in a corporation that is an E&P deficit foreign corporation as defined in Section 965(b)(3)(B) of the Internal Revenue Code, and the earnings and profit deficit, or a portion of the earnings and profit deficit, of the E&P deficit foreign corporation is permitted to reduce the federal adjusted gross income or federal taxable income of the taxpayer, the deficit, or the portion of the deficit, shall also reduce the amount taxable under this section to the extent permitted under the Internal Revenue Code, however, in no case shall this permit a reduction in the amount taxable under Section 965 of the Internal Revenue Code for purposes of this section to be less than zero (0); and

(2) the Internal Revenue Service issues guidance that such an income or deduction is not reported directly on a federal tax return or is to be reported in a manner different than specified in this section, this section shall be construed as if federal adjusted gross income or federal taxable income included the income or deduction.

SECTION 8. IC 6-3-1-11, AS AMENDED BY P.L.214-2018(ss), SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 11. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended and in effect on ~~February 11, 2018~~; **January 1, 2019**.

(b) Whenever the Internal Revenue Code is mentioned in this article, the particular provisions that are referred to, together with all the other provisions of the Internal Revenue Code in effect on ~~February 11, 2018~~; **January 1, 2019**, that pertain to the provisions specifically mentioned, shall be regarded as incorporated in this article by reference and have the same force and effect as though fully set forth in this article. To the extent the provisions apply to this article, regulations adopted under Section 7805(a) of the Internal Revenue Code and in effect on ~~February 11, 2018~~; **January 1, 2019**, shall be regarded as rules adopted by the department under this article, unless the department adopts specific rules that supersede the regulation.

(c) An amendment to the Internal Revenue Code made by an act



passed by Congress before ~~February 11, 2018~~, **January 1, 2019**, other than the federal 21st Century Cures Act (P.L. 114-255) and the federal Disaster Tax Relief and Airport and Airway Extension Act of 2017 (P.L. 115-63), that is effective for any taxable year that began before ~~February 11, 2018~~, **January 1, 2019**, and that affects:

- (1) individual adjusted gross income (as defined in Section 62 of the Internal Revenue Code);
- (2) corporate taxable income (as defined in Section 63 of the Internal Revenue Code);
- (3) trust and estate taxable income (as defined in Section 641(b) of the Internal Revenue Code);
- (4) life insurance company taxable income (as defined in Section 801(b) of the Internal Revenue Code);
- (5) mutual insurance company taxable income (as defined in Section 821(b) of the Internal Revenue Code); or
- (6) taxable income (as defined in Section 832 of the Internal Revenue Code);

is also effective for that same taxable year for purposes of determining adjusted gross income under section 3.5 of this chapter.

(d) This subsection applies to a taxable year ending before January 1, 2013. The following provisions of the Internal Revenue Code that were amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) are treated as though they were not amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312):

- (1) Section 1367(a)(2) of the Internal Revenue Code pertaining to an adjustment of basis of the stock of shareholders.
- (2) Section 871(k)(1)(C) and 871(k)(2)(C) of the Internal Revenue Code pertaining to the treatment of certain dividends of regulated investment companies.
- (3) Section 897(h)(4)(A)(ii) of the Internal Revenue Code pertaining to regulated investment companies qualified entity treatment.
- (4) Section 512(b)(13)(E)(iv) of the Internal Revenue Code pertaining to the modification of tax treatment of certain payments to controlling exempt organizations.
- (5) Section 613A(c)(6)(H)(ii) of the Internal Revenue Code pertaining to the limitations on percentage depletion in the case of oil and gas wells.
- (6) Section 451(i)(3) of the Internal Revenue Code pertaining to special rule for sales or dispositions to implement Federal Energy



Regulatory Commission or state electric restructuring policy for qualified electric utilities.

(7) Section 954(c)(6) of the Internal Revenue Code pertaining to the look-through treatment of payments between related controlled foreign corporation under foreign personal holding company rules.

The department shall develop forms and adopt any necessary rules under IC 4-22-2 to implement this subsection.

SECTION 9. IC 6-3-1-33, AS AMENDED BY P.L.246-2005, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 33. As used in this article, "bonus depreciation" means an amount equal to that part of any depreciation allowance allowed in computing the taxpayer's federal adjusted gross income or federal taxable income that is attributable to the additional first-year special depreciation allowance (bonus depreciation) for qualified property allowed under Section 168(k) of the Internal Revenue Code, including the special depreciation allowance for 50-percent bonus depreciation property. **For taxable years beginning after December 31, 2017, the term does not include any amount of additional first-year special depreciation allowance under Section 168(k) of the Internal Revenue Code in the amount of adjusted gross income realized on the exchange of property that otherwise would have been deferred under Section 1031 of the Internal Revenue Code in effect on January 1, 2017, if:**

- (1) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;**
- (2) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and**
- (3) the taxpayer claimed a deduction for the additional first-year special depreciation allowance under Section 168(k) of the Internal Revenue Code with regard to the acquired property.**

For purposes of this section, if the taxpayer elected to claim a deduction under Section 179 of the Internal Revenue Code with regard to an item of acquired property, the adjusted gross income realized on the exchange must be reduced (but not below zero dollars (\$0)) by the amount of the deduction under Section 179 of the Internal Revenue Code elected to be claimed on the acquired property.

SECTION 10. IC 6-3-2-2, AS AMENDED BY P.L.214-2018(ss), SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JANUARY 1, 2019 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property to the extent that the income is apportioned to Indiana under this section or if the income is allocated to Indiana or considered to be derived from sources within Indiana under this section.

Income from a pass through entity shall be characterized in a manner consistent with the income's characterization for federal income tax purposes and shall be considered Indiana source income as if the person, corporation, or pass through entity that received the income had directly engaged in the income producing activity. Income that is derived from one (1) pass through entity and is considered to pass through to another pass through entity does not change these characteristics or attribution provisions. In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter), only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (†) (s) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

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

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

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

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

Gross receipts derived from commercial printing as described in



IC 6-2.5-1-10 and from the sale of computer software shall be treated as sales of tangible personal property for purposes of this chapter.

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

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

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

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

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

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

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

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

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

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

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial



domicile is in this state.

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

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

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

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

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

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

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

(1) separate accounting;

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

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

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

Notwithstanding IC 6-8.1-5-1(c), a taxpayer petitioning for, or the department requiring, the use of an alternative method to effectuate an equitable allocation and apportionment of the taxpayer's income under this subsection bears the burden of proof that the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within this state and that the



alternative method to the allocation and apportionment provisions of this article is reasonable.

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

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

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

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

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

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

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

(r) A taxpayer who desires to discontinue filing a combined income tax return for any reason must petition the department



within thirty (30) days after the end of the taxpayer's taxable year for permission to discontinue filing a combined income tax return.

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

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

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

(‡) (t) This subsection applies to receipts derived from motorsports racing.

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

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

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

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

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

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

(†) (u) For purposes of this section and section 2.2 of this chapter,



the following apply:

(1) For taxable years beginning after December 25, 2016, if a taxpayer is required to include amounts in the taxpayer's federal adjusted gross income, federal taxable income, or IRC 965 Transition Tax Statement, line 1 as a result of Section 965 of the Internal Revenue Code, the following apply:

(A) For an entity that is not eligible to claim a deduction under IC 6-3-2-12, these amounts shall not be receipts in any taxable year for the entity.

(B) For an entity that is eligible to claim a deduction under IC 6-3-2-12, these amounts shall be receipts in the year in which the amounts are reported by the entity as adjusted gross income under this article, but only to the extent of:

(i) any amounts includible after application of IC 6-3-1-3.5(b)(13), IC 6-3-1-3.5(d)(12), and IC 6-3-1-3.5(e)(12); minus

(ii) the deduction taken under IC 6-3-2-12 with regard to that income.

This subdivision applies regardless of the taxable year in which the money or property was actually received.

(2) If a taxpayer is required to include amounts in the taxpayer's federal adjusted gross income or federal taxable income as a result of Section 951A of the Internal Revenue Code the following apply:

(A) For an entity that is not eligible to claim a deduction under IC 6-3-2-12, the receipts that generated the income shall not be included as a receipt in any taxable year.

(B) For an entity that is eligible to claim a deduction under IC 6-3-2-12, the amounts included in federal gross income as a result of Section 951A of the Internal Revenue Code, reduced by the deduction allowable under IC 6-3-2-12 with regard to that income, shall be considered a receipt in the year in which the amounts are includible in federal taxable income.

(3) Receipts do not include receipts derived from sources outside the United States to the extent the taxpayer is allowed a deduction or exclusion in determining both the taxpayer's federal taxable income as a result of the federal Tax Cuts and Jobs Act of 2017 and the taxpayer's adjusted gross income under this chapter. If any portion of the federal taxable income derived from these receipts is deductible under IC 6-3-2-12, receipts shall be reduced by the proportion of the deduction allowable under IC 6-3-2-12 with regard to that federal taxable income.



Receipts includible in a taxable year under subdivisions (1) and (2) shall be considered dividends from investments for apportionment purposes.

SECTION 11. IC 6-3-2-2.5, AS AMENDED BY P.L.214-2018(ss), SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2.5. (a) This section applies to a resident person.

(b) Resident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

(c) An Indiana net operating loss equals:

(1) the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for certain modifications required by IC 6-3-1-3.5 as set forth in subsection (d)(1); **plus**

(2) for taxable years beginning after December 31, 2017, a loss for a taxable year disallowed because of Section 461(l) of the Internal Revenue Code, without any modifications under subsection (d).

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred, except that the modifications do not include the modifications required under:

- (A) IC 6-3-1-3.5(a)(3);
- (B) IC 6-3-1-3.5(a)(4);
- (C) IC 6-3-1-3.5(a)(5);
- (D) IC 6-3-1-3.5(a)(26);
- (E) IC 6-3-1-3.5(f)(11); and
- (F) IC 6-3-1-3.5(f)(13).

(2) An Indiana net operating loss includes a net operating loss that arises when the applicable modifications required by IC 6-3-1-3.5 as set forth in subdivision (1) exceed the taxpayer's federal adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryover shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryover year provided in subsection (f).



(f) Carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(2) An Indiana net operating loss may not be carried over for more than twenty (20) taxable years after the taxable year of the loss.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried over as provided in subsection (f). The amount of the Indiana net operating loss carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the Indiana net operating loss has been used as a deduction.

(2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

SECTION 12. IC 6-3-2-2.6, AS AMENDED BY P.L.214-2018(ss), SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2018 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person.

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried over to that year. A taxpayer is not entitled to carryback any net operating losses after December 31, 2011.

(c) An Indiana net operating loss equals:

(1) the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for certain modifications required by IC 6-3-1-3.5 as set forth in subsection (d)(1); **plus**

(2) **for taxable years beginning after December 31, 2017, the portion of the loss for a taxable year disallowed because of Section 461(l) of the Internal Revenue Code and incurred from Indiana sources, without any modifications under subsection (d). Any net operating loss under this subdivision shall be computed in a manner consistent with the**



computation of adjusted gross income under IC 6-3.

- (d) The following provisions apply for purposes of subsection (c):
- (1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred, except that the modifications do not include the modifications required under:
 - (A) IC 6-3-1-3.5(a)(3);
 - (B) IC 6-3-1-3.5(a)(4);
 - (C) IC 6-3-1-3.5(a)(5);
 - (D) IC 6-3-1-3.5(a)(26);
 - (E) IC 6-3-1-3.5(b)(14);
 - (F) IC 6-3-1-3.5(b)(17);
 - (G) IC 6-3-1-3.5(d)(13);
 - (H) IC 6-3-1-3.5(d)(16);
 - (I) IC 6-3-1-3.5(e)(13);
 - (J) IC 6-3-1-3.5(e)(16);
 - (K) IC 6-3-1-3.5(f)(11); and
 - (L) IC 6-3-1-3.5(f)(13).
 - (2) The amount of the taxpayer's net operating loss that is derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's adjusted gross income derived from sources within Indiana is determined under section 2 of this chapter for the same taxable year during which each loss was incurred.
 - (3) An Indiana net operating loss includes a net operating loss that arises when the applicable modifications required by IC 6-3-1-3.5 as set forth in subdivision (1) exceed the taxpayer's federal taxable income (as defined in Section 63 of the Internal Revenue Code), if the taxpayer is a corporation, or when the applicable modifications required by IC 6-3-1-3.5 as set forth in subdivision (1) exceed the taxpayer's federal adjusted gross income (as defined by Section 62 of the Internal Revenue Code), if the taxpayer is a nonresident person, for the taxable year in which the Indiana net operating loss is determined.
- (e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryover shall be available as a deduction from the taxpayer's adjusted gross income derived from sources within Indiana (as defined in section 2 of this chapter) in the carryover year provided in subsection (f).
- (f) Carryovers shall be determined under this subsection as follows:
- (1) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable



year of the loss.

(2) An Indiana net operating loss may not be carried over for more than twenty (20) taxable years after the taxable year of the loss.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried over as provided in subsection (f). The amount of the Indiana net operating loss carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the Indiana net operating loss has been used as a deduction.

(2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

(h) An Indiana net operating loss deduction determined under this section shall be allowed notwithstanding the fact that in the year the taxpayer incurred the net operating loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

(1) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or

(2) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(i) In the case of a life insurance company, this section shall be applied by substituting life insurance company taxable income (as defined in Section 801 the Internal Revenue Code) in place of references to taxable income (as defined in Section 63 of the Internal Revenue Code).

SECTION 13. IC 6-3-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 9. (a) The credit provided by this section shall be known as the unified tax credit for the elderly.

(b) As used in this section, unless the context clearly indicates otherwise:

(1) "Household federal adjusted gross income" means the total adjusted gross income, as defined in Section 62 of the Internal Revenue Code, of an individual, or of an individual and his spouse if they reside together for the taxable year for which the



credit provided by this section is claimed.

(2) "Household" means a claimant or, if applicable, a claimant and his or her spouse if the spouse resides with the claimant and "household income" means the income of the claimant or, if applicable, the combined income of the claimant and his or her spouse if the spouse resides with the claimant.

(3) "Claimant" means an individual, other than an individual described in subsection (c) of this section, who:

(A) has filed a claim under this section;

(B) was a resident of this state for at least six (6) months during the taxable year for which he or she has filed a claim under this section; and

(C) was sixty-five (65) years of age during some portion of the taxable year for which he has filed a claim under this section or whose spouse was either sixty-five (65) years of age or over during the taxable year.

(c) The credit provided under this section shall not apply to an individual who, for a period of at least one hundred eighty (180) days during the taxable year for which he has filed a claim under this section, was incarcerated in a local, state, or federal correctional institution.

(d) The right to file a claim under this section shall be personal to the claimant and shall not survive his death, except that a surviving spouse of a claimant is entitled to claim the credit provided by this section. For purposes of determining the amount of the credit a surviving spouse is entitled to claim under this section, the deceased spouse shall be treated as having been alive on the last day of the taxable year in which the deceased spouse died. When a claimant dies after having filed a timely claim, the amount thereof shall be disbursed to another member of the household as determined by the commissioner. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within two (2) years of the filing of the claim, the amount of the claim shall escheat to the state.

(e) For each taxable year, subject to the limitations provided in this section, one (1) claimant per household may claim, as a credit against Indiana adjusted gross income taxes otherwise due, the credit provided by this section. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant's household income or if there are no Indiana income taxes due on such income, the amount of the claim not used as an offset against income taxes after audit by the department, at the taxpayer's option, shall be refunded to the claimant



or taken as a credit against such taxpayer's income tax liability subsequently due.

(f) No claim filed pursuant to this section shall be allowed unless filed within six (6) months following the close of claimant's taxable year or within the extension period if an extension of time for filing the return has been granted under IC 6-8.1-6-1, whichever is later.

(g) The amount of any claim otherwise payable under this section may be applied by the department against any liability outstanding on the books of the department against the claimant, or against any other individual who was a member of his household in the taxable year to which the claim relates.

(h) The amount of a claim filed pursuant to this section by a claimant that either (i) does not reside with his spouse during the taxable year, or (ii) resides with his spouse during the taxable year and only one (1) of them is sixty-five (65) years of age or older at the end of the taxable year, shall be determined in accordance with the following schedule:

HOUSEHOLD FEDERAL ADJUSTED GROSS INCOME FOR TAXABLE YEAR		CREDIT
less than \$1,000		\$100
at least \$1,000, but less than \$3,000		\$ 50
at least \$3,000, but less than \$10,000		\$ 40

(i) The amount of a claim filed pursuant to this section by a claimant that resides with his spouse during his taxable year shall be determined in accordance with the following schedule if both the claimant and spouse are sixty-five (65) years of age or older at the end of the taxable year:

HOUSEHOLD FEDERAL ADJUSTED GROSS INCOME FOR TAXABLE YEAR		CREDIT
less than \$1,000		\$140
at least \$1,000, but less than \$3,000		\$ 90
at least \$3,000, but less than \$10,000		\$ 80

(j) The department may promulgate reasonable rules under IC 4-22-2 for the administration of this section.

(k) Every claimant under this section shall supply to the department on forms provided under IC 6-8.1-3-4, in support of his claim, reasonable proof of household income and age.

(l) Whenever on the audit of any claim filed under this section the department finds that the amount of the claim has been incorrectly determined, the department shall redetermine the claim and notify the



claimant of the redetermination and the reasons therefor. The redetermination shall be final.

~~(m)~~ **(l)** In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid shall be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid at the rate determined under IC 6-8.1-10-1. The claimant in such a case commits a Class A misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, ten percent (10%) of the corrected claim shall be disallowed and, if the claim has been paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed, and such assessment shall bear interest at the rate determined under IC 6-8.1-10-1 from the date of payment until refunded or paid.

SECTION 14. IC 6-3-4-16.5, AS AMENDED BY P.L.137-2012, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 16.5. (a) This section applies to:

- (1) Form W-2 federal income tax withholding statements;
- (2) Form W-2G certain gambling winnings;
- (3) Form 1099-R distributions from pensions, annuities, retirement or profit sharing plans, IRAs, insurance contracts, or like distributions; **and**
- (4) Form WH-3 annual withholding tax reports; **and**
- ~~(5) Form WH-18 miscellaneous withholding tax statements for nonresidents;~~

filed with the department after December 31, 2012.

(b) If an employer or any person or entity acting on behalf of an employer files more than twenty-five (25):

- (1) Form W-2 federal income tax withholding statements;
- (2) Form W-2G certain gambling winnings; **or**
- (3) Form 1099-R distributions from pensions, annuities, retirement or profit sharing plans, IRAs, insurance contracts, or like distributions; **or**
- ~~(4) Form WH-18 miscellaneous withholding tax statements for nonresidents;~~

with the department in a calendar year, all forms and Form WH-3 annual withholding tax reports filed with the department in that



calendar year by the employer or the person or entity acting on behalf of the employer must be filed in an electronic format specified by the department.

SECTION 15. IC 6-3-4-16.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2019]: **Sec. 16.7. (a) For taxable years ending after December 31, 2019, a partnership that is required to provide twenty-five (25) or more reports to partners under section 12(b) of this chapter or a corporation that is required to provide twenty-five (25) or more reports to shareholders under section 13(b) of this chapter must file all such reports in an electronic format specified by the department.**

(b) For taxable years ending after December 31, 2021, an estate or trust required to provide ten (10) or more reports to beneficiaries under section 15(b) of this chapter must file all such reports in an electronic format specified by the department.

SECTION 16. IC 6-5.5-1-2, AS AMENDED BY P.L.214-2018(ss), SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

- (1) Add the following amounts:
 - (A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.
 - (B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.
 - (C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.
 - (D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.
 - (E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.
 - (F) For a taxpayer that is not a large bank (as defined in Section



585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

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

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand dollars~~ (\$25,000); **the sum of:**

- (i) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in item (ii); and**
- (ii) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017, the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code, and the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service. The amount of deductions allowable for an item of property under this item may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.**



(I) Add an amount equal to any income not included in gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code. Subtract from the adjusted gross income of any taxpayer that added an amount to adjusted gross income in a previous year the amount necessary to offset the amount included in federal gross income as a result of the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008, and before January 1, 2011, of an applicable debt instrument, as provided in Section 108(i) of the Internal Revenue Code.

(J) Add an amount equal to any exempt insurance income under Section 953(e) of the Internal Revenue Code for active financing income under Subpart F, Subtitle A, Chapter 1, Subchapter N of the Internal Revenue Code.

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation.

(F) The amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the



amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding ~~twenty-five thousand dollars~~ (\$25,000); **the sum of:**

- (i) twenty-five thousand dollars (\$25,000) to the extent deductions under Section 179 of the Internal Revenue Code were not elected as provided in item (ii); and**
- (ii) for taxable years beginning after December 31, 2017, the deductions elected under Section 179 of the Internal Revenue Code on property acquired in an exchange if the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017, the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code, and the taxpayer made an election to take deductions under Section 179 of the Internal Revenue Code with regard to the acquired property in the year that the property was placed into service. The amount of deductions allowable for an item of property under this item may not exceed the amount of adjusted gross income realized on the property that would have been deferred under the Internal Revenue Code in effect on January 1, 2017.**

(G) Income that is:

- (i) exempt from taxation under IC 6-3-2-21.7; and
- (ii) included in the taxpayer's taxable income under the Internal Revenue Code.

(H) ~~The amount included in the taxpayer's gross income under Section 118(b)(2) of the Internal Revenue Code that would have been excluded from gross income but for the enactment of Section 118(b)(2) of the Internal Revenue Code~~ for taxable years ending after December 22, 2017.

(3) Make the following adjustments:

- (A) Subtract the amount of any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code.
- (B) Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year.



For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income adjusted as follows:

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

(2) Make the following adjustments:

(A) Subtract the amount of any interest expense paid or accrued in the current taxable year but not deducted as a result of the limitation imposed under Section 163(j)(1) of the Internal Revenue Code.

(B) Add any interest expense paid or accrued in a previous taxable year but allowed as a deduction under Section 163 of the Internal Revenue Code in the current taxable year.

For purposes of this subdivision, an interest expense is considered paid or accrued only in the first taxable year the deduction would have been allowable under Section 163 of the Internal Revenue Code if the limitation under Section 163(j)(1) of the Internal Revenue Code did not exist.

(3) Multiply the amount determined after the adjustments in subdivisions (1) and (2) by the quotient of:

(A) the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by

(B) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:



(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

- (A) a so-called bond;
- (B) a share;
- (C) a coupon;
- (D) a certificate of membership;
- (E) an agreement;
- (F) a pretended agreement; or
- (G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 17. IC 6-5.5-1-20, AS AMENDED BY P.L.246-2005, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]: Sec. 20. As used in this article, "bonus depreciation" means an amount equal to that part of any depreciation allowance allowed in computing the taxpayer's federal taxable income that is attributable to the additional first-year special depreciation allowance (bonus depreciation) for qualified property allowed under Section 168(k) of the Internal Revenue Code, including the special depreciation allowance for 50-percent bonus depreciation property. **For taxable years beginning after December 31, 2017, the term does not include any amount of additional first-year special depreciation allowance under Section 168(k) of the Internal Revenue Code in the amount of adjusted gross income realized on the exchange of property that otherwise would have been deferred under Section 1031 of the Internal Revenue Code in effect on January 1, 2017, if:**

- (1) the exchange would have been eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code in effect on January 1, 2017;**



- (2) the exchange is not eligible for nonrecognition of gain or loss under Section 1031 of the Internal Revenue Code; and
- (3) the taxpayer claimed a deduction for the additional first-year special depreciation allowance under Section 168(k) of the Internal Revenue Code with regard to the acquired property.

For purposes of this section, if the taxpayer elected to claim a deduction under Section 179 of the Internal Revenue Code with regard to an item of acquired property, the adjusted gross income realized on the exchange must be reduced (but not below zero dollars (\$0)) by the amount of the deduction under Section 179 of the Internal Revenue Code elected to be claimed on the acquired property.

SECTION 18. IC 6-6-1.1-606.5, AS AMENDED BY P.L.182-2009(ss), SECTION 234, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 606.5. (a) Every person included within the terms of section 606(a) and 606(c) of this chapter shall register with the administrator before engaging in those activities. The administrator shall issue a transportation license to a person who registers with the administrator under this section.

(b) Every person included within the terms of section 606(a) of this chapter who transports gasoline in a vehicle on the highways in Indiana for purposes other than use and consumption by that person may not make a delivery of that gasoline to any person in Indiana other than a licensed distributor except:

- (1) when the tax imposed by this chapter on the receipt of the transported gasoline was charged and collected by the parties; and
- (2) under the circumstances described in section 205 of this chapter.

(c) Every person included within the terms of section 606(c) of this chapter who transports gasoline in a vehicle upon the highways of Indiana for purposes other than use and consumption by that person may not, on the journey carrying that gasoline to points outside Indiana, make delivery of that fuel to any person in Indiana.

(d) Every transporter of gasoline included within the terms of section 606(a) and 606(c) of this chapter who transports gasoline upon the highways of Indiana for purposes other than use and consumption by that person shall at the time of registration and on an annual basis list with the administrator a description of all vehicles, including the vehicles' license numbers, to be used on the highways of Indiana in transporting gasoline from:

- (1) points outside Indiana to points inside Indiana; and



(2) points inside Indiana to points outside Indiana.

(e) The description that subsection (d) requires shall contain the information that is reasonably required by the administrator including the carrying capacity of the vehicle. When the vehicle is a tractor-trailer type, the trailer is the vehicle to be described. When additional vehicles are placed in service or when a vehicle previously listed is retired from service during the year, the administrator shall be notified within ten (10) days of the change so that the listing of the vehicles may be kept accurate.

(f) A distributor's or an Indiana transportation license is required for a person or the person's agent acting in the person's behalf to operate a vehicle for the purpose of delivering gasoline within the boundaries of Indiana when the vehicle has a total tank capacity of at least eight hundred fifty (850) gallons.

(g) The operator of a vehicle to which this section applies shall at all times when engaged in the transporting of gasoline on the highways have with the vehicle an invoice or manifest showing the origin, quantity, nature, and destination of the gasoline that is being transported.

(h) The department shall provide for relief if a shipment of gasoline is legitimately diverted from the represented destination state after the shipping paper has been issued by a terminal operator or if a terminal operator failed to cause proper information to be printed on the shipping paper. Provisions for relief under this subsection:

(1) must require that the shipper or its agent ~~provide notification to the department before a diversion or correction if an intended diversion or correction is to occur;~~ **obtain a diversion number within twenty-four (24) hours of the diversion and report the number on the shipper's or agent's monthly return to the department;** and

(2) must be consistent with the refund provisions of this chapter.

SECTION 19. IC 6-6-1.1-902 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 902. (a) A local transit system is entitled to a refund of tax paid on gasoline used:

(1) for transporting persons for compensation by means of a motor vehicle or trackless trolley; or

(2) in a maintenance or an administrative vehicle that is used by the local transit system to support the transit service.

(b) ~~The claim for refund must contain the following:~~

~~(1) A quarterly operating statement.~~

~~(2) A current balance sheet.~~

~~(3) A schedule of all salaries in excess of ten thousand dollars~~



~~(\$10,000) per annum paid to any officer or employee.~~

~~(e) (b)~~ If a refund is not issued within ninety (90) days of filing of the verified statement and all supplemental information required by IC 6-6-1.1-904.1, the department shall pay interest at the rate established by IC 6-8.1-9 computed from the date of filing of the refund application until a date determined by the administrator that does not precede by more than thirty (30) days the date on which the refund is made.

SECTION 20. IC 6-6-1.1-902.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 902.5. (a) A rural transit system is entitled to a refund of tax paid on gasoline used for transporting persons for compensation by means of a motor vehicle or trackless trolley. However, the transporting must be done:

- (1) within a service area that is not larger than the rural transit system service area and the counties contiguous to that rural transit system service area; and
- (2) under a written contract between the rural transit system and the county providers within the service area that meets the requirements prescribed by the department.

~~(b) The claim for refund must contain the following:~~

- ~~(1) A quarterly operating statement.~~
- ~~(2) A current balance sheet.~~
- ~~(3) A schedule of all salaries that exceed ten thousand dollars (\$10,000) per year paid to any officer or employee.~~

~~(e) (b)~~ If a refund is not issued within ninety (90) days of filing of the verified statement and all supplemental information required by section 904.1 of this chapter, the department shall pay interest at the rate established by IC 6-8.1-10-1(c) computed from the date of filing of the refund application until a date determined by the administrator that does not precede by more than thirty (30) days the date on which the refund is made.

SECTION 21. IC 6-6-2.5-40, AS AMENDED BY P.L.158-2013, SECTION 96, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 40. (a) Each person operating a refinery, terminal, or bulk plant in Indiana shall prepare and provide to the driver of every vehicle receiving special fuel at the facility a shipping document setting out on its face the destination state as represented to the terminal operator by the shipper or the shipper's agent, except that an operator of a bulk plant in Indiana delivering special fuel into a vehicle with a capacity of not more than five thousand four hundred (5,400) gallons for subsequent delivery to an end consumer in Indiana is exempt from this requirement.



(b) Every person transporting special fuel in vehicles upon the Indiana public highways shall carry on board a shipping paper issued by the terminal operator or the bulk plant operator of the facility where the special fuel was obtained, which shipping paper shall set out on its face the state of destination of the special fuel transported in the vehicle, except that operators of vehicles with a capacity of not more than five thousand four hundred (5,400) gallons that have received special fuel at a bulk plant in Indiana for delivery to an end consumer in Indiana are exempt from this provision with respect to the special fuel. A person who violates this subsection commits a Class A infraction (as defined in IC 34-28-5-4).

(c) Every person transporting special fuel in vehicles upon the public highways of Indiana shall provide the original or a copy of the terminal issued shipping document accompanying the shipment to the operator of the retail outlet or bulk plant to which delivery of the shipment was made. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Level 6 felony.

(d) Each operator of a special fuel retail outlet or bulk plant shall receive, examine, and retain for a period of thirty (30) days at the delivery location the terminal issued shipping document received from the transporter for every shipment of special fuel that is delivered to that location, with record retention of the shipping paper of three (3) years required offsite. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Level 6 felony.

(e) No bulk end user, retail dealer, bulk plant operator, or wholesale distributor shall knowingly accept delivery of special fuel into storage facilities in Indiana if that delivery is not accompanied by a shipping paper issued by the terminal operator or bulk plant operator that sets out on its face Indiana as the state of destination of the special fuel. A person who knowingly violates or knowingly aids and abets another person in violating this subsection commits a Level 6 felony.

(f) The department shall provide for relief in a case where a shipment of special fuel is legitimately diverted from the represented destination state after the shipping paper has been issued by the terminal operator or where the terminal operator failed to cause proper information to be printed on the shipping paper. These relief provisions shall include a provision requiring that the shipper or its agent **provide notification before the diversion or correction to the department if an intended diversion or correction is to occur, obtain a diversion number within twenty-four (24) hours of the diversion and report**



the number on the shipper's or agent's monthly return to the department, and the relief provision shall be consistent with the refund provisions of this chapter.

(g) The supplier and the terminal operator shall be entitled to rely for all purposes of this chapter on the representation by the shipper or the shipper's agent as to the shipper's intended state of destination or tax exempt use. The shipper, the importer, the transporter, the shipper's agent, and any purchaser, not the supplier or terminal operator, shall be jointly liable for any tax otherwise due to the state as a result of a diversion of the special fuel from the represented destination state.

SECTION 22. IC 6-6-4.1-1, AS AMENDED BY P.L.185-2018, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018 (RETROACTIVE)]: Sec. 1. As used in this chapter:

(a) "Carrier" means a person who operates or causes to be operated a commercial motor vehicle on any highway in Indiana.

(b) "Commercial motor vehicle" means a vehicle which is listed in section 2(a) of this chapter and which is not excluded from the application of this chapter under section 2(b) of this chapter.

(c) "Commissioner" means the commissioner of the Indiana department of state revenue.

(d) "Declared gross weight" means the weight at which a motor vehicle is registered with:

- (1) the bureau of motor vehicles; or
- (2) a state other than Indiana.

(e) "Department" means the Indiana department of state revenue.

(f) "Diesel gallon equivalent" means the amount of an alternative fuel **or natural gas product** that produces the same number of British thermal units of energy as a gallon of diesel fuel.

(g) "Gasoline gallon equivalent" means the amount of an alternative fuel **or natural gas product** that produces the same number of British thermal units of energy as a gallon of gasoline.

(h) "Highway" means the entire width between the boundary lines of every publicly maintained way that is open in any part to the use of the public for purposes of vehicular travel.

(i) "Motor fuel" means gasoline (as defined in IC 6-6-1.1), special fuel (as defined in IC 6-6-2.5), and alternative fuel (as defined in IC 6-6-2.5).

(j) "Quarter" means calendar quarter.

(k) "Motor vehicle" has the meaning set forth in IC 6-6-1.1-103.

(l) "Recreational vehicle" means motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure. A vehicle is not a recreational vehicle if the vehicle is used



in connection with a business.

(m) "Alternative fuel" has the meaning set forth in IC 6-6-2.5-1.

(n) "Special fuel" has the meaning set forth in IC 6-6-2.5-22.

(o) "Natural gas product" has the meaning set forth in IC 6-6-2.5-16.5.

SECTION 23. IC 6-6-4.1-4, AS AMENDED BY P.L.185-2018, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018 (RETROACTIVE)]: Sec. 4. (a) A tax is imposed on the consumption of motor fuel by a carrier in its operations on highways in Indiana. The rate of this tax is determined as follows:

(1) When imposed upon the consumption of ~~gasoline or~~ special fuel (other than a ~~special fuel that is an alternative fuel~~), **fuel or a natural gas product**, the tax rate is the same rate per gallon as the rate per gallon at which special fuel is taxed under IC 6-6-2.5.

(2) When imposed upon the consumption of gasoline, the tax rate is the same rate per gallon as the rate per gallon at which gasoline is taxed under IC 6-6-1.1.

~~(2)~~ **(3)** When imposed upon the consumption of a ~~special fuel that is natural gas product or~~ an alternative fuel, the tax rate is either of the following:

(A) The same rate per diesel gallon equivalent as the rate per gallon at which special fuel is taxed under IC 6-6-2.5, in the case of liquid natural gas.

(B) The same rate per gasoline gallon equivalent at which special fuel is taxed under IC 6-6-2.5, in the case of compressed natural gas or an alternative fuel commonly or commercially known or sold as butane or propane.

The tax shall be paid quarterly by the carrier to the department on or before the last day of the month immediately following the quarter.

(b) The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

(c) The amount of tax that a carrier shall pay for a particular quarter under this section equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed by the carrier in its operation on highways in Indiana and upon which the carrier has not paid tax imposed under IC 6-6-1.1, IC 6-6-2.5, or section 4.5 of this chapter (before its repeal).

(d) Subject to section 4.8 of this chapter, a carrier is entitled to a



proportional use credit against the tax imposed under this section for that portion of motor fuel used to propel equipment mounted on a motor vehicle having a common reservoir for locomotion on the highway and the operation of the equipment, as determined by rule of the commissioner. An application for a proportional use credit under this subsection shall be filed on a quarterly basis on a form prescribed by the department.

SECTION 24. IC 6-6-6.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) A person required to register ~~his~~ **the person's** aircraft and to pay the tax imposed under this chapter, shall do so on or before the regular annual registration date.

(b) The payment of the tax imposed by this chapter shall be a condition to the right to register the taxable aircraft and shall be in addition to all other conditions prescribed by law.

(c) For a taxable period beginning after December 31, 2020, whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:

- (1) To any registration or transfer fee owed by the taxpayer.**
- (2) To any excise tax owed by the taxpayer.**
- (3) To any late penalty first and then toward interest on the excise tax owed by the taxpayer.**
- (4) To any gross retail or use tax owed by the taxpayer.**
- (5) To any late penalty first and then toward interest on gross retail or use tax owed by the taxpayer.**

(c) (d) For a taxable period beginning before January 1, 2021, when a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:

- (1) To any registration or transfer fee owed by the taxpayer.
- (2) To any late penalty and interest on the late registration or excise tax owed by the taxpayer.
- (3) To any excise tax owed by the taxpayer.
- (4) To any late penalty and interest on gross retail or use tax owed by the taxpayer.
- (5) To any gross retail or use tax owed by the taxpayer.

If the taxpayer has liabilities for taxes in addition to what is due under this section, the payment must be applied as prescribed by this section and then pursuant to IC 6-8.1-8-1.5 or the department's rules.

SECTION 25. IC 6-6-15-2, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2019 GENERAL ASSEMBLY, IS



AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Sec. 2. The following definitions apply throughout this chapter:

- (1) "Department" refers to the department of state revenue.
- (2) "Gross retail income" has the meaning set forth in IC 6-2.5-1-5, except that the term does not include taxes imposed under IC 6-2.5 or the excise tax imposed under this chapter.
- (3) "Heavy rental equipment" means **all rented tangible** personal property: ~~(including attachments used in conjunction with the personal property):~~
 - (A) that is owned by a person or business that:
 - (i) ~~is classified under~~ **primarily rents equipment described in 532412** of the North American Industry Classification System Manual in effect on January 1, 2018; and
 - (ii) is a retail merchant in the business of renting heavy equipment, including any attachments **or accessories;**
 - (B) **that** is not intended to be permanently affixed to any real property; and
 - (C) **that** is not subject to registration under IC 9-18.1 for use on a public highway (as defined in IC 9-25-2-4).

However, the term does not include heavy rental equipment that is rented for mining purposes or heavy rental equipment that is eligible for a property tax abatement deduction under ~~IC 6-1.1-12.1~~ during the calendar year. **A person is considered to primarily rent equipment described in 532412 of the North American Industry Classification System Manual in effect on January 1, 2018, if the rental of the equipment generates the largest portion of the person's gross revenue and the person lists 532412 as the person's principal business activity code on the person's Indiana adjusted gross income tax return. In the case of a person who is an affiliate included in an Indiana consolidated or combined adjusted gross income tax return, the person may provide a copy of the federal Form 851 filed with the Internal Revenue Services that lists 532412 as the person's principal business activity code. For purposes of this chapter, the department may rely on the principal business activity code listed for the person on the person's Indiana adjusted gross income tax return of the federal Form 851, and the person may not apply any change to the listing on any amended return or subsequent return or federal form for purposes of this chapter without the approval of the department.**

- (4) "Person" has the meaning set forth in IC 6-2.5-1-3.



(5) "Rental" means any transfer of possession or control of heavy rental equipment for consideration:

(A) for a period not to exceed three hundred sixty-five (365) days; or

(B) for a period that is open ended under the terms of the rental contract with no specified end date.

(6) "Retail merchant" has the meaning set forth in IC 6-2.5-1-8.

SECTION 26. IC 6-6-15-3, AS ADDED BY P.L.188-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) An excise tax, known as the heavy equipment rental excise tax, is imposed upon the rental of heavy rental equipment from a retail merchant **in Indiana** and **received from a location outside Indiana is exempt from the excise tax.**

(b) The heavy equipment rental excise tax imposed under this chapter is two and twenty-five hundredths percent (2.25%) of the gross retail income received by the retail merchant for the rental.

(c) A retail merchant subject to the heavy rental equipment excise tax is required to collect and remit the excise tax on all rentals of tangible personal property.

SECTION 27. IC 6-6-15-4, AS ADDED BY P.L.188-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. **(a)** A transaction involving the rental of heavy rental equipment is exempt from the tax imposed by this chapter if any of the following apply:

(1) The rentee is:

(A) the United States government;

(B) the state;

(C) a political subdivision (as defined in IC 36-1-2-13); or

(D) an agency or instrumentality of an entity described in clauses (A) through (C).

(2) The transaction is a subrent of the heavy rental equipment from a rentee to another person, and the rentee was liable for the tax imposed under this chapter.

(3) The heavy rental equipment is rented for mining purposes or would be eligible for a property tax abatement deduction under IC 6-1.1-12.1 during the calendar year if the rentee was considered the owner of the equipment for income tax purposes or property tax purposes.

(b) A rentee asserting an exemption under subsection (a) shall complete the form prescribed by the department and the retail merchant may rely on the completed form.



SECTION 28. IC 6-6-15-6, AS ADDED BY P.L.188-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) Subject to subsection (b), a retail merchant shall remit the heavy equipment rental excise tax that the retail merchant collects under this chapter in the same manner as the state gross retail tax is remitted under IC 6-2.5.

(b) The heavy equipment rental excise tax imposed under this chapter shall be sourced to the business location of the retail merchant from which the heavy rental equipment is rented.

(c) The return to be filed for the payment of the heavy equipment rental excise tax may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department.

(d) In the event of a misclassification, a person shall receive a credit:

(1) for any Indiana property tax paid on the equipment for a calendar year against any excise tax owed on the equipment in the same calendar year; and

(2) for any excise tax paid on the equipment for a calendar year against any Indiana property tax owed on the equipment in the same calendar year.

SECTION 29. IC 6-8.1-3-16, AS AMENDED BY P.L.197-2016, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 16. (a) The department shall prepare a list of all outstanding tax warrants for listed taxes each month. The list shall identify each taxpayer liable for a warrant by name, address, amount of tax, and either Social Security number or employer identification number. Unless the department renews the warrant, the department shall exclude from the list a warrant issued more than ten (10) years before the date of the list. The department shall certify a copy of the list to the bureau of motor vehicles.

(b) The department shall prescribe and furnish tax release forms for use by tax collecting officials. A tax collecting official who collects taxes in satisfaction of an outstanding warrant shall issue to the taxpayers named on the warrant a tax release stating that the tax has been paid. The department may also issue a tax release:

(1) to a taxpayer who has made arrangements satisfactory to the department for the payment of the tax; or

(2) by action of the commissioner under IC 6-8.1-8-2(k).

(c) The department may not issue or renew:

(1) a certificate under IC 6-2.5-8;

(2) a license under IC 6-6-1.1 or IC 6-6-2.5; or



(3) a permit under IC 6-6-4.1; to a taxpayer whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax, makes arrangements satisfactory to the department for the payment of the tax, or a release is issued under IC 6-8.1-8-2(k).

(d) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly warrant list. If the purchaser's or assignee's name is on the list, the bureau shall enter as a lien on the title the name of the state as the lienholder unless the bureau has received notice from the commissioner under IC 6-8.1-8-2(k). The tax lien on the title:

- (1) is subordinate to a perfected security interest (as defined and perfected in accordance with IC 26-1-9.1); and
- (2) shall otherwise be treated in the same manner as other title liens.

(e) The commissioner is the custodian of all titles for which the state is the sole lienholder under this section. Upon receipt of the title by the department, the commissioner shall notify the owner of the department's receipt of the title.

(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.6 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

- (1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection (d) on a motor vehicle title; or
- (2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

- (1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or
- (2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

- (1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and



(2) subsection (g)(1) does not apply if the person collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department do not apply to this subsection. The department shall prepare a list of retail merchants whose registered retail merchant certificate has not been renewed under ~~IC 6-2.5-8-1(g)~~ **IC 6-2.5-8-1(h)** or whose registered retail merchant certificate has been revoked under IC 6-2.5-8-7. The list compiled under this subsection must identify each retail merchant by name (including any name under which the retail merchant is doing business), address, and county. The department shall publish the list compiled under this subsection on the department's Internet web site (as operated under IC 4-13.1-2) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

SECTION 30. IC 6-8.1-5-1, AS AMENDED BY P.L.242-2015, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) As used in this section, "letter of findings" includes a supplemental letter of findings.

(b) If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date and is subject to IC 6-8.1-10 concerning the imposition of penalties and interest. The department shall send the person a notice of the proposed assessment through the United States mail.

(c) The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, **including during an action appealed to the tax court under this chapter**. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

(d) The notice shall state that the person has forty-five (45) days from the date the notice is mailed, if the notice was mailed before January 1, 2011, and sixty (60) days from the date the notice is mailed, if the notice was mailed after December 31, 2010, to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

(1) set the hearing at the department's earliest convenient time;



and

(2) notify the person by United States mail of the time, date, and location of the hearing.

(e) The department may hold the hearing at the location of its choice within Indiana if that location complies with IC 6-8.1-3-8.5.

(f) After conducting a hearing on a protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection (b). The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

(g) A person that disagrees with a decision in a letter of findings may request a rehearing not more than thirty (30) days after the date on which the letter of findings is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

(h) If a person disagrees with a decision in a letter of findings, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more than ninety (90) days after the date on which:

- (1) the letter of findings is issued by the department, if the person does not make a timely request for a rehearing under subsection (g) on the letter of findings; or
- (2) the department issues a denial of the person's timely request for a rehearing under subsection (g) on the letter of findings.

The ninety (90) day period may be extended according to the terms of a written agreement signed by both the department and the person. The agreement must specify a date upon which the extension will terminate and a statement that the person agrees to preserve the person's records until that specified termination date. The specified termination date agreed upon under this subsection may not be more than ninety (90) days after the expiration of the period otherwise specified by this subsection.

(i) The tax court shall hear an appeal under subsection (h) de novo and without a jury. The tax court may do the following:

- (1) Uphold or deny any part of the assessment that is appealed.
- (2) Assess the court costs in a manner that the court believes to be equitable.



(3) Enjoin the collection of a listed tax under IC 33-26-6-2.

(j) The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

(1) the person failed to properly respond within the sixty (60) day period;

(2) the person requested a hearing but failed to appear at that hearing; or

(3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

(k) The department shall make the demand for payment in the manner provided in IC 6-8.1-8-2.

(l) Subsection (b) does not apply to a motor carrier fuel tax return.

SECTION 31. IC 6-8.1-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Sec. 4. (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

(b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:

(1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; ~~or~~

(2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, **or for a period during which a judicial proceeding or appeal related to a listed tax is pending, whichever is later**, unless after an audit, the department consents to earlier destruction; ~~or~~

~~In addition;~~

(3) if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over, or for a period during which a judicial proceeding or appeal related to a listed tax is pending, whichever is later.

(c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable



times.

(d) A person must, on request by the department, furnish a copy of any federal returns that **he the person** has filed.

(e) The failure of a person to keep books and records in the ordinary course of business shall be considered for purposes of determining the weight of the evidence as it relates to the person's liability for a listed tax, and not for purposes of the admissibility of the evidence. In examining the evidence, the department and the courts may take into account any federal law regarding the probative value of such evidence.

SECTION 32. IC 6-8.1-7-1, AS AMENDED BY P.L.86-2018, SECTION 80, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to any of the following when it is agreed that the information is to be confidential and to be used solely for official purposes:

- (1) Members and employees of the department.
- (2) The governor.
- (3) A member of the general assembly or an employee of the house of representatives or the senate when acting on behalf of a taxpayer located in the member's legislative district who has provided sufficient information to the member or employee for the department to determine that the member or employee is acting on behalf of the taxpayer.
- (4) An employee of the legislative services agency to carry out the responsibilities of the legislative services agency under IC 2-5-1.1-7 or another law.
- (5) The attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes.
- (6) Any authorized officers of the United States.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession



of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and
- (2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family resources, and to any director of a county office of the division of family resources located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used



solely for official purposes.

(g) The information described in subsection (a) may be revealed upon the receipt of a written request from the chief law enforcement officer of a state or local law enforcement agency in Indiana when it is agreed that the information is to be confidential and to be used solely for official purposes.

(h) The name and address of retail merchants, including township, as specified in ~~IC 6-2.5-8-1(k)~~ **IC 6-2.5-8-1(l)** may be released solely for tax collection purposes to township assessors and county assessors.

(i) The department shall notify the appropriate innkeeper's tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(j) All information relating to the delinquency or evasion of the vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(k) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(l) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(m) All information relating to the delinquency or evasion of the excise taxes imposed on recreational vehicles and truck campers that are payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.1.

(n) This section does not apply to:

- (1) the beer excise tax, including brand and packaged type (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the vehicle excise tax (IC 6-6-5);



(7) the commercial vehicle excise tax (IC 6-6-5.5); and

(8) the fees under IC 13-23.

(o) The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

(p) The name and business address of a person licensed by the department under IC 6-6 or IC 6-7 may be released for the purpose of reporting the status of the person's license.

(q) The department may release information concerning total incremental tax amounts under:

(1) IC 5-28-26;

(2) IC 36-7-13;

(3) IC 36-7-26;

(4) IC 36-7-27;

(5) IC 36-7-31;

(6) IC 36-7-31.3; or

(7) any other statute providing for the calculation of incremental state taxes that will be distributed to or retained by a political subdivision or other entity;

to the fiscal officer of the political subdivision or other entity that established the district or area from which the incremental taxes were received if that fiscal officer enters into an agreement with the department specifying that the political subdivision or other entity will use the information solely for official purposes.

(r) The department may release the information as required in IC 6-8.1-3-7.1 concerning:

(1) an innkeeper's tax, a food and beverage tax, or an admissions tax under IC 6-9;

(2) the supplemental auto rental excise tax under IC 6-6-9.7; and

(3) the covered taxes allocated to a professional sports development area fund, sports and convention facilities operating fund, or other fund under IC 36-7-31 and IC 36-7-31.3.

(s) Information concerning state gross retail tax exemption certificates that relate to a person who is exempt from the state gross retail tax under IC 6-2.5-4-5 may be disclosed to a power subsidiary (as defined in IC 6-2.5-4-5) or a person selling the services or commodities listed in IC 6-2.5-4-5(b) for the purpose of enforcing and collecting the state gross retail and use taxes under IC 6-2.5.

(t) The department may release a statement of tax withholding or other tax information statement provided on behalf of a taxpayer to the department to:



- (1) the taxpayer on whose behalf the tax withholding or other tax information statement was provided to the department;**
- (2) the taxpayer's spouse, if:**
 - (A) the taxpayer is deceased or incapacitated; and**
 - (B) the taxpayer's spouse is filing a joint income tax return with the taxpayer; or**
- (3) an administrator, executor, trustee, or other fiduciary acting on behalf of the taxpayer if the taxpayer is deceased.**

SECTION 33. IC 6-8.1-8-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.5. **(a) For a taxable period beginning after December 31, 2020, whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:**

- (1) To the tax liability of the taxpayer.**
- (2) To any penalty owed by the taxpayer.**
- (3) To any interest owed by the taxpayer.**

(b) For a taxable period beginning before January 1, 2021, whenever a taxpayer makes a partial payment on the taxpayer's tax liability, the department shall apply the partial payment in the following order:

- (1) To any penalty owed by the taxpayer.
- (2) To any interest owed by the taxpayer.
- (3) To the tax liability of the taxpayer.

In the case of a taxpayer with multiple liabilities, the department may adopt rules under IC 4-22-2 to establish the manner in which payments are applied to the taxpayer's outstanding liabilities.

SECTION 34. IC 6-8.1-8-2, AS AMENDED BY P.L.181-2016, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3 and sections 16 and 17 of this chapter, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has twenty (20) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.



(4) The statutory authority for the department to levy against a person's property that is held by a financial institution.

(5) The remedies available to the taxpayer to prevent the filing and recording of the judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

The department may not issue a demand notice for a liability more than nine (9) years after the first date the department is permitted to issue a demand notice under this chapter.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the twenty (20) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. **If a taxpayer does not own property in Indiana, or if the department is unable to determine whether the taxpayer owns property in Indiana, the department may file the tax warrant with the circuit court clerk of Marion County.** The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

(1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and

(2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

(1) The name of the person owing the tax.

(2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

(3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment against the person owing the tax. The judgment



creates a lien in favor of the state that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county;

excepting only negotiable instruments not yet due. **The department may domesticate a valid tax warrant in one (1) or more other states or countries, or in the political subunits of other states or countries, in the manner that any other civil judgment may be domesticated in that jurisdiction. The department shall be permitted all rights and remedies permitted in a jurisdiction in which a judgment is domesticated, even if the rights or remedies would not be permitted under Indiana law.**

(f) **The following apply to a judgment on a tax warrant:**

(1) **A judgment on a tax warrant must be filed in at least one (1) Indiana county not later than ten (10) years after the first date on which a demand notice could be issued under this chapter.**

(2) **Except as provided in subdivision (3), if a judgment on a tax warrant is entered in at least one (1) Indiana county, the department may file an additional tax warrant in one (1) or more Indiana counties during the period in which one (1) or more tax warrants are valid under this section.**

(3) **A judgment obtained under this section is valid for ten (10) years from the date the judgment is filed. The department may renew the judgment for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the judgment previously existed. An amended tax warrant under this section or section 4 of this chapter shall not constitute an alias tax warrant. The failure to renew a tax warrant in a particular county shall preclude the issuance of a new tax warrant under subdivision (2).**

(4) **If the department does not:**

- (A) **issue a timely demand notice under subsection (a);**
- (B) **file a timely tax warrant under subdivision (1); or**
- (C) **renew all tax warrants under subdivision (3);**

the department shall extinguish the tax liability from which the demand notice or judgment arose, and no state agency shall treat the tax liability as a delinquency for purposes of Indiana law.

(g) **A judgment arising from a tax warrant in a county shall be released by the department:**

- (1) **after the judgment, including all accrued interest to the date of**



payment, has been fully satisfied; or

(2) if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) Subject to subsections (p) and (q), if the department determines that the filing of a tax warrant was in error or if the commissioner determines that the release of the judgment and expungement of the tax warrant are in the best interest of the state, the department shall mail a release of the judgment to the taxpayer and the circuit court clerk of each county where the warrant was filed. The circuit court clerk of each county where the warrant was filed shall expunge the warrant from the judgment debtor's column of the judgment record. The department shall mail the release and the order for the warrant to be expunged as soon as possible but no later than seven (7) days after:

(1) the determination by the department that the filing of the warrant was in error; and

(2) the receipt of information by the department that the judgment has been recorded under subsection (d).

(i) If the department determines that a judgment described in subsection (h) is obstructing a lawful transaction, the department shall immediately upon making the determination mail:

(1) a release of the judgment to the taxpayer; and

(2) an order requiring the circuit court clerk of each county where the judgment was filed to expunge the warrant.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release and the order for the warrant to be expunged issued under subsection (h) or (i) to each major credit reporting company located in each county where the judgment was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter. If a judgment has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the judgment. If a sheriff releases a judgment:

(1) before the judgment is fully satisfied;

(2) before the sheriff has properly disbursed the amount collected;
or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for



the part of the judgment not remitted to the department.

(m) A lien on real property described in subsection (e)(2) is void if both of the following occur:

- (1) The person owing the tax provides written notice to the department to file an action to foreclose the lien.
- (2) The department fails to file an action to foreclose the lien not later than one hundred eighty (180) days after receiving the notice.

(n) A person who gives notice under subsection (m) by registered or certified mail to the department may file an affidavit of service of the notice to file an action to foreclose the lien with the circuit court clerk in the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than one hundred eighty (180) days have passed since the notice was received by the department.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(o) Upon receipt of the affidavit described in subsection (n), the circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants.

(p) The department shall adopt rules to define the circumstances under which a release and expungement may be granted based on a finding that the release and expungement would be in the best interest of the state. The rules may allow the commissioner to expunge a tax warrant in other circumstances not inconsistent with subsection (q) that the commissioner determines are appropriate. Any releases or expungements granted by the commissioner must be consistent with these rules.

(q) The commissioner may expunge a tax warrant in the following circumstances:

- (1) If the taxpayer has timely and fully filed and paid all of the taxpayer's state taxes, or has otherwise resolved any outstanding state tax issues, for the preceding five (5) years.
- (2) If the warrant was issued more than ten (10) years prior to the expungement.
- (3) If the warrant is not subject to pending litigation.
- (4) Other circumstances not inconsistent with subdivisions (1) through (3) that are specified in the rules adopted under subsection (p).

(r) Notwithstanding any other provision in this section, the commissioner may decline to release a judgment or expunge a warrant



upon a finding that the warrant was issued based on the taxpayer's fraudulent, intentional, or reckless conduct.

(s) The rules required under subsection (p) shall specify the process for requesting that the commissioner release and expunge a tax warrant.

SECTION 35. IC 6-8.1-8-3, AS AMENDED BY P.L.99-2011, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff shall also have authority to attempt to levy on and collect the outstanding tax liability if the taxpayer does not pay the amount demanded under section 2(b) of this chapter and the taxpayer has taken an action under section 2(n) of this chapter to foreclose the lien. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses



and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. **The sheriff shall notify the department, in a manner specified by the department, of the name of the taxpayer and the amount of the payment within seven (7) days of receipt. In the event of an emergency, a taxpayer may direct the sheriff to make a payment on the taxpayer's behalf using the department's electronic payment portal when certified funds have been received by the sheriff.** On or before the fifth day of each month, the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.
- (3) Except as provided in subdivisions (4) and (5), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (5) If the sheriff has not entered into a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that:
 - (A) represents the ten percent (10%) collection fee added under section 2(b) of this chapter; and
 - (B) would, if kept by the sheriff, result in the total amount of the sheriff's annual compensation exceeding the maximum amount allowed under IC 36-2-13-17.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if the department determines that:

- (1) at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic



payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed; and
 (2) the sheriff's electronic data base regarding tax warrants is compatible with the department's data base;

the sheriff may keep the tax warrant and continue collections.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) Subject to subsection (g), the sheriff may retain forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

(g) If an amount of the collection fee added under section 2(b) of this chapter would, if retained by the sheriff under subsection (f)(1), cause the total amount of the sheriff's annual compensation to exceed the maximum amount allowed under IC 36-2-13-17, the sheriff shall instead deposit the amount in the county general fund.

(h) Money deposited into a county general fund under subsections (c)(5) and (g) must be used as follows:

(1) To reduce any unfunded liability of a sheriff's pension trust plan established for the county's sheriff's department.

(2) Any amounts remaining after complying with subdivision (1) must be applied to the costs incurred to operate the county's sheriff's department.

SECTION 36. IC 6-8.1-10-1, AS AMENDED BY P.L.214-2018(ss), SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the



adjusted rate established by the commissioner under subsection (c), from the due date for payment. The interest applies to:

- (1) the full amount of the unpaid tax due if the person failed to file the return;
- (2) the amount of the tax that is not paid, if the person filed the return but failed to pay the full amount of tax shown on the return;
- or
- (3) the amount of the deficiency.

(c) The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state general fund money for the state's previous fiscal year, excluding pension fund investments, as determined by the treasurer of state on or before October 1 of each year and reported to the commissioner. For purposes of IC 6-8.1-9-2(c), the adjusted rate of interest for an excess tax payment must be the same as the adjusted rate of interest determined under this subsection for a failure described in subsection (a). The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.

(d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(e) Except as provided by IC 6-8.1-3-17(c), IC 6-8.1-3-17(e), and IC 6-8.1-5-2, **and section 2.1(k) of this chapter**, the department may not waive the interest imposed under this section.

(f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

SECTION 37. IC 6-8.1-10-2.1, AS AMENDED BY P.L.181-2016, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2.1. (a) Except as provided in IC 6-3-4-12(k) and IC 6-3-4-13(l), a person that:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in IC 4-8.1-2-7), overnight courier, or personal delivery and the payment is not received by the department by the due date



in funds acceptable to the department;
is subject to a penalty.

(b) Except as provided in subsection (g), the penalty described in subsection (a) is ten percent (10%) of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

(h) A:



- (1) corporation which otherwise qualifies under IC 6-3-2-2.8(2);
- (2) partnership; or
- (3) trust;

that fails to withhold and pay any amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 shall pay a penalty equal to twenty percent (20%) of the amount of tax required to be withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15. This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

(i) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

(j) If a partnership or an S corporation fails to include all nonresidential individual partners or nonresidential individual shareholders in a composite return as required by IC 6-3-4-12(i) or IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per partnership or S corporation is imposed on the partnership or S corporation.

(k) If a person subject to the penalty imposed under this section provides the department with documentation showing that the person is or has been subject to incarceration for a period of a least one hundred eighty (180) days, the department shall waive any penalty under this section and interest that accrues during the time the person was incarcerated, but not to an extent greater than the penalty or interest relief to which a person would otherwise have been entitled under the federal Servicemembers Civil Relief Act (50 U.S.C. 3901-4043), if the person was in military service. Nothing in this subsection shall preclude the department from issuing a proposed assessment, demand notice, jeopardy proposed assessment, jeopardy demand notice, or warrant otherwise permitted by law.

SECTION 38. IC 6-8.1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:

- (1) Schedule K-1 of form IT-20S, IT-41, or IT-65.
- (2) Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under IC 6 or from which tax would be required to be deducted and withheld but for an exemption under IC 6.
- (3) Any form, statement, or schedule required to be filed with the Internal Revenue Service under 26 C.F.R. 301.6721-1(g) (1993).

The term does not include form IT-20FIT, IT-20S, IT-20SC, IT-41, or IT-65.



(b) If a person fails to file an information return required by the department, **or fails to electronically file an information return that is required by the department to be filed in an electronic format**, a penalty of ten dollars (\$10) for:

(1) each failure to file a timely return; **or**

(2) **each failure to electronically file a timely return required by the department to be in an electronic format;**

not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

SECTION 39. IC 16-44-2-18, AS AMENDED BY P.L.214-2005, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 18. (a) Except as provided in subsection (b), fees for the inspection of gasoline or kerosene shall be at the rate of fifty cents (\$0.50) per barrel (fifty (50) gallons) on all gasoline or kerosene received in Indiana less deductions provided in this section.

(b) A fee for inspection of gasoline or kerosene may not be charged for the following:

(1) On transport or tank car shipments direct to the federal government.

(2) On gasoline or kerosene received and subsequently exported from Indiana or returned to refineries or marine or pipeline terminals in Indiana.

(c) Fees shall be paid to the state department by the person receiving gasoline or kerosene in Indiana at the time gasoline or kerosene products are received, unless the person receiving the gasoline or kerosene is licensed as a distributor under the gasoline tax law (IC 6-6-1.1). In that case, the person in receipt of the gasoline or kerosene shall do the following:

(1) Include in the person's monthly gasoline tax report a statement of all gasoline and kerosene received during the preceding calendar month on which inspection fees are due.

(2) Remit the amount of the inspection fees at the same time the monthly motor fuel tax report is due.

(d) A refiner or other person supplying gasoline or kerosene to the first receiver in Indiana may elect to pay the fees monthly on all gasoline or kerosene supplied to persons in Indiana not licensed as distributors under the gasoline tax law (IC 6-6-1.1). If the supplier is not licensed as a distributor under the gasoline tax law of Indiana (IC 6-6-1.1), the supplier shall, as a condition precedent to such election, file with the state department a corporate surety bond that meets the



following conditions:

- (1) Is in the form and amount that the state department determines, not to exceed two thousand dollars (\$2,000).
- (2) Is conditioned that the supplier does the following:
 - (A) Reports all gasoline and kerosene supplied by the supplier to persons in Indiana not licensed as distributors under the gasoline tax law (IC 6-6-1.1).
 - (B) Pays inspection fees monthly on or before the twenty-fifth day of each calendar month for the preceding calendar month.
- (e) A person taking credit for gasoline or kerosene exported or returned to a refinery or terminal shall substantiate that credit in the manner that the state department reasonably requires by rule.
- (f) ~~A distributor who fails to file a monthly report and pay the tax due as required by this chapter is subject to a penalty of five percent (5%) of the amount of unpaid tax due and interest on the unpaid tax and penalty at the rate of eight percent (8%) annually. However, if a delay not exceeding ten (10) days is due to a mistake, an accident, or an oversight without intent to avoid payment, the administrator may waive the penalty and interest.~~

SECTION 40. [EFFECTIVE UPON PASSAGE] (a) The legislative council is urged to assign to an appropriate interim study committee the task of studying the revision of criteria for which governmental entities may form a regional development authority and the imposition of taxes by a regional development authority.

(b) This SECTION expires June 30, 2020.

SECTION 41. [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)] (a) IC 6-3-1-3.5, IC 6-3-1-33, IC 6-3-2-2, IC 6-3-3-9, IC 6-5.5-1-2, and IC 6-5.5-1-20, all as amended by this act, apply to taxable years beginning after December 31, 2018.

(b) IC 6-3-2-2.5 and IC 6-3-2-2.6, both as amended by this act, apply to taxable years beginning after December 31, 2017.

(c) However, if a different taxable year is specified for the application of any of the provisions referred to in subsection (a) or (b), the specified taxable year applies.

(d) This SECTION expires June 30, 2022.

SECTION 42. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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