
HOUSE BILL No. 1365

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5; IC 6-3; IC 6-4.1-1-3; IC 6-5.5-1; IC 6-2.5-5-15.

Synopsis: Various state tax matters. Makes the following changes to the sales and use tax: (1) Grants a credit against Indiana use tax for sales tax paid in another state for a vehicle, a watercraft, or an aircraft. (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail transaction. (3) Indicates that a deduction for sales tax paid on a purchase price that becomes uncollectible is not assignable. Requires interest and intangible expenses incurred in certain related member transactions and taken as a deduction for federal income tax purposes to be added back to income for adjusted gross income and financial institutions tax purposes. Makes the following changes to the adjusted gross income tax: (1) Changes the method of calculating the Indiana net operating loss deduction. (2) Eliminates the carryback of net operating loss deductions. Repeals the sales tax credit for sales of motor vehicles, trailers, watercraft, and aircraft that are sold in Indiana and titled or registered in another state.

Effective: January 1, 2004 (retroactive); March 1, 2004 (retroactive); July 1, 2004.

Cochran, Liggett, Kuzman

January 20, 2004, read first time and referred to Committee on Ways and Means.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1365



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

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

1 SECTION 1. IC 6-2.5-3-5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ A person is
3 entitled to a credit against the use tax imposed on the use, storage, or
4 consumption of a particular item of tangible personal property equal to
5 the amount, if any, of sales tax, purchase tax, or use tax paid to another
6 state, territory, or possession of the United States for the acquisition of
7 that property.

8 ~~(b) The credit provided under subsection (a) does not apply to the~~
9 ~~use tax imposed on the use, storage, or consumption of vehicles,~~
10 ~~watercraft, or aircraft that are required to be titled, registered, or~~
11 ~~licensed by Indiana.~~

12 SECTION 2. IC 6-2.5-4-11 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE MARCH 1, 2004 (RETROACTIVE)]: Sec.
14 11. (a) A person is a retail merchant making a retail transaction when
15 ~~he the person~~ furnishes ~~local~~ cable television **or radio** service or
16 ~~intrastate cable~~ **satellite** television **or radio** service **that terminates in**
17 **Indiana.**



1 (b) Notwithstanding subsection (a), a person is not a retail merchant
 2 making a retail transaction when the person provides, installs,
 3 constructs, services, or removes tangible personal property which is
 4 used in connection with the furnishing of ~~local~~ cable television **or**
 5 **radio** service or ~~intrastate cable satellite or radio~~ television service.

6 SECTION 3. IC 6-2.5-6-9, AS AMENDED BY P.L.257-2003,
 7 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2004]: Sec. 9. (a) In determining the amount of state gross
 9 retail and use taxes which ~~he a retail merchant~~ must remit under
 10 section 7 of this chapter, ~~a~~ **the** retail merchant shall, subject to
 11 ~~subsection~~ **subsections (c) and (d)**, deduct from ~~his the retail~~
 12 **merchant's** gross retail income from retail transactions made during
 13 a particular reporting period, an amount equal to ~~his the retail~~
 14 **merchant's** receivables which:

- 15 (1) resulted from retail transactions in which the retail merchant
 16 did not collect the state gross retail or use tax from the purchaser;
 17 (2) resulted from retail transactions on which the retail merchant
 18 has previously paid the state gross retail or use tax liability to the
 19 department; and
 20 (3) were written off as an uncollectible debt for federal tax
 21 purposes under Section 166 of the Internal Revenue Code during
 22 the particular reporting period.

23 (b) If a retail merchant deducts a receivable under subsection (a)
 24 and subsequently collects all or part of that receivable, then the retail
 25 merchant shall, subject to subsection ~~(c)(6); (d)(6)~~, include the amount
 26 collected as part of ~~his the retail merchant's~~ gross retail income from
 27 retail transactions for the particular reporting period in which ~~he the~~
 28 **retail merchant** makes the collection.

29 (c) **The right to a deduction under this section is not assignable.**

30 (d) The following provisions apply to a deduction for a receivable
 31 treated as uncollectible debt under subsection (a):

- 32 (1) The deduction does not include interest.
 33 (2) The amount of the deduction shall be determined in the
 34 manner provided by Section 166 of the Internal Revenue Code for
 35 bad debts but shall be adjusted to exclude:
 36 (A) financing charges or interest;
 37 (B) sales or use taxes charged on the purchase price;
 38 (C) uncollectible amounts on property that remain in the
 39 possession of the seller until the full purchase price is paid;
 40 (D) expenses incurred in attempting to collect any debt; and
 41 (E) repossessed property.
 42 (3) The deduction shall be claimed on the return for the period

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1 during which the receivable is written off as uncollectible in the
2 claimant's books and records and is eligible to be deducted for
3 federal income tax purposes. For purposes of this subdivision, a
4 claimant who is not required to file federal income tax returns
5 may deduct an uncollectible receivable on a return filed for the
6 period in which the receivable is written off as uncollectible in the
7 claimant's books and records and would be eligible for a bad debt
8 deduction for federal income tax purposes if the claimant were
9 required to file a federal income tax return.

10 (4) If the amount of uncollectible receivables claimed as a
11 deduction by a retail merchant for a particular reporting period
12 exceeds the amount of the retail merchant's taxable sales for that
13 reporting period, the retail merchant may file a refund claim
14 under IC 6-8.1-9. However, the deadline for **the** refund claim
15 shall be measured from the due date of the return for the reporting
16 period on which the deduction for the uncollectible receivables
17 could first be claimed.

18 (5) If a retail merchant's filing responsibilities have been assumed
19 by a certified service provider (as defined in IC 6-2.5-11-2), the
20 certified service provider may claim, on behalf of the retail
21 merchant, any deduction or refund for uncollectible receivables
22 provided by this section. The certified service provider must
23 credit or refund the full amount of any deduction or refund
24 received to the retail merchant.

25 (6) For purposes of reporting a payment received on a previously
26 claimed uncollectible receivable, any payments made on a debt or
27 account shall be applied first proportionally to the taxable price
28 of the property and the state gross retail tax or use tax thereon,
29 and secondly to interest, service charges, and any other charges.

30 (7) A retail merchant claiming a deduction for an uncollectible
31 receivable may allocate that receivable among the states that are
32 members of the streamlined sales and use tax agreement if the
33 books and records of the retail merchant support that allocation.

34 SECTION 4. IC 6-3-1-3.5, AS AMENDED BY P.L.1-2004,
35 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3.5. When used in this
37 article, the term "adjusted gross income" shall mean the following:

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

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

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- 1 (2) Add an amount equal to any deduction or deductions allowed
 2 or allowable pursuant to Section 62 of the Internal Revenue Code
 3 for taxes based on or measured by income and levied at the state
 4 level by any state of the United States.
- 5 (3) Subtract one thousand dollars (\$1,000), or in the case of a
 6 joint return filed by a husband and wife, subtract for each spouse
 7 one thousand dollars (\$1,000).
- 8 (4) Subtract one thousand dollars (\$1,000) for:
 9 (A) each of the exemptions provided by Section 151(c) of the
 10 Internal Revenue Code;
 11 (B) each additional amount allowable under Section 63(f) of
 12 the Internal Revenue Code; and
 13 (C) the spouse of the taxpayer if a separate return is made by
 14 the taxpayer and if the spouse, for the calendar year in which
 15 the taxable year of the taxpayer begins, has no gross income
 16 and is not the dependent of another taxpayer.
- 17 (5) Subtract:
 18 (A) one thousand five hundred dollars (\$1,500) for each of the
 19 exemptions allowed under Section 151(c)(1)(B) of the Internal
 20 Revenue Code for taxable years beginning after December 31,
 21 1996; and
 22 (B) five hundred dollars (\$500) for each additional amount
 23 allowable under Section 63(f)(1) of the Internal Revenue Code
 24 if the adjusted gross income of the taxpayer, or the taxpayer
 25 and the taxpayer's spouse in the case of a joint return, is less
 26 than forty thousand dollars (\$40,000).
- 27 This amount is in addition to the amount subtracted under
 28 subdivision (4).
- 29 (6) Subtract an amount equal to the lesser of:
 30 (A) that part of the individual's adjusted gross income (as
 31 defined in Section 62 of the Internal Revenue Code) for that
 32 taxable year that is subject to a tax that is imposed by a
 33 political subdivision of another state and that is imposed on or
 34 measured by income; or
 35 (B) two thousand dollars (\$2,000).
- 36 (7) Add an amount equal to the total capital gain portion of a
 37 lump sum distribution (as defined in Section 402(e)(4)(D) of the
 38 Internal Revenue Code) if the lump sum distribution is received
 39 by the individual during the taxable year and if the capital gain
 40 portion of the distribution is taxed in the manner provided in
 41 Section 402 of the Internal Revenue Code.
- 42 (8) Subtract any amounts included in federal adjusted gross

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- 1 income under Section 111 of the Internal Revenue Code as a
 2 recovery of items previously deducted as an itemized deduction
 3 from adjusted gross income.
- 4 (9) Subtract any amounts included in federal adjusted gross
 5 income under the Internal Revenue Code which amounts were
 6 received by the individual as supplemental railroad retirement
 7 annuities under 45 U.S.C. 231 and which are not deductible under
 8 subdivision (1).
- 9 (10) Add an amount equal to the deduction allowed under Section
 10 221 of the Internal Revenue Code for married couples filing joint
 11 returns if the taxable year began before January 1, 1987.
- 12 (11) Add an amount equal to the interest excluded from federal
 13 gross income by the individual for the taxable year under Section
 14 128 of the Internal Revenue Code if the taxable year began before
 15 January 1, 1985.
- 16 (12) Subtract an amount equal to the amount of federal Social
 17 Security and Railroad Retirement benefits included in a taxpayer's
 18 federal gross income by Section 86 of the Internal Revenue Code.
- 19 (13) In the case of a nonresident taxpayer or a resident taxpayer
 20 residing in Indiana for a period of less than the taxpayer's entire
 21 taxable year, the total amount of the deductions allowed pursuant
 22 to subdivisions (3), (4), (5), and (6) shall be reduced to an amount
 23 which bears the same ratio to the total as the taxpayer's income
 24 taxable in Indiana bears to the taxpayer's total income.
- 25 (14) In the case of an individual who is a recipient of assistance
 26 under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7,
 27 subtract an amount equal to that portion of the individual's
 28 adjusted gross income with respect to which the individual is not
 29 allowed under federal law to retain an amount to pay state and
 30 local income taxes.
- 31 (15) In the case of an eligible individual, subtract the amount of
 32 a Holocaust victim's settlement payment included in the
 33 individual's federal adjusted gross income.
- 34 (16) For taxable years beginning after December 31, 1999,
 35 subtract an amount equal to the portion of any premiums paid
 36 during the taxable year by the taxpayer for a qualified long term
 37 care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the
 38 taxpayer's spouse, or both.
- 39 (17) Subtract an amount equal to the lesser of:
 40 (A) for a taxable year:
 41 (i) including any part of 2004, the amount determined under
 42 subsection (f); and

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- 1 (ii) beginning after December 31, 2004, two thousand five
- 2 hundred dollars (\$2,500); or
- 3 (B) the amount of property taxes that are paid during the
- 4 taxable year in Indiana by the individual on the individual's
- 5 principal place of residence.
- 6 (18) Subtract an amount equal to the amount of a September 11
- 7 terrorist attack settlement payment included in the individual's
- 8 federal adjusted gross income.
- 9 (19) Add or subtract the amount necessary to make the adjusted
- 10 gross income of any taxpayer that owns property for which bonus
- 11 depreciation was allowed in the current taxable year or in an
- 12 earlier taxable year equal to the amount of adjusted gross income
- 13 that would have been computed had an election not been made
- 14 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
- 15 apply bonus depreciation to the property in the year that it was
- 16 placed in service.
- 17 **(20) Add an amount equal to:**
- 18 **(A) interest expenses and costs; and**
- 19 **(B) intangible expenses and costs;**
- 20 **directly or indirectly paid, accrued, or incurred to or in**
- 21 **connection with one (1) or more transactions with one (1) or**
- 22 **more related members in the taxable year.**
- 23 **(21) Add an amount equal to the deduction allowed under**
- 24 **Section 172 of the Internal Revenue Code for net operating**
- 25 **losses.**
- 26 (b) In the case of corporations, the same as "taxable income" (as
- 27 defined in Section 63 of the Internal Revenue Code) adjusted as
- 28 follows:
- 29 (1) Subtract income that is exempt from taxation under this article
- 30 by the Constitution and statutes of the United States.
- 31 (2) Add an amount equal to any deduction or deductions allowed
- 32 or allowable pursuant to Section 170 of the Internal Revenue
- 33 Code.
- 34 (3) Add an amount equal to any deduction or deductions allowed
- 35 or allowable pursuant to Section 63 of the Internal Revenue Code
- 36 for taxes based on or measured by income and levied at the state
- 37 level by any state of the United States.
- 38 (4) Subtract an amount equal to the amount included in the
- 39 corporation's taxable income under Section 78 of the Internal
- 40 Revenue Code.
- 41 (5) Add or subtract the amount necessary to make the adjusted
- 42 gross income of any taxpayer that owns property for which bonus

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1 depreciation was allowed in the current taxable year or in an
 2 earlier taxable year equal to the amount of adjusted gross income
 3 that would have been computed had an election not been made
 4 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
 5 apply bonus depreciation to the property in the year that it was
 6 placed in service.

7 **(6) Add an amount equal to:**

8 **(A) interest expenses and costs; and**

9 **(B) intangible expenses and costs;**

10 **directly or indirectly paid, accrued, or incurred to or in**
 11 **connection with one (1) or more transactions with one (1) or**
 12 **more related members in the taxable year.**

13 **(7) Add an amount equal to the deduction allowed under**
 14 **Section 172 of the Internal Revenue Code for net operating**
 15 **losses.**

16 (c) In the case of life insurance companies (as defined in Section
 17 816(a) of the Internal Revenue Code) that are organized under Indiana
 18 law, the same as "life insurance company taxable income" (as defined
 19 in Section 801 of the Internal Revenue Code), adjusted as follows:

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

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

24 (3) Add an amount equal to a deduction allowed or allowable
 25 under Section 805 or Section 831(c) of the Internal Revenue Code
 26 for taxes based on or measured by income and levied at the state
 27 level by any state.

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

31 (5) Add or subtract the amount necessary to make the adjusted
 32 gross income of any taxpayer that owns property for which bonus
 33 depreciation was allowed in the current taxable year or in an
 34 earlier taxable year equal to the amount of adjusted gross income
 35 that would have been computed had an election not been made
 36 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
 37 apply bonus depreciation to the property in the year that it was
 38 placed in service.

39 **(6) Add an amount equal to:**

40 **(A) interest expenses and costs; and**

41 **(B) intangible expenses and costs;**

42 **directly or indirectly paid, accrued, or incurred to or in**

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connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(d) 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.
- (3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(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.
- (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)(2)(C)(iii) 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:
(A) interest expenses and costs; and
(B) intangible expenses and costs;
directly or indirectly paid, accrued, or incurred to or in connection with one (1) or more transactions with one (1) or more related members in the taxable year.

(e) 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

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1 gross income of any taxpayer that owns property for which bonus
 2 depreciation was allowed in the current taxable year or in a
 3 earlier taxable year equal to the amount of adjusted gross income
 4 that would have been computed had an election not been made
 5 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
 6 apply bonus depreciation to the property in the year that it was
 7 placed in service.

8 **(4) Add an amount equal to:**

9 **(A) interest expenses and costs; and**

10 **(B) intangible expenses and costs;**

11 **directly or indirectly paid, accrued, or incurred to or in**
 12 **connection with one (1) or more transactions with one (1) or**
 13 **more related members in the taxable year.**

14 **(5) Add an amount equal to the deduction allowed under**
 15 **Section 642(d) of the Internal Revenue Code for net operating**
 16 **losses.**

17 (f) This subsection applies only to the extent that an individual paid
 18 property taxes in 2004 that were imposed for the March 1, 2002,
 19 assessment date or the January 15, 2003, assessment date. The
 20 maximum amount of the deduction under subsection (a)(17) is equal
 21 to the amount determined under STEP FIVE of the following formula:

22 STEP ONE: Determine the amount of property taxes that the
 23 taxpayer paid after December 31, 2003, in the taxable year for
 24 property taxes imposed for the March 1, 2002, assessment date
 25 and the January 15, 2003, assessment date.

26 STEP TWO: Determine the amount of property taxes that the
 27 taxpayer paid in the taxable year for the March 1, 2003,
 28 assessment date and the January 15, 2004, assessment date.

29 STEP THREE: Determine the result of the STEP ONE amount
 30 divided by the STEP TWO amount.

31 STEP FOUR: Multiply the STEP THREE amount by two
 32 thousand five hundred dollars (\$2,500).

33 STEP FIVE: Determine the sum of the STEP THREE amount and
 34 two thousand five hundred dollars (\$2,500).

35 SECTION 5. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE
 36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 37 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 34. For purposes of this**
 38 **chapter, "intangible investments" means investments in:**

39 **(1) stocks;**

40 **(2) bonds;**

41 **(3) notes;**

42 **(4) interests in a partnership;**

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- 1 **(5) patents;**
- 2 **(6) patent applications;**
- 3 **(7) trademarks;**
- 4 **(8) trade names;**
- 5 **(9) copyrights;**
- 6 **(10) similar types of intangible assets; and**
- 7 **(11) other debt obligations, including debt obligations of**
- 8 **related members.**

9 SECTION 6. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 11 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 35. For purposes of this**
 12 **chapter, "related member" means any of the following:**

- 13 **(1) An entity whose activities, in one (1) state, are primarily:**
 - 14 **(A) the maintenance and management of intangible**
 - 15 **investments, including the intangible investments of**
 - 16 **corporations, including business trusts, and other entities**
 - 17 **registered as investment companies under the federal**
 - 18 **Investment Company Act of 1940; and**
 - 19 **(B) the collection and distribution of the income from:**
 - 20 **(i) investments described in clause (A); or**
 - 21 **(ii) tangible property physically located outside that**
 - 22 **state.**
- 23 **(2) An entity that is:**
 - 24 **(A) a personal holding company; or**
 - 25 **(B) directly, indirectly, constructively, or beneficially**
 - 26 **owned in whole or in part by a personal holding company;**
 - 27 **(as defined in Section 542 of the Internal Revenue Code**
 - 28 **without regard to the stock ownership requirements set forth**
 - 29 **in Section 542(a)(2) of the Internal Revenue Code).**
- 30 **(3) An entity that is a foreign personal holding company (as**
- 31 **defined in Section 552 of the Internal Revenue Code).**
- 32 **(4) Any entity that:**
 - 33 **(A) is not a corporation; and**
 - 34 **(B) is directly, indirectly, constructively, or beneficially**
 - 35 **owned in whole or in part by a foreign personal holding**
 - 36 **company (as defined in Section 552 of the Internal Revenue**
 - 37 **Code).**

38 SECTION 7. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 40 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 36. (a) As used in this**
 41 **chapter, "intangible expenses and costs" includes expenses, losses,**
 42 **and costs for, related to, or in connection directly or indirectly with**

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1 **the direct or indirect:**
 2 **(1) acquisition;**
 3 **(2) use;**
 4 **(3) maintenance or management;**
 5 **(4) ownership;**
 6 **(5) sale; or**
 7 **(6) exchange;**
 8 **of, or any other direct or indirect disposition of, intangible**
 9 **property to the extent that the amounts are allowed as deductions**
 10 **or costs in determining taxable income before operating loss**
 11 **deductions and special deductions for the taxable year under the**
 12 **Internal Revenue Code.**

13 **(b) The term includes losses related to or incurred in connection**
 14 **directly or indirectly with:**
 15 **(1) factoring transactions;**
 16 **(2) losses related to or incurred in connection directly or**
 17 **indirectly with:**
 18 **(A) discounting transactions;**
 19 **(B) royalty, patent, technical, and copyright fees;**
 20 **(C) licensing fees; and**
 21 **(D) other similar expenses and costs.**

22 SECTION 8. IC 6-3-1-37 IS ADDED TO THE INDIANA CODE
 23 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 24 JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 37. For purposes of this**
 25 **chapter, "interest expenses and costs" includes amounts directly or**
 26 **indirectly allowed as deductions under Section 163 of the Internal**
 27 **Revenue Code for purposes of determining taxable income under**
 28 **the Internal Revenue Code.**

29 SECTION 9. IC 6-3-2-2.5 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
 31 Sec. 2.5. (a) This section applies to a resident person. for a particular
 32 taxable year, if the taxpayer's adjusted gross income for that taxable
 33 year is reduced because of a deduction allowed under Section 172 of
 34 the Internal Revenue Code for a net operating loss. For purposes of
 35 section 1 of this chapter, the taxpayer's adjusted gross income, for the
 36 particular taxable year, is the remainder determined under STEP FOUR
 37 of the following formula:

38 STEP ONE: Determine the taxpayer's adjusted gross income, for
 39 the taxable year, as calculated without the deduction for net
 40 operating losses provided by Section 172 of the Internal Revenue
 41 Code.

42 STEP TWO: Determine, in the manner prescribed in subsection

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1 (b), the amount of the taxpayer's net operating losses that are
 2 deductible for the taxable year under Section 172 of the Internal
 3 Revenue Code, as adjusted to reflect the modifications required
 4 by IC 6-3-1-3.5.

5 STEP THREE: Enter the larger of zero (0) or the amount
 6 determined under STEP TWO.

7 STEP FOUR: Subtract the amount entered under STEP THREE
 8 from the amount determined under STEP ONE.

9 (b) For purposes of STEP TWO of subsection (a), the modifications
 10 that are to be applied are those modifications required under
 11 IC 6-3-1-3.5 for the same taxable year during which each net operating
 12 loss was incurred. In addition, for purposes of STEP TWO of
 13 subsection (a), the following procedures apply:

14 (1) The taxpayer's net operating loss for a particular taxable year
 15 shall be treated as a positive number.

16 (2) A modification that is to be added to federal adjusted gross
 17 income or federal taxable income under IC 6-3-1-3.5 shall be
 18 treated as a negative number.

19 (3) A modification that is to be subtracted from federal adjusted
 20 gross income or federal taxable income under IC 6-3-1-3.5 shall
 21 be treated as a positive number.

22 (b) Resident persons are entitled to a net operating loss
 23 deduction.

24 (c) The Indiana net operating loss is equal to the taxpayer's
 25 federal net operating loss, calculated according to Section 172 of
 26 the Internal Revenue Code, adjusted for the modifications required
 27 by IC 6-3-1-3.5, represented as a positive number.

28 (d) Subject to the limitations contained in subsection (e), the
 29 amount calculated in subsection (c) shall be available as a
 30 deduction from the taxpayer's adjusted gross income (as defined in
 31 IC 6-3-1-3.5) in future taxable years. The deduction may be taken
 32 only after all other deductions from adjusted gross income allowed
 33 under this chapter have been taken.

34 (e) An amount remaining after the deduction is taken in a
 35 taxable year may be carried forward to the following taxable years.
 36 The amount of the deduction carried forward from a taxable year
 37 shall be reduced to the extent that the carry forward is used by the
 38 taxpayer to obtain a deduction in a taxable year until the
 39 occurrence of the earlier of the following:

40 (1) The entire amount of the deduction is taken.

41 (2) Twenty (20) years after the year in which the net operating
 42 loss was incurred.

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A net operating loss deduction may not be carried back.

SECTION 10. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss), SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person. for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 2 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's 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. Also, for purposes of STEP TWO of subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted

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1 gross income or federal taxable income under IC 6-3-1-3.5 shall
2 be treated as a positive number.

3 (4) A net operating loss under this section shall be considered
4 even though in the year the taxpayer incurred the loss the taxpayer
5 was not subject to the tax imposed under section † of this chapter
6 because the taxpayer was:

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

9 (B) an insurance company subject to tax under Section 83† of the
10 Internal Revenue Code.

11 (b) Corporations and nonresident persons are entitled to a net
12 operating loss deduction. The amount of the deduction taken in a
13 taxable year may not exceed the taxpayer's unused Indiana net
14 operating losses carried forward for use in that year.

15 (c) The Indiana net operating loss is equal to:

16 (1) the taxpayer's federal net operating loss, calculated
17 according to Section 172 of the Internal Revenue Code,
18 adjusted for the modifications required by IC 6-3-1-3.5,
19 represented as a positive number; multiplied by

20 (2) the taxpayer's Indiana apportionment percentage as
21 determined under section 2 of this chapter for the same year
22 that the federal loss was incurred.

23 (d) Subject to the limitations contained in subsection (e), the
24 amount calculated in subsection (c) shall be available as a
25 deduction from the taxpayer's adjusted gross income (as defined in
26 IC 6-3-1-3.5) in future taxable years. The deduction shall be taken
27 only after all other deductions from adjusted gross income allowed
28 under this chapter have been taken.

29 (e) An amount remaining after the deduction is taken in a
30 taxable year may be carried forward to the following taxable years.
31 The amount of the deduction carried forward from a taxable year
32 shall be reduced to the extent that the carry forward is used by the
33 taxpayer to obtain a deduction in a taxable year until the
34 occurrence of the earlier of the following:

35 (1) The entire amount of the deduction is taken.

36 (2) Twenty (20) years after the year in which the net operating
37 loss was incurred.

38 A net operating loss deduction may not be carried back.

39 SECTION 11. IC 6-4.1-1-3 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) "Class A
41 transferee" means a transferee who is a lineal ancestor or lineal
42 descendant of the transferor.

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1 (b) "Class B transferee" means a transferee who is a:

- 2 (1) brother or sister of the transferor;
 3 (2) descendant of a brother or sister of the transferor; or
 4 (3) spouse, widow, or widower of a child of the transferor.

5 (c) "Class C transferee" means a transferee, except a surviving
 6 spouse, who is neither a Class A nor a Class B transferee.

7 (d) For purposes of this section, a legally adopted child is to be
 8 treated as if ~~he~~ **the child** were the natural child of ~~his~~ **the child's**
 9 adopting parent **if the adoption occurred before the individual was**
 10 **totally emancipated.** For purposes of this section, if a relationship of
 11 loco parentis has existed for at least ten (10) years and if the
 12 relationship began before the child's fifteenth birthday, the child is to
 13 be considered the natural child of the loco parentis parent.

14 SECTION 12. IC 6-5.5-1-2, AS AMENDED BY P.L.105-2003,
 15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) Except as provided
 17 in subsections (b) through (d), "adjusted gross income" means taxable
 18 income as defined in Section 63 of the Internal Revenue Code, adjusted
 19 as follows:

20 (1) Add the following amounts:

21 (A) An amount equal to a deduction allowed or allowable
 22 under Section 166, Section 585, or Section 593 of the Internal
 23 Revenue Code.

24 (B) An amount equal to a deduction allowed or allowable
 25 under Section 170 of the Internal Revenue Code.

26 (C) An amount equal to a deduction or deductions allowed or
 27 allowable under Section 63 of the Internal Revenue Code for
 28 taxes based on or measured by income and levied at the state
 29 level by a state of the United States or levied at the local level
 30 by any subdivision of a state of the United States.

31 (D) The amount of interest excluded under Section 103 of the
 32 Internal Revenue Code or under any other federal law, minus
 33 the associated expenses disallowed in the computation of
 34 taxable income under Section 265 of the Internal Revenue
 35 Code.

36 (E) An amount equal to the deduction allowed under Section
 37 172 or 1212 of the Internal Revenue Code for net operating
 38 losses or net capital losses.

39 (F) For a taxpayer that is not a large bank (as defined in
 40 Section 585(c)(2) of the Internal Revenue Code), an amount
 41 equal to the recovery of a debt, or part of a debt, that becomes
 42 worthless to the extent a deduction was allowed from gross

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1 income in a prior taxable year under Section 166(a) of the
2 Internal Revenue Code.

3 (G) ~~Add~~ The amount necessary to make the adjusted gross
4 income of any taxpayer that owns property for which bonus
5 depreciation was allowed in the current taxable year or in an
6 earlier taxable year equal to the amount of adjusted gross
7 income that would have been computed had an election not
8 been made under Section 168(k)(2)(C)(iii) of the Internal
9 Revenue Code to apply bonus depreciation to the property in
10 the year that it was placed in service.

11 **(H) An amount equal to:**

12 **(i) interest expenses and costs; and**

13 **(ii) intangible expenses and costs;**

14 **directly or indirectly paid, accrued, or incurred to or in**
15 **connection with one (1) or more transactions with one (1)**
16 **or more related members in the taxable year.**

17 (2) Subtract the following amounts:

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

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

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

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

30 (E) ~~Subtract~~ The amount necessary to make the adjusted gross
31 income of any taxpayer that owns property for which bonus
32 depreciation was allowed in the current taxable year or in an
33 earlier taxable year equal to the amount of adjusted gross
34 income that would have been computed had an election not
35 been made under Section 168(k)(2)(C)(iii) of the Internal
36 Revenue Code to apply bonus depreciation.

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

41 (c) In the case of an investment company, "adjusted gross income"
42 means the **sum of the** company's federal taxable income, **as adjusted**

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- 1 **under subsection (e)**, multiplied by the quotient of:
- 2 (1) the aggregate of the gross payments collected by the company
- 3 during the taxable year from old and new business upon
- 4 investment contracts issued by the company and held by residents
- 5 of Indiana; divided by
- 6 (2) the total amount of gross payments collected during the
- 7 taxable year by the company from the business upon investment
- 8 contracts issued by the company and held by persons residing
- 9 within Indiana and elsewhere.
- 10 (d) As used in subsection (c), "investment company" means a
- 11 person, copartnership, association, limited liability company, or
- 12 corporation, whether domestic or foreign, that:
- 13 (1) is registered under the Investment Company Act of 1940 (15
- 14 U.S.C. 80a-1 et seq.); and
- 15 (2) solicits or receives a payment to be made to itself and issues
- 16 in exchange for the payment:
- 17 (A) a so-called bond;
- 18 (B) a share;
- 19 (C) a coupon;
- 20 (D) a certificate of membership;
- 21 (E) an agreement;
- 22 (F) a pretended agreement; or
- 23 (G) other evidences of obligation;
- 24 entitling the holder to anything of value at some future date, if the
- 25 gross payments received by the company during the taxable year
- 26 on outstanding investment contracts, plus interest and dividends
- 27 earned on those contracts (by prorating the interest and dividends
- 28 earned on investment contracts by the same proportion that
- 29 certificate reserves (as defined by the Investment Company Act
- 30 of 1940) is to the company's total assets) is at least fifty percent
- 31 (50%) of the company's gross payments upon investment
- 32 contracts plus gross income from all other sources except
- 33 dividends from subsidiaries for the taxable year. The term
- 34 "investment contract" means an instrument listed in clauses (A)
- 35 through (G).
- 36 **(e) The federal adjusted gross income of an investment company**
- 37 **shall be adjusted by adding an amount equal to:**
- 38 **(1) interest expenses and costs; and**
- 39 **(2) intangible expenses and costs;**
- 40 **directly or indirectly paid, accrued, or incurred to or in connection**
- 41 **with one (1) or more transactions with one (1) or more related**
- 42 **members in the taxable year.**

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1 SECTION 13. IC 6-5.5-1-10.5 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 10.5. For**
 4 **purposes of this chapter, "intangible investments" means**
 5 **investments in:**

- 6 (1) stocks;
- 7 (2) bonds;
- 8 (3) notes;
- 9 (4) interests in a partnerships;
- 10 (5) patents;
- 11 (6) patent applications;
- 12 (7) trademarks;
- 13 (8) trade names;
- 14 (9) copyrights;
- 15 (10) similar types of intangible assets; and
- 16 (11) other debt obligations, including debt obligations of
 17 related members.

18 SECTION 14. IC 6-5.5-1-12.5 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.5. For**
 21 **purposes of this chapter, "related member" means any of the**
 22 **following:**

- 23 (1) An entity whose activities, in one (1) state, are primarily:
 24 (A) the maintenance and management of intangible
 25 investments, including the intangible investments of
 26 corporations, including business trusts, and other entities
 27 registered as investment companies under the federal
 28 Investment Company Act of 1940; and
 29 (B) the collection and distribution of the income from:
 30 (i) investments described in clause (A); or
 31 (ii) tangible property physically located outside that
 32 state.
- 33 (2) An entity that is:
 34 (A) a personal holding company; or
 35 (B) directly, indirectly, constructively, or beneficially
 36 owned in whole or in part by a personal holding company;
 37 (as defined in Section 542 of the Internal Revenue Code
 38 without regard to the stock ownership requirements set forth
 39 in Section 542(a)(2) of the Internal Revenue Code).
- 40 (3) An entity that is a foreign personal holding company (as
 41 defined in Section 552 of the Internal Revenue Code).
- 42 (4) Any entity that:

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- 1 **(A) is not a corporation; and**
- 2 **(B) is directly, indirectly, constructively, or beneficially**
- 3 **owned in whole or in part by a foreign personal holding**
- 4 **company (as defined in Section 552 of the Internal Revenue**
- 5 **Code).**

6 SECTION 15. IC 6-5.5-1-12.6 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.6. (a)**
 9 **As used in this chapter, "intangible expenses and costs" includes**
 10 **expenses, losses, and costs for, related to, or in connection directly**
 11 **or indirectly with the direct or indirect:**

- 12 **(1) acquisition;**
- 13 **(2) use;**
- 14 **(3) maintenance or management;**
- 15 **(4) ownership;**
- 16 **(5) sale; or**
- 17 **(6) exchange;**

18 **of or any other direct or indirect disposition of intangible property**
 19 **to the extent that the amounts are allowed as deductions or costs in**
 20 **determining taxable income before operating loss deductions and**
 21 **special deductions for the taxable year under the Internal Revenue**
 22 **Code.**

23 **(b) The term includes losses related to or incurred in connection**
 24 **directly or indirectly with:**

- 25 **(1) factoring transactions;**
- 26 **(2) losses related to or incurred in connection directly or**
- 27 **indirectly with:**
 - 28 **(A) discounting transactions;**
 - 29 **(B) royalty, patent, technical, and copyright fees;**
 - 30 **(C) licensing fees; and**
 - 31 **(D) other similar expenses and costs.**

32 SECTION 16. IC 6-5.5-1-12.7 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 12.7. For**
 35 **purposes of this chapter, "interest expenses and costs" includes**
 36 **amounts directly or indirectly allowed as deductions under Section**
 37 **163 of the Internal Revenue Code for purposes of determining**
 38 **taxable income under the Internal Revenue Code.**

39 SECTION 17. IC 6-2.5-5-15 IS REPEALED [EFFECTIVE JULY
 40 1, 2004].

41 SECTION 18. [EFFECTIVE JANUARY 1, 2004
 42 (RETROACTIVE)] **(a) IC 6-2.5-3-5, as amended by this act, applies**

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1 only to vehicles, watercraft, and aircraft that are initially titled,
2 registered, or licensed in Indiana after June 30, 2004.

3 (b) IC 6-2.5-4-11, as amended by this act, applies only to
4 transactions occurring after March 1, 2004. A retail transaction to
5 which IC 6-2.5-4-11, as amended by this act, applies shall be
6 considered as having occurred after March 1, 2004, if charges are
7 collected for the retail transactions upon original statements and
8 billings dated after March 31, 2004.

9 (c) The repeal of IC 6-2.5-5-15 by this act applies only to retail
10 transactions occurring after June 30, 2004. A retail transaction
11 shall be considered as having occurred after June 30, 2004, to the
12 extent that delivery of the property or services constituting selling
13 at retail is made after that date to the purchaser or to the place of
14 delivery designated by the purchaser. However, a transaction shall
15 be considered as having occurred before July 1, 2004, to the extent
16 that the agreement of the parties to the transaction was entered
17 into before July 1, 2004, and payment for the property or services
18 furnished in the transaction is made before July 1, 2004,
19 notwithstanding the delivery of the property or services after June
20 30, 2004.

21 (d) IC 6-2.5-6-9, as amended by this act, applies only to
22 deductions assigned after June 30, 2004.

23 (e) The following provisions apply only to taxable years
24 beginning after December 31, 2003:

25 (1) IC 6-3-1-3.5.

26 (2) IC 6-5.5-1-2.

27 (f) The following provisions apply only to the use of a net
28 operating loss as a deduction for taxable years beginning after
29 December 31, 2003, regardless of the taxable year when the loss
30 that is the basis for the net operating loss deduction occurred:

31 (1) IC 6-3-2-2.5.

32 (2) IC 6-3-2-2.6.

33 (3) IC 6-5.5-2-1.

34 (g) IC 6-4.1-1-3, as amended by this act, applies only to an
35 adopting parent who dies after June 30, 2004.

36 SECTION 19. An emergency is declared for this act.

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