
SENATE BILL No. 500

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-22-16-4; IC 6-2.3-6-1; IC 6-2.5; IC 6-3; IC 6-4.1-10-1; IC 6-5.5-6-3; IC 6-6-1.1-502; IC 6-7-1-17; IC 6-8.1.

Synopsis: Tax procedure and administration changes. Restricts a sales tax exemption available under current law for an electric utility that purchases distribution equipment or transmission equipment. Restricts a sales tax exemption available under current law for a hotel or a restaurant that purchases electricity, water, gas, or steam. Restricts a sales tax exemption available under current law for an aircraft lessor that purchases an aircraft for rental or leasing. Provides for a graduated sales and use tax collection allowance for a retail merchant. Specifies conditions under which a professional tax return preparer must file client returns electronically. Decreases various periodic tax liability thresholds at which taxpayers are required to make tax payments by electronic fund transfer from \$10,000 to \$5,000. Provides that a tax payment made by electronic fund transfer is considered made on the date the taxpayer issues the payment order for the electronic fund transfer. Provides for the accrual of interest at the rate of 6% per annum on inheritance tax refunds that are not processed within 90 days by the department of state revenue. Increases the cigarette stamp discount to distributors from 1.2% to 2.523%. Provides that when a taxpayer claiming a refund requests a hearing on the claim, the department of state revenue must hold the requested hearing. Repeals a provision of the sales tax statute that requires certain out-of-state merchants making sales to customers in Indiana to register as retail merchants and remit sales and use tax. Repeals an administrative provision that prohibits the department of state revenue from establishing: (1) incentives based on the amount of revenue collected or liability assessed; and (2) production quotas for agents based on the number of cases closed. Makes technical corrections.

Effective: July 1, 2007; January 1, 2008.

Kenley

January 18, 2007, read first time and referred to Committee on Tax and Fiscal Policy.



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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 500



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 5-22-16-4, AS AMENDED BY P.L.246-2005,
2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 4. (a) An offeror that is a foreign corporation must
4 be registered with the secretary of state to do business in Indiana in
5 order to be considered responsible.

6 (b) This subsection applies to a purchase of ~~supplies or services~~
7 **tangible personal property** for a state agency under a contract entered
8 into or purchase order sent to an offeror (in the absence of a contract)
9 after June 30, ~~2003~~, **2007**, including a purchase described in
10 IC 5-22-8-2 or IC 5-22-8-3. A state agency may not purchase **tangible**
11 **personal property** ~~or services~~ from a person that is delinquent in the
12 payment of amounts due from the person under IC 6-2.5 (gross retail
13 and use tax) unless the person provides a statement from the
14 department of state revenue that the person's delinquent tax liability:
15 (1) has been satisfied; or
16 (2) has been released under IC 6-8.1-8-2.

17 (c) The purchasing agent may award a contract to an offeror pending



1 the offeror's registration with the secretary of state. If, in the judgment
 2 of the purchasing agent, the offeror has not registered within a
 3 reasonable period, the purchasing agent shall cancel the contract. An
 4 offeror has no cause of action based on the cancellation of a contract
 5 under this subsection.

6 SECTION 2. IC 6-2.3-6-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JANUARY 1, 2008] : Sec. 1. (a) Except as
 8 provided in subsections (c) through (e), a taxpayer shall file utility
 9 receipts tax returns with, and pay the taxpayer's utility receipts tax
 10 liability to, the department by the due date of the estimated return. A
 11 taxpayer who uses a taxable year that ends on December 31 shall file
 12 the taxpayer's estimated utility receipts tax returns and pay the tax to
 13 the department on or before April 20, June 20, September 20, and
 14 December 20 of the taxable year. If a taxpayer uses a taxable year
 15 which does not end on December 31, the due dates for filing estimated
 16 utility receipts tax returns and paying the tax are on or before the
 17 twentieth day of the fourth, sixth, ninth, and twelfth months of the
 18 taxpayer's taxable year.

19 (b) With each return filed, with each payment by cashier's check,
 20 certified check, or money order delivered in person or by overnight
 21 courier, and with each electronic funds transfer made, a taxpayer shall
 22 pay to the department twenty-five percent (25%) of the estimated or the
 23 exact amount of utility receipts tax that is due.

24 (c) If a taxpayer's estimated annual utility receipts tax liability does
 25 not exceed one thousand dollars (\$1,000), the taxpayer is not required
 26 to file an estimated utility receipts tax return.

27 (d) If the department determines that a taxpayer's:

- 28 (1) estimated quarterly utility receipts tax liability for the current
 29 year; or
 30 (2) average estimated quarterly utility receipts tax liability for the
 31 preceding year;

32 exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), **(\$5,000)**, the taxpayer
 33 shall pay the estimated utility receipts taxes due by electronic funds
 34 transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by
 35 overnight courier a payment by cashier's check, certified check, or
 36 money order to the department. The transfer or payment shall be made
 37 on or before the date the tax is due.

38 (e) If a taxpayer's utility receipts tax payment is made by electronic
 39 funds transfer, the taxpayer is not required to file an estimated utility
 40 receipts tax return.

41 (f) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed
 42 by the department on taxpayers failing to make payments as required

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1 in subsection (b) or (d). However, a penalty may not be assessed as to
 2 any estimated payments of utility receipts tax that equal or exceed:
 3 (1) twenty percent (20%) of the final tax liability for the taxable
 4 year; or
 5 (2) twenty-five percent (25%) of the final tax liability for the
 6 taxpayer's previous taxable year.

7 In addition, the penalty as to any underpayment of tax on an estimated
 8 return shall be assessed only on the difference between the actual
 9 amount paid by the taxpayer on the estimated return and twenty-five
 10 percent (25%) of the taxpayers's final utility receipts tax liability for the
 11 taxable year.

12 SECTION 3. IC 6-2.5-4-14 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. The department of
 14 administration and each purchasing agent for a state educational
 15 institution (as defined in IC 20-12-0.5-1) shall provide the department
 16 with a list of every person who desires to enter into a contract to sell
 17 **tangible personal property or services** to an agency (as defined in
 18 IC 4-13-2-1) or a state educational institution. The department shall
 19 notify the department of administration or the purchasing agent of the
 20 state educational institution if a person on the list does not have a
 21 registered retail merchant certificate or is delinquent in remitting or
 22 paying amounts due to the department under this article.

23 SECTION 4. IC 6-2.5-5-3 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) For purposes of
 25 this section:

- 26 (1) the retreading of tires shall be treated as the processing of
- 27 tangible personal property; and
- 28 (2) commercial printing shall be treated as the production and
- 29 manufacture of tangible personal property.

30 (b) **Except as provided in subsection (c)**, transactions involving
 31 manufacturing machinery, tools, and equipment are exempt from the
 32 state gross retail tax if the person acquiring that property acquires it for
 33 direct use in the direct production, manufacture, fabrication, assembly,
 34 extraction, mining, processing, refining, or finishing of other tangible
 35 personal property.

36 (c) **The exemption provided in subsection (b) does not apply to**
 37 **transactions involving distribution equipment or transmission**
 38 **equipment acquired by a public utility engaged in generating**
 39 **electricity.**

40 SECTION 5. IC 6-2.5-5-8 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this
 42 section, "new motor vehicle" has the meaning set forth in

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1 IC 9-13-2-111.

2 (b) Transactions involving tangible personal property other than a
3 new motor vehicle are exempt from the state gross retail tax if the
4 person acquiring the property acquires it for resale, rental, or leasing in
5 the ordinary course of the person's business without changing the form
6 of the property.

7 (c) The following transactions involving a new motor vehicle are
8 exempt from the state gross retail tax:

9 (1) A transaction in which a person that has a franchise in effect
10 at the time of the transaction for the vehicle trade name, trade or
11 service mark, or related characteristics acquires a new motor
12 vehicle for resale, rental, or leasing in the ordinary course of the
13 person's business.

14 (2) A transaction in which a person that is a franchisee appointed
15 by a manufacturer or converter manufacturer licensed under
16 IC 9-23 acquires a new motor vehicle that has at least one (1)
17 trade name, service mark, or related characteristic as a result of
18 modification or further manufacture by the manufacturer or
19 converter manufacturer for resale, rental, or leasing in the
20 ordinary course of the person's business.

21 (3) A transaction in which a person acquires a new motor vehicle
22 for rental or leasing in the ordinary course of the person's
23 business.

24 (d) The rental or leasing of accommodations to a promoter by a
25 political subdivision (including a capital improvement board) or the
26 state fair commission is not exempt from the state gross retail tax, if the
27 rental or leasing of the property by the promoter is exempt under
28 IC 6-2.5-4-4.

29 **(e) A transaction in which a person acquires an aircraft for**
30 **rental or leasing in the ordinary course of the person's business is**
31 **exempt from the state gross retail tax if the annual amount of the**
32 **lease revenue is equal to or greater than fifteen percent (15%) of**
33 **the greater of the original cost or the book value of the aircraft.**

34 **(f) The exemption described in subsection (e) can be rebutted if**
35 **the person's rental or leasing income is less than fifteen percent**
36 **(15%) of the original cost or book value of the aircraft.**

37 SECTION 6. IC 6-2.5-5-35 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. **(a) Except as**
39 **provided in subsection (b),** transactions involving tangible personal
40 property are exempt from the state gross retail tax if:

41 (1) the:

42 (A) person acquires the property to facilitate the service or

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1 consumption of food and food ingredients that is not exempted
 2 from the state gross retail tax under section 20 of this chapter;
 3 and
 4 (B) property is:
 5 (i) used, consumed, or removed in the service or
 6 consumption of the food and food ingredients; and
 7 (ii) made unusable for further service or consumption of
 8 food and food ingredients after the property's first use for
 9 service or consumption of food and food ingredients; or
 10 (2) the:
 11 (A) person acquiring the property is engaged in the business
 12 of renting or furnishing rooms, lodgings, or accommodations
 13 in a commercial hotel, motel, inn, tourist camp, or tourist
 14 cabin; and
 15 (B) ~~the~~ property acquired is:
 16 (i) used up, removed, or otherwise consumed during the
 17 occupation of the rooms, lodgings, or accommodations by a
 18 guest; or
 19 (ii) rendered nonreusable by the property's first use by a
 20 guest during the occupation of the rooms, lodgings, or
 21 accommodations.
 22 **(b) The exemption provided by subsection (a) does not apply to**
 23 **transactions involving electricity, water, gas, or steam.**
 24 SECTION 7. IC 6-2.5-6-1, AS AMENDED BY P.L.153-2006,
 25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JANUARY 1, 2008]: Sec. 1. (a) Except as otherwise provided in this
 27 section, each person liable for collecting the state gross retail or use tax
 28 shall file a return for each calendar month and pay the state gross retail
 29 and use taxes that the person collects during that month. A person shall
 30 file the person's return for a particular month with the department and
 31 make the person's tax payment for that month to the department not
 32 more than thirty (30) days after the end of that month, if that person's
 33 average monthly liability for collections of state gross retail and use
 34 taxes under this section as determined by the department for the
 35 preceding calendar year did not exceed one thousand dollars (\$1,000).
 36 If a person's average monthly liability for collections of state gross
 37 retail and use taxes under this section as determined by the department
 38 for the preceding calendar year exceeded one thousand dollars
 39 (\$1,000), that person shall file the person's return for a particular month
 40 and make the person's tax payment for that month to the department not
 41 more than twenty (20) days after the end of that month.
 42 (b) If a person files a combined sales and withholding tax report and

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1 either this section or IC 6-3-4-8.1 requires sales or withholding tax
 2 reports to be filed and remittances to be made within twenty (20) days
 3 after the end of each month, then the person shall file the combined
 4 report and remit the sales and withholding taxes due within twenty (20)
 5 days after the end of each month.

6 (c) Instead of the twelve (12) monthly reporting periods required by
 7 subsection (a), the department may permit a person to divide a year into
 8 a different number of reporting periods. The return and payment for
 9 each reporting period is due not more than twenty (20) days after the
 10 end of the period.

11 (d) Instead of the reporting periods required under subsection (a),
 12 the department may permit a retail merchant to report and pay the
 13 merchant's state gross retail and use taxes for a period covering:

14 (1) a calendar year, if the retail merchant's average monthly state
 15 gross retail and use tax liability in the previous calendar year does
 16 not exceed ten dollars (\$10);

17 (2) a calendar half year, if the retail merchant's average monthly
 18 state gross retail and use tax liability in the previous calendar year
 19 does not exceed twenty-five dollars (\$25); or

20 (3) a calendar quarter, if the retail merchant's average monthly
 21 state gross retail and use tax liability in the previous calendar year
 22 does not exceed seventy-five dollars (\$75).

23 A retail merchant using a reporting period allowed under this
 24 subsection must file the merchant's return and pay the merchant's tax
 25 for a reporting period not later than the last day of the month
 26 immediately following the close of that reporting period.

27 (e) If a retail merchant reports the merchant's adjusted gross income
 28 tax, or the tax the merchant pays in place of the adjusted gross income
 29 tax, over a fiscal year or fiscal quarter not corresponding to the
 30 calendar year or calendar quarter, the merchant may, without prior
 31 departmental approval, report and pay the merchant's state gross retail
 32 and use taxes over the merchant's fiscal period that corresponds to the
 33 calendar period the merchant is permitted to use under subsection (d).
 34 However, the department may, at any time, require the retail merchant
 35 to stop using the fiscal reporting period.

36 (f) If a retail merchant files a combined sales and withholding tax
 37 report, the reporting period for the combined report is the shortest
 38 period required under:

39 (1) this section;

40 (2) IC 6-3-4-8; or

41 (3) IC 6-3-4-8.1.

42 (g) If the department determines that a person's:

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1 (1) estimated monthly gross retail and use tax liability for the
 2 current year; or
 3 (2) average monthly gross retail and use tax liability for the
 4 preceding year;
 5 exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), (**\$5,000**), the person shall
 6 pay the monthly gross retail and use taxes due by electronic funds
 7 transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by
 8 overnight courier a payment by cashier's check, certified check, or
 9 money order to the department. The transfer or payment shall be made
 10 on or before the date the tax is due.

11 (h) If a person's gross retail and use tax payment is made by
 12 electronic funds transfer, the taxpayer is not required to file a monthly
 13 gross retail and use tax return. However, the person shall file a
 14 quarterly gross retail and use tax return before the twentieth day after
 15 the end of each calendar quarter.

16 (i) A person:
 17 (1) who has voluntarily registered as a seller under the
 18 Streamlined Sales and Use Tax Agreement;
 19 (2) who is not a Model 1, Model 2, or Model 3 seller (as defined
 20 in the Streamlined Sales and Use Tax Agreement); and
 21 (3) whose liability for collections of state gross retail and use
 22 taxes under this section for the preceding calendar year as
 23 determined by the department does not exceed one thousand
 24 dollars (\$1,000);

25 is not required to file a monthly gross retail and use tax return.

26 SECTION 8. IC 6-2.5-6-10 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) In order to
 28 compensate retail merchants for collecting and timely remitting the
 29 state gross retail tax and the state use tax, every retail merchant, except
 30 a retail merchant referred to in subsection (c), is entitled to deduct and
 31 retain from the amount of those taxes otherwise required to be remitted
 32 under IC 6-2.5-7-5 or under this chapter, if timely remitted, a retail
 33 merchant's collection allowance.

34 (b) The allowance equals ~~eighty-three hundredths percent (0.83%)~~
 35 **a percentage** of the retail merchant's state gross retail and use tax
 36 liability accrued during a ~~reporting period~~: **calendar year, specified as**
 37 **follows:**

38 (1) **Eighty-three hundredths percent (0.83%), if the retail**
 39 **merchant's state gross retail and use tax liability accrued**
 40 **during the state fiscal year ending on June 30 of the**
 41 **immediately preceding calendar year did not exceed sixty**
 42 **thousand dollars (\$60,000).**

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1 (2) **Thirty-two hundredths percent (0.32%), if the retail**
2 **merchant's state gross retail and use tax liability accrued**
3 **during the state fiscal year ending on June 30 of the**
4 **immediately preceding calendar year:**

5 (A) **was greater than or equal to sixty thousand dollars**
6 **(\$60,000); and**

7 (B) **did not exceed six hundred thousand dollars (\$600,000).**

8 (3) **Thirteen-hundredths percent (0.13%), if the retail**
9 **merchant's state gross retail and use tax liability accrued**
10 **during the state fiscal ending on June 30 of the immediately**
11 **preceding calendar year was greater than or equal to six**
12 **hundred thousand dollars (\$600,000).**

13 (c) **A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not**
14 **entitled to the allowance provided by this section.**

15 SECTION 9. IC 6-3-2-20, AS ADDED BY P.L.162-2006,
16 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2007]: Sec. 20. (a) The following definitions apply throughout
18 this section:

19 (1) "Affiliated group" has the meaning provided in Section 1504
20 of the Internal Revenue Code, except that the ownership
21 percentage in Section 1504(a)(2) of the Internal Revenue Code
22 shall be determined using fifty percent (50%) instead of eighty
23 percent (80%).

24 (2) "Directly related intangible interest expenses" means interest
25 expenses that are paid to, or accrued or incurred as a liability to,
26 a recipient if:

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

29 (B) the funds loaned were originally received by the recipient
30 from the payment of intangible expenses by any of the
31 following:

- 32 (i) The taxpayer.
- 33 (ii) A member of the same affiliated group as the taxpayer.
- 34 (iii) A foreign corporation.

35 (3) "Foreign corporation" means a corporation that is organized
36 under the laws of a country other than the United States and
37 would be a member of the same affiliated group as the taxpayer
38 if the corporation were organized under the laws of the United
39 States.

40 (4) "Intangible expenses" means the following amounts to the
41 extent these amounts are allowed as deductions in determining
42 taxable income under Section 63 of the Internal Revenue Code

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1 before the application of any net operating loss deduction and
2 special deductions for the taxable year:

3 (A) Expenses, losses, and costs directly for, related to, or in
4 connection with the acquisition, use, maintenance,
5 management, ownership, sale, exchange, or any other
6 disposition of intangible property.

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

8 (C) Licensing fees.

9 (D) Other substantially similar expenses and costs.

10 (5) "Intangible property" means patents, patent applications, trade
11 names, trademarks, service marks, copyrights, trade secrets, and
12 substantially similar types of intangible assets.

13 (6) "Interest expenses" means amounts that are allowed as
14 deductions under Section 163 of the Internal Revenue Code in
15 determining taxable income under Section 63 of the Internal
16 Revenue Code before the application of any net operating loss
17 deductions and special deductions for the taxable year.

18 (7) "Makes a disclosure" means a taxpayer provides the following
19 information regarding a transaction with a member of the same
20 affiliated group or a foreign corporation involving an intangible
21 expense and any directly related intangible interest expense with
22 the taxpayer's tax return on the forms prescribed by the
23 department:

24 (A) The name of the recipient.

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

26 (C) The amount paid to the recipient.

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

29 (E) The information needed to determine the taxpayer's status
30 under the exceptions listed in subsection (c).

31 (8) "Recipient" means:

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

33 (B) a foreign corporation;

34 to which is paid an item of income that corresponds to an
35 intangible expense or any directly related intangible interest
36 expense.

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

40 (b) Except as provided in subsection (c), in determining its adjusted
41 gross income under IC 6-3-1-3.5(b), a corporation subject to the tax
42 imposed by IC 6-3-2-1 shall add to its taxable income under Section 63

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1 of the Internal Revenue Code:

2 (1) intangible expenses; and

3 (2) any directly related intangible interest expenses;

4 paid, accrued, or incurred with one (1) or more members of the same

5 affiliated group or with one (1) or more foreign corporations.

6 (c) The addition of intangible expenses or any directly related

7 intangible interest expenses otherwise required in a taxable year under

8 subsection (b) is not required if one (1) or more of the following apply

9 to the taxable year:

10 (1) The taxpayer and the recipient are both included in the same

11 consolidated tax return filed under IC 6-3-4-14 or in the same

12 combined return filed under IC 6-3-2-2(q) for the taxable year.

13 (2) The taxpayer makes a disclosure and, at the request of the

14 department, can establish by a preponderance of the evidence

15 that:

16 (A) the item of income corresponding to the intangible

17 expenses and any directly related intangible interest expenses

18 was included within the recipient's income that is subject to

19 tax in:

20 (i) a state or possession of the United States; or

21 (ii) a country other than the United States;

22 that is the recipient's commercial domicile and that imposes a

23 net income tax, a franchise tax measured, in whole or in part,

24 by net income, or a value added tax;

25 (B) the transaction giving rise to the intangible expenses and

26 any directly related intangible interest expenses between the

27 taxpayer and the recipient was made at a commercially

28 reasonable rate and at terms comparable to an arm's length

29 transaction; and

30 (C) the transactions giving rise to the intangible expenses and

31 any directly related intangible interest expenses between the

32 taxpayer and the recipient did not have Indiana tax avoidance

33 as a principal purpose.

34 (3) The taxpayer makes a disclosure and, at the request of the

35 department, can establish by a preponderance of the evidence

36 that:

37 (A) the recipient regularly engages in transactions involving

38 intangible property with one (1) or more unrelated parties on

39 terms substantially similar to those of the subject transaction;

40 and

41 (B) the transaction giving rise to the intangible expenses and

42 any directly related intangible interest expenses between the

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- taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.
- (4) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:
 - (A) the payment was received from a person or entity that is an unrelated party, and on behalf of that unrelated party, paid that amount to the recipient in an arm's length transaction; and
 - (B) the transaction giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.
- (5) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:
 - (A) the recipient paid, accrued, or incurred a liability to an unrelated party during the taxable year for an equal or greater amount that was directly for, related to, or in connection with the same intangible property giving rise to the intangible expenses; and
 - (B) the transactions giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.
- (6) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:
 - (A) the recipient is engaged in:
 - (i) substantial business activities from the acquisition, use, licensing, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property; or
 - (ii) other substantial business activities separate and apart from the business activities described in item (i);
 as evidenced by the maintenance of a permanent office space and an adequate number of full-time, experienced employees;
 - (B) the transactions giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose; and
 - (C) the transactions were made at a commercially reasonable rate and at terms comparable to an arm's length transaction.
- (7) The taxpayer and the department agree, in writing, to the

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1 application or use of an alternative method of allocation or
2 ~~appointment~~ **apportionment** under section 2(1) or 2(m) of this
3 chapter.

4 (8) Upon request by the taxpayer, the department determines that
5 the adjustment otherwise required by this section is unreasonable.

6 (d) For purposes of this section, intangible expenses or directly
7 related intangible interest expenses shall be considered to be at a
8 commercially reasonable rate or at terms comparable to an arm's length
9 transaction if the intangible expenses or directly related intangible
10 interest expenses meet the arm's length standards of United States
11 Treasury Regulation 1.482-1(b).

12 (e) If intangible expenses or directly related intangible expenses are
13 determined not to be at a commercially reasonable rate or at terms
14 comparable to an arm's length transaction for purposes of this section,
15 the adjustment required by subsection (b) shall be made only to the
16 extent necessary to cause the intangible expenses or directly related
17 intangible interest expenses to be at a commercially reasonable rate and
18 at terms comparable to an arm's length transaction.

19 (f) For purposes of this section, transactions giving rise to intangible
20 expenses and any directly related intangible interest expenses between
21 the taxpayer and the recipient shall be considered as having Indiana tax
22 avoidance as the principal purpose if:

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

26 (2) the principal purpose of tax avoidance exceeds any other valid
27 business purpose.

28 SECTION 10. IC 6-3-4-1.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
30 1, 2007]: **Sec. 1.5. If a professional preparer files more than one
31 hundred (100) returns in a calendar year for persons described in
32 section 1(1) or 1(2) of this chapter, in the immediately following
33 calendar year the professional preparer shall file returns for
34 persons described in section 1(1) or 1(2) of this chapter in an
35 electronic format specified by the department.**

36 SECTION 11. IC 6-3-4-4.1 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4.1. (a) This
38 section applies to taxable years beginning after December 31, 1993.

39 (b) Any individual required by the Internal Revenue Code to file
40 estimated tax returns and to make payments on account of such
41 estimated tax shall file estimated tax returns and make payments of the
42 tax imposed by this article to the department at the time or times and

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1 in the installments as provided by Section 6654 of the Internal Revenue
2 Code. However, in applying Section 6654 of the Internal Revenue Code
3 for the purposes of this article, "estimated tax" means the amount
4 which the individual estimates as the amount of the adjusted gross
5 income tax imposed by this article for the taxable year, minus the
6 amount which the individual estimates as the sum of any credits against
7 the tax provided by IC 6-3-3.

8 (c) Every individual who has adjusted gross income subject to the
9 tax imposed by this article and from which tax is not withheld under
10 the requirements of section 8 of this chapter shall make a declaration
11 of estimated tax for the taxable year. However, no such declaration
12 shall be required if the estimated tax can reasonably be expected to be
13 less than four hundred dollars (\$400). In the case of an underpayment
14 of the estimated tax as provided in Section 6654 of the Internal
15 Revenue Code, there shall be added to the tax a penalty in an amount
16 prescribed by IC 6-8.1-10-2.1(b).

17 (d) Every corporation subject to the adjusted gross income tax
18 liability imposed by this article shall be required to report and pay an
19 estimated tax equal to twenty-five percent (25%) of such corporation's
20 estimated adjusted gross income tax liability for the taxable year. A
21 taxpayer who uses a taxable year that ends on December 31 shall file
22 the taxpayer's estimated adjusted gross income tax returns and pay the
23 tax to the department on or before April 20, June 20, September 20,
24 and December 20 of the taxable year. If a taxpayer uses a taxable year
25 that does not end on December 31, the due dates for filing estimated
26 adjusted gross income tax returns and paying the tax are on or before
27 the twentieth day of the fourth, sixth, ninth, and twelfth months of the
28 taxpayer's taxable year. The department shall prescribe the manner and
29 forms for such reporting and payment.

30 (e) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed
31 by the department on corporations failing to make payments as required
32 in subsection (d) or (g). However, no penalty shall be assessed as to
33 any estimated payments of adjusted gross income tax which equal or
34 exceed:

- 35 (1) twenty percent (20%) of the final tax liability for such taxable
36 year; or
- 37 (2) twenty-five percent (25%) of the final tax liability for the
38 taxpayer's previous taxable year.

39 In addition, the penalty as to any underpayment of tax on an estimated
40 return shall only be assessed on the difference between the actual
41 amount paid by the corporation on such estimated return and
42 twenty-five percent (25%) of the corporation's final adjusted gross

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1 income tax liability for such taxable year.

2 (f) The provisions of subsection (d) requiring the reporting and
3 estimated payment of adjusted gross income tax shall be applicable
4 only to corporations having an adjusted gross income tax liability
5 which, after application of the credit allowed by IC 6-3-3-2 (repealed),
6 shall exceed one thousand dollars (\$1,000) for its taxable year.

7 (g) If the department determines that a corporation's:

8 (1) estimated quarterly adjusted gross income tax liability for the
9 current year; or

10 (2) average estimated quarterly adjusted gross income tax liability
11 for the preceding year;

12 exceeds ~~before January 1, 1998, twenty thousand dollars (\$20,000);~~
13 ~~and, after December 31, 1997, ten five thousand dollars (\$10,000);~~
14 **(\$5,000)**, after the credit allowed by IC 6-3-3-2 (repealed), the
15 corporation shall pay the estimated adjusted gross income taxes due by
16 electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering
17 in person or overnight by courier a payment by cashier's check,
18 certified check, or money order to the department. The transfer or
19 payment shall be made on or before the date the tax is due.

20 (h) If a corporation's adjusted gross income tax payment is made by
21 electronic funds transfer, the corporation is not required to file an
22 estimated adjusted gross income tax return.

23 SECTION 12. IC 6-3-4-8.1, AS AMENDED BY P.L.111-2006,
24 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JANUARY 1, 2008]: Sec. 8.1. (a) Any entity that is required to file a
26 monthly return and make a monthly remittance of taxes under sections
27 8, 12, 13, and 15 of this chapter shall file those returns and make those
28 remittances twenty (20) days (rather than thirty (30) days) after the end
29 of each month for which those returns and remittances are filed, if that
30 entity's average monthly remittance for the immediately preceding
31 calendar year exceeds one thousand dollars (\$1,000).

32 (b) The department may require any entity to make the entity's
33 monthly remittance and file the entity's monthly return twenty (20) days
34 (rather than thirty (30) days) after the end of each month for which a
35 return and payment are made if the department estimates that the
36 entity's average monthly payment for the current calendar year will
37 exceed one thousand dollars (\$1,000).

38 (c) If the department determines that a withholding agent is not
39 withholding, reporting, or remitting an amount of tax in accordance
40 with this chapter, the department may require the withholding agent:

- 41 (1) to make periodic deposits during the reporting period; and
42 (2) to file an informational return with each periodic deposit.

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1 (d) If a person files a combined sales and withholding tax report and
2 either this section or IC 6-2.5-6-1 requires the sales or withholding tax
3 report to be filed and remittances to be made within twenty (20) days
4 after the end of each month, then the person shall file the combined
5 report and remit the sales and withholding taxes due within twenty (20)
6 days after the end of each month.

7 (e) If the department determines that an entity's:
8 (1) estimated monthly withholding tax remittance for the current
9 year; or
10 (2) average monthly withholding tax remittance for the preceding
11 year;

12 exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), (**\$5,000**), the entity shall
13 remit the monthly withholding taxes due by electronic fund transfer (as
14 defined in IC 4-8.1-2-7) or by delivering in person or by overnight
15 courier a payment by cashier's check, certified check, or money order
16 to the department. The transfer or payment shall be made on or before
17 the date the remittance is due.

18 (f) If an entity's withholding tax remittance is made by electronic
19 fund transfer, the entity is not required to file a monthly withholding
20 tax return.

21 SECTION 13. IC 6-4.1-10-1 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) A person may file
23 with the department of state revenue a claim for the refund of
24 inheritance or Indiana estate tax which has been erroneously or
25 illegally collected. Except as provided in section 2 of this chapter, the
26 person must file the claim within three (3) years after the tax is paid or
27 within one (1) year after the tax is finally determined, whichever is
28 later.

29 (b) The amount of the refund that a person is entitled to receive
30 under this chapter equals the amount of the erroneously or illegally
31 collected tax, plus interest ~~at the rate of six percent (6%) per annum~~
32 ~~computed from the date the tax was paid to the date it is refunded.~~
33 **calculated as specified in subsection (c).**

34 (c) **If a tax payment that has been erroneously or illegally**
35 **collected is not refunded within ninety (90) days after the date on**
36 **which the refund claim is filed with the department of state**
37 **revenue, interest accrues at the rate of six percent (6%) per annum**
38 **computed from the date the refund claim is filed until the tax**
39 **payment is refunded.**

40 SECTION 14. IC 6-5.5-6-3 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) Each
42 taxpayer subject to taxation under this article shall report and pay

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1 quarterly an estimated tax equal to twenty-five percent (25%) of the
 2 taxpayer's total estimated tax liability imposed by this article for the
 3 taxable year. A taxpayer that uses a taxable year that ends on December
 4 31 shall file the taxpayer's estimated quarterly financial institutions tax
 5 return and pay the tax to the department on or before April 20, June 20,
 6 September 20, and December 20 of the taxable year, without
 7 assessment or notice and demand from the department. If a taxpayer
 8 uses a taxable year that does not end on December 31, the due dates for
 9 filing the estimated quarterly financial institutions tax return and
 10 paying the tax are on or before the twentieth day of the fourth, sixth,
 11 ninth, and twelfth months of the taxpayer's taxable year. The
 12 department shall prescribe the manner and furnish the forms for
 13 reporting and payment.

14 (b) Subsection (a) is applicable only to taxpayers having a tax
 15 liability imposed under this article that exceeds one thousand dollars
 16 (\$1,000) for the taxable year.

17 (c) If the department determines that a taxpayer's:

18 (1) estimated quarterly financial institutions tax liability for the
 19 current year; or

20 (2) average quarterly financial institutions tax payment for the
 21 preceding year;

22 exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), **(\$5,000)**, the taxpayer
 23 shall pay the quarterly financial institutions taxes due by electronic
 24 fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or
 25 by overnight courier a payment by cashier's check, certified check, or
 26 money order to the department. The transfer or payment shall be made
 27 on or before the date the tax is due.

28 (d) If a taxpayer's financial institutions tax payment is made by
 29 electronic fund transfer, the taxpayer is not required to file a quarterly
 30 financial institutions tax return.

31 SECTION 15. IC 6-6-1.1-502 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 502. (a) Except
 33 as provided in subsection (b), at the time of filing each monthly report,
 34 each distributor shall pay to the administrator the full amount of tax
 35 due under this chapter for the preceding calendar month, computed as
 36 follows:

37 (1) Enter the total number of invoiced gallons of gasoline
 38 received during the preceding calendar month.

39 (2) Subtract the number of gallons for which deductions are
 40 provided by sections 701 through 705 of this chapter from the
 41 number of gallons entered under subdivision (1).

42 (3) Subtract the number of gallons reported under section 501(3)

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1 of this chapter.
 2 (4) Multiply the number of invoiced gallons remaining after
 3 making the computation in subdivisions (2) and (3) by the tax rate
 4 prescribed by section 201 of this chapter to compute that part of
 5 the gasoline tax to be deposited in the highway, road, and street
 6 fund under section 802(2) of this chapter or in the motor fuel tax
 7 fund under section 802(3) of this chapter.
 8 (5) Multiply the number of gallons subtracted under subdivision
 9 (3) by the tax rate prescribed by section 201 of this chapter to
 10 compute that part of the gasoline tax to be deposited in the fish
 11 and wildlife fund under section 802(1) of this chapter.

12 (b) If the department determines that a distributor's:
 13 (1) estimated monthly gasoline tax liability for the current year;
 14 or
 15 (2) average monthly gasoline tax liability for the preceding year;
 16 exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), (**\$5,000**), the distributor
 17 shall pay the monthly gasoline taxes due by electronic fund transfer (as
 18 defined in IC 4-8.1-2-7) or by delivering in person or by overnight
 19 courier a payment by cashier's check, certified check, or money order
 20 to the department. The transfer or payment shall be made on or before
 21 the date the tax is due.

22 SECTION 16. IC 6-7-1-17 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) Distributors
 24 who hold certificates and retailers shall be agents of the state in the
 25 collection of the taxes imposed by this chapter and the amount of the
 26 tax levied, assessed, and imposed by this chapter on cigarettes sold,
 27 exchanged, bartered, furnished, given away, or otherwise disposed of
 28 by distributors or to retailers. Distributors who hold certificates shall
 29 be agents of the department to affix the required stamps and shall be
 30 entitled to purchase the stamps from the department at a discount of
 31 ~~one and two-tenths~~ **two and five hundred twenty-three thousandths**
 32 percent (~~1.2%~~) (**2.523%**) of the amount of the tax stamps purchased,
 33 as compensation for their labor and expense.

34 (b) The department may permit distributors who hold certificates
 35 and who are admitted to do business in Indiana to pay for revenue
 36 stamps within thirty (30) days after the date of purchase. However, the
 37 privilege is extended upon the express condition that:
 38 (1) except as provided in subsection (c), a bond or letter of credit
 39 satisfactory to the department, in an amount not less than the sales
 40 price of the stamps, is filed with the department; and
 41 (2) proof of payment is made of all local property, state income,
 42 and excise taxes for which any such distributor may be liable. The

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1 bond or letter of credit, conditioned to secure payment for the
2 stamps, shall be executed by the distributor as principal and by a
3 corporation duly authorized to engage in business as a surety
4 company or financial institution in Indiana.

5 (c) If a distributor has at least five (5) consecutive years of good
6 credit standing with the state, the distributor shall not be required to
7 post a bond or letter of credit under subsection (b).

8 SECTION 17. IC 6-8.1-6-3 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) A
10 document, including a form, a return, a payment, or a writing of any
11 type, which must be filed with the department by a prescribed date, is
12 considered filed:

13 (1) in cases where it is mailed through the United States mail, on
14 the date displayed on the post office cancellation mark stamped
15 on the document's wrapper;

16 (2) in cases where it is delivered to the department in any manner
17 other than through the United States mail, on the date on which
18 the department physically receives the document; or

19 (3) in cases where a payment is made by an electronic fund
20 transfer, on the date the ~~taxpayer's bank account is charged:~~
21 **taxpayer issues the payment order for the electronic fund**
22 **transfer.**

23 (b) If a document is sent through the United States mail by
24 registered mail, certified mail, or certificate of mailing, then the date
25 of the registration, certification, or certificate, as evidenced by any
26 record authenticated by the United States Post Office, is considered the
27 postmark date.

28 (c) If a document is mailed to the department through the United
29 States mail and is physically received after the appropriate due date
30 without a legible correct postmark, the person who mailed the
31 document will be considered to have filed the document on or before
32 the due date if the person can show by reasonable evidence to the
33 department that the document was deposited in the United States mail
34 on or before the due date.

35 (d) If a document is mailed to, but not received by, the department,
36 the person who mailed the document will be considered to have filed
37 the document on or before the due date if the person can show by
38 reasonable evidence to the department that the document was deposited
39 in the United States mail on or before the due date and if the person
40 files with the department a duplicate document within thirty (30) days
41 after the date the department sends notice that the document was not
42 received.

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1 SECTION 18. IC 6-8.1-9-1, AS AMENDED BY P.L.2-2005,
2 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 1. (a) If a person has paid more tax than the
4 person determines is legally due for a particular taxable period, the
5 person may file a claim for a refund with the department. Except as
6 provided in subsections (f) and (g), in order to obtain the refund, the
7 person must file the claim with the department within three (3) years
8 after the latter of the following:

- 9 (1) The due date of the return.
- 10 (2) The date of payment.

11 For purposes of this section, the due date for a return filed for the state
12 gross retail or use tax, the gasoline tax, the special fuel tax, the motor
13 carrier fuel tax, the oil inspection fee, or the petroleum severance tax
14 is the end of the calendar year which contains the taxable period for
15 which the return is filed. The claim must set forth the amount of the
16 refund to which the person is entitled and the reasons that the person
17 is entitled to the refund.

18 (b) When the department receives a claim for refund, the
19 department shall consider the claim for refund and ~~may~~ **shall, if the**
20 **taxpayer requests**, hold a hearing on the claim for refund to obtain and
21 consider additional evidence. After considering the claim and all
22 evidence relevant to the claim, the department shall issue a decision on
23 the claim, stating the part, if any, of the refund allowed and containing
24 a statement of the reasons for any part of the refund that is denied. The
25 department shall mail a copy of the decision to the person who filed the
26 claim. If the department allows the full amount of the refund claim, a
27 warrant for the payment of the claim is sufficient notice of the decision.

28 (c) If the person disagrees with any part of the department's
29 decision, the person may appeal the decision, regardless of whether or
30 not ~~he~~ **the person** protested the tax payment or whether or not the
31 person has accepted a refund. The person must file the appeal with the
32 tax court. The tax court does not have jurisdiction to hear a refund
33 appeal suit, if:

- 34 (1) the appeal is filed more than three (3) years after the date the
35 claim for refund was filed with the department;
- 36 (2) the appeal is filed more than ninety (90) days after the date the
37 department mails the decision of denial to the person; or
- 38 (3) the appeal is filed both before the decision is issued and
39 before the one hundred eighty-first day after the date the person
40 files the claim for refund with the department.

41 (d) The tax court shall hear the appeal de novo and without a jury,
42 and after the hearing may order or deny any part of the appealed

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1 refund. The court may assess the court costs in any manner that it feels
 2 is equitable. The court may enjoin the collection of any of the listed
 3 taxes under IC 33-26-6-2. The court may also allow a refund of taxes,
 4 interest, and penalties that have been paid to and collected by the
 5 department.

6 (e) With respect to the motor vehicle excise tax, this section applies
 7 only to penalties and interest paid on assessments of the motor vehicle
 8 excise tax. Any other overpayment of the motor vehicle excise tax is
 9 subject to IC 6-6-5.

10 (f) If a taxpayer's federal income tax liability for a taxable year is
 11 modified by the Internal Revenue Service, and the modification would
 12 result in a reduction of the tax legally due, the due date by which the
 13 taxpayer must file a claim for refund with the department is the later of:

- 14 (1) the date determined under subsection (a); or
 15 (2) the date that is six (6) months after the date on which the
 16 taxpayer is notified of the modification by the Internal Revenue
 17 Service.

18 (g) If an agreement to extend the assessment time period is entered
 19 into under IC 6-8.1-5-2(f), the period during which a person may file
 20 a claim for a refund under subsection (a) is extended to the same date
 21 to which the assessment time period is extended.

22 SECTION 19. IC 6-8.1-10-1, AS AMENDED BY P.L.1-2006,
 23 SECTION 147, IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) If a person fails to file a
 25 return for any of the listed taxes, fails to pay the full amount of tax
 26 shown on the person's return by the due date for the return or the
 27 payment, or incurs a deficiency upon a determination by the
 28 department, the person is subject to interest on the nonpayment.

29 (b) The interest for a failure described in subsection (a) is the
 30 adjusted rate established by the commissioner under subsection (c),
 31 from the due date for payment. The interest applies to:

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

38 (c) The commissioner shall establish an adjusted rate of interest for
 39 a failure described in subsection (a) and for an excess tax payment on
 40 or before November 1 of each year. For purposes of subsection (b), the
 41 adjusted rate of interest shall be the percentage rounded to the nearest
 42 whole number that equals two (2) percentage points above the average

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1 investment yield on state money for the state's previous fiscal year,
 2 excluding pension fund investments, as published in the auditor of
 3 state's comprehensive annual financial report. For purposes of
 4 IC 6-8.1-9-2(c), the adjusted rate of interest for an excess tax payment
 5 is the percentage rounded to the nearest whole number that equals the
 6 average investment yield on state money for the state's previous fiscal
 7 year, excluding pension fund investments, as ~~published in the auditor~~
 8 ~~of state's comprehensive annual financial report.~~ **determined by the**
 9 **treasurer of state on or before October 1 of each year and reported**
 10 **to the commissioner.** The adjusted rates of interest established under
 11 this subsection shall take effect on January 1 of the immediately
 12 succeeding year.

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

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

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

19 SECTION 20. THE FOLLOWING ARE REPEALED [EFFECTIVE
 20 JULY 1, 2007]: IC 6-2.5-8-10; IC 6-8.1-3-2.5; IC 6-8.1-3-2.6.

21 SECTION 21. [EFFECTIVE JULY 1, 2007] **IC 6-7-1-17, as**
 22 **amended by this act, applies only to cigarette stamps purchased by**
 23 **distributors after June 30, 2007.**

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