



February 13, 2009

HOUSE BILL No. 1459

DIGEST OF HB 1459 (Updated February 11, 2009 3:43 pm - DI 44)

Citations Affected: IC 6-3; noncode.

Synopsis: Taxation of investment partnerships. Provides that income received by a nonresident limited partner from an investment partnership is treated as: (1) business income subject to apportionment, if the nonresident limited partner elects to treat the income as business income or the nonresident limited partner meets certain nexus conditions through other activities; or (2) nonbusiness income allocable to the nonresident limited partner's home state, in cases where alternative (1) does not apply.

Effective: January 1, 2010.

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January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.
February 12, 2009, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

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February 13, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1459

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

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

- 1 SECTION 1. IC 6-3-1-35 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2010]: **Sec. 35. (a) "Investment partnership" means**
4 **an entity that meets the following requirements:**
5 (1) **The entity is treated as a partnership for federal income**
6 **tax purposes.**
7 (2) **At least ninety percent (90%) of the cost of the entity's**
8 **total assets is attributable to:**
9 (A) **qualifying investment securities;**
10 (B) **deposits at banks or other financial institutions;**
11 (C) **interests in other entities that meet the definition of the**
12 **term; and**
13 (D) **office space and equipment reasonably necessary to**
14 **conduct the entity's investment business.**
15 (3) **At least ninety percent (90%) of the entity's federal gross**
16 **income consists of:**
17 (A) **interest on qualifying investment securities;**

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- 1 **(B) dividends from qualifying investment securities;**
- 2 **(C) gains from the sale or exchange of qualifying**
- 3 **investment securities; and**
- 4 **(D) distributive shares of income from an interest in**
- 5 **another entity that meets that definition of the term.**
- 6 **(b) The term defined in subsection (a) does not include a dealer**
- 7 **in qualifying investment securities.**
- 8 **(c) As used in this section, "qualifying investment securities"**
- 9 **means the following:**
- 10 **(1) Stock, including:**
 - 11 **(A) common stock;**
 - 12 **(B) preferred or debt securities convertible into common**
 - 13 **stock; and**
 - 14 **(C) preferred stock.**
- 15 **(2) Bonds, debentures, and other debt securities.**
- 16 **(3) Foreign and domestic currency deposits secured by**
- 17 **federal, state, or local governmental agencies.**
- 18 **(4) Mortgage or asset backed securities secured by federal,**
- 19 **state, or local governmental agencies.**
- 20 **(5) Repurchase agreements and loan participations.**
- 21 **(6) Foreign currency exchange contracts, and forward and**
- 22 **futures contracts on foreign currencies.**
- 23 **(7) Stock and bond index securities, and futures contracts or**
- 24 **other similar financial securities on stock and bond index**
- 25 **securities.**
- 26 **(8) Options for the purchase or sale of any of the securities,**
- 27 **currencies, contracts, or financial instruments described in**
- 28 **subdivisions (1) through (7).**
- 29 **(9) Regulated futures contracts.**
- 30 **(10) Commodities and futures, forwards, or options on**
- 31 **commodities, except:**
 - 32 **(A) a commodity described in Section 1221(a)(1) of the**
 - 33 **Internal Revenue Code (26 U.S.C. 1221(a)(1)); or**
 - 34 **(B) any item of a physical commodity to which title is**
 - 35 **acquired in an entity's capacity as a dealer.**
- 36 **(11) Derivatives.**
- 37 **SECTION 2. IC 6-3-2-2, AS AMENDED BY P.L.162-2006,**
- 38 **SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
- 39 **JANUARY 1, 2010]: Sec. 2. (a) With regard to corporations and**
- 40 **nonresident persons, "adjusted gross income derived from sources**
- 41 **within Indiana", for the purposes of this article, shall mean and include:**
- 42 **(1) income from real or tangible personal property located in this**

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- 1 state;
- 2 (2) income from doing business in this state;
- 3 (3) income from a trade or profession conducted in this state;
- 4 (4) compensation for labor or services rendered within this state;
- 5 and
- 6 (5) income from stocks, bonds, notes, bank deposits, patents,
- 7 copyrights, secret processes and formulas, good will, trademarks,
- 8 trade brands, franchises, and other intangible personal property if
- 9 the receipt from the intangible is attributable to Indiana under
- 10 section 2.2 of this chapter.

11 In the case of nonbusiness income described in subsection (g), only so
 12 much of such income as is allocated to this state under the provisions
 13 of subsections (h) through (k) shall be deemed to be derived from
 14 sources within Indiana. In the case of business income, only so much
 15 of such income as is apportioned to this state under the provision of
 16 subsection (b) shall be deemed to be derived from sources within the
 17 state of Indiana. In the case of compensation of a team member (as
 18 defined in section 2.7 of this chapter) only the portion of income
 19 determined to be Indiana income under section 2.7 of this chapter is
 20 considered derived from sources within Indiana. In the case of a
 21 corporation that is a life insurance company (as defined in Section
 22 816(a) of the Internal Revenue Code) or an insurance company that is
 23 subject to tax under Section 831 of the Internal Revenue Code, only so
 24 much of the income as is apportioned to Indiana under subsection (r)
 25 is considered derived from sources within Indiana. **The income of an
 26 investment partnership distributable to a nonresident limited
 27 partner after December 31, 2009, is treated in the manner provided
 28 by subsection (s).**

29 (b) Except as provided in subsection (l), if business income of a
 30 corporation or a nonresident person is derived from sources within the
 31 state of Indiana and from sources without the state of Indiana, the
 32 business income derived from sources within this state shall be
 33 determined by multiplying the business income derived from sources
 34 both within and without the state of Indiana by the following:

- 35 (1) For all taxable years that begin after December 31, 2006, and
 36 before January 1, 2008, a fraction. The:
 - 37 (A) numerator of the fraction is the sum of the property factor
 38 plus the payroll factor plus the product of the sales factor
 39 multiplied by three (3); and
 - 40 (B) denominator of the fraction is five (5).
- 41 (2) For all taxable years that begin after December 31, 2007, and
 42 before January 1, 2009, a fraction. The:

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- 1 (A) numerator of the fraction is the property factor plus the
- 2 payroll factor plus the product of the sales factor multiplied by
- 3 four and sixty-seven hundredths (4.67); and
- 4 (B) denominator of the fraction is six and sixty-seven
- 5 hundredths (6.67).
- 6 (3) For all taxable years beginning after December 31, 2008, and
- 7 before January 1, 2010, a fraction. The:
- 8 (A) numerator of the fraction is the property factor plus the
- 9 payroll factor plus the product of the sales factor multiplied by
- 10 eight (8); and
- 11 (B) denominator of the fraction is ten (10).
- 12 (4) For all taxable years beginning after December 31, 2009, and
- 13 before January 1, 2011, a fraction. The:
- 14 (A) numerator of the fraction is the property factor plus the
- 15 payroll factor plus the product of the sales factor multiplied by
- 16 eighteen (18); and
- 17 (B) denominator of the fraction is twenty (20).
- 18 (5) For all taxable years beginning after December 31, 2010, the
- 19 sales factor.
- 20 (c) The property factor is a fraction, the numerator of which is the
- 21 average value of the taxpayer's real and tangible personal property
- 22 owned or rented and used in this state during the taxable year and the
- 23 denominator of which is the average value of all the taxpayer's real and
- 24 tangible personal property owned or rented and used during the taxable
- 25 year. However, with respect to a foreign corporation, the denominator
- 26 does not include the average value of real or tangible personal property
- 27 owned or rented and used in a place that is outside the United States.
- 28 Property owned by the taxpayer is valued at its original cost. Property
- 29 rented by the taxpayer is valued at eight (8) times the net annual rental
- 30 rate. Net annual rental rate is the annual rental rate paid by the taxpayer
- 31 less any annual rental rate received by the taxpayer from subrentals.
- 32 The average of property shall be determined by averaging the values at
- 33 the beginning and ending of the taxable year, but the department may
- 34 require the averaging of monthly values during the taxable year if
- 35 reasonably required to reflect properly the average value of the
- 36 taxpayer's property.
- 37 (d) The payroll factor is a fraction, the numerator of which is the
- 38 total amount paid in this state during the taxable year by the taxpayer
- 39 for compensation, and the denominator of which is the total
- 40 compensation paid everywhere during the taxable year. However, with
- 41 respect to a foreign corporation, the denominator does not include
- 42 compensation paid in a place that is outside the United States.

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

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

- 26 (1) the property is delivered or shipped to a purchaser that is
- 27 within Indiana, other than the United States government; or
- 28 (2) the property is shipped from an office, a store, a warehouse, a
- 29 factory, or other place of storage in this state and:
- 30 (A) the purchaser is the United States government; or
- 31 (B) the taxpayer is not taxable in the state of the purchaser.

32 Gross receipts derived from commercial printing as described in
 33 IC 6-2.5-1-10 shall be treated as sales of tangible personal property for
 34 purposes of this chapter.

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

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

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

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

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

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

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

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

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

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

31 (3) Capital gains and losses from sales of intangible personal
32 property are allocable to this state if the taxpayer's commercial
33 domicile is in this state.

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

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

- 37 (i) if and to the extent that the patent or copyright is utilized by
38 the taxpayer in this state; or
- 39 (ii) if and to the extent that the patent or copyright is utilized by
40 the taxpayer in a state in which the taxpayer is not taxable and the
41 taxpayer's commercial domicile is in this state.

42 (2) A patent is utilized in a state to the extent that it is employed

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

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

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

- 18 (1) separate accounting;
- 19 (2) for a taxable year beginning before January 1, 2011, the
20 exclusion of any one (1) or more of the factors, except the sales
21 factor;
- 22 (3) the inclusion of one (1) or more additional factors which will
23 fairly represent the taxpayer's income derived from sources within
24 the state of Indiana; or
- 25 (4) the employment of any other method to effectuate an equitable
26 allocation and apportionment of the taxpayer's income.

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

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

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

42 (o) Notwithstanding subsections (l) and (m), the department may

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1 not, under any circumstances, require that income, deductions, and
 2 credits attributable to a taxpayer and another entity be reported in a
 3 combined income tax return for any taxable year, if the other entity is:

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

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

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

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

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

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

38 **(s) This subsection applies to distributions of income from an**
 39 **investment partnership to a nonresident limited partner after**
 40 **December 31, 2009. The income of an investment partnership that**
 41 **is distributable to a nonresident limited partner after December 31,**
 42 **2009, shall be treated as nonbusiness income that is allocated to the**

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1 partner's state of residence, in the case of an individual, or
2 commercial domicile, in the case of an entity other than an
3 individual. However, income of an investment partnership
4 distributable to a nonresident limited partner after December 31,
5 2009, shall be treated as business income and apportioned under
6 subsection (b) as if the income had been received directly by the
7 nonresident limited partner if:

8 (1) the nonresident limited partner elects, in the manner
9 prescribed by the department, to treat all income as business
10 income; or

11 (2) the income is from investment activity:
12 (A) that is directly or integrally related to another business
13 activity conducted in Indiana by the nonresident limited
14 partner or a member of the nonresident limited partner's
15 unitary business group;

16 (B) that serves an operational function to another business
17 activity of the nonresident limited partner or a member of
18 the nonresident limited partner's unitary business group;
19 or

20 (C) that is derived from assets of the investment
21 partnership that were acquired with working capital from
22 a trade or business that is:

- 23 (i) actively conducted in Indiana; and
- 24 (ii) owned to any extent by the nonresident limited
25 partner or a member of the nonresident limited
26 partner's unitary business group.

27 SECTION 3. [EFFECTIVE JANUARY 1, 2010] (a) IC 6-3-1-35,
28 as added by this act, applies only to taxable years beginning after
29 December 31, 2009.

30 (b) IC 6-3-2-2, as amended by this act, applies only to taxable
31 years beginning after December 31, 2009.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1459, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

RESKE, Chair

Committee Vote: yeas 12, nays 0.

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