

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 239 be amended to read as follows:

1           Page 51, between lines 12 and 13, begin a new paragraph and insert:  
2           "SECTION 23. IC 6-3-1-36 IS ADDED TO THE INDIANA CODE  
3           AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
4           **JANUARY 1, 2011]: Sec. 36. (a) "Unitary business" means a single**  
5           **economic enterprise that is made up either of separate parts of a**  
6           **single business entity or of a commonly controlled group of**  
7           **business entities that are sufficiently interdependent, integrated,**  
8           **and interrelated through their activities so as to provide a synergy**  
9           **and mutual benefit that produces a sharing or exchange of value**  
10           **among them and a significant flow of value to the separate parts.**  
11           **(b) Any business conducted by a pass through entity shall be**  
12           **treated as conducted by its partners, shareholders, or members,**  
13           **whether directly held or indirectly held through a series of pass**  
14           **through entities, to the extent of the shareholder, member, or**  
15           **partner's distributive share of the pass through entity's income,**  
16           **regardless of the percentage of the shareholder's, member's, or**  
17           **partner's ownership interest or its distributive or any other share**  
18           **of pass through entity income. A business conducted directly or**  
19           **indirectly by one (1) corporation is unitary with that part of a**  
20           **business conducted by another corporation through its direct or**  
21           **indirect interest in a pass through entity if the conditions of**  
22           **subsection (a) are satisfied.**  
23           SECTION 24. IC 6-3-1-37 IS ADDED TO THE INDIANA CODE  
24           AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**

1 JANUARY 1, 2011]: **Sec. 37. "Combined group" means the group**  
 2 **of persons, corporations, and pass through entities whose income**  
 3 **and apportionment factors are required to be taken into account**  
 4 **pursuant to IC 6-3-2-2(p) and IC 6-3-2.6 in determining the**  
 5 **taxpayer's share of the net business income or loss apportionable**  
 6 **to Indiana.**

7 SECTION 25. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE  
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 9 JANUARY 1, 2011]: **Sec. 38. "Tax haven" means a jurisdiction**  
 10 **that, during the tax year in question:**

11 **(1) is identified by the Organization for Economic**  
 12 **Co-operation and Development (OECD) as a tax haven or as**  
 13 **having a harmful preferential tax regime; or**

14 **(2) exhibits the following characteristics established by the**  
 15 **Organization for Economic Co-operation and Development**  
 16 **(OECD) in its 1998 report entitled Harmful Tax Competition:**  
 17 **An Emerging Global Issue as indicative of a tax haven or as**  
 18 **a jurisdiction having a harmful preferential tax regime,**  
 19 **regardless of whether the jurisdiction is listed by the OECD**  
 20 **as an un-cooperative tax haven:**

21 **(A) Has no or nominal effective tax on the relevant income.**

22 **(B) Has one (1) or more of the following characteristics:**

23 **(i) Has laws or practices that prevent effective exchange**  
 24 **of information for tax purposes with other governments**  
 25 **on taxpayers benefitting from the tax regime.**

26 **(ii) Has a tax regime that lacks transparency.**

27 **(iii) Facilitates the establishment of foreign-owned**  
 28 **entities without the need for a local substantive presence**  
 29 **or prohibits foreign-owned entities from having any**  
 30 **commercial impact on the local economy.**

31 **(iv) Explicitly or implicitly excludes the jurisdiction's**  
 32 **resident taxpayers from taking advantage of the tax**  
 33 **regime's benefits or prohibits enterprises that benefit**  
 34 **from the regime from operating in the jurisdiction's**  
 35 **domestic market.**

36 **(v) Has created a tax regime that is favorable for tax**  
 37 **avoidance, based upon an overall assessment of relevant**  
 38 **factors, including whether the jurisdiction has a**  
 39 **significant untaxed offshore financial/other services**  
 40 **sector relative to its overall economy.**

41 **For purposes of subdivision (2)(B)(ii), a tax regime lacks**  
 42 **transparency if the details of legislative, legal, or administrative**  
 43 **provisions are not open and apparent or are not consistently**  
 44 **applied among similarly situated taxpayers, or if the information**  
 45 **needed by tax authorities to determine a taxpayer's correct tax**  
 46 **liability, such as accounting records and underlying**  
 47 **documentation, is not adequately available.**

1 SECTION 26. IC 6-3-1-39 IS ADDED TO THE INDIANA CODE  
 2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
 3 JANUARY 1, 2011]: **Sec. 39. "Doing business in a tax haven"**  
 4 **means being engaged in activity sufficient for that tax haven**  
 5 **jurisdiction to impose a tax under United States constitutional**  
 6 **standards.**

7 SECTION 27. IC 6-3-1-40 IS ADDED TO THE INDIANA CODE  
 8 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
 9 JANUARY 1, 2011]: **Sec. 40. "Water's edge election" refers to a**  
 10 **taxpayer election under IC 6-3-2.6-8 and IC 6-3-2.6-9.**

11 SECTION 28. IC 6-3-2-2, AS AMENDED BY P.L.182-2009(ss),  
 12 SECTION 191, IS AMENDED TO READ AS FOLLOWS  
 13 [EFFECTIVE JANUARY 1, 2011]: **Sec. 2. (a)** With regard to  
 14 corporations and nonresident persons, "adjusted gross income derived  
 15 from sources within Indiana", for the purposes of this article, shall  
 16 mean and include:

17 (1) income from real or tangible personal property located in this  
 18 state;

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

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

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

22 **and**

23 (5) income from ~~stocks, bonds, notes, bank deposits, patents,~~  
 24 ~~copyrights, secret processes and formulas, good will, trademarks,~~  
 25 ~~trade brands, franchises, and other intangible personal property~~  
 26 **described in section 2.2 of this chapter**, if the receipt from the  
 27 intangible is attributable to Indiana under section 2.2 of this  
 28 chapter; **and**

29 **(6) for taxable years beginning after December 31, 2010,**  
 30 **income from patents, copyrights, secret processes and**  
 31 **formulas, good will, trademarks, trade brands, franchises,**  
 32 **and other intangible personal property if benefits of the**  
 33 **intangible property are consumed or used in Indiana or if the**  
 34 **income otherwise has a substantial nexus to Indiana.**

35 Income from a pass through entity shall be characterized in a manner  
 36 consistent with the income's characterization for federal income tax  
 37 purposes and shall be considered Indiana source income as if the  
 38 person, corporation, or pass through entity that received the income had  
 39 directly engaged in the income producing activity. Income that is  
 40 derived from one (1) pass through entity and is considered to pass  
 41 through to another pass through entity does not change these  
 42 characteristics or attribution provisions. In the case of nonbusiness  
 43 income described in subsection (g), only so much of such income as is  
 44 allocated to this state under the provisions of subsections (h) through  
 45 (k) shall be deemed to be derived from sources within Indiana. In the  
 46 case of business income, only so much of such income as is

1       apportioned to this state under the provision of subsection (b) shall be  
 2       deemed to be derived from sources within the state of Indiana. In the  
 3       case of compensation of a team member (as defined in section 2.7 of  
 4       this chapter), only the portion of income determined to be Indiana  
 5       income under section 2.7 of this chapter is considered derived from  
 6       sources within Indiana. In the case of a corporation that is a life  
 7       insurance company (as defined in Section 816(a) of the Internal  
 8       Revenue Code) or an insurance company that is subject to tax under  
 9       Section 831 of the Internal Revenue Code, only so much of the income  
 10       as is apportioned to Indiana under subsection (r) is considered derived  
 11       from sources within Indiana.

12       (b) Except as provided in subsection (l), if business income of a  
 13       corporation or a nonresident person is derived from sources within the  
 14       state of Indiana and from sources without the state of Indiana, the  
 15       business income derived from sources within this state shall be  
 16       determined by multiplying the business income derived from sources  
 17       both within and without the state of Indiana by the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

45       (c) The property factor is a fraction, the numerator of which is the  
 46       average value of the taxpayer's real and tangible personal property

1 owned or rented and used in this state during the taxable year and the  
 2 denominator of which is the average value of all the taxpayer's real and  
 3 tangible personal property owned or rented and used during the taxable  
 4 year. However, with respect to a foreign corporation, the denominator  
 5 does not include the average value of real or tangible personal property  
 6 owned or rented and used in a place that is outside the United States.  
 7 Property owned by the taxpayer is valued at its original cost. Property  
 8 rented by the taxpayer is valued at eight (8) times the net annual rental  
 9 rate. Net annual rental rate is the annual rental rate paid by the taxpayer  
 10 less any annual rental rate received by the taxpayer from subrentals.  
 11 The average of property shall be determined by averaging the values at  
 12 the beginning and ending of the taxable year, but the department may  
 13 require the averaging of monthly values during the taxable year if  
 14 reasonably required to reflect properly the average value of the  
 15 taxpayer's property.

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

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

35 (e) The sales factor is a fraction, the numerator of which is the total  
 36 sales of the taxpayer in this state during the taxable year, and the  
 37 denominator of which is the total sales of the taxpayer everywhere  
 38 during the taxable year. Sales include receipts from intangible property  
 39 and receipts from the sale or exchange of intangible property. However,  
 40 with respect to a foreign corporation, the denominator does not include  
 41 sales made in a place that is outside the United States **if, for taxable**  
 42 **years beginning after December 31, 2010, the foreign corporation**  
 43 **is not part of a combined group or a foreign corporation that is the**  
 44 **subject of a water's edge election.** Receipts from intangible personal  
 45 property are derived from sources within Indiana if the receipts from  
 46 the intangible personal property are attributable to Indiana under

1 section 2.2 of this chapter **or subsection (a)(6)**. Regardless of the f.o.b.  
 2 point or other conditions of the sale, sales of tangible personal property  
 3 are in this state if:

4 (1) the property is delivered or shipped to a purchaser that is  
 5 within Indiana, other than the United States government; or

6 (2) the property is shipped from an office, a store, a warehouse, a  
 7 factory, or other place of storage in this state and:

8 (A) the purchaser is the United States government; or

9 (B) the taxpayer is not taxable in the state of the purchaser.

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

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

16 (1) the income-producing activity is performed in this state; or

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

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

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

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

29 (i) if and to the extent that the property is utilized in this state; or

30 (ii) in their entirety if the taxpayer's commercial domicile is in this  
 31 state and the taxpayer is not organized under the laws of or  
 32 taxable in the state in which the property is utilized.

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

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

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

- 1 (i) the property had a situs in this state at the time of the sale; or  
2 (ii) the taxpayer's commercial domicile is in this state and the  
3 taxpayer is not taxable in the state in which the property had a  
4 situs.
- 5 (3) Capital gains and losses from sales of intangible personal  
6 property are allocable to this state if the taxpayer's commercial  
7 domicile is in this state.
- 8 (j) Interest and dividends are allocable to this state if the taxpayer's  
9 commercial domicile is in this state.
- 10 (k)(1) Patent and copyright royalties are allocable to this state:  
11 (i) if and to the extent that the patent or copyright is utilized by  
12 the taxpayer in this state; or  
13 (ii) if and to the extent that the patent or copyright is utilized by  
14 the taxpayer in a state in which the taxpayer is not taxable and the  
15 taxpayer's commercial domicile is in this state.
- 16 (2) A patent is utilized in a state to the extent that it is employed  
17 in production, fabrication, manufacturing, or other processing in  
18 the state or to the extent that a patented product is produced in the  
19 state. If the basis of receipts from patent royalties does not permit  
20 allocation to states or if the accounting procedures do not reflect  
21 states of utilization, the patent is utilized in the state in which the  
22 taxpayer's commercial domicile is located.
- 23 (3) A copyright is utilized in a state to the extent that printing or  
24 other publication originates in the state. If the basis of receipts  
25 from copyright royalties does not permit allocation to states or if  
26 the accounting procedures do not reflect states of utilization, the  
27 copyright is utilized in the state in which the taxpayer's  
28 commercial domicile is located.
- 29 (l) If the allocation and apportionment provisions of this article do  
30 not fairly represent the taxpayer's income derived from sources within  
31 the state of Indiana, the taxpayer may petition for or the department  
32 may require, in respect to all or any part of the taxpayer's business  
33 activity, if reasonable:
- 34 (1) separate accounting;  
35 (2) for a taxable year beginning before January 1, 2011, the  
36 exclusion of any one (1) or more of the factors, except the sales  
37 factor;  
38 (3) the inclusion of one (1) or more additional factors which will  
39 fairly represent the taxpayer's income derived from sources within  
40 the state of Indiana; or  
41 (4) the employment of any other method to effectuate an equitable  
42 allocation and apportionment of the taxpayer's income.
- 43 (m) In the case of two (2) or more organizations, trades, or  
44 businesses owned or controlled directly or indirectly by the same  
45 interests, the department shall distribute, apportion, or allocate the  
46 income derived from sources within the state of Indiana between and

1 among those organizations, trades, or businesses in order to fairly  
 2 reflect and report the income derived from sources within the state of  
 3 Indiana by various taxpayers.

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

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

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

12 (o) Notwithstanding subsections (l) and (m) **but subject to**  
 13 **subsection (p) and IC 6-3-2.6**, the department may not, under ~~any~~  
 14 ~~circumstances~~, **subsections (l) and (m)**, require that income,  
 15 deductions, and credits attributable to a taxpayer and another entity be  
 16 reported in a combined income tax return for any taxable year, if the  
 17 other entity is:

18 (1) a foreign corporation; or

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

21 (p) **Notwithstanding subsections (l) and (m), the department may not**  
 22 **require that income, deductions, and credits attributable to a taxpayer**  
 23 **and another entity not described in subsection (o)(1) or (o)(2) be**  
 24 **reported in a combined income tax return for any taxable year, unless**  
 25 **the department is unable to fairly reflect the taxpayer's adjusted gross**  
 26 **income for the taxable year through use of other powers granted to the**  
 27 **department by subsections (l) and (m): A taxpayer engaged in a**  
 28 **unitary business with one (1) or more other corporations shall file**  
 29 **a combined report that includes the income, determined under**  
 30 **IC 6-3-2.6-5 and IC 6-3-2.6-6, and apportionment factors,**  
 31 **determined under IC 6-3-2.6-4, of all corporations that are**  
 32 **members of the unitary business, and the other information as**  
 33 **required by the department. For this purpose, the business**  
 34 **conducted by a pass through entity that is directly or indirectly**  
 35 **held by a corporation shall be considered the business of the**  
 36 **corporation to the extent of the corporation's distributive share of**  
 37 **the pass through entity income, inclusive of guaranteed payments**  
 38 **to the extent prescribed by rule adopted under IC 4-22-2. The**  
 39 **department may, by rule adopted under IC 4-22-2, require that the**  
 40 **combined report include the income and associated apportionment**  
 41 **factors of any persons, corporations, or pass through entities that**  
 42 **are not included pursuant to this subsection, but that are members**  
 43 **of a unitary business, in order to reflect proper apportionment of**  
 44 **income of entire unitary businesses. The authority to require**  
 45 **combination by rule under this subsection includes the authority**  
 46 **to require the combination of persons, corporations, or pass**



1 through entities that are not (or would not be if doing business in  
 2 this state) subject to the tax imposed by this article. In addition, if  
 3 the department determines that the reported income or loss of a  
 4 taxpayer engaged in a unitary business with any person,  
 5 corporation, or pass through entity not included under this  
 6 subsection represents an avoidance or evasion of tax by that  
 7 taxpayer, the department may, on a case by case basis, require that  
 8 all or any part of the income and associated apportionment factors  
 9 of the person, corporation, or pass through entity be included in  
 10 the taxpayer's combined report. With respect to inclusion of  
 11 associated apportionment factors under this subsection, the  
 12 department may require the inclusion of one (1) or more additional  
 13 factors that will fairly represent the taxpayer's business activity in  
 14 Indiana, or the employment of any other method to effectuate a  
 15 proper reflection of the total amount of income subject to  
 16 apportionment and an equitable allocation and apportionment of  
 17 the taxpayer's income. Subsection (o) does not apply to this  
 18 subsection.

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

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

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

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

43 SECTION 29. IC 6-3-2-20, AS AMENDED BY P.L.211-2007,  
 44 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 45 JANUARY 1, 2011]: Sec. 20. (a) The following definitions apply  
 46 throughout this section:

- 1 (1) "Affiliated group" has the meaning provided in Section 1504  
2 of the Internal Revenue Code, except that the ownership  
3 percentage in Section 1504(a)(2) of the Internal Revenue Code  
4 shall be determined using fifty percent (50%) instead of eighty  
5 percent (80%).
- 6 (2) "Directly related intangible interest expenses" means interest  
7 expenses that are paid to, or accrued or incurred as a liability to,  
8 a recipient if:
- 9 (A) the amounts represent, in the hands of the recipient,  
10 income from making one (1) or more loans; and
- 11 (B) the funds loaned were originally received by the recipient  
12 from the payment of intangible expenses by any of the  
13 following:
- 14 (i) The taxpayer.  
15 (ii) A member of the same affiliated group as the taxpayer.  
16 (iii) A foreign corporation.
- 17 (3) "Foreign corporation" means a corporation that is organized  
18 under the laws of a country other than the United States and  
19 would be a member of the same affiliated group as the taxpayer  
20 if the corporation were organized under the laws of the United  
21 States.
- 22 (4) "Intangible expenses" means the following amounts to the  
23 extent these amounts are allowed as deductions in determining  
24 taxable income under Section 63 of the Internal Revenue Code  
25 before the application of any net operating loss deduction and  
26 special deductions for the taxable year:
- 27 (A) Expenses, losses, and costs directly for, related to, or in  
28 connection with the acquisition, use, maintenance,  
29 management, ownership, sale, exchange, or any other  
30 disposition of intangible property.
- 31 (B) Royalty, patent, technical, and copyright fees.  
32 (C) Licensing fees.  
33 (D) Other substantially similar expenses and costs.
- 34 (5) "Intangible property" means patents, patent applications, trade  
35 names, trademarks, service marks, copyrights, trade secrets, and  
36 substantially similar types of intangible assets.
- 37 (6) "Interest expenses" means amounts that are allowed as  
38 deductions under Section 163 of the Internal Revenue Code in  
39 determining taxable income under Section 63 of the Internal  
40 Revenue Code before the application of any net operating loss  
41 deductions and special deductions for the taxable year.
- 42 (7) "Makes a disclosure" means a taxpayer provides the following  
43 information regarding a transaction with a member of the same  
44 affiliated group or a foreign corporation involving an intangible  
45 expense and any directly related intangible interest expense with  
46 the taxpayer's tax return on the forms prescribed by the

- 1 department:
- 2 (A) The name of the recipient.
- 3 (B) The state or country of domicile of the recipient.
- 4 (C) The amount paid to the recipient.
- 5 (D) A copy of federal Form 851, Affiliation Schedule, as filed
- 6 with the taxpayer's federal consolidated tax return.
- 7 (E) The information needed to determine the taxpayer's status
- 8 under the exceptions listed in subsection (c).
- 9 (8) "Recipient" means:
- 10 (A) a member of the same affiliated group as the taxpayer; or
- 11 (B) a foreign corporation;
- 12 to which is paid an item of income that corresponds to an
- 13 intangible expense or any directly related intangible interest
- 14 expense.
- 15 (9) "Unrelated party" means a person that, with respect to the
- 16 taxpayer, is not a member of the same affiliated group or a foreign
- 17 corporation.
- 18 (b) Except as provided in subsection (c), in determining its adjusted
- 19 gross income under IC 6-3-1-3.5(b), a corporation subject to the tax
- 20 imposed by IC 6-3-2-1 shall add to its taxable income under Section 63
- 21 of the Internal Revenue Code:
- 22 (1) intangible expenses; and
- 23 (2) any directly related intangible interest expenses;
- 24 paid, accrued, or incurred with one (1) or more members of the same
- 25 affiliated group or with one (1) or more foreign corporations.
- 26 (c) The addition of intangible expenses or any directly related
- 27 intangible interest expenses otherwise required in a taxable year under
- 28 subsection (b) is not required if one (1) or more of the following apply
- 29 to the taxable year:
- 30 (1) The taxpayer and the recipient are both included in the same
- 31 consolidated tax return filed under IC 6-3-4-14 or in the same
- 32 combined return filed under **IC 6-3-2-2(p)** or IC 6-3-2-2(q) for
- 33 the taxable year.
- 34 (2) 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 item of income corresponding to the intangible
- 38 expenses and any directly related intangible interest expenses
- 39 was included within the recipient's income that is subject to
- 40 tax in:
- 41 (i) a state or possession of the United States; or
- 42 (ii) a country other than the United States;
- 43 that is the recipient's commercial domicile and that imposes a
- 44 net income tax, a franchise tax measured, in whole or in part,
- 45 by net income, or a value added tax;
- 46 (B) the transaction giving rise to the intangible expenses and

- 1 any directly related intangible interest expenses between the  
2 taxpayer and the recipient was made at a commercially  
3 reasonable rate and at terms comparable to an arm's length  
4 transaction; and  
5 (C) the transactions giving rise to the intangible expenses and  
6 any directly related intangible interest expenses between the  
7 taxpayer and the recipient did not have Indiana tax avoidance  
8 as a principal purpose.
- 9 (3) The taxpayer makes a disclosure and, at the request of the  
10 department, can establish by a preponderance of the evidence  
11 that:  
12 (A) the recipient regularly engages in transactions involving  
13 intangible property with one (1) or more unrelated parties on  
14 terms substantially similar to those of the subject transaction;  
15 and  
16 (B) the transaction giving rise to the intangible expenses and  
17 any directly related intangible interest expenses between the  
18 taxpayer and the recipient did not have Indiana tax avoidance  
19 as a principal purpose.
- 20 (4) The taxpayer makes a disclosure and, at the request of the  
21 department, can establish by a preponderance of the evidence  
22 that:  
23 (A) the payment was received from a person or entity that is an  
24 unrelated party, and on behalf of that unrelated party, paid that  
25 amount to the recipient in an arm's length transaction; and  
26 (B) the transaction giving rise to the intangible expenses and  
27 any directly related intangible interest expenses between the  
28 taxpayer and the recipient did not have Indiana tax avoidance  
29 as a principal purpose.
- 30 (5) The taxpayer makes a disclosure and, at the request of the  
31 department, can establish by a preponderance of the evidence  
32 that:  
33 (A) the recipient paid, accrued, or incurred a liability to an  
34 unrelated party during the taxable year for an equal or greater  
35 amount that was directly for, related to, or in connection with  
36 the same intangible property giving rise to the intangible  
37 expenses; and  
38 (B) the transactions giving rise to the intangible expenses and  
39 any directly related intangible interest expenses between the  
40 taxpayer and the recipient did not have Indiana tax avoidance  
41 as a principal purpose.
- 42 (6) The taxpayer makes a disclosure and, at the request of the  
43 department, can establish by a preponderance of the evidence  
44 that:  
45 (A) the recipient is engaged in:  
46 (i) substantial business activities from the acquisition, use,

- 1           licensing, maintenance, management, ownership, sale,  
2           exchange, or any other disposition of intangible property; or  
3           (ii) other substantial business activities separate and apart  
4           from the business activities described in item (i);  
5           as evidenced by the maintenance of a permanent office space  
6           and an adequate number of full-time, experienced employees;  
7           (B) the transactions giving rise to the intangible expenses and  
8           any directly related intangible interest expenses between the  
9           taxpayer and the recipient did not have Indiana tax avoidance  
10          as a principal purpose; and  
11          (C) the transactions were made at a commercially reasonable  
12          rate and at terms comparable to an arm's length transaction.  
13          (7) The taxpayer and the department agree, in writing, to the  
14          application or use of an alternative method of allocation or  
15          apportionment under section 2(l) or 2(m) of this chapter.  
16          (8) Upon request by the taxpayer, the department determines that  
17          the adjustment otherwise required by this section is unreasonable.  
18          (d) For purposes of this section, intangible expenses or directly  
19          related intangible interest expenses shall be considered to be at a  
20          commercially reasonable rate or at terms comparable to an arm's length  
21          transaction if the intangible expenses or directly related intangible  
22          interest expenses meet the arm's length standards of United States  
23          Treasury Regulation 1.482-1(b).  
24          (e) If intangible expenses or directly related intangible expenses are  
25          determined not to be at a commercially reasonable rate or at terms  
26          comparable to an arm's length transaction for purposes of this section,  
27          the adjustment required by subsection (b) shall be made only to the  
28          extent necessary to cause the intangible expenses or directly related  
29          intangible interest expenses to be at a commercially reasonable rate and  
30          at terms comparable to an arm's length transaction.  
31          (f) For purposes of this section, transactions giving rise to intangible  
32          expenses and any directly related intangible interest expenses between  
33          the taxpayer and the recipient shall be considered as having Indiana tax  
34          avoidance as the principal purpose if:  
35                  (1) there is not one (1) or more valid business purposes that  
36                  independently sustain the transaction notwithstanding any tax  
37                  benefits associated with the transaction; and  
38                  (2) the principal purpose of tax avoidance exceeds any other valid  
39                  business purpose.  
40          SECTION 30. IC 6-3-2.6 IS ADDED TO THE INDIANA CODE  
41          AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
42          JANUARY 1, 2011]:  
43          **Chapter 2.6. Determination of Adjusted Gross Income or Loss**  
44          **Using Combined Report; Designation of Surety; Water's Edge**  
45          **Election**  
46          **Sec. 1. It is the intent of the general assembly to apply the**

1 provisions of the Proposed Model Statute for Combined Reporting,  
2 as approved by the Multistate Tax Commission August 17, 2006,  
3 to taxable years beginning after December 31, 2010. The official  
4 background material used by the Multistate Tax Commission or its  
5 committees to prepare the model statute and any interpretive  
6 statements issued by the Multistate Tax Commission or its  
7 committees before April 1, 2010, are incorporated into this chapter  
8 by reference to guide the implementation of the provisions of this  
9 chapter.

10 **Sec. 2.** The use of a combined report does not disregard the  
11 separate identities of the taxpayer members of the combined  
12 group. Each taxpayer member is responsible for tax based on its  
13 adjusted gross income or loss apportioned or allocated to Indiana,  
14 which shall include, in addition to other types of income, the  
15 taxpayer member's apportioned share of business income of the  
16 combined group, where business income of the combined group is  
17 calculated as a summation of the individual net business incomes  
18 of all members of the combined group. A member's net business  
19 income shall be determined by removing all but business income,  
20 expense, and loss from that member's total income, as provided in  
21 this chapter.

22 **Sec. 3. (a)** Each taxpayer member is responsible for tax based on  
23 its adjusted gross income or loss apportioned or allocated to  
24 Indiana, which shall include:

- 25 (1) its share of any business income apportionable to Indiana  
26 of each of the combined groups of which it is a member, as  
27 determined under section 4 of this chapter;
- 28 (2) its share of any business income apportionable to Indiana  
29 of a distinct business activity that is conducted within and  
30 without Indiana wholly by the taxpayer member, as  
31 determined under the provisions of IC 6-3-2 related to the  
32 apportionment of business income;
- 33 (3) its income from a business conducted wholly by the  
34 taxpayer member entirely within Indiana;
- 35 (4) its income sourced to Indiana from the sale or exchange of  
36 capital or assets, and from involuntary conversions, as  
37 determined under section 6(8) of this chapter;
- 38 (5) its nonbusiness income or loss allocable to Indiana,  
39 determined under the provisions of IC 6-3-2 concerning the  
40 allocation of nonbusiness income;
- 41 (6) its income or loss allocated or apportioned in an earlier  
42 year, required to be taken into account as state source income  
43 during the income year, other than a net operating loss; and
- 44 (7) its net operating loss carryover or carryback. If the  
45 adjusted gross income computed under this chapter results in  
46 a loss for a taxpayer member of the combined group, that  
47 taxpayer member has a state net operating loss (NOL),

1           subject to the net operating loss limitations, carryforward,  
2           and carryback provisions of IC 6-3-2-2.6. The net operating  
3           loss may be applied as a deduction in a prior or subsequent  
4           year only if that taxpayer has state source positive net income,  
5           whether or not the taxpayer is or was a member of a  
6           combined reporting group in the prior or subsequent year.

7           (b) Except where otherwise provided in this chapter, no tax  
8           credit or post-apportionment deduction earned by one (1) member  
9           of the combined group, but not fully used by or allowed to that  
10          member, may be used in whole or in part by another member of  
11          the group or applied in whole or in part against the total income of  
12          the combined group. Except where otherwise provided in this  
13          chapter, a post-apportionment deduction carried over into a  
14          subsequent year as to the member that incurred it, and available  
15          as a deduction to that member in a subsequent year, will be  
16          considered in the computation of the income of that member in the  
17          subsequent year, regardless of the composition of that income as  
18          apportioned, allocated, or wholly within Indiana.

19          Sec. 4. The taxpayer's share of the business income  
20          apportionable to Indiana of each combined group of which the  
21          taxpayer is a member shall be the product of:

22               (1) the business income of the combined group, determined  
23               under sections 5 and 6 of this chapter; and  
24               (2) the taxpayer member's apportionment percentage,  
25               determined under IC 6-3-2-2, including in the numerator the  
26               taxpayer's sales associated with the combined group's unitary  
27               business in Indiana, and including in the denominator the  
28               sales of all members of the combined group, including the  
29               taxpayer, that are associated with the combined group's  
30               unitary business wherever located. The sales of a pass through  
31               entity shall be included in the determination of the partner's  
32               apportionment percentage in proportion to a ratio, the  
33               numerator of which is the amount of the partner's distributive  
34               share of pass through entity's unitary income included in the  
35               income of the combined group in accordance with section 6(4)  
36               of this chapter, and the denominator of which is the amount  
37               of the pass through entity's total unitary income.

38          Sec. 5. The business income of a combined group shall be  
39          determined as follows:

40               (1) From the total income of the combined group, as  
41               determined under subdivision (2), subtract any income, and  
42               add any expense or loss, other than the business income,  
43               expense, or loss of the combined group.  
44               (2) Except as otherwise provided in this chapter, the total  
45               income of the combined group is the sum of the income of  
46               each member of the combined group as determined under  
47               federal income tax laws, as adjusted for state purposes to

1           determine adjusted gross income or loss, as if the member  
2           were not consolidated for federal purposes.

3           **Sec. 6. The income of each member of a combined group shall**  
4           **be determined as follows:**

5           (1) For any member incorporated in the United States, or  
6           included in a consolidated federal corporate income tax  
7           return, the income to be included in the total income of the  
8           combined group shall be the adjusted gross income for the  
9           corporation after making appropriate adjustments under this  
10          article to determine adjusted gross income or loss.

11          (2) For any member to which subdivision (1) does not apply,  
12          the income to be included in the total income of the combined  
13          group shall be determined as follows:

14           (A) A profit and loss statement shall be prepared for each  
15           foreign branch or corporation in the currency in which the  
16           books of account of the branch or corporation are  
17           regularly maintained.

18           (B) Adjustments shall be made to the profit and loss  
19           statement prepared under clause (A) to conform it to the  
20           accounting principles generally accepted in the United  
21           States for the preparation of profit and loss statements,  
22           except as modified by this chapter or a rule adopted by the  
23           department under IC 4-22-2.

24           (C) Adjustments shall be made to the profit and loss  
25           statement prepared under clause (A) to conform it to the  
26           tax accounting standards required by this article.

27           (D) Except as otherwise provided by rule, the profit and  
28           loss statement of each member of the combined group, and  
29           the apportionment factors related to each member's profit  
30           and loss statement, whether United States or foreign, shall  
31           be translated into the currency in which the parent  
32           company maintains its books and records.

33           (E) Income apportioned to Indiana shall be expressed in  
34           United States dollars.

35          (3) In lieu of the procedures set forth in subdivision (2), and  
36          subject to the determination of the department that it  
37          reasonably approximates income as determined under this  
38          article, any member to which subdivision (1) does not apply  
39          may determine its income on the basis of the consolidated  
40          profit and loss statement that includes the member and that  
41          is prepared for filing with the Securities and Exchange  
42          Commission by related corporations. If the member is not  
43          required to file with the Securities and Exchange Commission,  
44          the department may allow the use of the consolidated profit  
45          and loss statement prepared for reporting to shareholders and  
46          subject to review by an independent auditor. If the statements  
47          referred to in this subdivision do not reasonably approximate



- 1 income as determined under this article, the department may  
2 accept those statements with appropriate adjustments to  
3 approximate that income.
- 4 (4) If a unitary business includes income from a pass through  
5 entity, the income to be included in the total income of the  
6 combined group shall be the member of the combined group's  
7 direct and indirect distributive share of the pass through  
8 entity's unitary business income.
- 9 (5) All dividends paid by one (1) to another of the members of  
10 the combined group shall, to the extent those dividends are  
11 paid out of the earnings and profits of the unitary business  
12 included in the combined report, in the current or an earlier  
13 year, be eliminated from the income of the recipient. This  
14 subdivision does not apply to dividends received from  
15 members of the unitary business that are not a part of the  
16 combined group.
- 17 (6) Except as otherwise provided by rule, business income  
18 from an intercompany transaction between members of the  
19 same combined group shall be deferred in a manner similar  
20 to the manner provided in 26 CFR 1.1502-13. Upon the  
21 occurrence of any of the following events, deferred business  
22 income resulting from an intercompany transaction between  
23 members of a combined group shall be restored to the income  
24 of the seller, and shall be apportioned as business income  
25 earned immediately before the event:
- 26 (A) the object of a deferred intercompany transaction is:
- 27 (i) resold by the buyer to an entity that is not a member  
28 of the combined group;
- 29 (ii) resold by the buyer to an entity that is a member of  
30 the combined group for use outside the unitary business  
31 in which the buyer and seller are engaged; or
- 32 (iii) converted by the buyer to a use outside the unitary  
33 business in which the buyer and seller are engaged; or
- 34 (B) the buyer and seller are no longer members of the same  
35 combined group, regardless of whether the members  
36 remain unitary.
- 37 (7) A charitable expense incurred by a member of a combined  
38 group shall, to the extent allowable as a deduction pursuant  
39 to Section 170 of the Internal Revenue Code, be subtracted  
40 first from the business income of the combined group (subject  
41 to the income limitations of that section applied to the entire  
42 business income of the group), and any remaining amount  
43 shall then be treated as a nonbusiness expense allocable to the  
44 member that incurred the expense (subject to the income  
45 limitations of that section applied to the nonbusiness income  
46 of that specific member). Any charitable deduction disallowed  
47 under the foregoing requirement set forth in this subdivision,

1 but allowed as a carryover deduction in a subsequent year,  
2 shall be treated as originally incurred in the subsequent year  
3 by the same member, and the rules of this section shall apply  
4 in the subsequent year in determining the allowable deduction  
5 in that year.

6 (8) Gain or loss from the sale or exchange of capital assets,  
7 property described by Section 1231(a)(3) of the Internal  
8 Revenue Code, and property subject to an involuntary  
9 conversion shall be removed from the total separate net  
10 income of each member of a combined group and shall be  
11 apportioned and allocated as follows:

12 (A) For each class of gain or loss (short term capital, long  
13 term capital, Internal Revenue Code Section 1231, and  
14 involuntary conversions) all members' business gain and  
15 loss for the class shall be combined (without netting  
16 between such classes), and each class of net business gain  
17 or loss separately apportioned to each member using the  
18 member's apportionment percentage determined under  
19 section 4 of this chapter.

20 (B) Each taxpayer member shall then net its apportioned  
21 business gain or loss for all classes, including any such  
22 apportioned business gain and loss from other combined  
23 groups, against the taxpayer member's nonbusiness gain  
24 and loss for all classes allocated to Indiana, using the rules  
25 of Sections 1231 and 1222 of the Internal Revenue Code,  
26 without regard to any of the taxpayer member's gains or  
27 losses from the sale or exchange of capital assets, Section  
28 1231 property, and involuntary conversions that are  
29 nonbusiness items allocated to another state.

30 (C) Any resulting state source income (or loss, if the loss is  
31 not subject to the limitations of Section 1211 of the  
32 Internal Revenue Code) of a taxpayer member produced  
33 by the application of the preceding subsections shall then  
34 be applied to all other state source income or loss of that  
35 member.

36 (D) Any resulting state source loss of a member that is  
37 subject to the limitations of Section 1211 of the Internal  
38 Revenue Code shall be carried forward or carried back by  
39 that member, and shall be treated as state source  
40 short-term capital loss incurred by that member for the  
41 year for which the carryover or carryback applies.

42 (9) Any expense of one (1) member of the unitary group that  
43 is directly or indirectly attributable to the nonbusiness or  
44 exempt income of another member of the unitary group shall  
45 be allocated to that other member as corresponding  
46 nonbusiness or exempt expense, as appropriate.

47 Sec. 7. As a filing convenience, and without changing the

1       **respective liability of the group members, members of a combined**  
 2       **reporting group may annually elect to designate one (1) taxpayer**  
 3       **member of the combined group to file a single return in the form**  
 4       **and manner prescribed by the department, in lieu of filing their**  
 5       **own respective returns. However, the taxpayer designated to file**  
 6       **the single return:**

7               **(1) consents to act as surety with respect to the tax liability of**  
 8               **all other taxpayers properly included in the combined report;**  
 9               **and**

10              **(2) agrees to act as agent on behalf of those taxpayers for the**  
 11              **year of the election for tax matters relating to the combined**  
 12              **report for that year.**

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

16       **Sec. 8. (a) Taxpayer members of a unitary group that meet the**  
 17       **requirements of section 9 of this chapter may elect to determine**  
 18       **each of their apportioned shares of the net business income or loss**  
 19       **of the combined group pursuant to a water's edge election. Under**  
 20       **a water's edge election, taxpayer members shall take into account**  
 21       **all or a portion of the income and apportionment factors of only**  
 22       **certain members otherwise included in the combined group**  
 23       **pursuant to IC 6-3-2-2(p), as follows:**

24              **(1) The entire income and apportionment factors of any**  
 25              **member incorporated in the United States or formed under**  
 26              **the laws of any state, the District of Columbia, or any**  
 27              **territory or possession of the United States.**

28              **(2) The entire income and apportionment factors of any**  
 29              **member, regardless of the place incorporated or formed, if**  
 30              **the average of the member's property, payroll, and sales**  
 31              **factors within the United States (as determined under**  
 32              **IC 6-3-2-2.4) is twenty percent (20%) or more.**

33              **(3) The entire income and apportionment factors of any**  
 34              **member that is:**

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

37                      **(B) a foreign sales corporation as described in Sections 921**  
 38                      **through 927 of the Internal Revenue Code; or**

39                      **(C) an export trade corporation, as described in Sections**  
 40                      **970 to 971 of the Internal Revenue Code.**

41              **(4) Any member not described in subdivisions (1) through (3)**  
 42              **shall include the portion of its income derived from or**  
 43              **attributable to sources within the United States, as**  
 44              **determined under the Internal Revenue Code without regard**  
 45              **to federal treaties, and its apportionment factors related to**  
 46              **the income.**

47              **(5) Any member that is a "controlled foreign corporation," as**

1 defined in Section 957 of the Internal Revenue Code, to the  
2 extent of the income of that member that is defined in Section  
3 952 of Subpart F of the Internal Revenue Code (Subpart F  
4 income), not excluding lower-tier subsidiaries' distributions  
5 of such income that were previously taxed, as determined  
6 without regard to federal treaties, and the apportionment  
7 factors related to that income. Any item of income received by  
8 a controlled foreign corporation shall be excluded if that  
9 income was subject to an effective rate of income tax imposed  
10 by a foreign country greater than ninety percent (90%) of the  
11 maximum rate of tax specified in Section 11 of the Internal  
12 Revenue Code.

13 (6) Any member that earns more than twenty percent (20%)  
14 of its income, directly or indirectly, from intangible property  
15 or service related activities that are deductible against the  
16 business income of other members of the combined group, to  
17 the extent of that income and the apportionment factors  
18 related to the property or service.

19 (7) The entire income and apportionment factors of any  
20 member that is doing business in a tax haven. If the member's  
21 business activity within a tax haven is entirely outside the  
22 scope of the laws, provisions, and practices that cause the  
23 jurisdiction to meet the criteria set forth in IC 6-3-1-38 for a  
24 tax haven, the activity of the member shall be treated as not  
25 having been conducted in a tax haven.

26 **Sec. 9. (a)** A water's edge election is effective only if made on a  
27 timely-filed, original return for a tax year by every member of the  
28 unitary business subject to tax under this article. The department  
29 shall develop rules under IC 4-22-2 governing the impact, if any, on  
30 the scope or application of a water's edge election, including  
31 termination or deemed election, resulting from a change in the  
32 composition of the unitary group, the combined group, the  
33 taxpayer members, and any other similar change.

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

37 (c) In the discretion of the department, a water's edge election  
38 may be disregarded in part or in whole, and the income and  
39 apportionment factors of any member of the taxpayer's unitary  
40 group may be included in the combined report without regard to  
41 the provisions of this section and section 8 of this chapter, if:

42 (1) any member of the unitary group fails to comply with any  
43 provision of IC 6-3-2-2(p) or this chapter; or

44 (2) a person, corporation, or pass through entity otherwise not  
45 included in the water's edge combined group was availed of  
46 with a substantial objective of avoiding state adjusted gross  
47 income tax.

1           (d) A water's edge election is binding for and applicable to the  
 2 tax year it is made and all tax years thereafter for a period of ten  
 3 (10) years. It may be withdrawn or reinstated after withdrawal,  
 4 prior to the expiration of the ten (10) year period, only upon  
 5 written request for reasonable cause based on extraordinary  
 6 hardship due to unforeseen changes in state tax statutes, law, or  
 7 policy, and only with the written permission of the department. If  
 8 the department grants a withdrawal of election, the department  
 9 shall impose reasonable conditions as necessary to prevent the  
 10 evasion of tax or to clearly reflect income for the election period  
 11 prior to or after the withdrawal. Upon the expiration of the ten (10)  
 12 year period, a taxpayer may withdraw from the water's edge  
 13 election. The withdrawal must be made in writing within one (1)  
 14 year of the expiration of the election, and is binding for a period of  
 15 ten (10) years, subject to the same conditions as applied to the  
 16 original election. If no withdrawal is properly made, the water's  
 17 edge election shall be in place for an additional ten (10) year  
 18 period, subject to the same conditions as applied to the original  
 19 election.

20           **Sec. 10. IC 6-3-2-16 applies to the combined reporting**  
 21 **requirements under this chapter."**

22           Page 110, between lines 14 and 15, begin a new paragraph and  
 23 insert:

24           "SECTION 68. [EFFECTIVE UPON PASSAGE] (a) The  
 25 department of state revenue shall adopt rules under IC 4-22-2 to  
 26 implement IC 6-3-2-2 and IC 6-3-2-20, both as amended by this act,  
 27 and IC 6-3-2.6, as added by this act. Notwithstanding  
 28 IC 4-22-2-37.1, the department of state revenue may adopt  
 29 emergency rules under IC 4-22-2-37.1 for this purpose and an  
 30 emergency rule adopted under this SECTION expires on the latest  
 31 of the following:

32           (1) The date on which the emergency rule specifies that the  
 33 emergency rule expires.

34           (2) The date that another emergency rule adopted under this  
 35 SECTION or a permanent rule adopted under IC 4-22-2  
 36 supersedes or repeals a previously adopted emergency rule.

37           (3) January 1, 2013.

38           (b) Not later than September 1, 2010, the department of state  
 39 revenue, with the assistance of the office of management and  
 40 budget and the budget agency, shall submit to the legislative  
 41 council in an electronic format under IC 5-14-6 a report that:

42           (1) makes recommendations concerning any legislative  
 43 changes that are necessary or desirable to implement  
 44 IC 6-3-2-2 and IC 6-3-2-20, both as amended by this act, and  
 45 IC 6-3-2.6, as added by this act; and

46           (2) contains a projection of the differences in revenue that the  
 47 state is likely to receive in the period beginning January 1,

1           **2011, and ending December 2016, as a result of the**  
2           **implementation of IC 6-3-2-2 and IC 6-3-2-20, both as**  
3           **amended by this act, and IC 6-3-2.6, as added by this act, and**  
4           **an explanation of the assumptions used by the department of**  
5           **state revenue to make the projection.**  
6           **The department of state revenue shall present the findings in its**  
7           **report to the commission on state tax and financing policy on the**  
8           **date specified by the commission.**  
9           **(c) This SECTION expires January 1, 2013."**  
10          Renumber all SECTIONS consecutively.  
            (Reference is to ESB 239 as printed February 22, 2010.)

---

Representative Pelath