



Reprinted
February 2, 2010

SENATE BILL No. 236

DIGEST OF SB 236 (Updated February 1, 2010 4:41 pm - DI 58)

Citations Affected: IC 6-3; IC 6-3.1.

Synopsis: State tax matters. Amends the definition of federal "Internal Revenue Code" used in Indiana statutes and rules to refer to the Internal Revenue Code in effect on January 1, 2010. Requires that two years be used for the net operating loss carryback period for taxpayers (instead of the five years allowed under the federal Worker, Homeownership, and Business Assistance Act of 2009). Requires that federal income tax withholding statements and annual withholding tax reports must be filed electronically with the department of state revenue if an employer or a person or entity acting on behalf of an employer files more than 25 federal income tax withholding statements with the department in the calendar year. Provides that any entity that submits incremental income tax withholdings, including a nonprofit organization, and that is a high growth company with new high skilled jobs, could qualify for the economic development for a growing economy tax credit if approved for the credit by the Indiana economic development corporation. Repeals the power of Indiana economic development corporation to grant the credit to a specified nonprofit organization. Suspends, for taxable years beginning in 2010 and 2011, the taking of the patent income exemption, teacher summer employment tax credit, enterprise zone loan interest credit, neighborhood assistance credit, maternity home tax credit, enterprise zone investment cost tax credit, community revitalization enhancement district tax credit, the tax credit for making available a health benefit plan, and the small employer qualified wellness program tax credit.

Effective: November 6, 2009 (retroactive); January 1, 2010 (retroactive); July 1, 2010.

Hershman, Kenley, Charbonneau

January 11, 2010, read first time and referred to Committee on Tax and Fiscal Policy.
January 28, 2010, amended, reported favorably — Do Pass.
February 1, 2010, read second time, amended, ordered engrossed.

SB 236—LS 6943/DI 73+



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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 236

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 6-3-1-11, AS AMENDED BY P.L.182-2009(ss),
2 SECTION 188, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 11. (a) The
4 term "Internal Revenue Code" means the Internal Revenue Code of
5 1986 of the United States as amended and in effect on ~~February 17,~~
6 ~~2009; January 1, 2010.~~

7 (b) Whenever the Internal Revenue Code is mentioned in this
8 article, the particular provisions that are referred to, together with all
9 the other provisions of the Internal Revenue Code in effect on ~~February~~
10 ~~17, 2009; January 1, 2010~~, that pertain to the provisions specifically
11 mentioned, shall be regarded as incorporated in this article by reference
12 and have the same force and effect as though fully set forth in this
13 article. To the extent the provisions apply to this article, regulations
14 adopted under Section 7805(a) of the Internal Revenue Code and in
15 effect on ~~February 17, 2009; January 1, 2010~~, shall be regarded as
16 rules adopted by the department under this article, unless the
17 department adopts specific rules that supersede the regulation.

SB 236—LS 6943/DI 73+



1 (c) An amendment to the Internal Revenue Code made by an act
 2 passed by Congress before ~~February 17, 2009~~, **January 1, 2010**, that
 3 is effective for any taxable year that began before January 1, ~~2009~~,
 4 **2010**, and that affects:

- 5 (1) individual adjusted gross income (as defined in Section 62 of
 6 the Internal Revenue Code);
 7 (2) corporate taxable income (as defined in Section 63 of the
 8 Internal Revenue Code);
 9 (3) trust and estate taxable income (as defined in Section 641(b)
 10 of the Internal Revenue Code);
 11 (4) life insurance company taxable income (as defined in Section
 12 801(b) of the Internal Revenue Code);
 13 (5) mutual insurance company taxable income (as defined in
 14 Section 821(b) of the Internal Revenue Code); or
 15 (6) taxable income (as defined in Section 832 of the Internal
 16 Revenue Code);

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

19 SECTION 2. IC 6-3-2-2.5, AS AMENDED BY P.L.182-2009(ss),
 20 SECTION 192, IS AMENDED TO READ AS FOLLOWS
 21 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.5. (a)
 22 This section applies to a resident person.

23 (b) Resident persons are entitled to a net operating loss deduction.
 24 The amount of the deduction taken in a taxable year may not exceed
 25 the taxpayer's unused Indiana net operating losses carried back or
 26 carried over to that year.

27 (c) An Indiana net operating loss equals the taxpayer's federal net
 28 operating loss for a taxable year as calculated under Section 172 of the
 29 Internal Revenue Code, adjusted for the modifications required by
 30 IC 6-3-1-3.5.

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

32 (1) The modifications that are to be applied are those
 33 modifications required under IC 6-3-1-3.5 for the same taxable
 34 year in which each net operating loss was incurred.

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

40 (e) Subject to the limitations contained in subsection (g), an Indiana
 41 net operating loss carryback or carryover shall be available as a
 42 deduction from the taxpayer's adjusted gross income (as defined in

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1 IC 6-3-1-3.5) in the carryback or carryover year provided in subsection
 2 (f).
 3 (f) Carrybacks and carryovers shall be determined under this
 4 subsection as follows:
 5 (1) An Indiana net operating loss shall be an Indiana net operating
 6 loss carryback to each of the carryback years preceding the
 7 taxable year of the loss.
 8 (2) An Indiana net operating loss shall be an Indiana net operating
 9 loss carryover to each of the carryover years following the taxable
 10 year of the loss.
 11 (3) Carryback years shall be determined by reference to the
 12 number of years allowed for carrying back a net operating loss
 13 under Section 172(b) of the Internal Revenue Code. However,
 14 with respect to the carryback period for a net operating loss:
 15 (A) for which ~~an eligible small business, as defined in Section~~
 16 ~~172(b)(1)(H)(iv) of the Internal Revenue Code; a taxpayer~~
 17 made an election to use five (5) years instead of two (2) years
 18 under Section 172(b)(1)(H) of the Internal Revenue Code, two
 19 (2) years shall be used instead of five (5) years; or
 20 (B) that is a qualified disaster loss for which the taxpayer
 21 elected to have the net operating loss carryback period with
 22 respect to the loss year determined without regard to Section
 23 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall
 24 be used.
 25 (4) Carryover years shall be determined by reference to the
 26 number of years allowed for carrying over net operating losses
 27 under Section 172(b) of the Internal Revenue Code.
 28 (5) A taxpayer who makes an election under Section 172(b)(3) of
 29 the Internal Revenue Code to relinquish the carryback period with
 30 respect to a net operating loss for any taxable year shall be
 31 considered to have also relinquished the carryback of the Indiana
 32 net operating loss for purposes of this section.
 33 (g) The entire amount of the Indiana net operating loss for any
 34 taxable year shall be carried to the earliest of the taxable years to which
 35 (as determined under subsection (f)) the loss may be carried. The
 36 amount of the Indiana net operating loss remaining after the deduction
 37 is taken under this section in a taxable year may be carried back or
 38 carried over as provided in subsection (f). The amount of the Indiana
 39 net operating loss carried back or carried over from year to year shall
 40 be reduced to the extent that the Indiana net operating loss carryback
 41 or carryover is used by the taxpayer to obtain a deduction in a taxable
 42 year until the occurrence of the earlier of the following:

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1 (1) The entire amount of the Indiana net operating loss has been
 2 used as a deduction.
 3 (2) The Indiana net operating loss has been carried over to each
 4 of the carryover years provided by subsection (f).
 5 SECTION 3. IC 6-3-2-2.6, AS AMENDED BY P.L.182-2009(ss),
 6 SECTION 193, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.6. (a)
 8 This section applies to a corporation or a nonresident person.
 9 (b) Corporations and nonresident persons are entitled to a net
 10 operating loss deduction. The amount of the deduction taken in a
 11 taxable year may not exceed the taxpayer's unused Indiana net
 12 operating losses carried back or carried over to that year.
 13 (c) An Indiana net operating loss equals the taxpayer's federal net
 14 operating loss for a taxable year as calculated under Section 172 of the
 15 Internal Revenue Code, derived from sources within Indiana and
 16 adjusted for the modifications required by IC 6-3-1-3.5.
 17 (d) The following provisions apply for purposes of subsection (c):
 18 (1) The modifications that are to be applied are those
 19 modifications required under IC 6-3-1-3.5 for the same taxable
 20 year in which each net operating loss was incurred.
 21 (2) The amount of the taxpayer's net operating loss that is derived
 22 from sources within Indiana shall be determined in the same
 23 manner that the amount of the taxpayer's adjusted income derived
 24 from sources within Indiana is determined under section 2 of this
 25 chapter for the same taxable year during which each loss was
 26 incurred.
 27 (3) An Indiana net operating loss includes a net operating loss that
 28 arises when the modifications required by IC 6-3-1-3.5 exceed the
 29 taxpayer's federal taxable income (as defined in Section 63 of the
 30 Internal Revenue Code), if the taxpayer is a corporation, or when
 31 the modifications required by IC 6-3-1-3.5 exceed the taxpayer's
 32 federal adjusted gross income (as defined by Section 62 of the
 33 Internal Revenue Code), if the taxpayer is a nonresident person,
 34 for the taxable year in which the Indiana net operating loss is
 35 determined.
 36 (e) Subject to the limitations contained in subsection (g), an Indiana
 37 net operating loss carryback or carryover shall be available as a
 38 deduction from the taxpayer's adjusted gross income derived from
 39 sources within Indiana (as defined in section 2 of this chapter) in the
 40 carryback or carryover year provided in subsection (f).
 41 (f) Carrybacks and carryovers shall be determined under this
 42 subsection as follows:

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- 1 (1) An Indiana net operating loss shall be an Indiana net operating
- 2 loss carryback to each of the carryback years preceding the
- 3 taxable year of the loss.
- 4 (2) An Indiana net operating loss shall be an Indiana net operating
- 5 loss carryover to each of the carryover years following the taxable
- 6 year of the loss.
- 7 (3) Carryback years shall be determined by reference to the
- 8 number of years allowed for carrying back a net operating loss
- 9 under Section 172(b) of the Internal Revenue Code. However,
- 10 with respect to the carryback period for a net operating loss:
- 11 (A) for which ~~an eligible small business, as defined in Section~~
- 12 ~~172(b)(1)(H)(iv) of the Internal Revenue Code; a taxpayer~~
- 13 made an election to use five (5) years instead of two (2) years
- 14 under Section 172(b)(1)(H) of the Internal Revenue Code, two
- 15 (2) years shall be used instead of five (5) years; or
- 16 (B) that is a qualified disaster loss for which the taxpayer
- 17 elected to have the net operating loss carryback period with
- 18 respect to the loss year determined without regard to Section
- 19 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall
- 20 be used.
- 21 (4) Carryover years shall be determined by reference to the
- 22 number of years allowed for carrying over net operating losses
- 23 under Section 172(b) of the Internal Revenue Code.
- 24 (5) A taxpayer who makes an election under Section 172(b)(3) of
- 25 the Internal Revenue Code to relinquish the carryback period with
- 26 respect to a net operating loss for any taxable year shall be
- 27 considered to have also relinquished the carryback of the Indiana
- 28 net operating loss for purposes of this section.
- 29 (g) The entire amount of the Indiana net operating loss for any
- 30 taxable year shall be carried to the earliest of the taxable years to which
- 31 (as determined under subsection (f)) the loss may be carried. The
- 32 amount of the Indiana net operating loss remaining after the deduction
- 33 is taken under this section in a taxable year may be carried back or
- 34 carried over as provided in subsection (f). The amount of the Indiana
- 35 net operating loss carried back or carried over from year to year shall
- 36 be reduced to the extent that the Indiana net operating loss carryback
- 37 or carryover is used by the taxpayer to obtain a deduction in a taxable
- 38 year until the occurrence of the earlier of the following:
- 39 (1) The entire amount of the Indiana net operating loss has been
- 40 used as a deduction.
- 41 (2) The Indiana net operating loss has been carried over to each
- 42 of the carryover years provided by subsection (f).

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

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

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

10 (i) In the case of a life insurance company that claims an operations
11 loss deduction under Section 810 of the Internal Revenue Code, this
12 section shall be applied by:

13 (1) substituting the corresponding provisions of Section 810 of the
14 Internal Revenue Code in place of references to Section 172 of
15 the Internal Revenue Code; and

16 (2) substituting life insurance company taxable income (as
17 defined in Section 801 the Internal Revenue Code) in place of
18 references to taxable income (as defined in Section 63 of the
19 Internal Revenue Code).

20 (j) For purposes of an amended return filed to carry back an Indiana
21 net operating loss:

22 (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1),
23 means the due date of the return for the taxable year in which the
24 net operating loss was incurred; and

25 (2) the term "date the payment was due", as used in
26 IC 6-8.1-9-2(c), means the due date of the return for the taxable
27 year in which the net operating loss was incurred.

28 SECTION 4. IC 6-3-2-21.7, AS ADDED BY P.L.223-2007,
29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JANUARY 1, 2010 (RETROACTIVE)]: Sec. 21.7. (a) This section
31 applies to a qualified patent issued to a taxpayer after December 31,
32 2007.

33 (b) As used in this section, "invention" has the meaning set forth in
34 35 U.S.C. 100(a).

35 (c) As used in this section, "qualified patent" means:

36 (1) a utility patent issued under 35 U.S.C. 101; or

37 (2) a plant patent issued under 35 U.S.C. 161;

38 after December 31, 2007, for an invention resulting from a
39 development process conducted in Indiana. The term does not include
40 a design patent issued under 35 U.S.C. 171.

41 (d) As used in this section, "qualified taxpayer" means a taxpayer
42 that on the effective filing date of the claimed invention:

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- 1 (1) is either:
- 2 (A) an individual or corporation, if the number of employees
- 3 of the individual or corporation, including affiliates as
- 4 specified in 13 CFR 121.103, does not exceed five hundred
- 5 (500) persons; or
- 6 (B) a nonprofit organization or nonprofit corporation as
- 7 specified in:
- 8 (i) 37 CFR 1.27(a)(3)(ii)(A) or 37 CFR 1.27(a)(3)(ii)(B); or
- 9 (ii) IC 23-17; and
- 10 (2) is domiciled in Indiana.
- 11 (e) Subject to subsections (g), ~~and~~ (h), **and** (i), in determining
- 12 adjusted gross income or taxable income under IC 6-3-1-3.5 or
- 13 IC 6-5.5-1-2, a qualified taxpayer is entitled to an exemption from
- 14 taxation under IC 6-3-1 through IC 6-3-7 for the following:
- 15 (1) Licensing fees or other income received for the use of a
- 16 qualified patent.
- 17 (2) Royalties received for the infringement of a qualified patent.
- 18 (3) Receipts from the sale of a qualified patent.
- 19 (4) Subject to subsection (f), income from the taxpayer's own use
- 20 of the taxpayer's qualified patent to produce the claimed
- 21 invention.
- 22 (f) The exemption provided by subsection (e)(4) may not exceed the
- 23 fair market value of the licensing fees or other income that would be
- 24 received by allowing use of the qualified taxpayer's qualified patent by
- 25 someone other than the taxpayer. The fair market value referred to in
- 26 this subsection must be determined in each taxable year in which the
- 27 qualified taxpayer claims an exemption under subsection (e)(4).
- 28 (g) The total amount of exemptions claimed under this section by a
- 29 qualified taxpayer in a taxable year may not exceed five million dollars
- 30 (\$5,000,000).
- 31 (h) A taxpayer may not claim an exemption under this section with
- 32 respect to a particular qualified patent for more than ten (10) taxable
- 33 years. Subject to the provisions of this section, the following amount of
- 34 the income, royalties, or receipts described in subsection (e) from a
- 35 particular qualified patent is exempt:
- 36 (1) Fifty percent (50%) for each of the first five (5) taxable years
- 37 in which the exemption is claimed for the qualified patent.
- 38 (2) Forty percent (40%) for the sixth taxable year in which the
- 39 exemption is claimed for the qualified patent.
- 40 (3) Thirty percent (30%) for the seventh taxable year in which the
- 41 exemption is claimed for the qualified patent.
- 42 (4) Twenty percent (20%) for the eighth taxable year in which the

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exemption is claimed for the qualified patent.
(5) Ten percent (10%) each year for the ninth and tenth taxable year in which the exemption is claimed for the qualified patent.
(6) No exemption under this section for the particular qualified patent after the eleventh taxable year in which the exemption is claimed for the qualified patent.

(i) A taxpayer may not claim an exemption under this section for a taxable year that begins in 2010 or 2011. The number of taxable years that an exemption may be taken and the percentage of the income, royalties, and receipts that is set forth in subsection (h) are not affected by the suspension of the exemption for taxable years beginning in 2010 and 2011.

(j) To receive the exemption provided by this section, a qualified taxpayer must claim the exemption on the qualified taxpayer's annual state tax return or returns in the manner prescribed by the department. The qualified taxpayer shall submit to the department all information that the department determines is necessary for the determination of the exemption provided by this section.

(k) On or before December 1 of each year, the department shall provide an evaluation report to the legislative council, the budget committee, and the Indiana economic development corporation. The evaluation report must contain the following:

- (1) The number of taxpayers claiming an exemption under this section.
- (2) The sum of all the exemptions claimed under this section.
- (3) The North American Industry Classification System code for each taxpayer claiming an exemption under this section.
- (4) Any other information the department considers appropriate, including the number of qualified patents for which an exemption was claimed under this section.

The report required under this subsection must be in an electronic format under IC 5-14-6.

SECTION 5. IC 6-3-4-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 16.5. (a) This section applies to:**

- (1) Form W-2 federal income tax withholding statements; and**
 - (2) Form WH-3 annual withholding tax reports;**
- filed with the department after December 31, 2010.**

(b) If an employer or any person or entity acting on behalf of an employer files more than twenty-five (25) Form W-2 federal income tax withholding statements with the department in a calendar year, all Form W-2 federal income tax withholding

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1 statements and Form WH-3 annual withholding tax reports filed
2 with the department in that calendar year by the employer or the
3 person or entity acting on behalf of the employer must be filed in
4 an electronic format specified by the department.

5 SECTION 6. IC 6-3.1-2-8 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
7 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 8. A tax credit may not
8 be taken under this chapter for a taxable year that begins in 2010
9 or 2011.**

10 SECTION 7. IC 6-3.1-7-8 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
12 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 8. A tax credit may not
13 be taken under this chapter for a taxable year that begins in 2010
14 or 2011.**

15 SECTION 8. IC 6-3.1-9-7 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
17 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 7. A tax credit may not
18 be taken under this chapter for a taxable year that begins in 2010
19 or 2011.**

20 SECTION 9. IC 6-3.1-10-10 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
22 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 10. A tax credit may not
23 be taken under this chapter for a taxable year that begins in 2010
24 or 2011.**

25 SECTION 10. IC 6-3.1-13-10 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]:
27 Sec. 10. As used in this chapter, "taxpayer" means a person,
28 corporation, partnership, or other entity that has any state tax liability
29 or that submits incremental income tax withholdings under
30 IC 6-3-4-8.

31 SECTION 11. IC 6-3.1-14-9 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
33 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 9. A tax credit may not
34 be taken under this chapter for a taxable year that begins in 2010
35 or 2011.**

36 SECTION 12. IC 6-3.1-19-7 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
38 JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 7. A tax credit may not
39 be taken under this chapter for a taxable year that begins in 2010
40 or 2011.**

41 SECTION 13. IC 6-3.1-31-14 IS ADDED TO THE INDIANA
42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 14. A tax**
2 **credit may not be taken under this chapter for a taxable year that**
3 **begins in 2010 or 2011.**
4 SECTION 14. IC 6-3.1-31.2-11 IS ADDED TO THE INDIANA
5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 11. A tax**
7 **credit may not be taken under this chapter for a taxable year that**
8 **begins in 2010 or 2011.**
9 SECTION 15. IC 6-3.1-13-27 IS REPEALED [EFFECTIVE
10 JANUARY 1, 2010 (RETROACTIVE)].
11 SECTION 16. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 236, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective date in SECTION 3 with "[EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]".

Replace the effective dates in SECTIONS 5 through 12 with "[EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]".

Page 4, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 3. IC 6-3-2-2.6, AS AMENDED BY P.L.182-2009(ss), SECTION 193, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person.

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried back or carried over to that year.

(c) An Indiana net operating loss equals the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for the modifications required by IC 6-3-1-3.5.

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

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred.

(2) The amount of the taxpayer's net operating loss that is derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's adjusted income derived from sources within Indiana is determined under section 2 of this chapter for the same taxable year during which each loss was incurred.

(3) An Indiana net operating loss includes a net operating loss that arises when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal taxable income (as defined in Section 63 of the Internal Revenue Code), if the taxpayer is a corporation, or when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal adjusted gross income (as defined by Section 62 of the Internal Revenue Code), if the taxpayer is a nonresident person, for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana

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net operating loss carryback or carryover shall be available as a deduction from the taxpayer's adjusted gross income derived from sources within Indiana (as defined in section 2 of this chapter) in the carryback or carryover year provided in subsection (f).

(f) Carrybacks and carryovers shall be determined under this subsection as follows:

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

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

(3) Carryback years shall be determined by reference to the number of years allowed for carrying back a net operating loss under Section 172(b) of the Internal Revenue Code. However, with respect to the carryback period for a net operating loss:

(A) for which ~~an eligible small business, as defined in Section 172(b)(1)(H)(iv) of the Internal Revenue Code, a taxpayer made an election to use five (5) years instead of two (2) years under Section 172(b)(1)(H) of the Internal Revenue Code, two (2) years shall be used instead of five (5) years; or~~

(B) that is a qualified disaster loss for which the taxpayer elected to have the net operating loss carryback period with respect to the loss year determined without regard to Section 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall be used.

(4) Carryover years shall be determined by reference to the number of years allowed for carrying over net operating losses under Section 172(b) of the Internal Revenue Code.

(5) A taxpayer who makes an election under Section 172(b)(3) of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be considered to have also relinquished the carryback of the Indiana net operating loss for purposes of this section.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried back or carried over as provided in subsection (f). The amount of the Indiana net operating loss carried back or carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryback

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or carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

- (1) The entire amount of the Indiana net operating loss has been used as a deduction.
- (2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

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

- (1) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or
- (2) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(i) In the case of a life insurance company that claims an operations loss deduction under Section 810 of the Internal Revenue Code, this section shall be applied by:

- (1) substituting the corresponding provisions of Section 810 of the Internal Revenue Code in place of references to Section 172 of the Internal Revenue Code; and
- (2) substituting life insurance company taxable income (as defined in Section 801 the Internal Revenue Code) in place of references to taxable income (as defined in Section 63 of the Internal Revenue Code).

(j) For purposes of an amended return filed to carry back an Indiana net operating loss:

- (1) the term "due date of the return", as used in IC 6-8.1-9-1(a)(1), means the due date of the return for the taxable year in which the net operating loss was incurred; and
- (2) the term "date the payment was due", as used in IC 6-8.1-9-2(c), means the due date of the return for the taxable year in which the net operating loss was incurred."

Page 5, line 25, after "section" insert "**for a taxable year that begins in 2010 or 2011. The number of taxable years that an exemption may be taken and the percentage of the income, royalties, and receipts that is set forth in subsection (h) are not affected by the suspension of the exemption for taxable years beginning in 2010 and 2011.**".

Page 5, delete lines 26 through 28.

Page 6, line 23, delete "(a)".

Page 6, line 23, delete "awarded under this" and insert "**taken under**".

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this chapter for a taxable year that begins in 2010 or 2011."

Page 6, delete lines 24 through 25.

Page 6, line 28, delete "awarded under this" and insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 6, delete lines 29 through 30.

Page 6, line 33, delete "(a)".

Page 6, line 33, delete "awarded under this" and insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 6, delete lines 34 through 35.

Page 6, line 38, delete "awarded under this" and insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 6, delete line 39.

Page 6, line 42, delete "awarded under this" and insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 7, delete lines 1 through 2.

Page 7, line 5, delete "awarded under this" and insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 7, delete line 6.

Page 7, line 9, after "be" insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 7, delete lines 10 through 11.

Page 7, line 14, after "be" insert "**taken under this chapter for a taxable year that begins in 2010 or 2011."**

Page 7, delete lines 15 through 16.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 236 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 8, Nays 3.

SENATE MOTION

Madam President: I move that Senate Bill 236 be amended to read as follows:

Page 9, between lines 24 and 25, begin a new paragraph and insert:
"SECTION 10. IC 6-3.1-13-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]:
Sec. 10. As used in this chapter, "taxpayer" means a person, corporation, partnership, or other entity that has any state tax liability

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or that submits incremental income tax withholdings under IC 6-3-4-8."

Page 10, between lines 2 and 3, begin a new paragraph and insert:
"SECTION 15. IC 6-3.1-13-27 IS REPEALED [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]."

Renumber all SECTIONS consecutively.

(Reference is to SB 236 as printed January 29, 2010.)

HERSHMAN

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