

# 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:**

- 1           Replace the effective date in SECTION 3 with "[EFFECTIVE  
2 JANUARY 1, 2010 (RETROACTIVE)]".
- 3           Replace the effective dates in SECTIONS 5 through 12 with  
4 "[EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]".
- 5           Page 4, between lines 4 and 5, begin a new paragraph and insert:  
6 "SECTION 3. IC 6-3-2-2.6, AS AMENDED BY P.L.182-2009(ss),  
7 SECTION 193, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.6. (a)  
9 This section applies to a corporation or a nonresident person.
- 10          (b) Corporations and nonresident persons are entitled to a net  
11 operating loss deduction. The amount of the deduction taken in a  
12 taxable year may not exceed the taxpayer's unused Indiana net  
13 operating losses carried back or carried over to that year.
- 14          (c) An Indiana net operating loss equals the taxpayer's federal net  
15 operating loss for a taxable year as calculated under Section 172 of the  
16 Internal Revenue Code, derived from sources within Indiana and  
17 adjusted for the modifications required by IC 6-3-1-3.5.
- 18          (d) The following provisions apply for purposes of subsection (c):  
19           (1) The modifications that are to be applied are those

1 modifications required under IC 6-3-1-3.5 for the same taxable  
2 year in which each net operating loss was incurred.

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

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

18 (e) Subject to the limitations contained in subsection (g), an Indiana  
19 net operating loss carryback or carryover shall be available as a  
20 deduction from the taxpayer's adjusted gross income derived from  
21 sources within Indiana (as defined in section 2 of this chapter) in the  
22 carryback or carryover year provided in subsection (f).

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

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

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

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

35 (A) for which ~~an eligible small business, as defined in Section~~  
36 ~~172(b)(1)(H)(iv) of the Internal Revenue Code, a taxpayer~~  
37 made an election to use five (5) years instead of two (2) years  
38 under Section 172(b)(1)(H) of the Internal Revenue Code, two

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

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

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

15 (g) The entire amount of the Indiana net operating loss for any  
16 taxable year shall be carried to the earliest of the taxable years to which  
17 (as determined under subsection (f)) the loss may be carried. The  
18 amount of the Indiana net operating loss remaining after the deduction  
19 is taken under this section in a taxable year may be carried back or  
20 carried over as provided in subsection (f). The amount of the Indiana  
21 net operating loss carried back or carried over from year to year shall  
22 be reduced to the extent that the Indiana net operating loss carryback  
23 or carryover is used by the taxpayer to obtain a deduction in a taxable  
24 year until the occurrence of the earlier of the following:

25 (1) The entire amount of the Indiana net operating loss has been  
26 used as a deduction.

27 (2) The Indiana net operating loss has been carried over to each  
28 of the carryover years provided by subsection (f).

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

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

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

38 (i) In the case of a life insurance company that claims an operations

1 loss deduction under Section 810 of the Internal Revenue Code, this  
2 section shall be applied by:

3 (1) substituting the corresponding provisions of Section 810 of the  
4 Internal Revenue Code in place of references to Section 172 of  
5 the Internal Revenue Code; and

6 (2) substituting life insurance company taxable income (as  
7 defined in Section 801 the Internal Revenue Code) in place of  
8 references to taxable income (as defined in Section 63 of the  
9 Internal Revenue Code).

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

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

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

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

24 Page 5, delete lines 26 through 28.

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

26 Page 6, line 23, delete "awarded under this" and insert "**taken under**  
27 **this chapter for a taxable year that begins in 2010 or 2011."**

28 Page 6, delete lines 24 through 25.

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

31 Page 6, delete lines 29 through 30.

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

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

35 Page 6, delete lines 34 through 35.

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

38 Page 6, delete line 39.

- 1 Page 6, line 42, delete "awarded under this" and insert "**taken under**
- 2 **this chapter for a taxable year that begins in 2010 or 2011.**".
- 3 Page 7, delete lines 1 through 2.
- 4 Page 7, line 5, delete "awarded under this" and insert "**taken under**
- 5 **this chapter for a taxable year that begins in 2010 or 2011.**".
- 6 Page 7, delete line 6.
- 7 Page 7, line 9, after "be" insert "**taken under this chapter for a**
- 8 **taxable year that begins in 2010 or 2011.**".
- 9 Page 7, delete lines 10 through 11.
- 10 Page 7, line 14, after "be" insert "**taken under this chapter for a**
- 11 **taxable year that begins in 2010 or 2011.**".
- 12 Page 7, delete lines 15 through 16.
- 13 Renumber all SECTIONS consecutively.  
(Reference is to SB 236 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 8, Nays 3.

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**Hershman**

**Chairperson**