

## ARTICLE 1.1. GROSS INCOME TAX

### Rule 1. Definitions

#### 45 IAC 1.1-1-1 Applicability

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1

Sec. 1. In addition to the definitions in IC 6-2.1, the definitions in this rule apply throughout this article. (*Department of State Revenue; 45 IAC 1.1-1-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999*)

#### 45 IAC 1.1-1-2 "Agent" defined

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-10; IC 6-2.1-1-11

Sec. 2. (a) "Agent" means a person or entity authorized by another to transact business on its behalf.

(b) A taxpayer will qualify as an agent if it meets both of the following requirements:

(1) The taxpayer must be under the control of another. An agency relationship is not established unless the taxpayer is under the control of another in transacting business on its behalf. The relationship must be intended by both parties and may be established by contract or implied from the conduct of the parties. The representation of one (1) party that it is the agent of another party without the manifestation of consent and control by the alleged principal is insufficient to establish an agency relationship.

(2) The taxpayer must not have any right, title, or interest in the money or property received from the transaction. The income must pass through, actually or substantially, to the principal or a third party, with the taxpayer being merely a conduit through which the funds pass between a third party and the principal.

(*Department of State Revenue; 45 IAC 1.1-1-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999*)

#### 45 IAC 1.1-1-3 "Business situs" defined

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2; IC 6-2.1-2-2

Sec. 3. (a) A "business situs" arises where possession and control of a property right have been localized in some business or investment activity away from the owner's domicile.

(b) A taxpayer may establish a business situs in ways, including, but not limited to, the following:

(1) Use, occupancy, or operation of an office, shop, construction site, store, warehouse, factory, agency route, or other place where the taxpayer's affairs are conducted.

(2) Performance of services.

(3) Maintenance of an inventory or stocks of goods for sale, distribution, or manufacture.

(4) Sale or distribution of merchandise from company-owned vehicles where title to the goods passes at the time of sale or distribution.

(5) Acceptance of orders without the right of approval or rejection in another state.

(6) Ownership, leasing, rental, or other business activities connected with income-producing property (real or personal).

(7) Ownership (in whole or part) of a partnership doing business in Indiana unless the ownership is that of a limited partner who does not participate in the control of the business.

(8) Other business or investment activities, other than de minimis, performed on behalf of the taxpayer by an employee of the taxpayer. These activities shall be considered together, not in isolation, in deciding if they are de minimis.

(*Department of State Revenue; 45 IAC 1.1-1-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 691, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

#### 45 IAC 1.1-1-4 "Capital asset" defined

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2; IC 6-2.1-2-1

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Sec. 4. (a) Except as provided in subsection (b), "capital asset" includes all property, whether real, tangible, or intangible, held by a taxpayer.

(b) The term does not include the following:

- (1) Stock in trade of a retail merchant held primarily for sale to a customer in the regular course of a trade or business.
- (2) Inventory held as raw materials.
- (3) Goods in the process of being finished.
- (4) Finished goods held for sale or for use in the production of a product to be sold.

(c) Except as provided in subsection (d), if a taxpayer converts a noncapital asset to a capital asset, it remains a capital asset in the hands of that taxpayer.

(d) A noncapital asset that is converted to a capital asset but is:

- (1) not depreciated;
- (2) utilized by the taxpayer for less than a year;
- (3) subsequently returned to inventory; and
- (4) sold in the ordinary course of the taxpayer's business;

will not be considered a capital asset for purposes of 45 IAC 1.1-2-8. (*Department of State Revenue; 45 IAC 1.1-1-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999*)

**45 IAC 1.1-1-5 "Constructive receipt" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-10; IC 6-2.1-1-11

Sec. 5. (a) "Constructive receipt" means an item of gross income which is not actually received by a taxpayer but is:

- (1) credited to the taxpayer;
- (2) made available for the taxpayer's withdrawal;
- (3) paid to another for the taxpayer's direct benefit; or
- (4) income to which the taxpayer is entitled.

(b) The term includes, but is not limited to, the following:

- (1) The partial or complete forgiveness of a debt.
- (2) Payment of a taxpayer's obligations by a third party for the taxpayer's direct benefit. The assumption of an outstanding lien on equipment sold by the taxpayer is not a payment for the taxpayer's direct benefit.
- (3) The sale, by a lender, of property pledged or assigned by the taxpayer as collateral for a loan.
- (4) Amounts credited to a partner as its distributive share of partnership income.
- (5) The amount of known liabilities discharged as a result of a sale or other disposition of property, and from which the taxpayer receives a direct benefit. For example, if a taxpayer sells a piece of equipment for five hundred thousand dollars (\$500,000) and uses part of the proceeds to pay off a two hundred thousand dollar (\$200,000) lien against the piece of equipment, the amount received by the taxpayer for gross income tax purposes is five hundred thousand dollars (\$500,000).

(*Department of State Revenue; 45 IAC 1.1-1-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999*)

**45 IAC 1.1-1-6 "Consumed" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-1

Sec. 6. (a) Except as provided in this subsection, "consumed" means the immediate dissipation of a property by combustion, use, or application. The term does not mean the immediate loss of tools, dies, equipment, rolling stock or its accessories, machinery, or furnishings due to obsolescence, discarding, disuse, depreciation, damage, wear, or breakage.

(b) As used in this section, "immediate dissipation" means the instantaneous loss of minute particles of a property so that the property disperses, separates into parts, and diminishes to the point of disappearing. The dissipation of the total property need not be accomplished immediately but within such time as is reasonably requisite. (*Department of State Revenue; 45 IAC 1.1-1-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999*)

**45 IAC 1.1-1-7 "Department" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1

Sec. 7. "Department" means the department of state revenue. (*Department of State Revenue; 45 IAC 1.1-1-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999*)

**45 IAC 1.1-1-8 "Discount" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-2

Sec. 8. (a) Except as provided in subsection (b), "discount" means the reduction in the purchase price of an item customarily granted by a seller and taken by a buyer in consideration of prompt payment of an invoice.

(b) The term does not include the following:

(1) A purchase which requires an additional activity or condition to be fulfilled before the reduction in purchase price will be granted.

(2) A patronage dividend.

(c) A discount may be allowed where expenses of the purchaser tied to the sale, such as freight charges or delivery charges, are paid by the seller to complete the sale. However, what is otherwise an expense of the seller cannot be changed to look like a discount to escape being included in gross income. (*Department of State Revenue; 45 IAC 1.1-1-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 692, eff Jan 1, 1999*)

**45 IAC 1.1-1-9 "Dividend" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-2

Sec. 9. (a) "Dividend" means a distribution payable by a corporation or association out of its earnings, profits, or some other source not impairing capital. The term includes a patronage dividend paid in cash or stock by a cooperative association. The distribution must be made in proportion to a stockholder's share of outstanding stock or membership interest therein.

(b) The term does not include the return of insurance premiums which is a reduction of cost. The term also does not include a stock dividend which merely increases the number of shares outstanding but representing exactly the same property interest. (*Department of State Revenue; 45 IAC 1.1-1-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999*)

**45 IAC 1.1-1-10 "Gross income" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1; IC 6-2.1-4

Sec. 10. (a) Except as otherwise provided in this article, "gross income" means the entire amount of receipts received by a taxpayer, actually or constructively, without any deductions of any kind or nature except as specifically allowed under IC 6-2.1-4.

(b) Amounts included in gross income are:

(1) cash and checks;

(2) notes or other property of any value or kind;

(3) services of any value or kind; and

(4) anything else of value received by or credited to the taxpayer in lieu of cash.

(c) The term does not include any amounts specifically excluded by IC 6-2.1-1. (*Department of State Revenue; 45 IAC 1.1-1-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999*)

**45 IAC 1.1-1-11 "Gross income of a broker" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-8

Sec. 11. (a) "Gross income of a broker" means the commissions earned from brokerage transactions without any deductions of any kind or character.

(b) As used in this section, "broker" includes a securities broker and a commodity broker. However, it does not include a taxpayer who purchases produce or otherwise acquires the ownership of a stock of commodities carried and handled for sale in its normal trade or business. The essential function of a broker is making a bargain for contracting parties without taking possession, management, control, or title of the goods involved. A broker cannot make a contract in its own name, except under the following circumstances:

- (1) The contract is made with the knowledge and consent of the broker's principal.
- (2) The contract is justified by the usages of trade of the particular business involved.

Otherwise, to qualify as a brokerage transaction, the contract must be in the name of the principal.

(c) As used in this section, "brokerage transaction" means a group of activities whereby a taxpayer is paid a commission for bringing a buyer and seller together and completing a sale of property.

(d) A taxpayer acting as a broker for goods and, at the same time, as a retail merchant for the same or similar type of goods, will report its gross income under subsection (a) only to the extent that its income is received from acting as a broker. (*Department of State Revenue; 45 IAC 1.1-1-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999*)

#### **45 IAC 1.1-1-12 "Gross income of a drug wholesaler" defined**

Authority: IC 6-8.1-3-3

Affected: IC 16-18-2-199

Sec. 12. (a) Except as provided in subsection (e), "gross income of a drug wholesaler" means the gross earnings that are derived from the sale of legend drugs.

(b) As used in subsection (a), "drug wholesaler" means a taxpayer who in the ordinary course of its business buys and sells legend drugs it has not manufactured to the following:

- (1) Another person for the purpose of resale.
- (2) A pharmacy, pharmacist, practitioner, hospital, or other health care provider. The sale of the legend drug must be for the lawful distribution, administration, or dispensation by the health care provider or the health care provider's agent or employee.

(c) As used in subsection (a), "gross earnings" means gross receipts less the original purchase price paid, without any other deductions of any kind or character.

(d) As used in this section, "legend drug" shall have the same meaning that it does in IC 16-18-2-199.

(e) Gross income of a drug wholesaler which is not gross earnings derived from the sale of legend drugs shall be reported and taxed at the appropriate rate. (*Department of State Revenue; 45 IAC 1.1-1-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999*)

#### **45 IAC 1.1-1-13 "Gross income of a grain dealer" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-5; IC 6-2.1-1-7

Sec. 13. (a) Except as provided in subsections (d) and (e), "gross income of a grain dealer" means the gross earnings that are derived from the sale of the whole grain or soybeans.

(b) As used in this section, "gross earnings" means the difference between the selling price and the cost of the whole grain and soybeans plus the gross income from charges for service, storage, cleaning, and handling.

(c) As used in this section, "cost of the whole grain and soybeans" means the purchase price of the raw product plus transportation charges for freight in and freight out.

(d) A taxpayer acting as a grain dealer and, at the same time, as a wholesale or retail merchant of goods processed or manufactured from whole grain or soybeans will report its gross income under subsection (a) only to the extent that its income is received from acting as a grain dealer.

(e) If the United States government prescribes a purchase price and a sale price, "gross income of a grain dealer" means the specific margin fixed between the purchase price and the sale price, without any deduction of any kind or character. (*Department of State Revenue; 45 IAC 1.1-1-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 693, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-1-14 "Gross income of an insurance carrier" defined**

Authority: IC 6-8.1-3-3

Affected: IC 27-13

Sec. 14. (a) Except as otherwise provided in this section, "gross income of an insurance carrier" means the total amount of premiums, interest, dividends, commissions, rents, and other earnings with respect to conducting the business of an insurance company. The term does not include the following:

(1) The amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability, to the extent that the insurance carrier is required to maintain the policy reserve or other policy liability by the department of insurance.

(2) Premium income derived from business conducted outside Indiana on which a domestic insurance carrier pays a premium tax of one percent (1%) or more. As used in this subdivision, "domestic insurance carrier" means an insurance company organized under the insurance laws of Indiana.

(3) Interest derived from securities issued by the federal government and from bonds of Indiana municipalities or taxing subdivisions.

(4) An amount retained by the taxpayer from premiums ceded under contracts for reinsurance when such amount is already included in gross income.

(b) As used in subsection (a), "premiums" means income which consists of gross premiums received from all sources. The term includes premiums ceded under contracts for reinsurance. The term does not include returned premiums, policy dividends, coupons (whether paid in cash or credited or used to pay renewal premiums), or reinsurance assumed premiums on which a tax reimbursement of one percent (1%) or more is made to the ceding company.

(c) As used in subsection (a), "other earnings with respect to conducting the business of an insurance company" includes the difference between the purchase price and the selling price of all property, tangible and intangible, representing the investment of funds. In determining investment earnings, expenses incurred with respect to a transaction are not deductible.

(d) As used in subsection (a), for a domestic farmers mutual insurance company, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means claims paid during the taxable period or that portion placed in reserve for payment of claims.

(e) As used in subsection (a), for a domestic carrier selling life insurance and annuities or accident and health insurance, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means the portion of underwriting income and investment income required to maintain reserves. The provisions of 45 IAC 1.1-6-11 apply to the calculation of reserves for a domestic carrier selling life insurance and annuities or accident and health insurance.

(f) As used in subsection (a), for a domestic casualty and fire insurance carrier, "amount of gross earnings which becomes or is used to maintain a policy reserve or other policy liability" means the percentage which is the ratio that the average of the policy reserves and other policy liabilities bears to the average of all admitted assets of the insurance carrier times the gross income determined for the taxable year. The reserves or other policy liabilities used in computing this ratio are limited to those reserves or liabilities designated to support policy losses.

(g) As used in subsection (f), "liabilities designated to support policy losses" include losses, loss adjustment expenses, unearned premiums, and drafts outstanding reported in the Liabilities, Surplus, and Other Funds section to the Annual Statement filed with the Indiana department of insurance. The term does not include liabilities, such as accounts payable or accrued and deferred expenses (such as contingent commissions, interest, taxes, and dividends).

(h) Gross income which is not earnings with respect to conducting the business of an insurance company will be reported and taxed at the appropriate rate. Examples of such income are:

- (1) service income, such as fees from data processing services;
- (2) receipts from the sale of tangible personal property, such as office furniture;
- (3) receipts from vending machines; and
- (4) receipts from the operation of an employee cafeteria.

Negative reserves are not deductible from gross income which is not earnings with respect to conducting the business of an insurance company. As used in this subsection, "negative reserves" means the amount by which policy reserves exceed total earnings with respect to conducting the business of an insurance company.

(i) Amounts received by an insurance carrier are exempt from the gross income tax if the company pays Indiana a premium tax of more than one percent (1%).

(j) For purposes of this section and 45 IAC 1.1-6-11, a health maintenance organization licensed under IC 27-13 shall be treated

the same as an insurance carrier selling accident and health insurance on all income from providing prepaid health care services. (*Department of State Revenue; 45 IAC 1.1-1-14; filed Oct 16, 1998, 3:45 p.m.: 22 IR 694, eff Jan 1, 1999*)

**45 IAC 1.1-1-15 "Gross income of a livestock dealer" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-3

Sec. 15. (a) "Gross income of a livestock dealer" means the gross earnings derived from the resale of livestock or from the sale of products resulting from the slaughtering and processing of livestock.

(b) As used in this section, "livestock dealer" means a taxpayer engaged in the business of purchasing live cattle, sheep, or swine for immediate resale or for slaughtering and processing such livestock for resale.

(c) As used in this section, "gross earnings" means the difference between the selling price and the purchase price of the livestock, without any other deduction of any kind or character.

(d) Gross income which is not derived from the resale of livestock or from the sale of products resulting from the slaughtering and processing of livestock shall be reported and taxed at the appropriate rate. (*Department of State Revenue; 45 IAC 1.1-1-15; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-1-16 "Gross income of a qualified lessor" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-9

Sec. 16. (a) "Gross income of a qualified lessor" means the excess of the total rental payments received under a lease described in subsection (b) over the purchase price of the property leased prorated on an annual basis.

(b) As used in this section, "qualified lessor" means a taxpayer who:

(1) purchases tangible personal property solely for the purpose of leasing it to others;

(2) has no other purpose of ownership in the property; and

(3) leases the property to another for a term of at least five (5) years requiring the lessee to make rental payments equal to the cost of the property plus finance charges.

However, a taxpayer who acquires a lease agreement described in this subsection or the payments required under such lease, in the ordinary course of its regularly conducted business, is also a qualified lessor.

(c) "Qualified lessor" does not include the following taxpayers:

(1) A manufacturer of the property covered by a lease agreement described in subsection (b).

(2) A taxpayer engaged in the business of selling, as a distributor at wholesale or retail or otherwise, the property covered by a lease agreement described in subsection (b).

(3) A taxpayer who directly or indirectly controls, is controlled by, or is under common control with, a taxpayer described in subdivision (1) or (2).

As used in this subsection, "control" means the possession, directly or indirectly, of the power to influence or cause the influence of the management and policies of another entity, either through the ownership of voting securities, by contract, or otherwise.

(d) A taxpayer will report its gross income under subsection (a) only to the extent that its income is received from acting as a qualified lessor. (*Department of State Revenue; 45 IAC 1.1-1-16; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999*)

**45 IAC 1.1-1-17 "Gross income of a securities dealer" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-8

Sec. 17. (a) "Gross income of a securities dealer" means the gross earnings from sales of securities carried in the dealer's own inventory.

(b) As used in subsection (a), "gross earnings" means the difference between the purchase price of the securities and their selling price without any deductions of any kind or character.

(c) As used in subsection (a), "securities dealer" includes a dealer in commercial paper.

(d) A taxpayer acting as a securities dealer and, at the same time, in another capacity will report its gross income under

subsection (a) only to the extent that its income is received from acting as a securities dealer. (*Department of State Revenue; 45 IAC 1.1-1-17; filed Oct 16, 1998, 3:45 p.m.: 22 IR 695, eff Jan 1, 1999*)

**45 IAC 1.1-1-18 "Gross income of a wholesale grocer" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-4

Sec. 18. (a) Except as provided in subsection (e), "gross income of a wholesale grocer" means the gross earnings from the sale of groceries, tobacco products, or expendable household supplies to retail food establishments.

(b) As used in this section, "gross earnings" means gross receipts less the cost of the groceries, tobacco products, and expendable household supplies, without any other deduction of any kind or character.

(c) As used in this section, "cost of the groceries, tobacco products, and expendable household supplies" includes the following items only:

(1) The original purchase price.

(2) Freight in transportation expenses.

(3) Any other expenses reasonably necessary and directly related to the preparation of the groceries, tobacco products, and expendable household supplies for resale to retail food establishments.

(d) As used in this section, "expendable household supplies" means tangible personal property substantially related to or common to the upkeep or maintenance of a household that is consumed as it is used.

(e) As used in this section, "retail food establishment" means a business primarily engaged in the sale of food or food products to the public. The term includes the following:

(1) A grocery.

(2) A delicatessen.

(3) A restaurant.

(4) A lunch counter.

(5) A coffee shop.

(6) A retail food facility on the premises of a business not primarily engaged in the sale of food or food products to the public.

(f) A taxpayer will report its gross income under subsection (a) only to the extent that its income is received from acting as a wholesale grocer. (*Department of State Revenue; 45 IAC 1.1-1-18; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-1-19 "Retail merchant" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-12

Sec. 19. (a) "Retail merchant" means a taxpayer who is regularly and occupationally engaged in the business of purchasing and reselling or renting tangible personal property.

(b) The possession of a retail merchant certificate is not conclusive evidence that a taxpayer is or is not a retail merchant. (*Department of State Revenue; 45 IAC 1.1-1-19; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999*)

**45 IAC 1.1-1-20 "Retail sale" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-1

Sec. 20. (a) "Retail sale" means a transaction, other than a wholesale sale, in which the ownership of tangible personal property is transferred for consideration in the ordinary course of the seller's regularly conducted business.

(b) To qualify as a retail sale under subsection (a), the property must have been previously acquired by the seller for the purpose of reselling it.

(c) As used in this section, the term has the same meaning as "selling at retail". (*Department of State Revenue; 45 IAC 1.1-1-20; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999*)

**45 IAC 1.1-1-21 "Royalty" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-1-2

Sec. 21. (a) "Royalty" means a payment received by the grantor of a patent, copyright, or similar right and payable proportionately to the use made of the right by the grantee.

(b) The term includes the share of the product or profit from a mining or oil operation paid to the owner of the property. The term does not include the payment for the use of real estate in a mineral lease that is rent. (*Department of State Revenue; 45 IAC 1.1-1-21; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999*)

**45 IAC 1.1-1-22 "Taxpayer" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 23-5-1-2

Sec. 22. (a) "Taxpayer" includes the following:

- (1) A regular C corporation.
  - (2) A regular C corporation that is a partner of a partnership.
  - (3) A not-for-profit organization on nonexempt income.
  - (4) A business trust as defined in IC 23-5-1-2.
  - (5) Indiana or a political subdivision of Indiana to the extent engaged in private or proprietary activities.
  - (6) A political organization as defined in Section 527 of the Internal Revenue Code.
  - (7) A publicly traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code.
  - (8) A receiver, trustee, or conservator of a taxpayer subject to IC 6-2.1.
  - (9) An individual or entity required to withhold gross income taxes pursuant to IC 6-2.1-6.
  - (10) A fund, account, or trust treated as a corporation under Section 468B of the Internal Revenue Code or its accompanying regulations.
  - (11) A limited liability company, except when it is composed of a single member and is disregarded as an entity for federal income tax purposes.
- (b) Except as provided in subsection (a), the term does not include the following:
- (1) An individual.
  - (2) A partnership.
  - (3) A trust.
  - (4) An estate.
  - (5) An S corporation exempt under IC 6-2.1-3-24.
  - (6) A small business corporation as defined in IC 6-2.1-3-24.5.
  - (7) An organization wholly exempt from the gross income tax under IC 6-2.1-3.

(*Department of State Revenue; 45 IAC 1.1-1-22; filed Oct 16, 1998, 3:45 p.m.: 22 IR 696, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-1-23 "Wholesale sale" defined**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-2-1; IC 6-2.1-2-1.2

Sec. 23. (a) "Wholesale sale" means the sale of tangible personal property (other than capital assets of the seller) under the following circumstances:

- (1) For resale without any change in its form.
- (2) To be consumed in the direct production of other tangible personal property by a business in:
  - (A) manufacturing;
  - (B) processing;
  - (C) refining;
  - (D) repairing;



- (E) mining;
- (F) agriculture; or
- (G) horticulture.

(3) To be incorporated as a necessary part of other tangible personal property produced by a business in:

- (A) manufacturing;
- (B) assembling;
- (C) constructing;
- (D) refining; or
- (E) processing.

(4) To be consumed in professional use by doctors, hospitals, embalmers, funeral directors, and tonsorial parlors. In these circumstances, tangible personal property is limited to drugs, medical and dental preparations, and other similar materials.

(5) To be consumed in the business of industrial cleaning.

(6) To be consumed in the business of rendering public utility service.

(b) A sale under subsection (a)(3) will include the receipts from industrial processing or servicing, such as tire retreading and the enameling or plating of tangible personal property, if the property is owned and produced for sale by the business for whom the servicing or processing is performed.

(c) As used in this section, the term does not include a sale to a division, subdivision, agency, instrumentality, unit, or department of government. (*Department of State Revenue; 45 IAC 1.1-1-23; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999*)

#### **45 IAC 1.1-1-24 "Withholding agent" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-17; IC 6-2.1-6

Sec. 24. (a) "Withholding agent" means a person or entity required to withhold gross income taxes under IC 6-2.1-6.

(b) The term includes a person or entity making payments to a nonresident contractor. The term also includes a prime contractor making payments to nonresident subcontractors. The following contracts are examples of service work that would require withholding on payments to nonresident contractors subject to the gross income tax:

- (1) A construction contract of any kind.
- (2) A contract for the performance of or participation in athletic events and exhibitions, including auto races.
- (3) A contract for entertainment, including single entertainment events.
- (4) A contract for the furnishing and installation of tangible personal property.
- (5) A contract for leasing tangible personal property.

(c) As used in this section, "nonresident contractor" does not include a foreign corporation qualified to do business in Indiana. (*Department of State Revenue; 45 IAC 1.1-1-24; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999*)

## **Rule 2. Imposition**

#### **45 IAC 1.1-2-1 Indiana source income**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-2; IC 6-2.1-2-2.5

Sec. 1. (a) Except as otherwise provided in this article or IC 6-2.1, the gross income tax is imposed upon the receipt of:

- (1) the entire gross income of a taxpayer who is a resident or a domiciliary of Indiana; and
- (2) the gross income derived from an activity, a business, or another source within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

(b) A taxpayer described in subsection (a)(2) who has contracted with a commercial printer for printing shall not have taxable gross income from:

- (1) the ownership or leasing by that entity of tangible or intangible property located at the Indiana premises of the commercial printer;
- (2) the sale by that entity of property of any kind produced at and shipped or distributed from the Indiana premises of the commercial printer;

(3) the activities of any kind performed by or on behalf of that entity at the Indiana premises of the commercial printer; and  
(4) the activities of any kind performed by the commercial printer in Indiana for or on behalf of that entity;  
if the taxpayer does not operate a fixed place of business in Indiana. In no event shall the taxpayer be considered to have a fixed place of business in Indiana at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of the taxpayer. (*Department of State Revenue; 45 IAC 1.1-2-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 697, eff Jan 1, 1999*)

**45 IAC 1.1-2-2 Low rate of tax**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-4; IC 6-2.1-2-5

Sec. 2. (a) Except as provided in subsection (b), taxable gross income from the following business transactions is subject to a tax rate of three-tenths of one percent (0.3%):

- (1) Retail and wholesale sales.
- (2) Display advertising, except for receipts from the sale or rental of property or from the rendering of professional services in connection with such advertising.
- (3) Dry cleaning and laundering service, except for coin operated laundry and dry cleaning equipment.
- (4) The rental of water softening and conditioning equipment, including exchanging tanks in the ordinary course of business, but excluding plumbing work incidental to the installation of water softening and conditioning tanks.
- (5) The rental of rooms, lodgings, booths, display spaces, banquet facilities, and other such accommodations for periods of less than thirty (30) days at a location where such accommodations are regularly furnished for a consideration.
- (6) The business of commercial printing that results in printed materials, excluding the business of photocopying.

(b) The low rate of tax provided by subsection (a) is not available to a taxpayer that fails to separate such gross income from all other income in the taxpayer's records and on the taxpayer's return. Also, the low rate of tax does not apply to gross income from a wholesale sale described in IC 6-2.1-2-5. (*Department of State Revenue; 45 IAC 1.1-2-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 698, eff Jan 1, 1999*)

**45 IAC 1.1-2-3 "Display advertising" defined**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-4

Sec. 3. (a) As used in section 2 of this rule, "display advertising" includes:

- (1) outdoor billboards;
  - (2) outdoor posters;
  - (3) outdoor painted displays;
  - (4) print media advertising; and
  - (5) the sale of time by a radio station, a television station, and a cable television operator.
- (b) The term does not include the following:
- (1) The rendering of professional services in connection with such advertising.
  - (2) The sale or rental of tangible property that will be used in display advertising. Examples of such tangible property include the following:
    - (A) Real estate.
    - (B) Painted signs.
    - (C) Electric signs.
    - (D) Neon signs.
    - (E) Novelties.
    - (F) Handbills.
    - (G) Cards.

(*Department of State Revenue; 45 IAC 1.1-2-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 698, eff Jan 1, 1999*)

**45 IAC 1.1-2-4 High rate of tax**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1; IC 6-2.1-2

Sec. 4. (a) Taxable gross income from the following business transactions is subject to a tax rate of one and two-tenths percent (1.2%):

- (1) Producing, transmitting, furnishing, wholesaling, or retailing:
  - (A) electrical energy; or
  - (B) artificial gas, natural gas, or a mixture of the two
- (2) Operating:
  - (A) a steam or electric railway, street car line, motor vehicle, steam or motorboat, or any other vehicle for the transportation of freight or passengers;
  - (B) a pipeline for the transportation of any commodity;
  - (C) a telephone or telegraph line;
  - (D) a water or sewerage system; or
  - (E) any other utility not specifically described in this subdivision.
- (3) Activities described in IC 6-2.1-1-3 through IC 6-2.1-1-9.
- (4) Any activity not specifically described in section 2 of this rule, including the following:
  - (A) The provision of services of any character.
  - (B) The sale of real estate.
  - (C) Rentals.
  - (D) The performance of contracts.
  - (E) The investment of capital.
  - (F) The sale of a capital asset.
  - (G) The provision of cable television.
  - (H) The extension of credit.

(b) If a taxpayer fails to separate, in its records and on its tax return, the gross income subject to the high rate from the gross income subject to the low rate, the taxpayer's entire gross income is subject to the rate imposed by subsection (a). (*Department of State Revenue; 45 IAC 1.1-2-4; filed Oct 16, 1998, 3:45 p.m.; 22 IR 698, eff Jan 1, 1999*)

**45 IAC 1.1-2-5 Services**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-4; IC 6-2.1-3-3

Sec. 5. (a) Gross income derived from the provision of a service of any character within Indiana is subject to the gross income tax. This is true even when a service contract calls for the furnishing of tangible personal property in the performance of the contract. The property is used in Indiana in furtherance of the contract and is not exempt under IC 6-2.1-3-3. The property is intrinsically related to and inherently part of the services to be performed. In other words, the property is essential to and inseparable from the performance of the contract.

(b) Except as otherwise provided in this rule and IC 6-2.1-2-4, gross income derived from the provision of services of any character within Indiana is taxable at the high rate of tax.

(c) Charges for services rendered before delivery of a product such as charges for:

- (1) preparation;
- (2) fabrication;
- (3) alteration;
- (4) modification;
- (5) finishing;
- (6) completion; or
- (7) delivery;

are considered a part of the sales price and taxed at the same rate as the gross income from the sale. As used in this subsection, "delivery" means the bringing of the property to a place agreed on by the parties to the contract. For example, delivery is complete

when the property is brought to the job site under a construction contract.

(d) Gross income derived from the provision of a service within Indiana, with or without the incidental furnishing of tangible personal property, on goods belonging to another is subject to the gross income tax even though such property is moved in interstate commerce before or after the performance of the service.

(e) When a contract provides for the provision of services in a state besides Indiana, gross income derived from the provision of services within Indiana will be determined by multiplying the gross income derived from the contract by the ratio of Indiana activities to total activities provided under the contract. The activities used will be only those related to the services performed and reasonably calculated to effectuate an equitable allocation and apportionment of the taxpayer's gross income under the contract. However, if the percentage of Indiana activities to total activities under the contract is less than five percent (5%), then the entire proceeds of the contract received in that year are exempt from the gross income tax.

(f) The following are examples of services being performed within Indiana:

(1) The sale of advertising time or space by Indiana publishers and broadcasters, even though the buyer is a nonresident, and even though the publication is disseminated in interstate commerce.

(2) The sale of telecommunications, including telephone, telegraph, and noncable television, if the telecommunications originate or terminate in Indiana and are charged to an Indiana address, and the charges are not taxable under the laws of another state.

(3) The provision of cable television services in Indiana regardless of where the television transmissions originate or are received.

(4) The leasing of motion picture films and intangible telecast rights to exhibitors within Indiana.

(5) The operation of radio and television stations within Indiana, including the sale of advertising time to local and national sponsors and the broadcast of local or national programs.

(6) The leasing of tangible personal property delivered to a site in Indiana where the lessor is directly engaged in locating the property in Indiana, and the leasing of tangible personal property delivered to a site outside Indiana where the lessor is not directly engaged in locating the property outside Indiana. The department will look to the totality of the lessor's activities related to the lease formation and execution and the activities related to the purpose of the lease, the use and possession of the leased property, in determining whether the lessor is directly engaged in locating the property in or outside of Indiana. More than a minimal amount of these activities must be conducted in Indiana. For instance, the activity of delivering property to a common carrier in one (1) state for shipment to another state, in and of itself, will not cause the lessor to be directly engaged in locating the property in or outside of Indiana. Also, the manufacture or ownership of property leased to an Indiana lessee, in and of itself, will not cause the lessor to be directly involved in locating the property in Indiana.

*(Department of State Revenue; 45 IAC 1.1-2-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 699, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273)*

**45 IAC 1.1-2-6 Vending machine sales**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2

Sec. 6. (a) A sale of tangible personal property by use of a vending machine is a retail sale.

(b) The gross receipts from a vending machine sale are taxable at the lower rate without any deductions for any amounts paid to the location owner.

(c) Except as provided in subsection (b), all amounts received by a location owner in connection with a vending machine are rental receipts and therefore taxable at the higher rate. *(Department of State Revenue; 45 IAC 1.1-2-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

**45 IAC 1.1-2-7 Nonvending machine sales**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-5

Sec. 7. (a) "Nonvending machine sale" means the sale of a service by use of a coin or card operated machine. The term includes the sale of any service by machine which does not include the dispensing of tangible personal property.

(b) The gross income from a nonvending machine sale and any services associated therewith is taxable at the higher rate.

*(Department of State Revenue; 45 IAC 1.1-2-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

**45 IAC 1.1-2-8 Sale of a capital asset**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-1; IC 6-2.1-2-5

Sec. 8. (a) The gross income from the sale of a capital asset is taxable at the high rate of tax.

(b) The following examples illustrate the taxation of a capital asset:

(1) A corporation sells a milling machine which costs seven thousand dollars (\$7,000) in 1989 for two thousand dollars (\$2,000). The book value of the machine at the time of sale was three thousand dollars (\$3,000). The milling machine is a capital asset and the receipts of two thousand dollars (\$2,000) from the sale are subject to the high rate of tax.

(2) The corporate assets of a retail merchant are sold. The assets include the following:

- (A) Inventory.
- (B) Office supplies.
- (C) Trucks.
- (D) Equipment.
- (E) Good will.
- (F) A building.
- (G) Land.

The inventory is a noncapital asset and the receipts from the sale of inventory are subject to the low rate of tax. The remaining assets are capital assets and the receipts derived from the sale of these assets are subject to the high rate of tax.

(3) A retail merchant removes a noncapital asset from its stock in trade for the purpose of leasing it to a customer for a period of two (2) years. Because the property is converted from being held for sale to being leased for a period of two (2) years, it becomes a capital asset. At the termination of the lease, the asset is returned to the inventory of the taxpayer and sold. Because the asset remains a capital asset, the receipts from the sale are subject to the high rate of tax.

(4) A retail merchant removes a noncapital asset from its stock in trade for the purpose of briefly using it as a demonstrator. The asset is not depreciated, and it is subsequently returned to inventory and sold in the taxpayer's ordinary course of business. The asset does not become a capital asset for purposes of this section and the receipts from the sale of the asset are subject to the low rate of tax.

(5) A manufacturer of business machines sells and also leases such machines. A leased machine becomes a capital asset at the beginning of the lease. Because it is a capital asset, the receipts from the eventual sale of a leased machine by the manufacturer are subject to the high rate of tax.

*(Department of State Revenue; 45 IAC 1.1-2-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999)*

**45 IAC 1.1-2-9 Dry cleaning and laundering**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-4

Sec. 9. (a) Except as provided in subsection (b), gross income derived from the business of dry cleaning and laundering is subject to the low rate of tax.

(b) Gross income derived from coin operated laundry and dry cleaning equipment is subject to the high rate of tax.

(c) As used in this section, "the business of dry cleaning and laundering" means the laundering or dry cleaning of wearing apparel and household goods such as linen, towels, and upholstery.

(d) The business of dry cleaning and laundering does not include the following:

(1) The mending, repairing, or pressing of wearing apparel and household goods when such services are performed entirely apart from dry cleaning and laundering.

(2) A self-service laundry, a laundrette, or similar business unless the actual cleaning services are done by an attendant of the owner.

(3) The furnishing of clean linen, towels, or uniforms unless the taxpayer providing such service also performs the dry cleaning and laundering of the property rented.

(e) A taxpayer may be in the business of dry cleaning and laundering at an established location even though the product is sent

elsewhere for the dry cleaning or laundering. However, a taxpayer who acts as an agent of a laundry or dry cleaner is not in the business of dry cleaning and laundering. (*Department of State Revenue; 45 IAC 1.1-2-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 700, eff Jan 1, 1999*)

**45 IAC 1.1-2-10 Rental income**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-4; IC 6-2.1-2-5

Sec. 10. (a) Except as provided in subsection (b), rental income derived from leasing real or personal property is taxable as a service under section 5 of this rule.

(b) If the leasing agreement is a financing device for a sale of tangible personal property that is normally sold in the regular course of the taxpayer's retail business, the receipts from the contract are taxable as a retail sale.

(c) The department will consider many factors in determining the intent of the parties, including the following:

(1) Whether the lease payments are to be applied to an equity to be acquired by the lessee.

(2) Whether the lessee will acquire title to the goods upon the lessor's receipt of a stated amount of payments under the contract.

(3) Whether the total lease payments for a relatively short period of use make up an inordinately large proportion of the total payments needed for the lessee to secure title.

(4) Whether the lease payments exceed the current fair rental value of like goods.

(5) Whether the lease contains an option to buy at a price nominal in comparison to the value of the property when the option may be exercised.

(6) Whether a part of the lease payments is designated or recognizable as interest or its equivalent.

(d) If a lease is not a financing device but contains an option to buy, payments received by the lessor until the exercise of the option are taxable as a service. (*Department of State Revenue; 45 IAC 1.1-2-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-2-11 Advertising agency**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-5

Sec. 11. (a) The gross income of an advertising agency is subject to the gross income tax at the higher rate except for any income received from the actual sale of tangible personal property.

(b) As used in this section, "gross income" includes reimbursements of costs or expenses under a cost plus a fixed fee or percent of cost contract in which an advertising agency is acting as an independent contractor with respect to any client, including an advertiser or the news media. The term also includes amounts actually or constructively received by an agency by crediting its account or otherwise reducing its liabilities. Income received in an agency capacity is subject to 45 IAC 1.1-6-10. (*Department of State Revenue; 45 IAC 1.1-2-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999*)

**45 IAC 1.1-2-12 Construction contractors**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-5; IC 6-2.1-6-1

Sec. 12. (a) As used in this section, "construction contractor" means a taxpayer obligated under the terms of a contract to furnish the necessary labor or materials, or both, to construct, alter, repair, move, erect, install, or demolish, including excavation and site development:

(1) a highway;

(2) a road;

(3) a railroad;

(4) a building; or

(5) any type of fixed structure, or any part thereof.

The term applies to a general contractor, a prime contractor, and a subcontractor. The term does not apply to a taxpayer who contracts

to provide tangible personal property only, even though the contract requires the taxpayer to provide materials and labor to create the property.

(b) All construction contractors involved in the same project are taxable on the gross income each receives from the performance of a construction contract in Indiana without any deductions for any amounts paid other construction contractors. A nonresident construction contractor is taxable on the gross income from the performance of a construction contract in Indiana even though all work is subcontracted and the nonresident contractor has no other contact with Indiana.

(c) Generally, the gross income derived from the portion of the contract price representing the taxpayer's services is taxable at the high rate of tax. The gross income derived from the portion of the contract price representing materials is taxable at the low rate of tax.

(d) If a construction contractor has a subcontractor, the breakdown of labor and materials provided by the subcontractor must be reported on the contractor's books and records or the total receipts applicable to the subcontracted portion of the contract will be subject to the high rate of tax.

(e) If the construction contractor prefabricates or manufactures tangible personal property prior to delivery to a job site, the cost of the tangible personal property includes the labor to produce the property and the cost to deliver the property to the job site.

(f) Under a cost plus contract, the actual material cost will be subject to the low rate of tax. The labor, overhead, and fixed fee will be subject to the high rate of tax.

(g) If a construction contractor is unable to segregate the portion of the contract price representing the taxpayer's services from the portion of the contract price representing materials on its books and records, an alternative method approved by the department may be used. This method shall be used only for a lump sum or fixed price contract where the contract terms do not segregate a price between service and tangible personal property. (*Department of State Revenue; 45 IAC 1.1-2-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 701, eff Jan 1, 1999*)

#### **45 IAC 1.1-2-13 Distributive share of a corporate partner**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-2-2

Sec. 13. (a) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(b) An amount credited to a corporate partner as its distributive share of partnership income, which is derived from sources within Indiana is subject to the gross income tax. An amount previously subjected to the gross income tax because it was included in the partner's distributive share but not actually distributed is not subject to the gross income tax again when it is actually distributed.

(c) For purposes of this subsection, all income of the partnership shall be considered business income. If a partnership does business in a state besides Indiana, a partner's distributive share of partnership income which is derived from sources within Indiana, for gross income tax purposes, shall be determined by multiplying the partner's distributive share by a fraction. The numerator of the fraction shall be the sum of:

- (1) the property factor;
- (2) the payroll factor; and
- (3) the sales factor;

of the partnership. The denominator of the fraction shall be determined by the number of factors used. The property factor shall be determined under IC 6-3-2-2(c). The payroll factor shall be determined under IC 6-3-2-2(d). The sales factor shall be determined under IC 6-3-2-2(e) and IC 6-3-2-2(f).

(d) The amount credited to a corporate partner as its distributive share of partnership income which is derived from sources within Indiana is taxable at the high rate. (*Department of State Revenue; 45 IAC 1.1-2-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999*)

#### **45 IAC 1.1-2-14 Motor vehicle dealers**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-5

Sec. 14. (a) A payment or credit to a motor vehicle dealer from a manufacturer is taxable at the high rate of tax for the

following services:

- (1) The preparation and cleanup of a new car to make it salable.
- (2) The replacement or repair of a defective part or correction of an improper installation on a recalled car.
- (3) Any work performed on a car that is covered by a factory warranty.

(b) The gross income received by a motor vehicle dealer for services performed after the transfer of a vehicle is subject to the high rate of tax. Transfer of the vehicle takes place when the purchaser takes possession and control of the vehicle and assumes the risk of loss, even though title has not been transferred.

(c) A commission or rebate received by a motor vehicle dealer from a finance company or bank which finances the purchase of a motor vehicle is subject to the high rate of tax.

(d) The provisions of 45 IAC 1.1-6-6 apply to a sale or exchange of motor vehicles between registered motor vehicle dealers. (*Department of State Revenue; 45 IAC 1.1-2-14; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999*)

#### **45 IAC 1.1-2-15 Prizes, premiums, and awards**

Authority: IC 6-8.1-3-3

Affected: IC 25-9-1

Sec. 15. (a) The gross income received as a prize, a premium, or an award from participation in a contest or exhibition is taxable at the high rate of tax.

(b) Except as provided in subsection (c), gross income derived from the operation of a contest or exhibition is taxable at the high rate of tax.

(c) Gross income which is subject to the Indiana Athletic Exhibition Tax under IC 25-9-1 is exempt from the gross income tax. (*Department of State Revenue; 45 IAC 1.1-2-15; filed Oct 16, 1998, 3:45 p.m.: 22 IR 702, eff Jan 1, 1999*)

#### **45 IAC 1.1-2-16 Damages and judgments**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-5; IC 6-2.1-3-11

Sec. 16. (a) Except as otherwise provided in this section, gross income derived from the payment of damages or judgments, whether secured through suit in court or from settlement between the parties involved, is taxable at the high rate of tax.

(b) The portion of the damages or judgment that constitutes the recovery of gross income that would have been subject to the low rate of tax if otherwise paid is taxable at the low rate of tax.

(c) The portion of the damages or judgment that constitutes the recovery of gross income that would have been exempt from the gross income tax if otherwise paid is exempt from the gross income tax.

(d) An insurance recovery for damages to property is not taxable to the extent it is used to replace the damaged property with like kind property within two (2) years from the date of the recovery. As used in this subsection, "like kind" shall have the same meaning that it does in 45 IAC 1.1-6-6. Any amounts not meeting the conditions of this subsection are reported and taxed in the year of receipt. (*Department of State Revenue; 45 IAC 1.1-2-16; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999*)

#### **45 IAC 1.1-2-17 Consignment sale**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-8; IC 6-2.1-5-9

Sec. 17. (a) The consignee shall withhold and pay the gross income tax due on gross income received from a consignment sale.

(b) As used in this section, "consignment sale" means a sale of tangible personal property under an agreement wherein the consignee agrees to:

- (1) accept certain goods from the consignor;
- (2) pay the consignor for any goods sold; and
- (3) return to the consignor any unsold goods.

(c) Because the tax liability of a consignee under subsection (a) is in the nature of a withholding, the consignor is also liable for the tax. Therefore, the consignor may also be pursued for payment of the tax in the case of default by the consignee.

(d) The consignee is also liable for and shall pay the gross income tax due on the gross receipts representing fees, bonuses,



commissions, or other compensation for services rendered whether received by the consignee directly or as a reduction in the amount remitted to the consignor. (*Department of State Revenue; 45 IAC 1.1-2-17; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999*)

**45 IAC 1.1-2-18 Stockholder liability**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-2-9

Sec. 18. (a) A stockholder is liable for a percentage of the unpaid gross income tax of an organization under the following circumstances:

(1) The organization owes unpaid gross income tax at the time of its dissolution, whether assessed before or after its dissolution.

(2) The stockholder receives a distribution of the assets of the organization due to its dissolution.

(b) The tax owed by the stockholder is determined by multiplying the unpaid gross income tax of the organization by the percentage of the total outstanding stock of the organization held by the stockholder at the time of the organization's dissolution. However, the stockholder's liability is limited to the extent of the assets received from the organization. (*Department of State Revenue; 45 IAC 1.1-2-18; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999*)

**45 IAC 1.1-2-19 Sale or transfer of real estate**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1

Sec. 19. (a) Except as provided in subsection (b), the gross income from a sale or transfer of an interest in real estate shall be subject to the gross income tax if the seller or grantor is a taxpayer subject to IC 6-2.1.

(b) The amount of any receipts that represent a mortgage or similar encumbrance, but not any interest due thereon, that exists on real estate at the time of its sale is exempt from the gross income tax under the following circumstances:

(1) The mortgage is paid off as a result of the sale.

(2) The mortgage is assumed by the purchaser.

(3) The property is transferred subject to the mortgage.

If only part of the property covered by a mortgage or similar encumbrance is sold, the exemption is limited to the percentage that the cost of the real estate sold bears to the total cost of all the real estate covered by the mortgage.

(c) A mortgage or similar encumbrance created for the purpose of avoiding the gross income tax shall void the exemption granted under subsection (b).

(d) The gross income from a sale or transfer of an interest in real estate is taxable at the higher rate.

(e) The taxpayer shall pay the gross income tax due to the treasurer of the county in which the real estate is located. The instrument of transfer shall be marked "gross income tax paid" and provide the date of payment, the amount of tax paid, and any other information required by the department.

(f) The county treasurer shall remit the gross income tax collected, less one percent (1%), from the sale or transfer of an interest in real estate to the department on the fifteenth day of January, April, July, and October for the preceding quarterly period. If the average monthly amount due for the preceding year exceeds ten thousand dollars (\$10,000), the county treasurer is required to pay the taxes by electronic fund transfer or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department on or before the date the tax is due.

(g) The county recorder may not accept an instrument of conveyance for recording unless:

(1) it displays the gross income tax paid pursuant to subsection (e); or

(2) it is accompanied by an affidavit, signed by the seller or grantor, which states that gross income tax is not due on the sale or transfer.

(h) Amounts received from the condemnation of real estate, or a sale under threat of condemnation, are exempt from the gross income tax if both of the following conditions are met:

(1) The condemnation is by Indiana or an organization which Indiana has given the power of condemnation.

(2) The proceeds are used to purchase similar property within two (2) years after receipt.

As used in subdivision (2), "similar" means the replacement property is related in service or use to the converted property. Any amounts not meeting the conditions for exemption are reported and taxed in the tax year of receipt. (*Department of State Revenue;*

45 IAC 1.1-2-19; filed Oct 16, 1998, 3:45 p.m.: 22 IR 703, eff Jan 1, 1999)

**45 IAC 1.1-2-20 Liability for tax on sale of real estate**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-2-10

Sec. 20. (a) The receipt of gross income from the sale of real estate is subject to tax. If the seller adds the amount of gross income tax due to the agreed purchase price, the amount is includable in gross income and subject to tax.

(b) Generally, the tax is due at the time the interest in the property is transferred. However, payments from a conditional or installment sale are included in gross income in the year received if such year is before the year in which the interest in the property is transferred.

(c) An entity that receives an interest in real estate, by purchase or from or through a purchaser, is not responsible or liable for determining or paying the tax owed on the gross income received by the seller. (*Department of State Revenue; 45 IAC 1.1-2-20; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999*)

**Rule 3. Exemptions**

**45 IAC 1.1-3-1 Securities issued by the United States**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-3-1

Sec. 1. (a) Earnings paid to holders of securities issued by the federal government are exempt from the gross income tax to the extent the United States Constitution prohibits the states from taxing such income.

(b) As used in this section, "earnings" means the amount paid less the expenses related to such income. The term does not include the gain derived from the sale of such securities.

(c) As used in this section, "securities issued by the federal government" means direct obligations issued by a federal agency. The term does not include the following:

- (1) Securities issued by an entity sponsored by, but not a part of, the federal government.
- (2) Securities guaranteed by, but not issued by, an agency of the federal government.

(d) The exemption provided by subsection (a) applies to the proportionate share of earnings received by a taxpayer from an investment fund that invests in federal government securities. In other words, the exemption passes through to the ultimate taxpayer. (*Department of State Revenue; 45 IAC 1.1-3-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999*)

**45 IAC 1.1-3-2 Sales to the federal government**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-3-2

Sec. 2. (a) Gross income derived from sales to the federal government is taxable unless such income is prohibited from taxation by the United States Constitution.

(b) The income from such sales is taxable even though the gross income tax is paid indirectly by the federal government, either as a reimbursement or as an inclusion in the purchase price. (*Department of State Revenue; 45 IAC 1.1-3-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999*)

**45 IAC 1.1-3-3 Interstate commerce**

Authority: IC 6-8.1-3-3  
Affected: IC 6-2.1-3-3

Sec. 3. (a) Gross income derived from business conducted in interstate commerce is exempt from the gross income tax to the extent such taxation is prohibited by the United States Constitution.

(b) As used in this section, "interstate commerce" means business conducted by the taxpayer between Indiana and another state or a foreign country.

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(c) Gross income derived from the sale of tangible personal property in interstate commerce is not subject to the gross income tax if the sale is not completed in Indiana. The following examples are situations where a sale is not completed in Indiana prior to or after shipment in interstate commerce:

- (1) A sale to a nonresident where the seller, as part of the contract, ships the goods to an out-of-state location via:
  - (A) its own carrier;
  - (B) its contract carrier; or
  - (C) common carrier.
- (2) A sale of fungible goods to a nonresident where delivery of the product occurs out-of-state or at the state line.
- (3) A sale to a nonresident where the goods are picked up in Indiana and delivered to an out-of-state location by a common or contract carrier which was ordered to do so by the buyer.
- (4) A sale to an Indiana buyer by a nonresident with no in-state business situs or activities where the goods are shipped from out-of-state.
- (5) A sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated, and serviced by out-of-state personnel, and the goods are shipped from out-of-state. The in-state business situs or activities will be considered significantly associated with the sale if the sale is initiated, negotiated, or serviced by in-state personnel.
- (6) A sale, not otherwise taxable, to an Indiana buyer by a nonresident where the seller, because of its special skill or expertise, assembles or installs the product at the buyer's place of business without any additional services being rendered. In other words, the services performed are part of the sale and the sale is exempt because it is in interstate commerce.
- (7) A sale of stock to a nonresident, whether made through an Indiana or nonresident broker, that is completed on a security exchange in another state.

(d) Gross income derived from the sale of tangible personal property in interstate commerce is subject to the gross income tax if the sale is completed in Indiana. The following examples are situations where a sale is completed in Indiana prior to or after shipment in interstate commerce:

- (1) A sale to a nonresident where the goods are picked up in Indiana by the buyer via its own carrier.
- (2) A sale to a nonresident where the goods become the property of the buyer but are kept within Indiana by the seller until they are resold by the buyer and delivered at the buyer's direction.
- (3) A sale to an Indiana buyer where delivery is made by the Indiana seller to a nonresident customer of the buyer.
- (4) A sale to a nonresident where the goods are shipped from a point in Indiana to a point in Indiana.
- (5) A sale to the federal government where the goods are shipped to an out-of-state location on a government bill of lading.
- (6) A sale to an Indiana buyer by a nonresident seller after the goods are transported into Indiana.
- (7) A sale to an Indiana buyer by a nonresident seller if the sale:
  - (A) originated from;
  - (B) was channeled through; or
  - (C) was otherwise connected with;

an Indiana business situs established by the seller.

- (8) A sale to an Indiana buyer by a resident seller even though such goods are shipped from outside Indiana.

(e) The following matters are not determinative in whether or not a sale is completed in Indiana:

- (1) The place at which title or risk of loss passes.
- (2) The place at which the goods are inspected, tested, and accepted.
- (3) The place designated by F.O.B. terms.
- (4) The party shown as shipper of record on the bill of lading.

(f) As used in this section, "gross income derived from the sale of tangible personal property" includes income for the performance of services rendered before delivery of a product such as charges for:

- (1) preparation;
- (2) fabrication;
- (3) alteration;
- (4) modification;
- (5) finishing;
- (6) completion; or
- (7) delivery.

(g) As used in this section, "resident" means that the entity referred to is formed or organized under the laws of Indiana or whose commercial domicile is in Indiana.

(h) As used in this section, "nonresident" means that the entity referred to is not formed or organized under the laws of Indiana and its commercial domicile is not in Indiana.

(i) As used in subsections (g) and (h), "commercial domicile" has the same meaning as under 45 IAC 1.1-6-2(e).

(j) As used in this section, "Indiana buyer" and "Indiana seller" include a nonresident if the sale or purchase is from, to, or otherwise significantly associated with, an Indiana business situs established by the nonresident. (*Department of State Revenue; 45 IAC 1.1-3-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 704, eff Jan 1, 1999*)

#### **45 IAC 1.1-3-4 Commercial printing**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3-3.5

Sec. 4. (a) Gross income of a commercial printer derived from the business of commercial printing that results in printed material, excluding the business of photocopying, is exempt from the gross income tax if the printed material is:

- (1) shipped outside Indiana;
- (2) mailed outside Indiana; or
- (3) delivered outside Indiana;

from the commercial printer's premises.

(b) The exemption provided by subsection (a) is not available if the printed material is delivered inside Indiana, even though subsequently shipped, mailed, or delivered outside Indiana. (*Department of State Revenue; 45 IAC 1.1-3-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 705, eff Jan 1, 1999*)

#### **45 IAC 1.1-3-5 Interstate transportation**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3-4

Sec. 5. (a) Gross income derived from the interstate transportation of property or passengers is exempt from the gross income tax under the following conditions:

- (1) The property is transported by truck or rail.
- (2) Passengers are transported by bus or rail.
- (3) The activity involved is an initial, intermediate, or final link in such interstate transportation.

For example, a product whose designation is South Bend is transported by rail to a depot in Indianapolis and off loaded. It is then loaded on a truck for transportation to South Bend. This is the final link in the interstate transportation.

(b) The exemption provided by subsection (a) does not apply to income derived from the transportation of property or passengers between two (2) points in Indiana, even if the property or passengers are later transported out of Indiana or earlier transported into Indiana. For example, a product is shipped by truck from out of state to a warehouse in Indianapolis. The goods are later sold and delivered by truck to South Bend. The transportation of the goods between Indianapolis and South Bend is not the final link in the interstate transportation because the interstate transportation came to an end in Indianapolis.

(c) The exemption provided by subsection (a) only applies to the income of an interstate carrier and not to the income of a taxpayer providing goods or services to an interstate carrier.

(d) Gross income derived from the sale of air transportation or the carriage of persons traveling in air commerce is exempt from the gross income tax under 49 U.S.C. 1513(a). (*Department of State Revenue; 45 IAC 1.1-3-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 706, eff Jan 1, 1999*)

#### **45 IAC 1.1-3-6 Tax collections**

Authority: IC 6-8.1-3-3

Affected: IC 6-6-2.5-35

Sec. 6. (a) As used in this section, "collection agent" means any taxpayer who has been explicitly designated as a collection agent for a tax by the statute under which the tax is imposed. The term includes, in the case of upstream collection statutes such as

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IC 6-6-2.5-35, each reseller who sets out the tax as a separate line item on its invoices and billings.

(b) Except as otherwise provided in this section, a tax that a taxpayer is required to collect as a collecting agent for Indiana or the federal government is exempt from the gross income tax.

(c) Except as otherwise provided in this section, the exemption provided by subsection (b) does not apply to a tax imposed directly upon the collecting agent, even though such tax is passed on to the ultimate consumer as either an addition to or an inclusion in the price of the product sold.

(d) Taxes exempt from the gross income tax under subsection (b) include taxes such as the following:

- (1) The sales tax.
- (2) The Indiana motor fuel tax.
- (3) The federal motor fuel taxes (gasoline and diesel fuel).
- (4) The Indiana special fuel tax.
- (5) The cigarette tax.

Taxes not exempt under subsection (b) include taxes such as the alcoholic beverages tax and the other tobacco products tax. Also, not exempt under subsection (b) is that portion of a tax paid to or retained by a collection agent.

(e) A retailer's excise tax imposed by the United States solely on the sale at retail of tangible personal property is exempt from the gross income tax if:

- (1) the tax is remitted to the appropriate taxing authority; and
- (2) the tax is separately stated as an addition to the price of the property sold.

(f) A manufacturer's excise tax imposed by the United States on motor vehicles, motor vehicle parts, and motor vehicle accessories is exempt from the gross income tax if the tax is separately stated as:

- (1) an addition to the price of the property sold; or
- (2) an inclusion in the price of the property sold.

*(Department of State Revenue; 45 IAC 1.1-3-6; filed Oct 16, 1998, 3:45 p.m.; 22 IR 706, eff Jan 1, 1999)*

#### **45 IAC 1.1-3-7 University sponsored organizations**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3-19; IC 6-2.1-3-23

Sec. 7. (a) Except as provided in subsections (b), (c), and (e), the gross income received by a university sponsored organization is exempt from the gross income tax. As used in this section, "university sponsored organization" means a fraternity, sorority, or student cooperative housing organization which is connected with and supervised by a college, university, or other such educational institution.

(b) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(c) The exemption provided by subsection (a) will be denied under the following circumstances:

- (1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.
- (2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(d) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(e) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code. *(Department of State Revenue; 45 IAC 1.1-3-7; filed Oct 16, 1998, 3:45 p.m.; 22 IR 706, eff Jan 1, 1999)*

#### **45 IAC 1.1-3-8 Religious, charitable, scientific, literary, educational, or civic organizations**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3

Sec. 8. (a) Except as provided in subsections (c), (d), and (f), the gross income received by an organization that is organized

and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes is exempt from the gross income tax. As used in this section, "exclusively" means that the organization is not primarily organized or operated for any purpose other than an exempt purpose.

(b) As used in subsection (a), "civic purposes" means the promotion of the common good and general welfare (social welfare) of the people of the community. An organization that is organized and operated exclusively for civic purposes is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. It is not an organization whose primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. However, the operation of a club or restaurant by a veterans' organization chartered by the United States Congress shall be deemed to be consistent with the exempt purpose of the organization and shall be deemed to be secondary in importance to its primary civic purposes. Further, it is not an organization whose activities include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for political office. In addition, it does not include an organization such as a homeowner or condominium association.

(c) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(d) The exemption provided by subsection (a) will be denied under either of the following circumstances:

(1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.

(2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(e) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(f) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code. (*Department of State Revenue; 45 IAC 1.1-3-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 707, eff Jan 1, 1999*)

#### **45 IAC 1.1-3-9 Fraternal or social organizations**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3

Sec. 9. (a) Except as provided in subsections (b), (c), and (e), a taxpayer organized and operated for fraternal or social purposes or as a business league or association is not subject to the gross income tax on the following income:

(1) Contributions for which the payor does not receive or expect to receive services or tangible personal property.

(2) Tuition fees.

(3) Initiation fees.

(4) Membership fees for which a member does not receive specific services or tangible personal property.

(5) Earnings on or receipts from the sale of intangible property.

(6) Amounts received from conducting a convention, trade show, or exhibition.

(b) The exemption provided by subsection (a) will not apply to an organization if any part of the gross income received is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate of the organization. As used in this subsection, "private benefit or gain" does not include reasonable compensation to an employee for services actually performed.

(c) The exemption provided by subsection (a) will be denied under the following circumstances:

(1) The organization failed to file an application for exemption with the department within one hundred twenty (120) days after its formation.

(2) The organization failed to file a timely annual report with the department within sixty (60) days after being notified of such failure by the department.

(d) The taxpayer's exemption may be reinstated upon a showing by the organization that the failure to timely file was due to excusable neglect.

(e) The exemption provided by subsection (a) does not apply to gross income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code.

(f) As used in this section, "services" means a benefit of any kind, whether direct or indirect.

(g) As used in this section, "specific services" means a distinct or particular benefit, whether direct or indirect. However, the term does not include a member's right to use any or all of a taxpayer's facilities, including the taxpayer's golf, tennis, swimming, or other athletic facilities. (*Department of State Revenue; 45 IAC 1.1-3-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 707, eff Jan 1, 1999*)

**45 IAC 1.1-3-10 S corporation**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-2-2.8; IC 6-3-4-13; IC 6-8.1-10

Sec. 10. (a) A taxpayer is not subject to the gross income tax if it is a corporation which is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2).

(b) A corporation will not lose its exemption under subsection (a) if it fails to comply with the requirements of IC 6-3-4-13 by not withholding the amounts prescribed by the department at the time it pays or credits amounts to a nonresident shareholder as dividends or as a share of the corporation's undistributed taxable income, but it will be subject to the penalties provided under IC 6-8.1-10.

(c) A corporation will not lose its exemption under subsection (a) solely because it has income taxable under Section 1374 or Section 1375 of the Internal Revenue Code. (*Department of State Revenue; 45 IAC 1.1-3-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999*)

**45 IAC 1.1-3-11 Special corporation**

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-10-2.1

Sec. 11. (a) As used in this section, "special corporation" has the same meaning as small business corporation as defined in subsection (b).

(b) As used in subsection (a), "small business corporation" has the same meaning as the definition found in Section 1361(b) of the Internal Revenue Code except that a shareholder may be a qualified trust that forms a part of an employee stock ownership plan under Section 401(a) of the Internal Revenue Code.

(c) Except as provided in subsection (d), a special corporation is not subject to the gross income tax.

(d) A special corporation is subject to the gross income tax if twenty-five percent (25%) or more of its income for the taxable year consists of passive investment income as defined in Section 1362(d)(3)(C) of the Internal Revenue Code.

(e) Upon request, the department must be provided with proof that the corporation qualifies as a special corporation for the taxable year for which the exemption is claimed.

(f) An exemption may not be denied because of a late filed return. However, a special corporation that files a return after the due date seeking an exemption from the gross income tax is subject to a penalty.

(g) The penalty provided by subsection (f) is ten percent (10%) of the corporation's adjusted gross and supplemental net income tax liabilities for the taxable year or ten dollars (\$10) for each day the corporation's income tax return is past due, but not to exceed two hundred fifty dollars (\$250), if no income tax liability is imposed for the taxable year. (*Department of State Revenue; 45 IAC 1.1-3-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999*)

**45 IAC 1.1-3-12 Partnership income**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-1-19

Sec. 12. (a) Generally, gross income received by a partnership is not subject to the gross income tax. However, a publicly traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code will be subject to the gross income tax.

(b) As used in this section, "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization which is not, within the meaning of IC 6-3-1-19, a corporation, a trust, or an estate. The term includes a limited liability company if it is treated as a partnership for federal income tax purposes. (*Department of State Revenue; 45 IAC 1.1-3-12; filed Oct 16, 1998, 3:45 p.m.: 22 IR 708, eff Jan 1, 1999*)

**45 IAC 1.1-3-13 Trust income**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-1-10; IC 6-3-1-14

Sec. 13. (a) Except as provided in subsection (b), gross income received by a trust that is defined as a "person" under IC 6-3-1-14 and is not defined as a "corporation" under IC 6-3-1-10 is exempt from the gross income tax.

(b) Each corporate beneficiary of the trust shall report for gross income tax purposes its proportionate share of the following income:

- (1) Distributable net income determined under Section 643 of the Internal Revenue Code.
- (2) An accumulation distribution determined under Section 665 of the Internal Revenue Code.
- (3) Undistributed capital gain, determined without regard to capital losses, not otherwise included in distributable net income as determined under Section 643 of the Internal Revenue Code.

This amount shall be determined before any taxes imposed on the trust attributable to such income.

(c) The amount reported by each corporate beneficiary shall be subject to the high gross income tax rate. (*Department of State Revenue; 45 IAC 1.1-3-13; filed Oct 16, 1998, 3:45 p.m.: 22 IR 709, eff Jan 1, 1999*)

**45 IAC 1.1-3-14 Indiana and its political subdivisions**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-16; IC 6-2.1-3-29; IC 6-2.1-3-33

Sec. 14. (a) Gross income received by Indiana, an agency or instrumentality of Indiana, or a municipal corporation or other political subdivision of Indiana, in performance of their governmental function, is exempt from the gross income tax.

(b) As used in this section, "governmental function" includes the following:

- (1) The operation of a park or recreational facility.
- (2) The sale or lease of real property.
- (3) The occasional sale or lease of personal property.
- (4) The performance of similar governmental services.

(c) The exemption provided for in subsection (a) does not apply to receipts derived from a private or proprietary activity or business.

(d) An activity is governmental and not proprietary where it:

- (1) involves the general public benefit;
- (2) is not in the nature of a corporate or business undertaking for the benefit and interest of the state or political subdivision; and
- (3) does not matter whether the activity is directly imposed or voluntarily assumed.

(e) The following are examples of a proprietary activity:

- (1) Operation of the following:
  - (A) Wharves.
  - (B) City markets.
  - (C) Sports arenas.
  - (D) Concessions.
  - (E) Gas, water, and electric utilities.
- (2) Street-cutting permits.
- (3) Permits for the use or entry onto property owned by the city.
- (4) Street repairs and other services.
- (5) Sales of byproducts of sewage disposal plants.
- (6) The rental of lockers and other personal property.
- (f) The following are further examples of a governmental activity:
  - (1) Operation of the following:
    - (A) Hospitals.
    - (B) Dog pounds.
    - (C) Housing authorities.



(D) Public schools (not colleges or universities).

(E) Public libraries.

(F) Cemeteries.

(2) Sales and issuance of bonds.

(3) Dividends, distributions, and earnings of intangibles.

(4) Sales of intangibles.

(5) Sales of permits to private industry.

(6) Fines.

(7) Street sweeping, salting, sanding, and snow removal on streets and public parking lots.

(8) Parking fees for parking on public streets and alleys, in off-street parking projects, or upon other property owned, leased, or operated by the city.

(9) Levies for the operation of sewage disposal plants and billings for sewage disposal.

(10) Hydrant rental and charges by fire departments for runs outside the city limits.

(11) Admission fees to parks.

(12) Hangar rental, landing fees, and sales of gas, oil, and parts by airports and airport authorities.

*(Department of State Revenue; 45 IAC 1.1-3-14; filed Oct 16, 1998, 3:45 p.m.; 22 IR 709, eff Jan 1, 1999)*

#### **45 IAC 1.1-3-15 Revocation of exemption**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-3; IC 6-3-7-1

Sec. 15. (a) In the event the adjusted gross income tax is held inapplicable or invalid with respect to any entity described in IC 6-3-7-1, the exemption granted such entity under IC 6-2.1-3 is revoked for the tax periods for which the adjusted gross income tax is held invalid.

(b) If an exemption is revoked under subsection (a), the entity whose exemption is revoked is subject to the gross income tax for the tax periods for which the exemption is revoked. *(Department of State Revenue; 45 IAC 1.1-3-15; filed Oct 16, 1998, 3:45 p.m.; 22 IR 709, eff Jan 1, 1999)*

#### **45 IAC 1.1-3-16 Gambling receipts**

Authority: IC 6-8.1-3-3

Affected: IC 4-30-3-7; IC 4-30-18-2; IC 4-33-2-9; IC 4-33-6

Sec. 16. (a) Gross income from the sale of lottery tickets authorized by IC 4-30 is exempt from the gross income tax. As used in this subsection, "gross income" includes the five percent (5%) commission authorized by 65 IAC 3-4-5 and retained by the retailer.

(b) A prize payable under IC 4-30 is exempt from the gross income tax. As used in this subsection, "prize" includes the one percent (1%) commission paid by the state lottery commission to a retailer for selling a winning lottery ticket. The term does not include a cashing bonus paid by the state lottery commission to a retailer for redeeming winning lottery tickets.

(c) Gross income from a gambling game, as defined in IC 4-33-2-9, conducted by a taxpayer that possesses a valid owner's license under IC 4-33-6 is exempt from the gross income tax. *(Department of State Revenue; 45 IAC 1.1-3-16; filed Oct 16, 1998, 3:45 p.m.; 22 IR 710, eff Jan 1, 1999)*

### **Rule 4. Deductions**

#### **45 IAC 1.1-4-1 Annual deduction**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-4-1

Sec. 1. (a) Except as otherwise provided in this section, a taxpayer is entitled to deduct one thousand dollars (\$1,000) each taxable year from its gross income.

(b) If a taxpayer is subject to the gross income tax for less than a full year, the amount deductible is one thousand dollars (\$1,000) multiplied by the number of days the taxpayer is subject to the gross income tax over the number of days in the taxpayer's

taxable year.

(c) A group of taxpayers that files a consolidated return is entitled to only one (1) deduction under this section on the consolidated return.

(d) A court appointed commissioner who files a gross income tax return for the sale of real estate is entitled to only one (1) deduction under this section regardless of the number of taxpayers owning an interest in the real estate. (*Department of State Revenue; 45 IAC 1.1-4-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999*)

**45 IAC 1.1-4-2 Bad debt deduction**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5-6-9

Sec. 2. (a) An accrual basis taxpayer is entitled to deduct from its gross income each taxable year any amount written off as uncollectible for federal income tax purposes for the same taxable year if the sale representing the bad debt was subject to the gross income tax in the year reported.

(b) Any amount deducted under subsection (a) and subsequently collected by a taxpayer shall be included in the gross income of the taxpayer in the taxable year in which it is collected. (*Department of State Revenue; 45 IAC 1.1-4-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999*)

**45 IAC 1.1-4-3 Solid or hazardous waste deduction**

Authority: IC 6-8.1-3-3

Affected: IC 13-30-6

Sec. 3. (a) Except as provided in subsection (c), a taxpayer is entitled to a deduction from gross income for a particular taxable year if the following conditions are met:

(1) The taxpayer is allowed, for federal income tax purposes, a depreciation deduction on a resource recovery system.

(2) The resource recovery system processes solid waste or hazardous waste.

(b) The amount of the deduction is the total depreciation deductions with respect to the resource recovery system allowed for that taxable year under Sections 167 and 179 of the Internal Revenue Code.

(c) The deduction provided by subsection (a) shall be divided proportionately between the taxpayer's gross income subject to the high rate and the taxpayer's gross income subject to the low rate.

(d) A taxpayer is not entitled to the deduction provided by subsection (a) with respect to a resource recovery system that is directly used to dispose of hazardous waste if any of the following occurs:

(1) The taxpayer is convicted of a violation under IC 13-7-13-3 (before its repeal), IC 13-7-13-4 (before its repeal), or IC 13-30-6 [*IC 13-30-6 was repealed by P.L.137-2007, SECTION 37, effective July 1, 2007.*].

(2) The taxpayer is subject to an order or consent decree based upon a violation of a federal or state rule, regulation, or statute governing the treatment, storage, or disposal of hazardous waste that had a major or moderate potential for harm.

(e) As used in subsection (d)(2), "major or moderate potential for harm" means a violation that was injurious or threatened to:

(1) be injurious to:

(A) human health;

(B) plant or animal life; or

(C) property; or

(2) interfere unreasonably with the enjoyment of life or property.

(*Department of State Revenue; 45 IAC 1.1-4-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 710, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-4-4 Refund of reusable container deposit**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-4-5

Sec. 4. (a) A reusable container deposit refunded to a person returning the reusable container is deductible from the payor's gross income if the payor originally included such deposits in its gross income.

(b) The deduction may be taken by the taxpayer in calculating the gross income tax due on its quarterly returns. (*Department of State Revenue; 45 IAC 1.1-4-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999*)

**45 IAC 1.1-4-5 Intercompany transactions**

Authority: IC 6-8.1-3-3

Affected: IC 6-5.5

Sec. 5. (a) Except as provided in subsections (b) and (c), an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group.

(b) The deduction provided by subsection (a) does not apply to gross income received because of the dissolution of a member of the affiliated group. Also, the deduction does not apply to gross income derived from sources outside Indiana. Nor does the deduction apply to gross income derived from an affiliate not qualifying to be included in the consolidated filing.

(c) In addition to subsection (a), all income and deductions attributable to transactions between two (2) entities are eliminated in determining the amount of gross income tax due when all three (3) of the following conditions exist:

- (1) The first entity is subject to taxation under IC 6-2.1.
- (2) The second entity is subject to taxation under IC 6-5.5.
- (3) The entities are members of the same unitary group.

(d) Income shall not be deducted twice. For instance, income may not be deducted as being received in an intercompany transaction if it has already been deducted as having been received in an interstate commerce transaction. (*Department of State Revenue; 45 IAC 1.1-4-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999*)

**Rule 5. Returns**

**45 IAC 1.1-5-1 Quarterly returns and payments**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-5-1.1; IC 6-2.1-6

Sec. 1. (a) Except as provided otherwise in this section, a taxpayer shall pay its gross income tax liability on a quarterly basis. The tax must be paid with a form prescribed by the department.

(b) For taxable years beginning after December 31, 1993, the tax is due on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(c) In determining the amount due, the taxpayer is entitled to deduct any gross income tax withheld pursuant to IC 6-2.1-6 for the same quarter.

(d) A taxpayer is not required to remit the gross income tax for a quarter for which the gross amount estimated to be due is determined to be two hundred fifty dollars (\$250) or less.

(e) The fourth quarterly payment is not required if the taxpayer files its annual return and pays the total gross income tax liability for its taxable year before the due date of the fourth quarterly payment.

(f) After December 31, 1997, a taxpayer whose quarterly gross income tax liability exceeds ten thousand dollars (\$10,000) is required to pay the taxes by electronic fund transfer or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department.

(g) A taxpayer's quarterly gross income tax liability shall be deemed to exceed ten thousand dollars (\$10,000) if:

- (1) its total estimated gross income tax for the current year exceeds forty thousand dollars (\$40,000); or
- (2) its total gross income tax liability for the preceding year exceeded forty thousand dollars (\$40,000).

(h) If a taxpayer is required to make its quarterly gross income tax payments by electronic fund transfer, it is not required to file the quarterly gross income tax return. (*Department of State Revenue; 45 IAC 1.1-5-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999*)

**45 IAC 1.1-5-2 Annual return**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-5-2; IC 6-2.1-5-2.1; IC 6-2.1-6

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Sec. 2. (a) An annual gross income tax return is required to be filed by a taxpayer who receives more than one thousand dollars (\$1,000) in gross income during a taxable year. Any gross income taxes not previously paid shall be paid at the time the annual return is filed.

(b) Except as provided otherwise in this section, the annual gross income tax return is due on the fifteenth day of the fourth month following the end of the taxpayer's taxable year.

(c) A taxpayer with any gross income subject to the withholding requirements of IC 6-2.1-6 shall file its annual gross income tax return by March 1 of the calendar year following the year in which the tax was withheld or should have been withheld.

(d) Due to federal filing requirements, a taxpayer may be allowed a due date different from the date specified in subsection (b). For example, the annual gross income tax returns for the following taxpayers are due on the dates given:

(1) An exempt organization subject to tax under Section 511 of the Internal Revenue Code has until the fifteenth day of the fifth month following the end of its taxable year to file its annual gross income tax return.

(2) A farmers' cooperative described in Section 1381 of the Internal Revenue Code has until the fifteenth day of the ninth month following the end of its taxable year to file its annual gross income tax return.

(e) A taxpayer not filing an annual gross income tax return may be required to execute and file a sworn affidavit that it did not receive more than one thousand dollars (\$1,000) of taxable gross income during its taxable year. (*Department of State Revenue; 45 IAC 1.1-5-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 711, eff Jan 1, 1999; errata filed Mar 5, 1999, 9:30 a.m.: 22 IR 2273*)

**45 IAC 1.1-5-3 Consolidated return**

Authority: IC 6-8.1-3-3

Affected: IC 23-1

Sec. 3. (a) An affiliated group, as defined in IC 6-2.1-5-5, may file a consolidated gross income tax return. To be included in the consolidated filing, a member of the group must be incorporated in the state of Indiana or authorized to do business in the state of Indiana on or before the due date of the annual return, including valid extensions.

(b) As used in subsection (a), "authorized to do business in Indiana" means that:

(1) a foreign corporation has applied for and been granted a certificate of authority to transact business in Indiana under the appropriate statute; and

(2) the authority has not been withdrawn or revoked.

(c) An affiliated group may elect to file a consolidated return at the time it files its first annual return. After the first annual return is filed, an affiliated group must ask for and receive the department's approval to change the manner in which it files gross income tax returns.

(d) An affiliated group may choose any member of the group to be the reporting company and file the first consolidated return. Any future change in the reporting member who files the consolidated return must be approved in advance by the department.

(e) Each member included in the consolidated filing is jointly and severally liable for the gross income tax imposed on the affiliated group as a whole and imposed separately on each member of the consolidated filing.

(f) An affiliated group must ask for and receive the department's approval to change from a consolidated return filing to a separate return filing. Such approval will be granted only upon a showing of changes in the law or circumstances that would cause a consolidated return filing to unfairly reflect the Indiana source income of the members of the affiliated group.

(g) An affiliated group filing a consolidated annual return shall file its quarterly returns on a consolidated basis by the same member required to file the annual return. If consolidated quarterly returns have not been filed by the affiliated group, the members of the group will be required to segregate their receipts and verify the proper credit to be taken on the annual return for quarterly payments made.

(h) If the adjusted gross income tax returns for the members of the affiliated group are filed on a separate basis, the burden will be on the members of the affiliated group to provide a complete breakdown of each member's gross, adjusted gross, and supplemental net income tax liabilities, quarterly payments, and other credits. (*Department of State Revenue; 45 IAC 1.1-5-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 712, eff Jan 1, 1999*)

**45 IAC 1.1-5-4 Partnership return**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-4-10

Sec. 4. (a) A partnership must file an annual return, Form IT-65, disclosing each partner's distributive share of distributed and undistributed income.

(b) As used in this section, "partner's distributive share" means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes. (*Department of State Revenue; 45 IAC 1.1-5-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 712, eff Jan 1, 1999*)

**45 IAC 1.1-5-5 Liability of a fiduciary and a distributee**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-5-7

Sec. 5. (a) A receiver, trustee in dissolution, trustee in bankruptcy, or assignee has the same duties and responsibilities under this article as the taxpayer whose property or business the fiduciary is operating.

(b) The fiduciary is also required to report all gross income previously unreported and pay the taxes due thereon even though such income was never received by the fiduciary.

(c) In addition to the liability of the fiduciary, each distributee is also proportionately liable for any gross income tax due and not paid at the time of the distribution.

(d) A resident fiduciary described in subsection (a) shall withhold and pay to the department any gross income tax due on a distribution to a nonresident distributee before making the distribution. (*Department of State Revenue; 45 IAC 1.1-5-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999*)

**45 IAC 1.1-5-6 A fiduciary acting under court supervision**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-5-7; IC 6-2.1-5-8; IC 6-2.1-8-7

Sec. 6. (a) A fiduciary acting under court supervision includes the following:

- (1) A receiver.
- (2) A trustee in dissolution.
- (3) A trustee in bankruptcy.
- (4) A commissioner appointed for the sale of real estate.
- (5) Any other officer acting under the authority and supervision of a court.

(b) A court shall not allow or approve a final report or account of a fiduciary described in subsection (a) unless the account or report shows, and the court finds, that all:

- (1) gross income tax returns have been filed;
- (2) gross income tax due has been paid; and
- (3) gross income tax which may become due is secured by bond, deposit, or otherwise.

(c) A fiduciary shall provide the proof required in subsection (b) by either of the following methods:

- (1) By a certificate of clearance issued by the department certifying that all gross income tax due has been paid and that any required security has been provided.
- (2) By any other evidence which demonstrates that all gross income tax due has been paid and that any required security has been provided.

(d) The gross income tax liability owed by a fiduciary is a preferred claim and has priority over all other claims except claims for judicial costs and costs of administration. (*Department of State Revenue; 45 IAC 1.1-5-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999*)

**45 IAC 1.1-5-7 Accounting methods**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-5-12

Sec. 7. (a) A taxpayer shall use either the cash or accrual method of accounting for determining the gross income tax liability.

(b) The taxpayer shall use the same method of accounting used for federal income tax purposes. However, the taxpayer shall use the cash method of accounting if it does not use either the cash or the accrual method of accounting for federal income tax

purposes.

(c) As used in this section, "cash method of accounting" means that gross income is reported in the year that it is actually or constructively received and deductions or credits are generally taken in the year actually paid unless they should be taken in a different period to clearly reflect income. Examples include depreciation allowances and prepaid expenses.

(d) As used in this section, "accrual method of accounting" means that gross income is reported and expenses are deductible when all the events have occurred that determine the right to the income or that determine the amount of the expense and the liability of the taxpayer to pay it. The term does not include any method of accounting other than the standard accrual basis method of accounting. (*Department of State Revenue; 45 IAC 1.1-5-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999*)

#### **45 IAC 1.1-5-8 Withholding return**

Authority: IC 6-8.1-3-3

Affected: IC 6-3-4-8.1

Sec. 8. (a) For taxable years beginning after December 31, 1993, a withholding agent who is required to withhold gross income tax under IC 6-2.1-6-1 or IC 6-2.1-6-2 is required to file a return and pay the tax withheld to the department on April 20, June 20, September 20, and December 20 of each calendar year. The return shall show the amount withheld from the gross income paid to each taxpayer.

(b) The withholding agent is not liable to a taxpayer for any amounts withheld and paid to the department in accordance with this section.

(c) Gross income tax should not be withheld on the first one thousand dollars (\$1,000) paid to a taxpayer during a taxable year.

(d) The amount of gross income tax withheld shall be determined by applying the high rate of tax to the total amount of gross income without any deductions.

(e) A withholding agent shall furnish, in duplicate, a written statement to a taxpayer showing the total amount of gross income and the tax withheld therefrom, for the preceding calendar year, on or before January 31 of the year immediately following the year in which the tax was withheld.

(f) To receive credit for taxes withheld, a taxpayer must attach to its annual gross income tax return a copy of the written statement received from the withholding agent pursuant to subsection (e).

(g) Taxpayers who combine monthly employee and nonresident contractor withholding are permitted to file and pay both amounts twenty (20) days after the end of each month. (*Department of State Revenue; 45 IAC 1.1-5-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 713, eff Jan 1, 1999*)

### **Rule 6. Exclusions**

#### **45 IAC 1.1-6-1 Retail installment contract or promissory note**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 1. (a) Except as otherwise provided in this section, the face amount of a retail installment contract or promissory note accepted as the basis under which payment is to be made is includable in gross income upon receipt of the note or contract.

(b) Subsection (a) applies only to income that is derived from the selling, providing, repairing, working with or on, or servicing of any tangible personal property.

(c) Any part of the contract or note that represents insurance premiums or consideration which the buyer contracts to pay the seller for the privilege of paying the principal balance in installments is includable in gross income when received.

(d) Income from the subsequent sale of a retail installment contract or promissory note is includable in gross income unless it was previously subjected to the gross income tax. (*Department of State Revenue; 45 IAC 1.1-6-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-2 Intangibles**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

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Sec. 2. (a) As used in this section, "intangible" means a personal property right, which exists only in connection with something else, the evidence of such right being represented by such things as the following:

- (1) Notes.
- (2) Stocks.
- (3) Bonds.
- (4) Debentures.
- (5) Certificates of deposit.
- (6) Leases.
- (7) Choses in action.
- (b) Except as provided in subsection (c), receipts derived from an intangible are included in gross income.
- (c) Receipts derived from an intangible are not included in gross income under the following situations:
  - (1) The intangible forms an integral part of:
    - (A) a trade or business situated and regularly carried on at a business situs outside Indiana; or
    - (B) activities incident to such trade or business.

- (2) The intangible does not form an integral part of a trade or business situated and regularly carried on at a business situs in Indiana, and the taxpayer's commercial domicile is located outside Indiana.

- (3) The receipts from the intangible are otherwise excluded from gross income under IC 6-2.1-1-2 or 45 IAC 1.1-3-3(c)(7).

- (d) In determining whether an intangible forms an integral part of a trade or business or activities incident thereto under subsection (c), it is the connection of the intangible itself to such trade or business or activities incident thereto that is the controlling factor. The physical location of the evidence of the intangible (share of stock, bond, etc.) is not a controlling factor. Also, any activities related to the sale of an intangible occur after the fact and are never determinative.

(e) As used in this section, "commercial domicile" means the nerve center of the taxpayer where a majority of the activities and functions of the business are performed. The department will include the following types of activities in making a determination of commercial domicile:

- (1) The location of management and administrative activities connected with each location, such as policy and investment decisions.
- (2) The location of meetings of the board of directors.
- (3) The residence of executives and their offices.
- (4) The location of books and records.
- (5) The location of payment on income from intangibles of the taxpayer.
- (6) The information from annual and quarterly reports of the taxpayer.

*(Department of State Revenue; 45 IAC 1.1-6-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999)*

**45 IAC 1.1-6-3 Bonds**

Authority: IC 6-8.1-3-3

Affected: IC 6-8-5-1

Sec. 3. (a) Except as otherwise provided in this section, receipts from the issuance or redemption of a bond are not included in gross income.

(b) Interest accumulated at the time of redemption of a bond is included in gross income except for interest derived from securities issued by the federal government and bonds of Indiana municipalities or taxing subdivisions.

(c) Gain derived from the sale or redemption of a bond is included in gross income even when the interest derived from the bond is otherwise excluded from gross income. *(Department of State Revenue; 45 IAC 1.1-6-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 714, eff Jan 1, 1999)*

**45 IAC 1.1-6-4 Refunds**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 4. (a) As used in this section, "refund" means:

- (1) an amount representing an overpayment;

(2) the value of property returned to the seller; or

(3) an adjustment to the selling price of property or services that is later received by the buyer in cash or in credit.

(b) A refund received by a buyer is excludable from gross income in the year received unless such amount was excluded from gross income when the property or services were originally purchased.

(c) A refund received by a seller is excludable from gross income in the year received unless such amount was not included in gross income when the property was originally sold.

(d) The term does not include a patronage dividend because it is a distribution to a member based on the overall efficient management and operation of the cooperative. (*Department of State Revenue; 45 IAC 1.1-6-4; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-5 Contributions to capital**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 5. (a) Except as provided in subsection (b), a contribution to the capital of a taxpayer, whether or not from the sale of an interest in such taxpayer, is not included in the gross income of such taxpayer.

(b) Except as provided in subsection (e), the exclusion provided by subsection (a) does not apply to income derived from any subsequent transaction in a taxpayer's stock or in the interest or share of a member of the taxpayer.

(c) To qualify as a contribution to capital, it must be shown that the principal benefit derived from a contribution is a capital improvement, a strengthening of the capital structure of the taxpayer, or an enhancement of the contributor's ownership interest. The following are examples of a contribution to capital:

(1) A voluntary pro rata payment by a shareholder to a corporation, the amounts so received being credited to the taxpayer's surplus account or to a special account.

(2) A contribution of land or other property to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community.

(3) A contribution by a shopping center developer of land and building costs to a corporation to attract it as the anchor tenant for a shopping center.

(d) As used in this section, "contribution to capital" does not include a loan or any money or property transferred to a taxpayer in consideration for goods or services rendered or to be rendered at some time in the future. The following are examples of contributions not qualifying as contributions to capital:

(1) A subsidy paid for the purpose of inducing a taxpayer to limit production.

(2) A contribution to a utility to provide or encourage the provision of services to or for the benefit of the contributor or the contributor's customers.

(3) Any other contribution in aid of construction as a customer or potential customer, or on behalf of a customer or potential customer. However, a contribution in aid of construction will be recognized as a contribution to capital if:

(A) it is not made in connection with the provision of services; and

(B) the benefit of the public as a whole is the primary motivating factor.

An example of this is when a utility is reimbursed for the cost of relocating lines to accommodate highway construction.

(e) A distribution in property in any form from a corporation to its shareholders in consideration for the return, surrender, cancellation, retirement, or rendering without value of its issued stock does not result in gross income to the corporation.

(f) A sale of treasury stock which has been issued, repurchased, or otherwise acquired results in gross income to the corporation. (*Department of State Revenue; 45 IAC 1.1-6-5; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-6 Reciprocal exchange of like kind property**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2; IC 6-2.1-3-14

Sec. 6. (a) As used in this section, "like kind" means property of the same class having common characteristics or attributes but not necessarily of the same grade or quality.

(b) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of



effectuating an exchange.

(c) As used in subsection (b), "exchange" does not include the following transactions:

- (1) A sale of property even though other property is purchased with the proceeds.
- (2) A barter or swap of property with more than two (2) parties to the transaction.
- (3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(d) The value of real or tangible personal property received in a reciprocal exchange of like kind property is excluded from gross income.

(e) The reciprocal exchange of like kind property may be made with or without additional consideration. However, the receipt of additional consideration, whether in cash or unlike kind property, is includable in gross income. Any amount received by a retail merchant because of an encumbrance on tangible personal property involved in a reciprocal exchange of like kind property is not additional consideration.

(f) The value of real or tangible personal property allowed for a trade-in on the purchase of like kind property qualifies for the exclusion provided by subsection (d).

(g) In addition to a reciprocal exchange, gross receipts from a sale of a new, untitled, and unregistered motor vehicle between registered motor vehicle dealers enfranchised by the same motor vehicle manufacturer or distributor to sell or service motor vehicles of the same make are exempt from the gross income tax. (*Department of State Revenue; 45 IAC 1.1-6-6; filed Oct 16, 1998, 3:45 p.m.: 22 IR 715, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-7 Reciprocal exchange of securities**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 7. (a) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of effectuating an exchange.

(b) As used in subsection (a), "exchange" does not include the following transactions:

- (1) A sale of property even though other property is purchased with the proceeds.
- (2) A barter or swap of property with more than two (2) parties to the transaction.
- (3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(c) The value of stock received in a reciprocal exchange for stock in the same corporation or association is excluded from gross income to the extent of the value of the stock surrendered.

(d) The value of bonds or similar securities received in a reciprocal exchange for bonds or similar securities of the same corporation or association is excluded from gross income to the extent of the value of the bonds or similar securities surrendered. (*Department of State Revenue; 45 IAC 1.1-6-7; filed Oct 16, 1998, 3:45 p.m.: 22 IR 716, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-8 Reciprocal exchange in a reorganization**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 8. (a) As used in this section, "reciprocal exchange" means the transfer of ownership of property by barter or swap by and between the owners of the property. The property must have been acquired prior to the exchange but not with the intent of effectuating an exchange.

(b) As used in subsection (a), "exchange" does not include the following transactions:

- (1) A sale of property even though other property is purchased with the proceeds.
- (2) A barter or swap of property with more than two (2) parties to the transaction.
- (3) A transaction where the property transferred is acquired by a party to the transaction as a result of negotiation or arrangement with the intent of effectuating an exchange.

(c) The value of stocks, bonds, or other securities received in a reciprocal exchange in the course of a consolidation, merger, or other reorganization is excluded from gross income under the following conditions:

(1) The exchange is securities for securities and the exclusion is limited to the extent title is surrendered in other stocks, bonds, or other securities.

(2) The stocks, bonds, or other securities are received in exchange for substantially all of the assets of another corporation.

(d) The exclusion provided by this section applies only when the stocks, bonds, or other securities received are issued by one (1) or more corporations or associations that are each a party to the reorganization.

(e) The department will generally look to the treatment by the Internal Revenue Service in determining whether a reorganization is valid and therefore qualifying for the exclusion provided by this section. (*Department of State Revenue; 45 IAC 1.1-6-8; filed Oct 16, 1998, 3:45 p.m.: 22 IR 716, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-9 Liquidation of subsidiary into parent**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 9. (a) Except as provided in subsection (b), receipts from a complete liquidation of a subsidiary corporation into its parent under Section 332 of the Internal Revenue Code shall be excluded from gross income, if the same result could have been accomplished under section 7 or 8 of this rule.

(b) The value of the transfer of property by a subsidiary corporation in satisfaction of its liability to its parent shall be included in the gross income of the subsidiary corporation. (*Department of State Revenue; 45 IAC 1.1-6-9; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-10 Receipts by agents**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1

Sec. 10. (a) Income received in an agency capacity is not included in the agent's gross income. This is because the income was received by the agent for the principal's benefit.

(b) The exclusion provided by subsection (a) will not apply if an agency relationship is not established or if the agent has any right, title, or interest in the money or property received from the transaction.

(c) Where property is purchased by a taxpayer for another, title need not vest immediately in the principal in order for the taxpayer's reimbursement to be excluded from gross income if the agency relationship actually exists. However, where property is purchased from the principal by the taxpayer and resold to a third party, the receipts from the sale are included in the taxpayer's gross income.

(d) The reimbursement of amounts paid to a third party under an agreement to be reimbursed by another for expenses incurred and paid to a third party is not excluded from gross income unless the party being reimbursed qualifies as the agent of the party making the reimbursement under 45 IAC 1.1-1-2. A reimbursement of a taxpayer's own expenses are never excluded from gross income.

(e) The mere execution of an agency contract will not create an agency relationship. If the agent takes title to the products, operates under its own name, and cannot bind the principal in contracts, an agency relationship has not been established. (*Department of State Revenue; 45 IAC 1.1-6-10; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999*)

#### **45 IAC 1.1-6-11 Insurance company reserves**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-1-2

Sec. 11. (a) For a domestic insurance carrier selling life insurance and annuities or accident and health insurance, amounts that become or are used to maintain a reserve or other policy liability are excluded from gross income.

(b) The portion of underwriting income required to maintain reserves or other policy liabilities is calculated by using net premiums for individual policies by state, if such records are maintained. Otherwise, the following estimation methods shall be used:

(1) For life insurance and annuity classes of business included in the Analysis of Operations section of the Annual Statement filed with the Indiana department of insurance, multiply the gross premiums (page 6, line 1, column 1) by the ratio of tabular net premiums (page 7, line 2, column 1) to the corresponding gross premium (page 4, line 1). In applying this ratio method,

separate ratios for different classes of business shall be used whenever the use of an aggregate ratio would produce a material distortion in the result. For example, if the effect of reinsurance ceded is material in amount, the ceded premiums shall be added back to both tabular net premiums and to gross premiums in forming the ratio. Likewise, if reinsurance assumed is material in its effect, a separate ratio shall be computed and applied to reinsurance assumed gross premiums to produce the corresponding net premiums.

(2) For life insurance and annuity classes of business not included in the Analysis of Operations section of the Annual Statement filed with the Indiana department of insurance, use the same ratio method described in subdivision (1) applied to the appropriate net and gross premiums.

(3) For accident and health insurance classes of business on which reserves comparable to life insurance reserves are maintained, use the difference for aggregate reserves between the years (page 3, line 2) plus incurred claims (Schedule H, page 87, line 3), less the reserve interest determined under subsection (c)(3) with respect to such classes of business as noncancellable accident and health insurance.

(4) For other accident and health business (or hospitalization), multiply the gross premiums for such business included in the Analysis of Operations section (page 6, line 1, column 1) by the ratio of claims incurred (Schedule H, page 87, line 3) to premiums earned (Schedule H, page 87, line 2). An example of business to which this method will apply is the selling of group and other short term cancellable accident and health policies.

(c) The portion of investment income required to maintain reserves or other policy liabilities is calculated as follows:

(1) For life insurance and annuity reserves included in Analysis of Increase in Reserves (page 7), use tabular interest (page 7, line 4).

(2) For reserves and other policy liabilities requiring interest which are not included in the Analysis of Increase in Reserves, such as interest on a premium deposit fund (page 3, line 10) and interest on a policy or contract fund (page 4, line 14), a separate calculation must be made.

(3) For required interest on other reserves and policy liabilities such as noncancellable accident and health insurance for which company records of net premiums for such business are available, use the reserve interest rate assumed multiplied by the mean of the policy reserves and policy liabilities at the beginning and end of the taxable year.

(d) The deductions calculated under subsections (b) and (c) are allocated between nontaxable and taxable receipts in an appropriate manner.

(e) As used in this section, the specific references to exhibits, schedules, sections, pages, or lines relate to the 1994 form of the Annual Statement filed with the Indiana department of insurance. Taxpayers are expected to use comparable sources each taxable year despite any future changes in the form of the Annual Statement required to be filed with the Indiana department of insurance. (*Department of State Revenue; 45 IAC 1.1-6-11; filed Oct 16, 1998, 3:45 p.m.: 22 IR 717, eff Jan 1, 1999*)

## **Rule 7. Penalties**

### **45 IAC 1.1-7-1 Civil penalties**

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-1-3; IC 6-8.1-10

Sec. 1. (a) As used in this rule, "person" has the same meaning set forth in IC 6-8.1-1-3.

(b) A person who violates a provision of IC 6-2.1 is subject to the penalties imposed by IC 6-8.1-10. (*Department of State Revenue; 45 IAC 1.1-7-1; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999*)

### **45 IAC 1.1-7-2 Criminal penalties**

Authority: IC 6-8.1-3-3

Affected: IC 6-8.1-5-4

Sec. 2. (a) A person commits a Class C infraction under the following circumstances:

(1) Failing to keep a record which may be necessary to determine the gross income tax owed for a period of three (3) years as required by IC 6-8.1-5-4.

(2) Failing to permit the department to examine any records necessary to determine the gross income tax due at any time in accordance with IC 6-8.1-5-4.

(b) A person commits a Class B misdemeanor under the following circumstances:

- (1) Recklessly entering a false affidavit described in IC 6-2.1-8-6(a).
- (2) Recklessly entering false information concerning gross income taxes paid on a deed or other instrument of conveyance.
- (3) Knowingly failing to produce, or permit the department to examine, a record necessary to determine the gross income tax due.
- (4) Failing to file a return required by IC 6-2.1 with the intent to defraud Indiana.
- (5) Entering false information in a return required by IC 6-2.1 with the intent to defraud Indiana.
- (6) Knowingly failing to permit the department to inspect or appraise any property.
- (7) Knowingly failing to offer testimony or to produce any record required by IC 6-2.1.
- (8) Recklessly violating a provision contained in IC 6-2.1-6.

(c) A person commits a Class D felony under the following circumstances:

- (1) Making a false entry in a taxpayer's records with the intent to defraud Indiana or evade payment of the gross income tax.
- (2) Keeping more than one (1) set of records for a taxpayer with the intent to defraud Indiana or evade payment of the gross income tax.

*(Department of State Revenue; 45 IAC 1.1-7-2; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

**45 IAC 1.1-7-3 Prosecution**

Authority: IC 6-8.1-3-3

Affected: IC 6-2.1-7-8

Sec. 3. The department may decline to prosecute a violation of IC 6-2.1 if the violation is:

- (1) a first offense; and
- (2) not flagrant or willful.

*(Department of State Revenue; 45 IAC 1.1-7-3; filed Oct 16, 1998, 3:45 p.m.: 22 IR 718, eff Jan 1, 1999)*

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