**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**Title:** Risk Integrated System of Closure (RISC), User's Guide Chapter 2, RCRA Closure and Corrective Action
**Identification Number:** W-0046
**Date Originally Effective:** February 15, 2001
**Dates Revised:** October 15, 2002
**Other Policies Repealed or Amended:**
**Brief Description of Subject Matter:** User's Guide Chapter 2 provides a description of the Agency's policy on the application of risk assessments to obtain closure of sites in the RCRA closure and corrective action program.
**Citations Affected:** None

This nonrule policy document is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This nonrule policy document shall be used in conjunction with applicable laws. It does not replace applicable laws, and if it conflicts with these laws, the laws shall control. This nonrule policy document may be put into effect by IDEM thirty days after presentation to the appropriate board and after it is made available to public inspection and comment, pursuant to IC 13-14-1-11.5. If the nonrule policy is presented to more than one board, it will be effective thirty days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the board and publication.

**Risk Integrated System of Closure**
**Users Guide**

Chapter 2 of RISC User's Guide has been revised, essentially to remove post-closure maintenance and monitoring requirements from industrial closures. Instead, facilities are allowed to obtain environmental restrictive covenants, which restricts future land use to industrial purposes, unless remediation to residential closure levels is conducted.

The document may be viewed on the WEB at: *http://www.in.gov/idem/land/pubsforms/guidance/guidance.html#r*

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**INDIANA DEPARTMENT OF LABOR**
**NOTICE OF SIGNIFICANT CHANGES IN**
**ENFORCEMENT OF INJURY AND ILLNESS RECORD KEEPING REGULATIONS**
**Policy Document No. 03-01**

The federal Occupational Safety and Health Administration (OSHA), effective January 1, 2002, has revised the injury and illness record keeping regulations contained in 29 CFR 1904. Consistent with this revision the Indiana Occupational Safety and Health Administration, effective January 1, 2003, adopted as a final rule 610 IAC 4-6.

Effective immediately, effective dates for the following provisions of 610 IAC 4-6 are delayed:

(1) 610 IAC 4-6-11's requirement that employers check the hearing loss column on the OSHA 300 Log for cases involving occupational hearing loss; the effective date of this provision will be delayed until January 1, 2004;

(2) 610 IAC 4-6-13's requirement that employers check the Musculoskeletal Disorder (MSD) column on the OSHA 300 Log if an employee experiences a recordable MSD; the effective date of this provision will be delayed until federal OSHA completes evaluation of this provision;

(3) 610 IAC 4-6-14(b)(7)(g), which states that musculoskeletal disorders are not considered privacy concern cases; the effective date of this provision will be delayed until federal OSHA completes evaluation of this provision.

Nancy J. Guyott
Commissioner
Indiana Department of Labor

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**NATURAL RESOURCES COMMISSION**
**Information Bulletin #10 (Repeal)**
**March 1, 2003**

**SUBJECT:** Wetlands and Areas of Special Concern within Public Freshwater Lakes
**PURPOSE:** Repeal of *Wetlands and Areas of Special Concern within Public Freshwater Lakes*, Information Bulletin #10 (Second Amendment) published at 22 IR 1805
**EXPLANATION:** The subject matter of the *Wetlands and Areas of Special Concern within Public Freshwater Lakes,* Information Bulletin #10, published at 22 IR 1805, is now largely addressed by rule. In addition, there have been recent technical advances with the use of resources such as global positioning systems that make obsolete the maps associated with the nonrule policy document.

As a result, the nonrule policy document no longer assists in the implementation of standards designed to protect wetlands and areas of special concern under the Lakes Preservation Act (IC 14-26-2). The maps are imprecise and even misleading in light of technical advancements.

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #12**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #12 dated November 1993)

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions, is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Corporate Income Taxes

**REFERENCES:** IC 6-3-2; IC 6-3-3; IC 6-3-4; IC 6-3.1; IC 6-5.5-1-17; IC 27-1-18-2

**General Statement**

A corporation doing business or an entity subject to the utility receipts tax under IC 6-2.3 in Indiana, other than a corporation defined as a taxpayer under IC 6-5.5-1-17, is subject to the adjusted gross income tax.

**S Corporation**

A corporation is exempt from the corporate adjusted gross income tax if it is a corporation which is exempt from the federal income tax under Section 1363 of the Internal Revenue Code. However, the income of a corporation that is subject to income tax under the Internal Revenue Code, such as excess net passive income, capital gains and built-in capital gains, will be subject to the Indiana corporate adjusted gross income tax.

The corporation must comply with the requirements of IC 6-3-4-13 by 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. Failure to withhold and pay the amount required will subject the corporation to a twenty percent (20%) penalty of the tax required under IC 6-3-4-13 and IC 6-8.1-10-2.1(h).

A qualified S corporation is required to file an annual information return on Form IT-20S. The return is due on the fifteenth ($15^{th}$) day of the fourth ($4^{th}$) month following the close of its taxable year.

An S corporation may file a composite adjusted gross income tax return on behalf of some or all of its shareholders who are not residents of Indiana, if it complies with the instructions found in Information Bulletin #72. The nonresident shareholders properly electing to participate in the composite return will be relieved of the obligation to file an individual adjusted gross income tax return.

**Not-For-Profit Organization**

A not-for-profit organization is subject to the adjusted gross income tax, unless the income is specifically exempted from taxation under the provisions of the Adjusted Gross Income Tax Act (Indiana Code 6-3-2-2.8 and 6-3-2-3.1). A not-for-profit organization will be subject to tax on income derived from an unrelated trade or business as defined in Section 513 of the Internal Revenue Code. A political organization and a homeowners organization are not considered not-for-profit organizations and therefore must file as regular corporations on Form IT-20.

**Insurance Company**

A foreign insurance company (one organized under the laws of a state other than Indiana) is required by IC 27-1-18-2 to pay the insurance premium tax to the Indiana Department of Insurance. Paying the premium tax exempts a foreign corporation from the adjusted gross income tax. Domestic insurance companies are exempt from the adjusted gross income tax if it elects to pay the premium tax.

**Financial Institutions**

Financial institutions are subject to a franchise tax under IC 6-5.5. The franchise tax extends to both resident and non-resident financial institutions and to all other corporate entities when eighty percent (80%) of gross income is derived from activities which encompass the business of a financial institution. The business of a financial institution is defined as activities authorized by the Federal Reserve Board; the making, acquiring, selling, or servicing loans or extensions of credit; or operating a credit, debit card or charge card business. Entities subject to this tax must file Form FIT-20. (For more information, see Commissioner's Directive #14.)

**Utility Receipts Tax**

The utility receipts tax is an income tax imposed on the gross receipts from the retail sale of utility services. The tax rate is one and four-tenths percent (1.4%). Utility services include electrical energy, natural gas, water, steam, sewage, and telecommunication services. (For further information concerning the utility receipts tax, see Commissioner's Directive #18.)

**Corporate Adjusted Gross Income Tax**

The adjusted gross income tax rate is eight and five-tenths percent (8.5%).

The tax base is computed by using net federal taxable income from the federal Form 1120 and adding back all state income taxes (all taxes based on income), and charitable contributions that were deducted on the federal return.

The nonbusiness income of a corporation is specifically allocated under IC 6-3-2-2(g) through (k). Nonbusiness income is only that income that is not considered business income. Business income is all income which arises from the conduct of trade or business operations of the taxpayer. For further information concerning the classification of business and nonbusiness income, refer to the annual return, its filing instructions, and the Department's regulations.

If a corporation has business income from both within and without Indiana, the corporation, other than a domestic insurance company, must apportion its income by means of the three-factor formula under IC 6-3-2-2.

For Indiana adjusted gross income tax purposes, the term "doing business" generally means the operation of any business enterprise or activity in Indiana including but not limited to the following:

1. Maintenance of an office, warehouse, construction site or other place of business in Indiana.
2. Maintenance of an inventory of merchandise or material for sale, distribution, or manufacture.
3. The sale or distribution of merchandise to customers in Indiana directly from company owned or operated vehicles when the title of merchandise is transferred from the seller or distributor to the customer at the time of sale or distribution.
4. The rendering of a service to customers in Indiana.
5. The ownership, rental, or operation of business or property (real or personal) in Indiana.
6. Acceptance of orders in Indiana with no right of approval or rejection in another state.
7. Interstate transportation.
8. Maintenance of a public utility.

The apportionment factor to be applied to a corporation's business income to determine the amount taxable by Indiana is determined by taking the sum of the property factor, the payroll factor, and two hundred percent (200%) of the sales factor ÷4. The property factor is determined by dividing the total value of the taxpayer's Indiana property by the total value of the taxpayer's property everywhere. The payroll factor is determined by dividing the total compensation paid by the taxpayer within Indiana by the total compensation paid everywhere by the taxpayer. The sales factor is determined by dividing the taxpayer's total Indiana sales by the taxpayer's total sales everywhere. The numerator of the sales factor includes all sales made in Indiana, sales made from Indiana to the U.S. Government, and sales made from Indiana to a state which does not have jurisdiction to tax the activities of the seller. Destination sales by an Indiana seller which has activities in the state of destination, other than mere solicitation, will not be included in the numerator of the sales factor regardless of whether or not the destination state levies a tax. For more information on the determination of Indiana source income, see IC 6-3-2-2. As used in this paragraph, the term "everywhere" does not include property, payroll, or sales of a foreign corporation in a place that is outside the United States.

**Filing Requirements**

Annual tax returns are required under the Adjusted Gross Income Tax Act (Form IT-20). The due date for the IT-20 return is the fifteenth ($15^{th}$) day of the fourth ($4^{th}$) month following the close of the taxable year.

The Indiana Department of Revenue accepts Federal extension of time applications (Form 7004) and it is not necessary to contact the Department prior to filing the annual return. A copy of the Federal extension of time must be attached to the return when it is filed. When a corporation does not need a Federal extension of time and one is necessary for filing the state return, a letter requesting such an extension should be submitted to this Department prior to the due date of the annual return.

An extension of time granted under IC 6-8.1-6-1 waives the late payment penalty for the extension period on the balance of tax due provided ninety percent (90%) of the current year's total tax liability is paid on or prior to the original due date. Interest on the balance of tax due must be included with the return when it is filed. Interest is computed from the original due date until the date of payment. In October of each year the department establishes the interest rate for the next calendar year. See Departmental Notice #3 for interest rates.

**Separate Accounting**

Indiana does not accept returns filed on a separate accounting basis without prior approval. If the apportionment provisions do not fairly reflect the corporation's Indiana income, the corporation must petition the department for permission to use an alternative method.

**Consolidated Reporting**

The Adjusted Gross Income Tax Act provides for an election to file a consolidated return for a qualified affiliated group under IC 6-3-4-14. To file a consolidated return for adjusted gross income tax purposes, the parent corporation must own eighty percent (80%) of the voting stock of each subsidiary. Each corporation in the affiliated group electing to file consolidated must be either incorporated in Indiana, or be registered with the Secretary of State to do business in Indiana. The affiliated group may not include any corporation which does not have taxable income or loss derived from Indiana sources. If such an election is made for Indiana tax purposes, the Department should be notified by attaching a statement to the return which indicates those affiliated corporations electing to file a consolidated return. In addition, a worksheet must accompany the annual return supporting the adjusted gross consolidated income of the participating affiliates.

An election to file a consolidated return for Indiana purposes can be made by filing the consolidated return by the due date; if filed past the due date, a copy of the valid federal extension of time to file must be attached to the return. An election to file a consolidated return cannot be made on a retroactive basis. Once an affiliated group elects to file consolidated for Indiana purposes, the group must follow that election for all subsequent years of filing. If the group wishes to revoke the election in a subsequent tax year, the group must obtain written permission from the Department prior to filing the return.

**Combined Reporting**

A taxpayer may petition the Department for permission to file a combined income tax return for a tax year. However, the petition must be filed with the Department on or before thirty (30) days after the end of the tax year for which permission is sought. The petition should be sent to the Tax Policy Division, 100 North Senate, N-248, Indianapolis, IN 46204. A timely filed petition will be granted if combined reporting will more fairly reflect the unitary group's Indiana source income. However, combined reporting is limited to the "water's-edge" of the United States.

A unitary group that has petitioned and received permission from the Department to file a combined return in Indiana may file one return for the unitary group, providing a schedule is attached showing the adjusted gross income tax due by member. In the alternative, the unitary group should file an Indiana return for each member doing business in Indiana.

**Accounting Period**

The accounting period for the adjusted gross income tax must be the same as the accounting period adopted for federal income tax purposes.

**Accounting Methods**

Under the Adjusted Gross Income Tax Act, the department will recognize the method of accounting used for federal income tax purposes.

**Estimated Tax Requirements**

A corporation whose estimated adjusted gross income tax liability exceeds one thousand dollars ($1,000) for a taxable year, must file quarterly estimated tax payments. The quarterly estimated tax payments are submitted with an appropriate Indiana voucher or by electronic funds transfer, depending on the amount of the payment due. To avoid the underpayment of estimated tax penalties, corporations are required to make quarterly payments equal to twenty percent (20%) of the final tax liability for the current year, or twenty five percent (25%) of the corporation's liability for the previous tax year. The penalty on corporate adjusted gross income tax or utility receipts tax is assessed on the difference between the actual amount paid by the corporation for each quarter and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for the current year. For estimated payment dates see Information Bulletin #11.

**Tax Credits**

For a complete list of available credits, see Information Bulletin #59.

**Summary**

A corporation operating in Indiana which is not certain of its tax status should promptly apply to the Department for a determination of its status. Complete detailed information as to the corporation's operation should be submitted. All correspondence concerning the matter should be addressed to the Indiana Department of Revenue, Compliance Division, 100 North Senate Avenue, Room N203, Indiana Government Center North, Indianapolis, Indiana 46204-2253.

To avoid the possibility of costly penalties and interest charges for the delinquent filing of returns, a corporation should ask for a determination of its tax status before commencing business in Indiana.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #14**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #14, dated November, 2000)

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**SUBJECT:** Income Tax Credit for Donations to Colleges
**REFERENCE:** IC 6-3-3-5
**INTRODUCTION:**

The purpose of this Bulletin is to briefly summarize the provision in the Adjusted Gross Income Tax law which provides taxpayers a credit for any contribution made to an accredited institution of higher education that is located in the State of Indiana. The term contribution does not include payments for tuition or fees to attend the institution.

**I. ELIGIBLE INSTITUTIONS**

The Department will recognize credits taken on individual and corporate tax returns for contributions made to an eligible institution or to any corporation or foundation organized and operated solely for the benefit of the institution of higher education.

**II. DEFINITION OF "INSTITUTION OF HIGHER EDUCATION"**

The term "institution of higher education" means any educational institution located within Indiana:

(1) which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on;

(2) which regularly offers education at a level above the twelfth grade;

(3) which regularly awards either associate, bachelors, masters, or doctoral degrees, or any combination thereof; and

(4) which is duly accredited by the North Central Association of Colleges and Schools, the Indiana State Board of Education, or the American Association of Theological Schools.

**III. TAX CREDIT FOR CONTRIBUTIONS BY INDIVIDUALS**

Individuals are allowed a tax credit against their adjusted gross income tax liability for contributions made to an institution of higher education. The amount of the individual's credit is fifty percent (50%) of the total amount given during the tax year. The credit may not exceed the lesser of: 1) $100 for a single return or $200 for a joint return; or 2) the adjusted gross income tax liability on any return less the credit for taxes paid to other states, the twenty first century scholars program, the unified tax credit for the elderly, and the enterprise zone credit.

**IV. TAX CREDIT FOR CONTRIBUTIONS BY CORPORATIONS**

Corporations are allowed a tax credit against their adjusted gross income tax liability for contributions made to an institution of higher education.

The amount of a corporation's credit is equal to fifty percent (50%) of the total amount given during the tax year. However, the credit may not exceed the lesser of: 1) ten percent (10%) of the corporation's adjusted gross income tax liability, or 2) the amount of one thousand dollars ($1,000).

**V. COMPUTATION SCHEDULE**

Schedule CC-40 must be attached to the taxpayer's income tax return to substantiate the credit. Schedule CC-40 is used to calculate the allowable credit, to list eligible institutions to which contributions have been made, the date of the contribution, and the amount of the contribution. Schedule CC-40 is available upon request from the Department, and on the Department's web site at www.in.gov/dor/taxforms.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #15**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #15, dated September 2001)

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**SUBJECT:** Extension of Time to File Indiana Corporation Income Tax Returns and Recognition of the Federal Extension of Time to File Indiana Corporation Income Tax Returns
**REFERENCES:** IC 6-8.1-6-1; IC 6-8.1-10-2.1
**INTRODUCTION:**

The purpose of this Bulletin is to explain the steps necessary to get a valid Indiana extension to file an Indiana corporate income tax return.

**I. EXTENSION OF TIME TO FILE**

The Indiana Department of Revenue accepts the approved federal Form 7004 (Application for Automatic Extension of Time to File Corporation Income Tax Return). It is not necessary to request a separate extension of time to file for Indiana filing purposes if a federal extension has been approved. The Indiana corporation income tax return will be accepted as timely filed if it is filed within thirty (30) days after the expiration date of the federal extension. The federal extension is automatically an extension for six months. A copy of the approved Federal Extension Application must be attached to the return.

If an extension of time to file is not being requested from the Internal Revenue Service, or if an extension is being sought for a period in excess of the thirty (30) days past the expiration date of a federal extension, a special extension of time to file must be requested. The written request for a special extension of time to file must be made prior to the original due date or before the current extension of time expires. This request should contain an explanation as to why the extension is being sought and for what period. The request for a special extension of time to file should be sent to:

Indiana Dept. of Revenue
Corporation Income Tax Section
Returns Processing Center
100 N. Senate Avenue
Indianapolis, IN 46204-2253

The Corporation Income Tax Section will issue a letter of approval or denial.

A corporation must pay, by the original due date for filing its return, at least 90% of the tax that is reasonably expected to be due. Any amount due should be sent to the Corporation Income Tax Section as a fifth quarter estimated payment on Form IT-6.

**II. PENALTIES**

A ten percent (10%) penalty will be assessed against a taxpayer who files his Indiana corporation income tax returns past the due date of the return and does not attach a valid extension of time to file or has not prepaid at least ninety percent (90%) of the tax reasonably expected to be due by the original due date. The penalty is imposed under IC 6-8.1-10-2.1.

**III. INTEREST**

Any tax that remains unpaid during an extension period accrues interest in accordance with IC 6-8.1-6-1(d). The interest rate changes annually. Please refer to Departmental Notice #3. The interest should be added to the amount shown as due on the tax return.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #16**
**INCOME TAX**
**JANUARY 2003**

(Replace Information Bulletin #16, dated January 2001)

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**SUBJECT:** Use of Federal Form W-2 for Reporting Indiana State and County Taxes Withheld

**REFERENCE:** IC 6-3-4-8

**INTRODUCTION:**

The purpose of this Bulletin is to provide employers with the necessary information to correctly indicate Indiana adjusted gross income tax withheld, county income tax withheld, and Indiana advance earned income payments on the State copy of Federal Form W-2, Wage and Tax Statement.

**I. EMPLOYER'S STATEMENT TO EMPLOYEES**

Every employer, who has withheld tax from income paid or credited to any taxpayer, is required to provide the taxpayer with a statement of the amount of income paid or credited to him and the amount of tax withheld for him, during the calendar year. For both state and county tax purposes, Federal Form W-2, Wage and Tax Statement, should be used for Indiana withholding purposes.

**II. COMPLETING THE STATE COPY OF FORM W-2 FOR STATE AND COUNTY TAX WITHHOLDING**

All Indiana State income tax withheld by an employer must be designated in the appropriate boxes of the state copy of the W-2 form. For purposes of identifying Indiana State income tax withheld, the abbreviation IN must be shown in box 15.

State income tax information should be reported in boxes 16 and 17. Box 16 should report the amount of wages subject to Indiana income tax. Box 17 should report the amount of Indiana income tax withheld.

All Indiana county income taxes withheld by an employer must be designated in the appropriate boxes of state copy of the W-2 form. To identify county tax withheld for the tax year, enter C and the adopting county code in box 20.

County income tax information should be reported in boxes 18 and 19. Box 18 should report the amount of wages subject to county income tax. Box 19 should report the amount of county income tax withheld.

Advance Earned Income Credit Payments should be reported on the bottom line of box 19. Enter "IN-AEIC" on the bottom line of box 20.

**III. COUNTY CODE LISTINGS**

| | | |
|---|---|---|
| 1. Adams | 32. Hendricks | 63. Pike |
| 2. Allen | 33. Henry | 64. Porter |
| 3. Bartholomew | 34. Howard | 65. Posey |
| 4. Benton | 35. Huntington | 66. Pulaski |
| 5. Blackford | 36. Jackson | 67. Putnam |
| 6. Boone | 37. Jasper | 68. Randolph |
| 7. Brown | 38. Jay | 69. Ripley |
| 8. Carroll | 39. Jefferson | 70. Rush |
| 9. Cass | 40. Jennings | 71. St. Joseph |
| 10. Clark | 41. Johnson | 72. Scott |
| 11. Clay | 42. Knox | 73. Shelby |
| 12. Clinton | 43. Kosciusko | 74. Spencer |
| 13. Crawford | 44 LaGrange | 75. Starke |
| 14. Daviess | 45. Lake | 76. Steuben |
| 15. Dearborn | 46. LaPorte | 77. Sullivan |
| 16. Decatur | 47. Lawrence | 78. Switzerland |
| 17. Dekalb | 48. Madison | 79. Tippecanoe |
| 18. Delaware | 49. Marion | 80. Tipton |
| 19. Dubois | 50. Marshall | 81. Union |
| 20. Elkhart | 51. Martin | 82. Vanderburgh |
| 21. Fayette | 52. Miami | 83. Vermillion |
| 22. Floyd | 53. Monroe | 84. Vigo |
| 23. Fountain | 54. Montgomery | 85. Wabash |
| 24. Franklin | 55. Morgan | 86. Warren |
| 25. Fulton | 56. Newton | 87. Warrick |
| 26. Gibson | 57. Noble | 88. Washington |
| 27. Grant | 58. Ohio | 89. Wayne |
| 28. Greene | 59. Orange | 90. Wells |
| 29. Hamilton | 60. Owen | 91. White |
| 30. Hancock | 61. Parke | 92. Whitley |
| 31. Harrison | 62. Perry | |

Refer to Information Bulletin #32, Income Tax, for additional information concerning state and county taxes.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #18**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #18, dated September 2001)

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**SUBJECT:** Instruction for Obtaining Extensions of Time to File Indiana Individual Income Tax Returns
**REFERENCE:** IC 6-8.1-6-1; IC 6-8.1-10-2.1
**INTRODUCTION:**

This bulletin outlines the procedures for obtaining an extension of time to file the Indiana individual income tax return, Form IT-40 or Form IT-40PNR.

**I. AUTOMATIC EXTENSION OF TIME TO FILE, NOT TO EXCEED SIXTY (60) DAYS**

Form IT-9, Application for Automatic Extension of Time to File Indiana IT-40 or IT-40PNR, is used to obtain an automatic sixty (60) day extension of time to file the Indiana resident or nonresident return. Any taxpayer who wishes to request an extension of time to file, and who expects a payment to be due with their Indiana return, must complete and file the Form IT-9 voucher on or before the original due date of the Indiana individual tax return. If an application for extension is filed, at least ninety percent (90%) of the state and/or county tax due for the entire tax year must be paid with the application.

The payment made with Form IT-9 should be claimed as an estimated tax credit at the time of filing Form IT-40 or Form IT-40PNR. This is only an extension of time for filing your return. *This is not an extension of time to pay any state and/or county tax due.*

Form IT-9 is not required to be filed if there is no tax due on the Indiana individual income tax return.

If you file a federal extension, the Indiana Department of Revenue will accept the extension if a copy is attached to your return at the time of filing. You will have thirty (30) days beyond the federal extension period in which to file your Indiana return.

**II. PENALTY AND INTEREST CHARGES**

Form IT-9 or a federal extension does not extend the due date for the payment of the tax. A penalty may be assessed on any state or county tax paid after the due date of the return. However, a penalty will not be assessed if the balance due on the tax return is:

1. not in excess of ten percent (10%) of the amount of state and county tax due on the tax return, and;
2. paid with the return.

If a penalty is due with your return, it is calculated at ten percent (10%) of the tax that is owed with the return or $5.00, whichever is greater. Any penalty due with the return should be reported on the Form IT-40 or Form IT-40PNR.

Interest will be charged on any amount due with your late filed return and should be calculated from the original due date of the return until the tax is paid. Interest is charged even though an extension has been granted. The interest rate changes annually. Please refer to Departmental Notice # 3. The interest should be added to the amount shown as due on the tax return.

Copies of returns and schedules are available on the Department's web site at www.in.gov/dor/taxforms.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #19**
**INCOME TAX**
**JANUARY 2003**
(replaces bulletin #19 dated July 1992)

**DISCLAIMER**: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT**: Government Obligations
**REFERENCES:** IC 6-3-1-3.5

**I. For purposes of the Adjusted Gross Income Tax Act**, obligations issued by the following organizations are considered direct United States Government obligations specifically exempted from state income taxation by federal law. Although not all inclusive, the Indiana Department of Revenue recognizes the following list of United States obligations, and is correct as of the date of issuance of this bulletin. For obligations not listed below refer to 31 U.S.C. 3124(a) for further guidance.

1. Banks for Cooperatives (12 U.S.C. Section 2134)
2. Central Banks for Cooperatives (12 U.S.C. Section 2134)
3. Commodity Credit Corporation (15 U.S.C. Section 714)
4. District of Columbia
5. Export-Import Banks of the United States (12 U.S.C. Section 635(b))
6. Farm Credit Banks (12 U.S.C. Section 2023)
7. Farmers Home Corporation

8. Federal Deposit Insurance Corporation (12 U.S.C. Section 1825)
9. Federal Farm Loan Corporation
10. Federal Financing Banks (12 U.S.C. Section 2290(b))
11. Federal Home Loan Banks (notes and debentures 12 U.S.C. Section 1433)
12. Federal Housing Administration
13. Federal Intermediate Credit Banks (12 U.S.C. Section 2204)
14. Federal Intermediate Credit Corporation (12 U.S.C. Section 2204)
15. Federal Land Banks Association (12 U.S.C. Section 931, Repealed. Pub. L. 92-181, Title V, Section 5.26(a) Dec. 10, 1971, 85 Stat. 624)
16. Federal Land Banks (12 U.S.C. Section 931, Repealed. Pub. L. 92-181, Title V, Section 5.26(a) Dec. 10, 1971, 85 Stat. 624)
17. Federal Savings and Loan Insurance Corporation (12 U.S.C. Section 1725(e))
18. Home Owner's Loan Corporation (12 U.S.C. Section 1463 Repealed. Pub. L. 89-554, Section 8(a), Sept. 6, 1966, 80 Stat. 648)
19. Joint Stock Land Banks (farm loan bonds and mortgages (12 U.S.C. Section 931, Repealed. Pub. L. 92-181, Title V, Section 5.26(a) Dec. 10, 1971, 85 Stat. 624)
20. Maritime Administration (Merchant Marine Bonds)
21. Production Credit Association (12 U.S.C. Section 2077)
22. Student Loan Marketing Association (20 U.S.C. Section 1087-2)
23. Series E, F, G, ~ H Bonds (26 U.S.C. Section 1272(a)(2)(B))
24. Small Business Administration
25. Tennessee Valley Authority (bonds only) (16 U.S.C. Section 831(n)-4 (d))
26. U.S. Government Bonds (31 U.S.C. Section 3124)
27. U.S. Government Certificates (31 U.S.C. Section 3124)
28. U.S. Government Notes (31 U.S.C. Section 3124)
29. U.S. Housing Authority
30. U.S. Treasury Bills (12 U.S.C. Section 221)
31. U.S. Maritime Commission
32. U.S. Possessions - obligations of Puerto Rico (48 U.S.C. Section 745), Virgin Islands (48 U.S.C. Section 1574 (b)(ii)(A)), Guam (48 U.S.C. Section 1423a) etc.
33. U.S. Postal Service (bonds) (39 U.S.C. Section 2005(d)(4))

The proportionate share of dividends or interest received from a Mutual Fund, Money Market Fund, Regulated Investment Trust or other investment fund derived from investments in **direct** U.S. government obligations will be allowed as a deduction in the computation of Indiana adjusted gross income tax. This deduction will be allowed to the extent such income is included in Indiana adjusted gross income. (For purposes of this deduction, earnings from investing in repurchase agreements are not considered to be derived from **direct** obligations of the U.S. government.)

The following sources of obligations are **not** considered United States obligations:
1. Building and Loan Associations
2. District of Columbia Armory Board
3. FSLIC secondary reserve prepayments
4. Farmer's Home Administration
5. Federal or State Savings and Loan Associations
6. Federal Home Loan Mortgage Corporation participation certificates in mortgage pools
7. Federal Home Loan Time Deposits
8. Federal National Mortgage Association (including dividends from FNMA stock)
9. GI Loans
10. Government National Mortgage Association (including participation certificates)
11. Inter-American Development Bank
12. International Bank for Reconstruction and Development (World Bank obligations)
13. Obligations issued under the New Commodities Act (Interstate and development bonds)
14. Panama Canal Bonds
15. Participating loans in the Federal Reserve System for member banks (Federal funds)
16. Philippine Bonds
17. Reconstruction Finance Corporation
18. Student Loans
19. U.S. Postal Service certificates and savings deposits
20. Repurchase Agreements

Also, interest or dividends received in the following instances is **not exempt** for **adjusted gross income** tax purposes:

a) Debentures issued to mortgage or mortgages foreclosed under the provisions of the National Housing Act.
b) Interest bearing certificates issued in lieu of tax exempt securities, such income losing its identity when merged with other funds
c) Promissory notes of a federal instrumentality
d) Refunds of Federal income tax
e) Earnings from repurchase agreements

**II. Obligations of the State of Indiana**

Any direct obligation of a state or a political subdivision of a state is not taxable for purposes of the Adjusted Gross Income Tax Act.

**III. The Effect of Government Obligations on Indiana Adjusted Gross Income Tax**

All interest reported for federal tax purposes must be reported for Indiana adjusted gross income tax purposes. However, in determining taxable interest income for Indiana adjusted gross income tax purposes, a deduction may be taken for interest received on direct obligations of the Federal government or its agencies, as required under 31 U.S.C. Section 3124. The exemption for Government obligations is not a total exclusion, and may be limited by charging the obligations and interest their fair share of related expenses. However, the deductions generated by the expenses are limited to the amount of income generated by the obligation.

**NOTE**: Although municipal bond interest (including interest on public housing bonds) and bond interest from United States Government obligations are excludable, the gain derived from the sale of tax-exempt municipal bonds and United States Government obligations held as investments is not exempt. The gain to be reported for Indiana tax purposes is the gain reported for Federal income tax purposes. Losses sustained are deductible, subject to capital loss limitations.

You may contact the Compliance Division for a determination of the exempt (or nonexempt) status of any governmental obligation.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #22**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #22 dated September 1997)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Neighborhood Assistance Tax Credit

**REFERENCE:** IC 6-3.1-9

**INTRODUCTION**

An income tax credit is available to Indiana taxpayers who contributed to individuals, groups or neighborhood organizations, or who engage in activities to upgrade economically disadvantaged areas. This credit is limited to the lesser of fifty percent (50%) of the amount contributed or invested, state income tax due, or twenty-five thousand dollars ($25,000) in any taxable year. The credit can be applied against the taxpayer's adjusted gross income tax liability or the financial institutions tax.

**I. Qualification for Claiming the Neighborhood Assistance Credit**

The credit may be claimed by any taxpayer (including any S Corporation, partnership or individual) who makes a contribution to or an investment in some type of activity which will result in the upgrading of an area designated as economically disadvantaged by the Director of the Indiana Department of Commerce after consultation with the community services agency. Examples of qualifying activities are:

1. Furnishing financial assistance, labor, material, and technical advice to aid the physical or economic improvement of an economically disadvantaged area.
2. Any type of instruction to an individual who resides in an economically disadvantaged area that enables the individual to acquire the necessary vocational skills to become either employable, or to be able to seek a higher grade of employment.
3. Any activity which aids in the reduction of crime in an economically disadvantaged area.
4. Contributions to any neighborhood organization which performs community services in an economically disadvantaged area, provided that such organization qualifies and obtains a ruling as exempt from taxation under provisions of the Internal Revenue Code and from the Indiana Department of Revenue as a religious, charitable, scientific, literary, educational or civic organization.

5. Any type of scholastic instruction or scholarship assistance to an individual residing in an economically disadvantaged area which enables the individual to prepare for better life opportunities.

**NOTE:** None of the above activities can benefit an individual employed by the donor or an individual administering such activities. On-going volunteer activities and out of pocket expenses necessary for day to day operation of the program do not qualify for the credit.

**II. Credit Limitations and Application**

The credit is limited to the lesser of fifty percent (50%) of the amount contributed or invested, the state income tax due, or twenty-five thousand dollars ($25,000) and should be claimed for the tax year in which the contribution is made. There is no provision for carry back, carry forward or refund of the credit. For purposes of the limitation, state income tax due is first reduced by any credit for taxes paid to other states, and the college contribution credit, before the application of the neighborhood assistance credit.

The total amount of neighborhood assistance credit allowed to all taxpayers in any state fiscal year is limited to $2,500,000. Applications for the credit will be considered in the chronological order received until the $2,500,000 limit is reached.

**III. Procedure**

Any organization or individual providing neighborhood assistance must first apply to the Director of the Department of Commerce requesting approval of a proposed program. Such application should set forth the program to be conducted, the economically disadvantaged area selected, the estimated amount to be invested and the plans for implementing the program. For further information contact the Director of the Indiana Department of Commerce by writing to:

Indiana Department of Commerce
Community Development Division
One North Capitol, Suite 700
Indianapolis, IN 46204

Donors with approved programs should complete Form NC-10, Neighborhood Assistance Credit Application, and Form NC-20, Notice of Department Decision on Neighborhood Assistance Credit Application, and submit both forms along with the Contributor Application and Certification to the Indiana Department of Commerce at the address listed above. The Department of Commerce will review the application and forward it to the Department of Revenue with a recommendation for approval or rejection of the credit.

The Department of Revenue will return Form NC-20 to the donor indicating the amount of credit approved or the reason the credit was disapproved. The Department of Revenue will accept a properly completed Contributor Application and Certification as proof of cash donations. Contributions of property and or services require additional documentation as shown below.

**IV. Contributions Other Than Cash**

In order to qualify for the credit, contributions other than cash must be contemplated by the program proposal submitted by an organization for approval. Donors to approved programs should check with the organization administering the program to determine if contributions other than cash are within the scope of the approved program.

Contributions other than cash should be valued and documented according to the following guidelines:

<u>Property</u>

Donations of property should be valued at the lower of cost or market value. The value for new property will be determined on the basis of fair and reasonable market price as available to consumers on the open market but not in excess of the substantiated cost to the donor. The value of used property will be determined on the basis of book value (using generally accepted accounting principles) as certified by the donor. Book value is the purchase cost less reasonable depreciation using the straight line method, with one-half year of depreciation used in the year purchased and one-half used in the year of contribution. Unless it can be otherwise clearly established, a five-year useful life should be used in calculating depreciation.

"New Property" is property which has not been used by the end user and which is packaged as it would normally be received by the end user upon purchase. Unless it can be otherwise clearly established, "new property" held more than twelve (12) months prior to contribution will be treated as used property.

A copy of the original invoice showing cost and date of purchase must be submitted with each application. In the case of manufactured property, a statement supporting the cost of the manufactured property must accompany any claim.

<u>Services</u>

Contributions of services should be valued at the donor's usual charge for such services, but not to exceed the average fee charged for the same type of services in the locality in which the services are rendered.

An itemized listing of the services rendered with the proposed charge for each service should be submitted with each application.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #26**
**INCOME TAX**
**JANUARY 2003**
(Replace Information Bulletin #26, dated November 2000)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to this subject matter.

**SUBJECT:** General Information Concerning Filing Requirements and Specific Tax Benefits Available to the Elderly

**REFERENCES:** IC 6-3-1-3.5; IC 6-3-2-3.7; IC 6-3-2-4; IC 6-3-3-9; IC 6-3.5-1.1-7; IC 6-3.5-6-24; IC 6-3.5-7-9

**INTRODUCTION**

Elderly taxpayers have many Indiana tax advantages available to them. The purpose of this bulletin is to highlight those advantages. The first part of the bulletin discusses the filing requirements that are necessary for the elderly and whether or not they are required to file an annual income tax return.

**I. FILING REQUIREMENTS**

The first step in determining whether an individual needs to file an Indiana return is to determine the residency status for the year. A taxpayer is considered a full-year resident if the taxpayer maintained a legal residence in Indiana for the entire year. A taxpayer does not have to be physically present in Indiana the entire year to be considered a full-year resident. If the taxpayer is a resident and the total value of personal, elderly and blind exemptions exceeds the taxpayer's federal adjusted gross income before deductions, the taxpayer does not have to file an annual income tax return. If the taxpayer is not required to file, but has withholding for Indiana state and local taxes, the taxpayer may file a return to claim a refund for taxes withheld.

**NOTE**: A taxpayer might not be required to file a federal return because the standard deduction amount and the number of exemptions exceed the taxpayer's adjusted gross income. However, this does not automatically mean that the taxpayer is not required to file an Indiana resident return.

If the taxpayer was a part-year resident, and the taxpayer had Indiana source income, the taxpayer must file an IT-40PNR (Part Year Nonresident Return).

**II. EXEMPTIONS**

Indiana allows:

- a one thousand dollar ($1,000) exemption for each exemption claimed on the federal return;
- one thousand five hundred dollars ($1,500) for certain dependent children;
- one thousand dollar ($1,000) personal exemption for the taxpayer and/or spouse if they are age 65 or over;
- one thousand dollar ($1,000) exemption for the taxpayer and/or spouse if they are blind; and
- five hundred dollars ($500) additional exemption for each individual age 65 or older if the federal adjusted gross income is less than forty thousand dollars ($40,000).

**III. TAXABLE VERSUS NONTAXABLE INCOME**

Taxable income includes, but is not limited to, income from the following sources:

| | |
|---|---|
| Wages | Rental Income |
| Salaries | Farm Income |
| Commissions | Business Income |
| Tips | Pensions (taxable portion) |
| Interest | Annuities (taxable portion) |
| Dividends | Partnership/Shareholder Income |
| Royalty Income | Gain from sale or exchange of property |

Nontaxable income would include, but is not limited to, income from the following sources:

Social Security
Railroad Retirement Benefits
Life Insurance Proceeds

The federal government taxes a portion of social security and railroad retirement benefits. Indiana allows a tax deduction for any social security or railroad retirement benefits included in federal adjusted gross income. Indiana also allows a deduction for a portion of unemployment compensation benefits received. For more information on taxation of unemployment compensation see Income Tax Information Bulletin #60.

**IV. LIABILITY FOR COUNTY TAX**

If the taxpayer's place of residence or principal place of work activity on January 1 was an Indiana county that had adopted the county adjusted gross income tax, county option income tax, and/or the county economic development income tax, the taxpayer may owe a county tax. The county tax schedule is included in the tax return booklet with a list of the adopting counties and their respective rates.

**V. ADJUSTMENTS TO INDIANA INCOME**

If a taxpayer is required to file an Indiana tax return, the taxpayer may be eligible for certain adjustments to Indiana income.

**Civil Service Annuity Deduction**

A taxpayer who is at least sixty-two (62) years of age by the end of the taxable year may be allowed a deduction from adjusted gross income equal to the first two thousand dollars ($2,000) received during the taxable year from a Federal civil service annuity included in adjusted gross income. This annuity must be reduced by the total amount of any Social Security Benefits and Railroad Retirement Benefits received during the taxable year.

**EXAMPLE**: A taxpayer who received six thousand dollars ($6,000) in Federal civil service annuity benefits, and one thousand five hundred dollars ($1,500) in Social Security benefits, will be allowed a five hundred dollar ($500) civil service annuity adjustment.

**Military Retirement Pay Adjustment**

A taxpayer who is at least sixty (60) years old by the end of the taxable year, or the taxpayer's surviving spouse, may qualify for a military retirement pay deduction. This deduction is limited to the first two thousand dollars ($2,000) of retirement or survivor's benefits received during the taxable year by the individual or the individual's surviving spouse for service in an active or reserve component of the armed forces.

**Homeowner's Residential Property Tax Deduction**

A taxpayer is eligible for an income tax deduction equal to the lesser of two thousand five hundred dollars ($2,500) or the amount of property taxes that are paid during the taxable year in Indiana by the individual, on the individual's Indiana principal place of residence.

**Renter's Income Tax Deduction**

A taxpayer is eligible for an income tax deduction if the taxpayer rents a dwelling for his principal place of residence. The deduction is equal to the lesser of the amount of rent actually paid or two thousand five hundred dollars ($2,500).

**Disability Retirement Deduction**

An individual who retired on disability, and was permanently and totally disabled, is entitled to a deduction from adjusted gross income. For further information, refer to Information Bulletin #70.

**VI. CREDITS AVAILABLE TO THE ELDERLY**

**Unified Tax Credit for the Elderly**

An individual is eligible for the Unified Tax Credit for the Elderly if the individual meets all of the following requirements:

1. Taxpayer and/or spouse must be at least sixty five (65) by the end of the taxable year.
2. The taxpayer and spouse must file a joint return if they lived together at any time during the taxable year.
3. The federal adjusted gross income must be less than ten thousand dollars ($10,000).
4. The qualifying taxpayer and/or spouse must have been a resident of Indiana at least six months during the taxable year.

A claim for this credit must be made by June 30 following the close of the taxable year. After June 30, no credit or refund will be allowed.

This credit can be claimed on the IT-40 or the IT-40PNR. If the income is under the limits that require the filing of an income tax return, but the taxpayer and/or spouse meets the qualifications to claim the credit, the credit can be claimed by filing a Form SC-40. The credit cannot be claimed on the behalf of a decedent unless the claim is filed by the surviving spouse on a joint return. If an individual is imprisoned for more than one hundred eighty (180) days during the taxable year, the individual is not eligible for the credit.

The amount of credit that may be claimed depends on the income and filing status of the taxpayer. Use the table below to calculate the amount of the credit.

If the taxpayer is filing a single return and is age 65 or older, or if the taxpayer is filing a joint return and only the taxpayer or spouse is over 65, use the following table.

| If your income is: | Allowable credit |
|---|---|
| Less than $1,000 | $100 |
| Between $1,000 and $2,999 | $ 50 |
| Between $3,000 and $9,999 | $ 40 |

If the taxpayer and spouse are filing a joint return and both are 65 or older, use the following table.

| If your income is: | Allowable credit |
|---|---|
| Less than $1,000 | $140 |
| Between $1,000 and $2,999 | $ 90 |
| Between $3,000 and $9,999 | $ 80 |

**VII. CREDIT AGAINST COUNTY TAXES**

If a taxpayer qualifies for the Federal Elderly Credit on Schedule R and is subject to county tax (CAGIT, COIT, or CEDIT), the taxpayer will be allowed a credit against the county tax.

The credit is the lesser of:

1. The product of:
   A) the amount of federal credit for the elderly; multiplied by
   B) a fraction, the numerator of which is the county tax rate, and the denominator of fifteen hundredths (0.15); or
2. The amount of county tax imposed on the county taxpayer.

If you need additional information concerning credits for the elderly, contact the Department of Revenue. The Department's web site is www.state.in.us/dor/pubs/bullets/bullet.html.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #27**
**INCOME TAX**
**JANUARY 2003**
(Replaces Information Bulletin #27, dated June 2001)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Indiana Adjusted Gross Income Tax Applicable to Military Personnel

**REFERENCE:** IC 6-3-1-3.5; IC 6-3-2-4

**INTRODUCTION:**

Indiana adjusted gross income tax applies to members of both the active and active reserve components of the United States Army, Air Force, Marines, Navy, Coast Guard, Air National Guard, National Guard, and Navy Merchant Marines. Resident servicemen are taxable on all income, regardless of source. Nonresident servicemen are taxable on all nonmilitary income received from Indiana sources.

**I. RESIDENCY**

Military personnel who enter the armed forces as Indiana residents remain legal residents of Indiana regardless of duty station until official action is taken to change their legal residence. This can be accomplished by filing a State of Legal Residence Certificate, Form DD 2058, with the military personnel office.

**II. FILING REQUIREMENTS**

Resident military personnel are required to file an Indiana income tax return if their gross income exceeds their exemptions. Income from all sources, both military and nonmilitary, should be reported on the Indiana resident return Form IT-40.

Nonresident military personnel are required to file an Indiana income tax return if they receive any income from an Indiana source. Military earnings for active duty are not considered to be from an Indiana source; however, other compensation for part-time employment would be attributable to Indiana. Nonresident servicemen should file an Indiana part-year or nonresident return, Form IT-40PNR.

Military personnel may be subject to tax by both their state of legal residence and the state in which they are stationed if they have nonmilitary earnings. Persons with income subject to tax by two states are allowed a credit in one state for tax paid to the other state. Information Bulletin #28 provides additional information for taxpayers with income subject to tax by two states.

**III. DEDUCTIONS AVAILABLE TO INDIANA RESIDENTS FOR MILITARY SERVICE**

Military personnel on active duty or in the active reserves may deduct up to $2,000 of their military pay. If they earned less than $2,000 military pay, they may deduct only the amount of military pay they earned. If the taxpayer and spouse are both in the military, they each may claim the deduction.

Military retirement pay received by an Indiana resident is taxable in the same manner that it is for federal tax purposes. An individual, or an individual's surviving spouse, is allowed an adjustment of up to $2,000 for retirement pay or survivor's benefits received as a result of the individual's active or reserve service in the armed forces, provided that the individual, or the individual's surviving spouse, is at least 60 years of age. The individual need not have been an Indiana resident during active military service to qualify for this adjustment.

Military withholding statements or retirement survivor's benefits statements must be attached to the tax return when these deductions are claimed.

**IV. COUNTY INCOME TAXES**

Some Indiana counties have adopted one (or a combination) of the three local option income taxes. They include the (1) County Adjusted Gross Income Tax (CAGIT), (2) County Option Income Tax (COIT), and (3) County Economic Development Income Tax (CEDIT). The tax is imposed on residents of adopting counties, and residents of non-adopting counties that work in an adopting county. A list of the adopting counties and their rates are contained in the Individual income tax booklets IT-40, and IT-40PNR.

Resident military personnel are subject to a local option income tax if, on January 1 of the tax year, their county of residence is a county which has adopted a local option income tax. However, a resident military person who maintains a household outside the state of Indiana is not subject to a county tax.

The income of a nonresident military person's spouse may be subject to county tax if, on January 1 of the tax year, the spouse's legal residence or principal place of work activity was in an Indiana adopting county.

**V. ESTIMATED TAX**

A military person who expects to owe four hundred dollars ($400) or more in state and/or county income tax may be required to make estimated installment payments. Generally, the military will withhold Indiana state income tax from military earnings of resident military personnel in an amount sufficient to avoid estimated tax payments on military earnings. However, county tax is not withheld. Other types of income not subject to withholding of tax could result in an amount due of $400 or more of state and/or county tax due for the year.

A taxpayer may be subject to a penalty for underpayment of estimated tax if they do not make the required estimated payments. To establish an estimated account, the first payment must be made. A coupon booklet will be issued for the remaining installment periods.

For further information concerning estimated tax, see Income Tax Information Bulletin #3.

**VI. DUE DATES AND EXTENSION OF TIME FOR FILING**

Indiana individual income tax returns are due on or before April 15 of the year following the tax year. Military personnel on active duty outside of the U.S. and Puerto Rico will be allowed an automatic sixty (60) day extension. A statement must be attached to the return verifying that the taxpayer was outside the U.S. or Puerto Rico on April 15.

Military personnel serving in a combat zone have an automatic extension of 180 days after they leave the combat zone. If they are hospitalized outside the United States as a result of such service, the 180 day extension period begins upon release. The spouse of such serviceman must use the same method of filing for both federal and Indiana income tax returns. If filing under this extension, write "Combat Zone" across the top of the form and mail to: Indiana Department of Revenue, P.O. Box 2305, Indianapolis, IN 46206-2305.

Questions concerning Indiana taxation of military personnel should be addressed to the Individual Income Tax Section of the Compliance Division, Indiana Government Center North Room N203, Indianapolis, IN 46204.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #32**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #32, dated August, 2000 )

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to this subject matter.

**SUBJECT:** General Information on County Income Taxes

**REFERENCE:** IC 6-3.5-1.1; IC6-3.5-6; IC 6-3.5-7

**INTRODUCTION**

The 1973 Indiana General Assembly enacted legislation which provides each county the option of adopting a County Adjusted Gross Income Tax (CAGIT). The 1984 Indiana General Assembly enacted legislation which provides each county the option of adopting an alternative county income tax, the County Option Income Tax (COIT). The 1987 Indiana General Assembly enacted legislation which provides each county with the option of adopting a third income tax, that can stand alone or may be supplementary to the first two. This third tax is known as the County Economic Development Income Tax (CEDIT). CAGIT was enacted to provide the adopting counties with additional funds, to be used in part for property tax relief. COIT was enacted to provide counties with additional funds, part of which will be used to: (1) replace the amount, if any, of the property tax revenue lost due to allowing an increased homestead credit within the county, and (2) to make distributions of distributive shares to the civil taxing units of a county. CEDIT was enacted to allow counties to raise funds for local economic development projects.

**I. County of Residence and County of Work**

The taxpayer's county of residence is determined as of January 1 each year. For purposes of county tax, an individual's county of residence is determined by the county where the taxpayer maintains his home.

The taxpayer's county of principal work activity is also determined as of January 1 each year. An individual's county of principal work activity is that county where the taxpayer receives the greatest percentage of his gross income from salaries, wages, commissions, fees or other income of this type. If an individual is self-employed, the county of principal work activity is that county where the individual's principal place of business is located. If an individual has two or more sources of income from two or more counties, the principal source will be evidenced by the percent of income received from each county and the percent of time spent in each county.

**II. Change in County Residence or County of Work Within the Taxable Year**

The county of residence and county of principal work activity determined as of January 1 each year are fixed as of that date for county tax purposes for the entire tax year. Any change in an individual's county of residence or county of principal work activity during the year will not affect the amount of county tax for which he is liable. Form WH-4 establishes, for withholding purposes, the taxpayer's county of residence or county of principal work activity. If an individual moves or changes his place of employment during the year, a new WH-4 must be completed. Completion of a new WH-4 will serve only to establish the county of residence and county of principal work activity for the ensuing year.

**III. Income Subject to County Income Tax**

If an individual is a resident of a county which adopts the county tax, his entire adjusted gross income will be subject to the county tax at the tax rate imposed by that county. The adjusted gross income for county tax purposes will be the Indiana adjusted gross income, plus any adjustment taken for the non-Indiana locality earnings deduction.

If an individual resides in a non-adopting county, but his principal place of business or employment is in an adopting county, only the adjusted gross income derived from his principal place of business or employment is subject to the county tax at the nonresident rate.

The only deductions allowed from principal work activity income are those which directly apply to the production of income from one's principal work activity. They would not include Indiana deductions which are not related to the production of income.

The following deductions are considered directly related to the production of principal work activity income:

- reimbursed employee business expenses to the extent that they are deductible in computing Indiana adjusted gross income and which are attributable to the income from a county taxpayer's principal work activity; and
- payments to self-employed retirement plans and an IRA attributable to income from a county taxpayer's principal work activity, to the extent such payments are deductible in computing Indiana adjusted gross income, are deductible to arrive at the county adjusted gross income subject to tax.

If an individual resides outside the State of Indiana, but the taxpayer's principal place of work activity is in an Indiana adopting county, only the adjusted gross income derived from the Indiana adopting county is subject to county tax. Reciprocal agreements between the State of Indiana and other states do not affect the taxpayer's liability under the county tax.

**IV. Tax Rates**

Counties that have adopted CAGIT have the option of adopting one of three different rates for county residents who are subject to CAGIT: one-half of one percent (.005), three-fourths of one percent (.075), or one percent (.01). Also, the adopting county must assess all residents of nonadopting counties who derive their principal source of income either from employment or business in the adopting county at the rate of one-fourth of one percent (.0025). The nonresident rate applies only when the taxpayer's home county has not adopted the County Option Income Tax or the County Economic Development Income Tax. There are several counties permitted by statute to adopt an additional tax exceeding one percent (.01) for special projects.

Counties that have adopted COIT must initially impose the rate at two-tenths of one percent (.002) on resident county taxpayers, and at one-fourth of the county resident rate or five hundredths of one percent (.0005) for taxpayers subject to the nonresident county rate. If adopted, the COIT takes effect on July 1 of the tax year in which it is adopted. If the COIT rate is imposed on the taxpayers of a county, then the COIT rate increases for residents by one-tenth of one percent (.001) (to a maximum of.006) each succeeding July 1, unless frozen or rescinded by the county income tax council. The council can then pass an ordinance to increase the resident rate to a maximum of one percent (.01) in increments of one-tenth of one percent per year. The COIT rate in effect for taxpayers who are subject to the nonresident rate of the county is at all times one-fourth of the rate imposed upon resident county taxpayers.

The County Economic Development Income Tax (CEDIT) may be imposed at several different rates. Those rates are: one-tenth of one percent (.001), two-tenths of one percent (.002), twenty-five hundredths of one percent (.0025), three tenths of one percent (.003), thirty-five hundredths of one percent (.0035), four-tents of one percent (.004), forty-five hundredths of one percent (.0045), or one-half of one percent (.005).

Counties may adopt an additional CEDIT rate of twenty-five hundredths of one percent (.0025) to offset the increased property tax on homesteads resulting from the deduction of the assessed value of inventory in the county. If the county does not elect to permit the deduction for the assessed value of inventory in the county, the county is prohibited from imposing the additional CEDIT rate.

If a county has adopted CAGIT, the combined rate of CAGIT and CEDIT may not exceed one and one-fourth percent (.0125) unless specific legislation is passed to allow a county to exceed the maximum rate. If a county has adopted COIT, the combined rate of COIT and CEDIT may not exceed one percent (.01).

There is no separate CEDIT rate for resident or nonresident taxpayers. The taxpayer pays the full rate of tax even if he is a nonresident.

**V. County Tax Withheld**

The State copy of the Federal Wage and Tax Statement, Form W-2, usually indicates the amount, if any, of CAGIT, COIT, and/or CEDIT withheld. A separate line on the individual income tax return is provided to take credit for local taxes withheld.

**VI. Credit for the Elderly or Totally Disabled**

A credit against the county tax is available for persons who qualify for the Federal Credit for the Elderly and the Permanently and Totally Disabled. The credit is the lesser of: the product of: his or her credit for the elderly for that same taxable year; multiplied by a fraction, the numerator of which is the CAGIT, COIT and CEDIT rate imposed against the county taxpayer, and the denominator of which is fifteen hundredths (.0015); or the amount of CAGIT, COIT and CEDIT tax imposed on the county taxpayer.

**VII. Credit for Taxes Paid to Localities Outside of Indiana**

A credit against county tax is available to taxpayers who are also subject to a local income tax in another state. The credit is the lesser of: (1) the amount of local income tax actually paid to the locality in the other state; (2) the amount of income taxed by the locality outside of Indiana multiplied by the Indiana county tax rate to which the taxpayer is subject; or (3) the actual amount of county income tax due.

A copy of the tax return filed with the out-of-state locality must be attached to the Indiana return in order to substantiate the credit claimed. When no return is required by an out-of-state locality, a copy of the W-2 form showing the local tax withheld must be attached to the return.

Nonresidents of Indiana may not claim this credit against their Indiana county tax liability. On a joint return, the husband and/or wife should compute the credit separately. Applying the above limitations, any excess credit of one spouse cannot be used to reduce the county tax liability of the other spouse.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #42**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #42, dated November 2000)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Indiana Income Tax Forms and Schedules

**REFERENCES:** IC 6-2.3; IC 6-3; IC 6-3.1; IC 6-3.5; IC 6-5.5; IC 6-8.1

**INTRODUCTION**

The Indiana Department of Revenue has the sole authority to prescribe and furnish forms and schedules used in the administration and collection of state income taxes. These forms are available to the taxpayer free of charge upon request. The forms can also be obtained by retrieving them from the Department’s web site (www.in.gov/dor/taxforms/statetoc.html).

Software developers who wish to produce forms that are acceptable to the Department should consult Departmental Notice #4 for more detailed information.

**I. FORMS AND SCHEDULES FOR USE BY INDIVIDUALS ONLY**

| | |
|---|---|
| Form IT-9 | Application for automatic extension of time to file Indiana IT-40 or IT-40PNR |
| Form IT-40 | Indiana full-year resident individual income tax return |
| Form IT-40EZ | Indiana full-year resident EZ (short form) return |
| Form IT-40ES | Declaration of estimated tax |
| Form IT-40P | Indiana individual income tax return for filing an original return for a year prior to 1997 |
| Form IT -40PNR | Part-year or nonresident Indiana individual income tax return |
| Schedule IT-40PNRA | Indiana apportionment schedule for nonresident individuals |
| Schedule IT-40NOL | Individual income tax net operating loss computation |
| Schedule IT-40QEC | Enterprise zone employee deduction |
| Form IT-2440 | Indiana disability retirement deduction |
| Schedule CT-40 | County income tax schedule for Indiana residents |
| Form IT-40X | Amended Indiana individual income tax return |
| Schedule IT-2210 | Underpayment of estimated tax by individuals |
| Schedule IT-2210A | Annualized schedule for underpayment of estimated tax by individuals |
| Form SC-40 | Unified tax credit for the elderly |
| Schedule IN-H | Indiana household employee taxes |
| Schedule IN-EIC | Computation of Indiana's earned income tax credit |

**II. FORMS AND SCHEDULES FOR CORPORATIONS ONLY**

| | |
|---|---|
| AD-19 | Affidavit for reinstatement of corporation |
| Form E-6 | Request for Indiana corporate estimated quarterly income tax returns |
| Schedule E-7 | Three factor apportionment schedule for entities involved with interstate transportation |
| IT-20 Schedule 8-D | Consolidated income tax schedule for Indiana affiliated group |
| Form IT-20 | Corporation income tax return for adjusted gross income tax |
| IT-6 | Indiana corporate adjusted gross income tax quarterly return |
| Form FIT-20 | Annual return for an entity conducting the business of a financial institution |
| Form FIT-QP | Financial institution tax quarterly return |
| Form IT-20S | S Corporation return |
| Form URT | Income tax return for the utility receipts tax |
| Form URT-Q | Utility receipts tax quarterly return |
| Form IT-20X | Amended Indiana corporation income tax return |
| Schedule IT-2220 | Underpayment of estimated adjusted gross income tax by corporations |
| Schedule IT-20NOL | Corporate income tax net operating loss computation |
| IT-20 Schedule Unitary 1 | Combined profit and loss statement of Indiana unitary group |
| IT-20 Schedule Unitary 2 | Converting net income to combined business income of Indiana unitary group |

**III. PARTNERSHIPS, TRUST AND ESTATE RETURNS**

| | |
|---|---|
| Form IT-65 | Partnership return |
| Form IT-41 | Fiduciary return |

**IV. NOT-FOR-PROFIT ORGANIZATION RETURNS**

| | |
|---|---|
| Form IT-20NP | Not-for-profit organization unrelated business income tax return |
| Form NFP-20A | Application to file as a not-for-profit organization |
| Form NFP-20 | Not-for-profit organization's annual report |

**V. MISCELLANEOUS FORMS FOR USE BY MOST TAXPAYERS**

| | |
|---|---|
| Form POA-1 | Power of attorney |
| Form CC-40 | Indiana college credit |
| Schedule IT-20REC | Indiana credit for increased research activity |
| Form IDA-10/20 | Individual development account tax credit application |
| Form NC10/20 | Neighborhood assistance credit application |
| Schedule TSE | Claim for credit by employers of eligible teachers during summer recess |
| Schedule EZ 1, 2, 3 | Enterprise zone employment expense tax credit |
| Schedule LIC | Enterprise zone loan interest tax credit |

**VI. WITHHOLDING TAX FORMS**

| | |
|---|---|
| Form WH-1 | Employers' withholding tax return |
| From WH-3 | Annual reconciliation of employers withholding tax returns (Form WH-1) with amounts shown on withholding forms (Form W-2) |
| Form WH-4 | Employee's withholding exemption and county residence certificate |
| Form WH-5 | Indiana Earned Income Credit Advance Payment Certificate |
| Form WH-4852 | Indiana substitute for (W-2) or Form 1099-R |
| Form WH-47 | Certificate of residence for out of state employees |

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #43**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #43 dated April 1995)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Insulation Deduction

**REFERENCE:** IC 6-3-2-5

**INTRODUCTION**

A taxpayer is entitled to an Indiana income tax deduction on the materials and labor used to install insulation in a taxpayer's principal place of residence in Indiana. This bulletin discusses the requirements to qualify for this deduction.

**I. Insulation Defined**

Insulation is any material commonly used in the building industry for the sole purpose of controlling the passage of heat energy into or out of a building. This deduction includes the following forms of insulation: material made from fiberglass, rock wool, cellulose, Styrofoam, urea-based foam urethane, vermiculite, perlite, polystyrene, reflective insulation, extruded polystyrene foam, blown-in insulation, rolled insulation, sheet Styrofoam insulation, and wrap insulation. Other materials which qualify for this deduction include weather stripping, storm windows, storm doors, thermal pane windows, and caulking. The following materials do not qualify for the insulation deduction: automatic setback thermostats, flue opening modifications, mechanical furnace ignition systems, solar energy equipment (such as collectors, rock beds, and heat exchangers), wind energy equipment (such as windmills), geothermal energy equipment, furnace replacement burners, meters, wood burning stoves, sky lights, heat pumps, and temporary plastic window coverings.

Also note that materials which are primarily structural or decorative do not qualify for this deduction, even though these materials may have been designed, in part, to achieve an insulating effect. Such materials include carpeting, drapes, fluorescent replacement lighting systems, swimming pools used to store energy, or residential siding.

**II. Requirements Regarding Installation Of Insulation**

Insulation must be installed through one of the following applications to qualify for this deduction:

**1. Ceiling insulation.** Ceiling insulation is insulation installed within the enclosed walls of a principal residence or insulation installed between unheated attic space and the top level of a principal residence.

**2. Wall insulation.** Wall insulation is insulation installed in the surface of an exterior wall or in the cavity of an exterior wall.

**3. Floor insulation.** Floor insulation is insulation installed between the first level heating space of a residence and the unheated space beneath it. This space includes a crawl space or a basement.

**4. Roof insulation.** Roof insulation is insulation installed on the surface of the roof facing the residential interior.

**5. Hot bare pipe insulation.** Hot bare pipe insulation is insulation installed around the exterior of pipes.

**6. Exterior insulation for a hot water heater.** Exterior insulation for a hot water heater is insulation placed around the exterior of a hot water heater tank.

**III. Other Requirements**

Insulation or insulation-related materials must also meet the following requirements to qualify for this deduction:

1. The materials must be installed in the taxpayer's principal place of residence in Indiana. If the taxpayer's principal residence is a rental property, the deduction is available only if the costs incurred for insulation are not reimbursed by the landlord.

2. The portion of the residence being insulated must have been built at least three years prior to the taxable year for which the deduction is taken. For example, if a taxpayer claims an insulation deduction in 2002, the portion of the residence where the insulation was installed must have been built before 1999.
3. The materials must be new and not used as a replacement for other material. Materials replacing broken or worn-out materials do not qualify for this deduction.
4. The deduction must be taken for the tax year during which the materials were installed. For example, if the insulation was installed during 2002, the deduction must be taken for the 2002 tax year.
5. The taxpayer must submit invoices with the Indiana tax return which document the cost of labor and materials used in installing the insulation. These invoices must also provide the names and addresses of the persons who performed the labor in installing the insulation. No labor charge is allowed for items installed by the taxpayer at his or her principal place of residence.

**Dollar Limitations**

The insulation deduction is limited to the cost of the insulation (including installation costs) or one thousand dollars ($1,000), whichever is less. Excess costs may not be carried forward to subsequent tax years.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #51**
**SALES TAX**
**JANUARY 2003**

(Replaces Bulletin #51 dated October 1983 and Bulletins #51E, 51G and 51W all dated April 1983)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Public Utilities

**REFERENCES:** IC 6-2.5-4-5; IC 6-2.5-4-6

**INTRODUCTION**

A person engaged as a public utility is a retail merchant making a retail transaction when the person furnishes or sells electrical energy, natural or artificial gas, water, steam or steam heating. The term public utility refers to any organization of any kind or nature furnishing or selling those services listed above, and having the right to eminent domain or subject to governmental regulation in any phase of its operation in furnishing those services.

The act of registering to be regulated by governmental units is not the activity which creates a public utility. It is, rather, the performance of that act which should be regulated by a governmental unit that creates a public utility of its responsibility to collect and remit taxes.

**I. Public Utilities Furnishing Electrical Energy and/or Steam Heat**

All purchases of tangible personal property by electric utilities are subject to sales tax unless the property purchased constitutes "production plant" or "power production" expenses as classified pursuant to the "Uniform System of Accounts" which was adopted and prescribed for the utility by the Indiana Utility Regulatory Commission.

**II. Public Utilities Furnishing Natural or Artificial Gas**

All purchases of tangible personal property by natural or artificial gas utilities are subject to sales tax unless the property purchased constitutes "production plant", "storage plant", "production expenses" and "underground storage expenses" as classified pursuant to the "Uniform System of Accounts" which was adopted and prescribed for the utility by the Indiana Utility Regulatory Commission.

**III. Public Utilities Furnishing Water**

All purchases of tangible personal property by water utilities are subject to sales tax unless the property purchased constitutes "source of supply plant and expenses", "pumping plant and expenses" and "water treatment plant and expenses" as classified pursuant to the "Uniform System of Accounts" which was adopted and prescribed for the utility by the Indiana Utility Regulatory Commission.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #52**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #52, dated September 2001)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Withholding Information for Part-Time Employees and Other Miscellaneous Withholding Requirements

**REFERENCE:** IC 6-3-4-15.7

**I. WITHHOLDING OF TAX FROM PART-TIME, TEMPORARY, OR SEASONAL EMPLOYEES**

Withholding agents are required to withhold both State Income Tax and County Tax at the applicable rate stated on the rate schedules, from the income of all employees, including part-time, temporary or seasonal employees. The fact that the employee will not earn in excess of their one thousand dollar ($1,000) exemption has no bearing on the withholding by the withholding agent. The Internal Revenue Service, which allows an employee to waive withholding for federal tax purposes when the income is not expected to exceed the federal filing requirements and income allowances, has no bearing on the withholding of taxes from the income of employees for Indiana tax purposes.

**II. WITHHOLDING OF TAX FROM SUPPLEMENTAL UNEMPLOYMENT COMPENSATION BENEFIT INCOME**

Supplemental Unemployment Compensation Benefits paid to an individual are treated as if they were income, to the extent such benefits are includable in the gross income of such individuals, and therefore are subject to withholding by the withholding agent for Indiana tax purposes.

**III. WITHHOLDING OF TAX FROM DISTRIBUTION OF ANNUITY, PENSION, AND RETIREMENT PAYMENTS**

The payor of periodic or nonperiodic distribution under an annuity, pension, retirement, or other deferred compensation plan (as described in Section 3405 of the Internal Revenue Code) that is paid to a resident of Indiana shall, upon receipt from the payee of a written request for state and/or county tax withholding, withhold the requested amount from each payment. The request must be dated and signed by the payee and specify the whole dollar amount to be withheld from each payment. The request must also specify the payee’s name, current address, social security number, and the contract, policy, or account number to which the request applies. The request shall remain in effect until the payor receives in writing from the payee a change in or revocation of the request. The payor is not required to withhold state income tax from a payment if the amount to be withheld is less than ten dollars ($10) or if the amount to be withheld would reduce the affected payment to less than ten dollars ($10).

**IV. WITHHOLDING OF TAX FROM AGRICULTURAL EMPLOYEES**

Most compensation earned through agricultural labor is subject to income tax withholding if the compensation is subject to FICA withholding. However, the compensation for services performed in connection with forestry, lumbering, or landscaping is statutorily excluded from wages, and therefore no withholding is required.

**V. WITHHOLDING OF TAX FROM CASUAL EMPLOYEES**

Withholding agents are not required to withhold Indiana state income taxes from payments made to ordained ministers, casual laborers, such as periodic yard workers, and in some cases household employees. Although these types of income do not require withholding, the Internal Revenue Code provides for voluntary withholding. If the payee makes a request for voluntary withholding of Federal Income Tax, the payor is required to withhold. Once this voluntary agreement is entered into, the payor must withhold the Indiana state and county income taxes.

**VI. WITHHOLDING OF TAX FROM HOUSEHOLD EMPLOYEES**

A person is defined as a household employee if the person does household work and you control what will be done and how it will be done. If you pay wages to a household worker who is your employee, you may have needed to withhold state and county income taxes. The withholding can be reported on the IT-40 Individual Income Tax Return.

**VII. INFORMATION RETURN FILING REQUIREMENTS**

Information returns that indicate the withholding of Indiana Adjusted Gross or County Income Taxes must be submitted with Indiana Form WH-3. Forms W-2, W-2G, 1099-R, and WH-18 satisfy this requirement.

Information returns that do not report withholding of Adjusted Gross or County Income Taxes should not be submitted to the Department. Forms 1099-B, 1099-DIV, 1099-INT, 1099-MISC, and 1099-S are in this category. Theses returns must be maintained by the taxpayer for the statutory time period, and made available to the Department upon request.

Questions relating to information contained in this Bulletin should be directed to:

Indiana Department of Revenue
Compliance Division
Indiana Government Center North
Indianapolis, IN 46204-2253

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #59**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin # 59 dated September 1997)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Application of Tax Credits Available to Taxpayers

**REFERENCES:** IC 6-3-3; IC 6-3.1

**INTRODUCTION:**

There are numerous Indiana tax credits available for individual, fiduciary, partnership and corporate taxpayers. The credits should be claimed when the annual income tax return is filed. In the case of partnerships, S Corporations and limited liability companies, some credits are allocated to the partners, shareholders, or members of the entity.

**I. REFUND OF CREDITS CLAIMED**

Credits are divided into three categories: 1) nonrefundable; 2) non-refundable with carryover allowances; and 3) refundable. Nonrefundable credits are those credits which may be used to reduce a current year tax liability, but are limited to the total amount of tax due. Nonrefundable credits with carryover allowances are those credits which are used to reduce a tax liability, and allow any amount in excess of the liability to be used against a subsequent year's liability. Refundable credits are those credits that provide for the amount in excess of the claimant's tax liability to be refunded to the taxpayer.

**II. CREDITS AVAILABLE TO TAXPAYERS**

The following table lists the credits available to taxpayers. The credits should be applied against the tax due in the order listed with all nonrefundable credits used first, nonrefundable credits with carryover allowances used second, and refundable credits used last. The type of tax to which the credit may be applied is listed, and if the credit can be applied against more than one tax type, then the additional tax types are listed in the order to be applied. Claims for credits administered by agencies other than the Department should be supported by a separate calculation and certification from the appropriate agency of the amounts eligible for credit.

**SEE BOTTOM OF CHART FOR EXPLANATION OF TERMS**

| **CREDIT** | **TAX** | **CREDIT LIMITATIONS** |
|---|---|---|
| **Non Refundable Credits** | | |
| Taxes paid to other states<br>IC 6-3-3-3 * | AGIT | Amount of state income tax liability |
| Local taxes paid outside of Indiana<br>IC 6-3.5-1.1-6 & IC 6-3.5-6-23 | CAGIT<br>*COIT | |
| Charitable contributions to higher education institutions<br>IC 6-3-3-5 | AGIT | 50% of contribution up to $100 for single, $200 for joint return, or 10% of corporation adjusted gross income tax liability up to $1,000 per entity |
| County credit for elderly or permanently disable<br>IC 6-3.5-1.1-7, IC 6-3.5-6-24<br>IC 6-3.5-7-9* | CAGIT<br>COIT<br>CEDIT | Based on Federal Schedule R |
| Twenty-first century scholars program support fund<br>IC 6-3-3-5.1 | AGIT | Same limits as college contributions credit |
| Teacher summer employment credit<br>IC 6-3.1-2<br>Board of Education | AGIT<br>FIT | Lesser of $2,500 or 50% of wages paid, maximum amount of credit for all taxpayers is $500,000 per fiscal year. |

| | | |
|---|---|---|
| Prison investment credit<br>IC 6-3.1-6#<br>Dep't of Correction | AGIT | 50% of qualified investment<br>plus 25% of wages paid. |
| Neighborhood assistance<br>credit<br>IC 6-3.1-9 #<br>Dep't of Commerce | AGIT<br>FIT | Lesser of 50% of investment or<br>or $25,000. Maximum for all<br>taxpayers, $2,500,000 per year. |
| Individual development<br>account<br>IC 6-3.1-18 # | AGIT<br>FIT | 50% of contributed amount if<br>contribution is less than<br>$50,000. Total statewide<br>impact is $200,000 per year. |
| Use tax credit<br>IC 6-2.5-3-5 | SALES | Limited up to 6% credit<br>for qualified property<br>purchased out of state |
| **Nonrefundable credits with carry forward** | | |
| Community revitalization<br>enhancement district<br>IC 6-3.1-19 #<br>Dep't of Commerce | AGIT<br>FIT<br>INSUR<br>CAGIT<br>COIT<br>CEDIT | 25% of the qualified investment |
| Enterprise zone employer<br>Expense credit<br>IC 6-3-3-10 #<br>Ten-year carry forward<br>Three year carry back | AGIT<br>FIT<br>INSUR | Lesser of 10% of increased<br>expenditures, or $1,500 per<br>employee |
| Research expense credit<br>IC 6-3.1-4 #<br>Fifteen year carry forward | AGIT | 10% of the Indiana qualified<br>research expense without<br>apportionment. |
| Enterprise zone loan interest<br>credit<br>IC 6-3.1-7 #<br>Ten-year carry forward | AGIT<br>FIT<br>INSUR | 5% of interest received from a<br>qualified loan. |
| Enterprise zone investment<br>cost credit<br>IC 6-3.1-10 #<br>Dep't of Commerce<br>Indefinite carry forward | AGIT | Maximum 30% of investment<br>depending on number of<br>employees, type of business<br>and amount of investment. |
| Industrial recovery tax credit<br>IC 6-3.1-11 #<br>Enterprise Zone Board<br>Indefinite carry forward | AGIT<br>INSUR<br>FIT | Maximum of 25% of the cost of<br>investment depending on the<br>age of the facility. |
| Military base recovery credit<br>IC 6-3.1-11.5 #<br>Enterprise Zone Board<br>Indefinite carry forward | AGIT<br>INSUR<br>FIT | Same parameters as the<br>industrial recovery tax<br>credit. |

| | | |
|---|---|---|
| Capital Investment Tax Credit<br>IC 6-3.1-13.5 #<br>Department of Commerce<br>3 year carry forward | AGIT<br>INSUR<br>FIT | Credit is equal to 14% of<br>the qualified investment.<br>To qualify for the credit,<br>the employee's average<br>wages must exceed the county<br>average wage. |
| Maternity home tax credit<br>IC 6-3.1-14<br>St. Board of Health<br>Indefinite carry forward | AGIT | Lesser of $200 per pregnant<br>woman, or $3,000 per home.<br>Maximum total credit<br>allowable of $500,000 per<br>state fiscal year. |
| Historic rehabilitation tax credit<br>IC 6-3.1-16 #<br>Natural Resources Dep't<br>Fifteen year carry forward | AGIT | 20% of qualified expenditures.<br>Maximum total credits<br>allowable of $450,000 per<br>state fiscal year |
| Riverboat building credit<br>IC 6-3.1-17<br>Dep't of Commerce<br>Indefinite carry forward | AGIT<br>INSUR<br>FIT<br>SALES | 15% of the qualified investment<br>Maximum total credits<br>allowable of $1,000,000 per<br>state fiscal year |
| Community Revitalization<br>Enhancement District<br>Tax Credit<br>IC 6-3.1-19<br>Department of Commerce<br>Indefinite carry forward | AGIT<br>CAGIT<br>COIT<br>CEDIT<br>INSUR<br>FIT | Credit is equal to 25% of the<br>qualified investment made by<br>the taxpayer during the taxable<br>year. |
| Residential Historic<br>Rehabilitation Credit<br>IC 6-3.1-22<br>Natural Resources Dep't<br>Fifteen year carry forward | AGIT | Credit is equal to 20% of<br>qualified expenditure that the<br>preservation or rehabilitation of<br>historic property. The total<br>amount of all credits allowed<br>may not exceed $250,000 per<br>fiscal year. |
| Rerefined Lubrication Oil<br>Facility Credit<br>IC 6-3.1-22.2#<br>Department of Commerce<br>Two year carry forward | AGIT<br>INSUR<br>FIT<br>SALES | The credit is the percentage<br>of credit listed below<br>multiplied by the amount of<br>property taxes paid.<br><u>Year</u> <u>Percentage</u><br>2001 100%<br>2002 80%<br>2003 60%<br>2004 40%<br>2005 20% |
| Voluntary Remediation<br>Tax Credit<br>IC 6-3.1-23#<br>Dep't of Environmental<br>Management<br>Indiana Development Finance<br>Authority<br>Five year carry forward | AGIT<br>INSUR<br>FIT<br>SALES | The credit is the lesser of<br>$100,000 or 10% of the<br>qualified investment. The<br>total amount of credits allowed<br>in a fiscal year may not<br>exceed $1,000,000. |

| | | |
|---|---|---|
| Indiana Comprehensive<br>Health Insurance Assn.<br>IC 27-8-10-2.1(n)(1)<br>Unlimited carry forward<br>Department of Insurance | INSUR<br>AGIT | An insurance company may<br>claim a credit against it tax<br>liabilities for the assessment(s)<br>paid to the association during<br>the calendar year. |
| Guaranty Association Credit<br>IC 27-6-8-15 &<br>IC 27-8-8-16<br>Unlimited carry forward<br>Department of Insurance | INSUR<br>AGIT | The tax credit may not exceed<br>20% of the assessment paid to<br>the association in the preceding<br>calendar year. |
| **Refundable Credits** | | |
| Taxes withheld from wages<br>IC 6-3-3-1 * | AGIT | Total withholding from wages |
| Unified credit for the elderly<br>IC 6-3-3-9 * | AGIT | Minimum of $40, maximum of<br>$140 depending on income and<br>Marital status. |
| Credit for estimated tax paid<br>IC 6-3-4-4 | AGIT<br>FIT | Taxpayer eligible for credit for<br>estimated taxes paid. |
| Economic development for<br>Growing economy tax credit<br>IC 6-3.1-13 #<br>Dep't of Commerce | AGIT<br>INSUR<br>FIT | Amount of withholding tax<br>remitted by employer for<br>qualified new employees, and<br>retention of current employees.<br>The maximum aggregate amount of job retention credits is limited to<br>$5,000,000 per year in FY 2004 and FY 2005. |
| Income Tax Credit for<br>Property Taxes<br>Paid on Homesteads in<br>Lake County<br>IC 6-3.1-20* | AGIT | Credit for property tax as paid<br>if the individual's earned<br>income is less than $18,600 per<br>year. The credit is limited to<br>the lesser of $300 or the amount of property taxes paid. |
| Earned income tax credit<br>IC 6-3.1-21 * | AGIT | 6% of the federal earned<br>income tax credit amount. |

* = Applies to individuals only
\# = Applies to pass through entities
AGIT = Adjusted gross income tax
CAGIT – County adjusted gross income tax
COIT – County option income tax
CEDIT – County economic development income tax
INSUR = Insurance premium tax
FIT = Financial institutions tax
SALES = Sales tax

Agencies administering the various tax credits in cooperation with the Department of Revenue can be contacted at the following addresses.

| | |
|---|---|
| Teacher Summer Employment Credit | Indiana Dep't of Education<br>Room 229<br>State House<br>Indianapolis, IN 46204 |
| Prison Investment Credit | Indiana Dep't of Correction<br>Office of the Commissioner<br>Indiana Gov't Center South<br>Room E334<br>Indianapolis, IN 46204 |

| | |
|---|---|
| Neighborhood Assistance Credit | Indiana Dep't of Commerce<br>Community Development Div.<br>One North Capitol, Suite 700<br>Indianapolis, IN 46204 |
| Enterprise Zone Investment Cost Credit | Indiana Dep't of Commerce<br>One North Capitol, Suite 700<br>Indianapolis, IN 46204 |
| Maternity Home Tax Credit | Indiana State Dep't of Health<br>2 N. Meridian St. 3rd Floor<br>Indianapolis, IN 46204 |
| Historic Rehabilitation Tax Credit<br>Residential Historic Rehabilitation<br>Tax Credit | Dep't of Natural Resources<br>Historic Preservation and<br>Archaeology Division<br>Indiana Gov't Center South<br>Room W-274<br>Indianapolis, IN 46204 |
| Riverboat Building Tax Credit | Indiana Dep't of Commerce<br>One North Capitol, Suite 700<br>Indianapolis, IN 46204 |
| Economic Development for a<br>Growing Economy Tax Credit<br>Community Revitalization Enhancement<br>District Tax Credit<br>Rerefined Lubrication Oil<br>Facility Tax Credit | Indiana Dep't of Commerce<br>One North Capitol, Suite 700<br>Indianapolis, IN 46204 |
| Voluntary Remediation Tax Credit | Indiana Dep't of<br>Environmental Management<br>Indiana Gov't Center North<br>Room N1101<br>Indianapolis, IN 46204<br>and Indiana Development<br>Finance Authority<br>One North Capitol, Suite 320<br>Indianapolis, IN 46204 |

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #64**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #64 dated January 1995)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Interest Rates on Assessments of Delinquent Taxes and Refunds for Overpayment of Taxes for Listed Taxes under IC 6-8.1-1-1
**REFERENCE:** IC 6-8.1-10-1
**I. Assessments**

If a taxpayer fails to file a return, fails to pay the full amount of tax, or files a late return with tax due, the taxpayer is subject to interest (and possibly penalty) on any outstanding balance of tax due after the due date of the return under IC 6-8.1-10-1. The interest on nonpayment of tax accrues at the rate established by the Commissioner from the due date until the date on which full payment of the tax is received.

**II. Refunds**

A taxpayer that pays more than is legally due may file a claim for refund for which interest is calculated as accrued on the overpayment based on the established annual rate. The interest will be applied to any refund after all required refund offsets are made for taxes currently due. Interest will not be added to a refund made within ninety (90) days after the date due, the date on which the tax was paid, or the date on which a refund claim is filed, whichever is later. Interest accrues on refunds until the date the refund is paid, but the accrual of interest or the suspension of accrual cannot precede the payment by more than thirty (30) days.

**III. Adjusted Interest Rate Established by the Commissioner**

The Commissioner of the Department of Revenue establishes the rate of interest to be paid or charged on or before November 1 of each year. The interest rate is effective for the following calendar year. For a tax overpayment, the rate of interest will be the average investment yield on state money during the state's previous fiscal year, excluding pension fund investments, as published in the Auditor of State's Comprehensive Annual Financial Report, rounded to the nearest whole percentage point. For a tax underpayment, the rate of interest will be the rate established for an overpayment plus two percent (2%).

For more information concerning current and past interest rates, please see Departmental Notice #3, available on the Department's web site at www.in.gov/dor/publications/.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #66**
**INCOME TAX**
**JANUARY 2003**
(Replaces Information Bulletin #66, dated November 2000)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Enterprise Zones
**REFERENCES:** IC 6-2.1-3-32; IC 6-3-2-7; IC 6-3-3-10; IC 6-3.1-7; IC 6-3.1-10

**INTRODUCTION**

An enterprise zone is an area within a city where there is a significant amount of unemployment, and several business facilities that are not being used to their maximum. An enterprise zone created is in effect for ten years with the potential for two five year renewals. There are currently twenty-nine areas that have been designated as enterprise zones. There are five state tax incentives and one local property tax incentive to encourage businesses to locate in a zone.

The state income tax incentives that are available include: the employee tax deduction; the employment expense credit; the loan interest credit; and the investment cost credit.

**I. EMPLOYEE INCOME TAX DEDUCTION (IC 6-3-2-8)**

There is an income tax deduction for qualified employees of an enterprise zone business. The qualified employee is an individual who is employed by a taxpayer where the employee's principal place of residence is in the enterprise zone where the employee is employed. The employee must perform services for the employer, ninety percent (90%) of which are directly related to the conduct of the taxpayer's business that is located in the enterprise zone. The employee must perform fifty percent (50%) of the employee's service for the taxpayer during the taxable year in the enterprise zone. Qualified employees include employees of a financial institution, insurance company, and an international banking facility. Also included are employees of a non profit entity, the state, a political subdivision, or the United States Government.

The qualified employee is entitled to a deduction from his adjusted gross income equal to the lesser of;

1. one-half (1/2) of his adjusted gross income for the taxable year that he earns as a qualified employee; or
2. seven thousand five hundred dollars ($7,500).

**II. EMPLOYMENT EXPENSE CREDIT (IC 6-3-3-10)**

There is an income tax credit for employers that hire qualified employees. A qualified employee is one who lives in the enterprise zone, works fifty percent (50%) of his time in the enterprise zone, and performs services for the taxpayer, ninety percent (90%) of which are directly related to the conduct of the taxpayer's trade or business that is located in the enterprise zone.

The credit is the lesser of ten percent (10%) multiplied by the qualified increased employment expenditures of the taxpayer for the taxable year; or one thousand five hundred dollars ($1,500) multiplied by the number of qualified employees employed by the taxpayer during the taxable year.

The tax credit can be carried forward for ten years or carried back for three years. Pass through entities' partners or shareholders are eligible for the credit in the same proportion as the distributive income to which the shareholder or partner is entitled.

**III. LOAN INTEREST CREDIT (IC 6-3.1-7)**

Any entity that makes a loan to an entity that uses the loan proceeds for:

(1) a purpose that is directly related to a business located in an enterprise zone;

(2) an improvement that increases the assessed value of real property located in an enterprise zone;

(3) rehabilitation, repair, or improvement of a residence.

A taxpayer is entitled to a credit against the adjusted gross income tax, the financial institution tax, or the insurance premium tax for a taxable year if he receives interest on a qualified loan in that taxable year. The amount of the credit to which the taxpayer is entitled is five percent (5%) multiplied by the amount of interest received by the taxpayer during the taxable year from the qualified loans. The credit can be carried forward for ten (10) years.

**IV. ENTERPRISE ZONE INVESTMENT COST CREDIT (IC 6-3.1-10)**

A taxpayer may purchase a qualified investment which means the purchase of an ownership interest in a business located in an enterprise zone if the purchase is approved by the department of commerce.

The amount of the credit to which a taxpayer is entitled is the percentage determined by the department of commerce multiplied by the price of the qualified investment made by the taxpayer in the taxable year.

If the department of commerce finds that a purchase is a qualified investment, the department shall certify the percentage credit based upon the following:

(1) A percentage credit of ten percent (10%) may be allowed based upon the need of the business for equity financing, as demonstrated by the inability of the business to obtain debt financing.

(2) A percentage credit of two percent (2%) may be allowed for business operations in the retail, professional, or warehouse/distribution codes of the NAICS Manual.

(3) A percentage credit of five percent (5%) may be allowed for business operations in the manufacturing codes of the NAICS Manual.

(4) A percentage credit of five percent (5%) may be allowed for high technology business operations.

(5) A percentage credit may be allowed for jobs created during the twelve (12) month period following the purchase of an ownership interest in the zone business, as determined under the following table:

| JOBS CREATED | PERCENTAGE |
|---|---|
| Less than 11 jobs | 1% |
| 11 to 25 jobs | 2% |
| 26 to 40 jobs | 3% |
| 41 to 75 jobs | 4% |
| More than 75 jobs | 5% |

(6) A percentage credit of five percent (5%) may be allowed if fifty percent (50%) or more of the jobs created in the twelve (12) month period following the purchase of an ownership interest in the zone business will be reserved for zone residents.

(7) A percentage credit may be allowed for investments made in real or depreciable personal property, as determined under the following table:

| AMOUNT OF INVESTMENT | PERCENTAGE |
|---|---|
| Less than $25,001 | 1% |
| $25,001 to $50,000 | 2% |
| $50,001 to $100,000 | 3% |
| $100,001 to $200,000 | 4% |
| More than $200,000 | 5% |

The total percentage credit may not exceed thirty percent (30%). The credit can be carried forward from one taxable year to the next; however there is no carry back or refund of any unused credit.

Enterprise zone income tax questions: Other questions:

| Enterprise zone income tax questions | Other questions |
|---|---|
| Indiana Department of Revenue | Indiana Department of Commerce |
| Tax Policy Division | Enterprise Zone Program |
| 100 N. Senate, Room N248 | One North Capitol, Suite 700 |
| Indianapolis, IN 46204 | Indianapolis, IN 46204 |
| (317) 232-7282 | (317) 232-8911 |

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #67**
**SALES TAX**
**JANUARY 2003**
(Replaces Bulletin #67 dated July 1995)

**DISCLAIMER**: Informational bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Professional Racing Team Engines and Chassis

**REFERENCES**: IC 6-2.5-5-37

**INTRODUCTION:**

Transactions involving the purchase, lease or operation of engines or chassis by professional racing teams in Indiana are exempt from Indiana sales and use tax. This includes replacement and rebuilding parts or components for the engines and chassis, but excludes tires and accessories.

**DEFINITIONS:**

For purposes of IC 6-2.5-5-37:

**Professional Racing Teams** are those racing operations qualified to file under the Internal Revenue Code as a for-profit business. To qualify as a trade or business under IRS regulations a taxpayer must be involved in the activity with continuity and regularity, and the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify.

**Engines** are engines of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the engines.

**Chassis** are chassis of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the chassis. For purposes of this exemption, chassis does not include tires or accessories.

**Tires** are tires of vehicles intended for use in competition by the professional racing teams which purchase, lease, or operate the tires. Tires include tubes and exclude wheels.

**Accessories** includes instrumentation, telemetry, consumables and paint.

Chassis, engines, and their components combined are a complete racing vehicle minus the tires and accessories. Therefore, a racing vehicle purchased by a professional racing team is exempt from Indiana sales and use except for the tires and accessories. Tires and accessories purchased by professional racing teams for any purpose are subject to Indiana sales and use tax.

**Operation of Exemption**

All professional racing teams wishing to purchase items exempt pursuant to this exemption must register as a retail merchant with the Department. The professional racing team must present the merchant with a valid exemption certificate (ST-105) in order to relieve the merchant from its responsibility to collect sales tax on the transaction.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #70**
**INCOME TAX**
**JANUARY 2003**
(Replaces Information Bulletin #70, dated November 2000)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulation, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Disability Income Deduction

**REFERENCE:** IC 6-3-2-9

**INTRODUCTION**

There is a deduction from adjusted gross income for persons retired on disability who are permanently and totally disabled.

**I. QUALIFICATIONS**

To qualify for the deduction, an individual must meet all of the following qualifications:

(1) must be retired on disability before the end of the taxable year; and

(2) must be permanently and totally disabled at the time of retirement.

**II. PERMANENTLY AND TOTALLY DISABLED**

An individual is permanently and totally disabled if the individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continued period of not less than twelve (12) months.

**III. PROOF OF DISABILITY**

For the purposes of IC 6-3-2-9(c), a person may furnish proof of permanent and total disability by including any of the following documents with the person's adjusted gross income tax return. Failure to provide proof of disability will result in disallowing the deduction. The following documents are acceptable to the Department to determine that a person is permanently and totally disabled:

(1) A properly executed Schedule IT-2440;

(2) A copy of a properly executed Physician's Statement (contained in Schedule R of the Internal Revenue Service Form 1040);

(3) A copy of any properly executed document, utilized by any agency of the United States or the State of Indiana, which requires at least the same information as the Physician's Statement of Permanent and Total Disability contained in the IT-2440; or

(4) A properly executed document or documents showing that the person received federal supplemental security income (SSI) during the tax year.

**IV. COMPUTATION OF DISABILITY DEDUCTION**

STEP 1: Determine the amount received by the individual during the taxable year through an accident and health plan for personal injury or sickness to the extent that:

(A) these amounts are attributable to contributions by the individual's employer that were not includable in the individual's gross income or are paid by the employer; and

(B) these amounts constitute wages or payments in lieu of wages for a period during which the employee is absent from work because of permanent and total disability.

STEP 2: Determine for each week of the taxable year the amount by which each payment referred to in STEP 1 exceeds one hundred dollars ($100), then add these amounts.

STEP 3: Determine the amount by which the individual's federal adjusted gross income for the taxable year, as defined by Section 62 of the Internal Revenue Code, exceeds fifteen thousand dollars ($15,000).

STEP 4: Subtract the amount determined in STEP 1 from the total amount determined in STEP 2 and STEP 3.

The remainder is the individual's allowable disability income deduction. This amount should be inserted in the section for Indiana modifications to adjusted gross income on Form IT-40.

Any questions concerning the disability income deduction may be directed to the Individual Income Tax Section of the Compliance Division.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #78**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #78 dated September 1987)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Foreign Source Dividend Deduction

**REFERENCE:** IC 6-3-2-12

A deduction is provided for foreign source dividends in the computation of Indiana Adjusted Gross Income.

**DEFINITIONS:**

"Foreign source dividend" is a dividend from a foreign corporation, which also includes any amount that a taxpayer is required to include in its gross income under Section 951 of the Internal Revenue Code (Sub-part F – Controlled Foreign Corporations) but does not include any amount that is treated as a dividend under Section 78 of the Internal Revenue Code (gross-up).

"Foreign Corporation" is defined under IRC Section 7701(a)(5) as any corporation formed outside the United States.

**Computation of deduction:**

The amount of deduction is determined by the percentage of voting stock owned, by the taxpayer, in the foreign corporation computed as follows:

1. The deduction is 100% of the foreign source dividends included in **adjusted** gross income if the taxpayer owns at least 80% of the total combined voting power of all classes of stock of the foreign corporation from which the dividend is derived.
2. The deduction is 85% of the foreign source dividends included in **adjusted** gross income if the taxpayer owns at least 50% but less than 80% of the total combined voting power of all classes of stock of the foreign corporation from which the dividend is derived.
3. The deduction is 50% of the foreign source dividends included in **adjusted** gross income if the taxpayer owns less than 50% of the total combined voting power of all classes of stock of the foreign corporation from which the dividend is derived.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #87**
**INCOME TAX**
**JANUARY 2003**
(Replaces Information Bulletin #87 dated August 1997)

**DISCLAIMER**: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide the information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, rules or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT**: Historic Building Rehabilitation Tax Credit

**REFERENCE**: IC 6-3.1-16

**INTRODUCTION**

There is an income tax credit available for the rehabilitation of historic property. The credit can be applied against the adjusted gross income tax.

**Qualified Taxpayers**

The entities that can qualify for the credit include an individual, a corporation, an S corporation, a partnership, a limited liability company, a limited liability partnership, a nonprofit organization, or a joint venture. If a pass through entity is entitled to a credit but does not have state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit equal to the tax credit determined for the pass through entity for the taxable year multiplied by the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

**Qualified Expenditures**

Qualified expenditures mean expenditures for preservation or rehabilitation that are chargeable to a capital account. The term does not include costs that are incurred to do any of the following:

1. Acquire a property or an interest in a property.
2. Pay taxes due on a property.
3. Enlarge an existing structure.
4. Pay realtor's fees associated with a structure or property.
5. Pay paving and landscaping costs.
6. Pay sales and marketing costs.

**Qualification for the Tax Credit**

A taxpayer qualifies for the credit if all the following conditions are met.

1. The historic property is located in Indiana, at least fifty (50) years old, and owned by the taxpayer.
2. The division of historic preservation and archaeology of the Department of Natural Resources certifies that the historic property is listed in the register of Indiana historic sites and historic structures.
3. The division certifies that the taxpayer submitted a proposed preservation or renovation plan to the division that complies with the standards of the division.
4. The division certifies that the preservation or rehabilitation work substantially complies with the proposed plan mentioned above.
5. The preservation or rehabilitation work is completed in not more than two (2) years, or within five (5) years if the preservation or rehabilitation plan indicated that the preservation or rehabilitation is initially planned for completion in phases.
6. The historic property is actively used in a trade or business, held for the production of income, or held for the rental or other use in the ordinary course of the taxpayer's trade or business.

**Limitation of the Tax Credit**

The qualified expenditures for the preservation or rehabilitation of the property must exceed ten thousand dollars ($10,000). The tax credit is equal to twenty percent (20%) of the qualified expenditure that the taxpayer makes for the preservation or rehabilitation of the property. The total amount of all credits for all taxpayers for a fiscal year is limited to four hundred fifty thousand dollars ($450,000).

**Procedure to Claim the Credit**

The taxpayer shall claim the credit on the taxpayer's annual state income tax return. The taxpayer shall submit to the Department the certification approved by the Division of Historic Preservation and Archaeology within the Department of Natural Resources.

If the taxpayer's credit exceeds the liability for the taxable year for which the credit is first claimed, the excess may be carried over to succeeding taxable years, and used as a credit in those taxable years. The credit may be carried forward and applied to succeeding taxable years for fifteen (15) taxable years. A taxpayer is not entitled to a carry back or refund of any unused credit.

**Recapture of Credit Claimed**

The historic building rehabilitation tax credit shall be recaptured from the taxpayer if:

1. the property is transferred less than five (5) years after completion of the certified preservation or rehabilitation work; or
2. less than five (5) years after the completion of the certified preservation or rehabilitation, additional modifications to the property are undertaken that do not meet the standards of the division.

If the recapture of a credit is required, an amount equal to the credit recaptured shall be added to the tax liability of the taxpayer for the taxable year during which the credit is recaptured.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #87A**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #87A dated September 2001)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Residential Historic Rehabilitation Credit

**REFERENCE:** IC 6-3.1-22

**INTRODUCTION:**

There is an adjusted gross income tax credit available for the rehabilitation of historic residential property.

**I. QUALIFIED TAXPAYERS**

A qualified taxpayer is an individual filing a single return, or a husband and wife filing a joint return. If the husband and wife file a separate return, they may take the credit in equal shares, or one spouse may take the whole credit.

**II. QUALIFIED EXPENDITURES**

Qualified expenditures means expenditures for preservation or rehabilitation of a structure that enables the structure to be principally used and occupied by the taxpayer as the taxpayer's residence. The term does not include costs that are incurred to do the following:

- Acquire a property or an interest in a property.
- Pay taxes due on a property.
- Enlarge an existing structure.
- Pay realtor's fees associated with a structure or property.
- Pay paving and landscaping costs.
- Pay sales and marketing costs.

**III. QUALIFICATION FOR THE TAX CREDIT**

A taxpayer qualifies for the credit if all the following conditions are met.

1. The historic property is located in Indiana, is at least fifty years old, and is owned by the taxpayer.
2. The division of historic preservation and archeology of the department of natural resources (division) certifies that the historic property is listed in the register of Indiana historic sites and historic structures.
3. The division certifies that the taxpayer submitted a proposed preservation or rehabilitation plan to the division that complies with the standards of the division.
4. The division certifies that the preservation or rehabilitation work that is subject to the credit substantially complies with the proposed plan.
5. The preservation or rehabilitation work is completed in not more than two years, or five years if the preservation or rehabilitation plan indicates that the preservation or rehabilitation is initially planned for completion in phases.
6. The historic property is principally used and occupied by the taxpayer as the taxpayer's residence.

**IV. LIMITATION OF THE TAX CREDIT**

The qualified expenditures for preservation or rehabilitation of the historic property must exceed ten thousand dollars ($10,000). The tax credit is equal to twenty percent (20%) of the qualified expenditures that the taxpayer makes for the preservation or rehabilitation of the historic property. The total amount of all credits for all taxpayers may not exceed two hundred fifty thousand dollars ($250,000) in a state fiscal year.

**V. PROCEDURE TO CLAIM THE CREDIT**

The taxpayer shall claim the credit on the taxpayer's annual state income tax return. The taxpayer shall submit to the Department the certifications approved by the division.

If the credit exceeds the taxpayer's state income tax liability for the taxable year for which the credit is first claimed, the excess may be carried over to succeeding taxable years and used as a credit during those taxable years. The credit may be carried forward and applied to succeeding taxable years for fifteen taxable years following the unused credit year. A taxpayer is not entitled to a refund or carry back of any unused credit.

**VI. RECAPTURE OF CREDIT CLAIMED**

The Residential Historic Building Tax Credit shall be recaptured from the taxpayer if the property is transferred less than five years after completion of the certified preservation or rehabilitation work. The credit will also be recaptured if, less than five years after the completion of the certified preservation or rehabilitation, additional modifications to the property are undertaken that do not meet the standards of the division.

If the recapture of a credit is required, an amount equal to the credit recaptured shall be added to the tax liability of the taxpayer for the taxable year during which the credit is recaptured.

Kenneth L. Miller
Commissioner

**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #88**
**INCOME TAX**
**JANUARY 2003**
(Replaces Bulletin #88 dated October 1997)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT**: Taxation of Nonresident Professional Athletes

**REFERENCES**: IC 6-3-2-2; IC 6-3-2-2.7; IC 6-3-4-1

**INTRODUCTION**

Nonresident professional athletes playing or on contract with a team will apportion their income to Indiana based on duty days performed in Indiana compared to total duty days in a taxable year.

**I. Applicable Teams and Team Players**

The provision for apportioning income of nonresident athletes' income applies to members of a professional baseball, basketball, football, hockey, or soccer team that played games or had services rendered by a team member in Indiana.

The provision applies to employees who are active players, players on a disabled list, and other individuals required to travel with and perform services on behalf of the team on a regular basis. This includes coaches, managers, and trainers.

**II. Income That is Subject to Apportionment**

Income is defined to mean the total compensation received during the taxable year for services rendered from the beginning of the official preseason training through the last game in which the team competes and income received from participation in instructional leagues, an all-star or pro bowl game with a promotional caravan.

The term includes salaries, wages, bonuses, and any other type of compensation paid to a team member for services rendered in that year. The term does not include strike benefits, severance pay, termination pay, contract or option year buyout payments, expansion or relocation benefits, or any other payments not related to services rendered to the team.

Bonuses do not include a signing bonus paid to a person. To qualify as a signing bonus, all the following conditions must be met:

1) The payment of the signing bonus is not conditional upon the signer playing any games for the team, performing any subsequent services for the team or making the team.
2) The signing bonus is payable separately from the salary and any other compensation.
3) The signing bonus is not refundable.

**III. Definition of Duty Days**

"Total duty days" means all days during the taxable year that a team member renders a service for the team, beginning with the team's official preseason training period through the last game in which the team competes or is scheduled to compete. The term includes duty days on which a team member renders a service for the team on a date that does not fall within this period. Duty days include all of the following:

a) game days, practice days, days spent at team meetings, days spent with a promotional caravan and at preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete;
b) days spent conducting training and rehabilitation activities, but only if the service is conducted at the facilities of the team;
c) travel days that do not involve either a game, practice, team meeting, promotional caravan, or other similar team event;
d) days spent participating in instructional leagues and all-star or pro bowl games; and
e) days for which a team member is on the disabled list.

"Indiana duty days" means the number of total duty days spent by a team member within Indiana rendering a service for the team in any manner during the taxable year, except:

a) travel days spent in Indiana that do not involve either a game, practice, team meeting, promotional caravan, or other similar team event; and
b) those days spent in Indiana for which a team member is on the disabled list.

**IV. Partial Year Team Member**

Total duty days for an individual joining a team during the season begins on the day the individual joins the team, and, for an individual who leaves a team, ends on the day the individual leaves the team. When an individual changes teams during a taxable year, a separate duty day calculation must be made for the period the individual was with each team. Total duty days do not include days for which a team member is not compensated and is not rendering a service for the team in any manner, including days when the team member has been suspended without pay and prohibited from performing any services for the team.

**V. Calculation of Indiana Income**

For purposes of calculating Indiana income, it is the individual's total income during the taxable year multiplied by the following fraction:

1) The numerator of the fraction is the individual's Indiana duty days for the taxable year.

2) The denominator of the fraction is the individual's total duty days for the taxable year.

**EXAMPLE: A nonresident team member plays one game in Indiana with a practice day before the game, (two (2) Indiana duty days). The total duty days during the year totaled one hundred and fifty (150). The fraction will be two divided by one hundred and fifty or 1.33%. This percentage is then multiplied by the total income to arrive at Indiana income.**

This calculation is presumed to represent an equitable apportionment of the team member's compensation. If the Department or the team member demonstrate this calculation is not an equitable apportionment of the team member's income, then either may use a different formula that provides an equitable apportionment. The team member's alternative method must be thoroughly explained on the individual's tax return and approved by the Department.

**VI. Simplified Reporting for Teams not Located in Indiana**

The Department may establish simplified reporting for members of a team, if the team is not based in Indiana. The Department will establish a withholding system that requires the team to withhold adjusted gross income tax for each team member and to remit the withheld taxes to Indiana on an annual basis. The Department may require each team to submit information for each team member regarding total income, Indiana income subject to tax under this section, and the amount of tax withheld. Remittance of the withholding tax and submission of the required information satisfies the team member's tax liability and return filing responsibilities. A team that is required to withhold and remit shall provide all participating team members with a Form W-2 evidencing the amount of tax withheld and remitted to Indiana.

Even though a team is required to withhold and remit, a team member may file an individual income tax return to claim a refund if the amount remitted exceeds the amount otherwise owed using the above described methodology. However, if a team member files an individual income tax return to claim a refund, the team member is required to notify the team member's state of residence of the filing by attaching a copy of the Indiana return to the taxpayer's residence return.

A team member reporting under the simplified method may not use any deduction, exemption, or exclusion to reduce the Indiana adjusted gross income.

**NOTE**: For a team member to participate in the simplified reporting, a team member's compensation from the team must be the only source of income attributable to Indiana.

If a team member leaves the team during the taxable year, the team remains responsible for remitting the appropriate tax.

**VII. Reciprocity Agreements**

Reciprocity agreements that are in place with other states will be honored with nonresident team members if they play for a nonresident team or live in a reciprocity state and play for an Indiana team.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**
**INFORMATION BULLETIN #91**
**INCOME TAX**
**JANUARY 2003**

(Replaces Information Bulletin #91 dated September 2001)

**DISCLAIMER**: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

**SUBJECT:** Rerefined Lubrication Oil Facility Tax Credit

**REFERENCE:** IC 6-3.1-22.2

**INTRODUCTION:**

This Bulletin is intended to summarize the tax credit available for property tax paid for an oil rerefining facility.

**I. REREFINED LUBRICATION OIL**

Rerefined lubrication oil is base oil manufactured from at least ninety-five percent (95%) used oil, and uses not more than two percent (2%) previously unused oil in a refining process that effectively removes physical and chemical impurities and spent and unspent additives to the extent that the base oil is capable of meeting industry standards for engine oil.

**II. ELIGIBLE ENTITIES AND TAXES FOR WHICH THE CREDIT MAY BE APPLIED AGAINST**

A taxpayer is an individual or entity that has state tax liability, including pass through entities.

The tax credit can be applied against the following taxes:

- State Gross Retail and Use Tax
- Adjusted Gross Income Tax
- Financial Institutions Tax
- Insurance Premiums Tax

**III. QUALIFICATION FOR THE CREDIT**

A person is entitled to a credit against their state tax liability in a taxable year for a percentage of the ad valorem property taxes paid in the taxable year for: real property on which a facility that processes rerefined lubrication oil is located; and personal property used in the processing of rerefined lubrication oil, including personal property used in the transportation of rerefined lubrication oil to and from the processing facility.

**IV. CALCULATION OF THE CREDIT**

The amount of the credit to which a taxpayer is entitled equals the product of:

The amount of ad valorem property taxes paid by the taxpayer in a taxable year; multiplied by the percentage that corresponds to the tax year listed below.

| YEAR | PERCENTAGE OF CREDIT |
|---|---|
| 2001 | 100% |
| 2002 | 80% |
| 2003 | 60% |
| 2004 | 40% |
| 2005 | 20% |

A taxpayer is entitled to a carry-forward of any unused credit for a period not to exceed two years. However, no unused credit may be carried forward to a tax year beginning after December 31, 2007.

The Department of Commerce shall determine if the taxpayer is entitled to the credit.

Kenneth L. Miller
Commissioner

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**DEPARTMENT OF STATE REVENUE**

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02950110.LOF

**LETTER OF FINDINGS NUMBERS: 95-0383 and 95-0110**
**Corporate Gross Income Tax – Revenue Agent's Reports**
**For Tax Years 1988-1993**

**NOTICE:** Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Corporate Gross Income Tax – Revenue Agent's Reports**

**Authority:** IC § 6-3-4-6(b); 45 IAC 3.1-1-94

**STATEMENT OF FACTS**

Taxpayer and its wholly owned transportation subsidiary are Indiana corporations filing consolidated returns for gross income tax and adjusted gross income tax purposes. Taxpayer is in the business of producing, packaging, and selling table agricultural products. The subsidiary transports by truck all of taxpayer's products and materials. Taxpayer owns and operates agricultural facilities in and out of Indiana. Taxpayer's customers include grocery stores, wholesalers, and processors.

The original audit period covered tax years 1988-1993. At the time, the Internal Revenue Service also was in the process of auditing taxpayer. The federal audit was a lengthy one, which included protests and, ultimately, an agreed upon settlement. Taxpayer's representative requested that the results of the state audit (completed in 1995) be held in abeyance until the federal audit process, including protests and settlement negotiations, concluded. The Department agreed, the IRS audit eventually settled, and the Department issued proposed assessments of Indiana's corporate gross income tax. Taxpayer protested the Department's assessments, arguing that the final numbers on the Revenue Agent's Reports (RAR's) more accurately determined taxpayer's State tax liability.

**I. Corporate Gross Income Tax – Revenue Agent Reports**

**DISCUSSION**

Taxpayer protests the Department's proposed assessments of Indiana's corporate gross income tax, arguing that since the conclusion of the Internal Revenue Service's audit, which resulted in a negotiated settlement. Taxpayer has, albeit sporadically, kept the Department informed of the progress of the IRS audit; the Federal RAR's have been completed, and taxpayer brought materials to the hearing and sent in additional materials at the Department's request. As of May 2002, taxpayer had not filed its RAR adjustments with the Department pursuant to IC § 6-3-4-6(b) and 45 IAC 3.1-1-94.

Taxpayer has provided sufficient documentation to show that the Department's audit finding should be revisited in light of the federal findings.

**FINDING**

Taxpayer's protest is sustained, subject to audit review.

**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER: 97-0621 ST**
**Sales and Use Tax**
**For Tax Periods: 1994-1996**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**ISSUE**

**Sales and Use Tax – Installation Charges**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-4-1(e), IC 6-2.5-1-2, IC 26-1-2-401(2), IC 6-2.5-1-1, *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991)

The taxpayer protests the imposition of sales tax on installation charges.

**STATEMENT OF FACTS**

The taxpayer is an Indiana corporation that designs, sells, installs, and maintains satellite systems. They also provide programming. The taxpayer's primary customers are industrial accounts that include apartment complexes and hospitals. After an audit, the Indiana Department of Revenue, hereinafter, referred to as the "department," assessed additional sales and use tax for the tax period 1994-1996. The taxpayer protested a portion of the assessment and a hearing was held on the imposition of the sales tax on installation charges.

**Sales and Use Tax – Installation Charges**

**DISCUSSION**

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2. A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1.

Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). The installation in this case takes place after the tangible personal property, the satellite system, has been delivered to the location designated by the purchaser. In the absence of an explicit agreement between the taxpayer and its customers to the contrary, the transfer takes place prior to installation. Since the installation services are performed after the transfer of the satellite systems, the installation charges are not subject to imposition of the sales tax.

The department assessed the sales tax on the taxpayer's installation charges on the theory that the transactions were unitary transactions pursuant to IC 6-2.5-1-1. If the transactions were actually unitary transactions, the entire charge would be subject to tax. However, in *Cowden & Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E.2d 718 at 722 (Ind. Tax 1991), the court stated that "the legislature intends to tax services rendered in retail unitary transactions only if the transfer of property and the rendition of services is inextricable and indivisible." In *Cowden*, the court looked at the taxpayer's records, the overall nature of the taxpayer's business, and the nature of the unitary transactions themselves to determine whether the unitary transactions were inextricable and indivisible. *Id* at 723.

In this case, the taxpayer provided copies of invoices indicating that the service charges were consistently stated separately. Therefore, they are extricable and divisible from the charges for the sale of the tangible personal property. Pursuant to the finding in *Cowden*, the installation charges are not subject to the imposition of sales tax.

**FINDING**

The taxpayer's protest is sustained.

**DEPARTMENT OF STATE REVENUE**

02980208.LOF

**LETTER OF FINDINGS NUMBER: 98-0208**
**Adjusted Gross Income Tax**
**For Tax Years 1992 through 1994**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Adjusted Gross Income Tax – Throwback Sales**

**Authority**: Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992); IC 6-3-1-25; IC 6-3-2-2

Taxpayer protests the imposition of income tax on sales to foreign countries.

**II. Adjusted Gross Income Tax – Foreign Source Dividend Expense**

**Authority**: IC 6-3-2-12

Taxpayer protests a fifteen percent (15%) reduction of the foreign dividend deduction expenses attributed to the earning of dividends.

**III. Adjusted Gross Income Tax – Foreign Source Dividend Deduction**

**Authority**: IC 6-3-2-12

Taxpayer protests the add-back of foreign source dividends.

**IV. Tax Administration – Negligence Penalty**

**Authority**: 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer manufactures and sells pharmaceuticals, medical equipment, and agricultural and industrial chemicals. Taxpayer has operations in the United States and several foreign countries. As the result of an audit conducted for the tax years 1992 to 1994, the Department issued proposed income tax assessments to taxpayer. Taxpayer protests these proposed assessments on several grounds. Further facts will be provided as necessary.

**I. Adjusted Gross Income Tax – Throwback Sales**

**DISCUSSION**

Taxpayer protests the inclusion of throwback sales to foreign countries in income tax assessments. The Department assessed these sales on the grounds that taxpayer was not taxed in those countries, and the income was therefore properly taxable in Indiana. Taxpayer protests that it was taxable, if not actually taxed, in those countries. The Department added the foreign sales back in order to adjust the sales factor of the apportionment formula, as provided in IC 6-3-2-2(b), which states in relevant part:

> Except as provided in subsection *(l)*, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and form sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

IC 6-3-1-25 states:

> The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

Taxpayer asserts that it is taxable in the foreign countries of the purchasers with regard to the bulk of the throwback sales. IC 6-3-2-2(n) states:

> For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:
>
> (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

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

The United States Supreme Court's decision in Wisconsin Department of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214 (1992), provides guidance for this case. In Wrigley, the Court ruled that the Wrigley chewing gum company was subject to taxation in Wisconsin even though the taxable activity was only 0.00007% (several hundred dollars in absolute terms) of Wrigley's total activity in the state. Wrigley, at 235. The Court also explained:

> Accordingly, whether in-state activity other than "solicitation of orders" is sufficiently *de minimis* to avoid loss of the tax immunity conferred by § 381 depends upon whether that activity establishes a nontrivial additional connection with the taxing State.

Wrigley, at 232

Also of relevance is the Court's explanation that Wrigley's activities would not be considered in isolation, but rather were taken together to determine whether or not the activities were de minimis. Wrigley, at 235.

Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the three audit years in: Australia, Belgium, Canada, Denmark, France, Germany, Japan, Mexico, Puerto Rico, Singapore, Taiwan, and the United Kingdom. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit years 1993 and 1994 in Brazil, Columbia, and Ireland. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit years 1992 and 1994 in Italy. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit years 1992 and 1993 in Austria. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit year 1992 in Spain, Sweden, and Switzerland. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit year 1993 in Venezuela. Taxpayer has provided documentation establishing that it was involved in non-solicitation activities and/or maintained inventory for the audit year 1994 in Guatemala.

This documentation establishes that taxpayer had nontrivial contacts with those countries in those years, under the test provided in Wrigley. Therefore, taxpayer was doing business in those countries for those countries for those years, and so those countries had jurisdiction to tax taxpayer for those years, as provided in IC 6-3-2-2(n). Under IC 6-3-2-2(e)(2)(B), the throwback sales are not assigned to Indiana.

**FINDING**

Taxpayer's protest is sustained to the extent that it was taxable in a given country for a given year. Taxpayer's protest is denied to the extent that it was not taxable in a given country for a given year.

**II. Adjusted Gross Income Tax – Foreign Source Dividend Expense**

**DISCUSSION**

In calculating its Indiana tax liabilities, taxpayer, pursuant to IC 6-3-2-12, deducted foreign source dividend income from its Indiana adjusted gross income. The Department, however, disagreed with taxpayer's calculations. Re-calculation by the Department resulted in an increase in taxpayer's Indiana adjusted gross income and tax. Proposed assessments of Indiana adjusted gross income tax followed. The Department added back foreign source dividends.

Taxpayer, in response, directs the Department's attention to the language of IC 6-3-2-12(b), which states:

> A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction from that adjusted gross income. The amount of the deduction equals the product of:
>
> > the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by the percentage prescribed in subsection (c), (d), or (e), as the case may be.
>
> The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred percent (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty percent (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50%-79%) percent ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c)-(e).

This statutory language is cogent and clear. IC § 6-3-2-12 authorizes pro rata deductions (based on the percentage ownership of the payor by the payee) of certain foreign source dividend income. In this instance, taxpayer has followed the statutory prescriptions in calculating its foreign source dividend deductions.

**FINDING**

Taxpayer's protest is sustained.

**III. Adjusted Gross Income Tax – Foreign Source Dividend Deduction**

**DISCUSSION**

In calculating its Indiana tax liabilities, taxpayer, pursuant to IC 6-3-2-12, deducted foreign source dividend income from its Indiana adjusted gross income. The Department, however, disagreed with taxpayer's calculations. Re-calculation by the Department resulted in an increase in taxpayer's Indiana adjusted gross income and tax. Proposed assessments of Indiana adjusted gross income tax followed. The Department added back foreign source dividends where it did not believe that the companies involved were sufficiently related.

Taxpayer, in response, directs the Department's attention to the language of IC 6-3-2-12(b), which states:

A corporation that includes any foreign source dividend in its adjusted gross income for a taxable year is entitled to a deduction from that adjusted gross income. The amount of the deduction equals the product of:

the amount of the foreign source dividend included in the corporation's adjusted gross income for the taxable year; multiplied by the percentage prescribed in subsection (c), (d), or (e), as the case may be.

The aforementioned subsections (c), (d), and (e) allow corporate taxpayers to receive a one hundred percent (100%) deduction for foreign source dividends received from corporations in which a taxpayer has an eighty percent (80%) or larger ownership interest; an eighty-five percent (85%) deduction for dividends received from corporations in which a taxpayer has a fifty to seventy-nine percent (50%-79%) percent ownership interest; and a fifty percent (50%) deduction for dividends received from corporations in which a taxpayer has less than a fifty percent (50%) ownership interest. IC 6-3-2-12(c)-(e).

The Department added these deductions back to taxpayer's income because the companies did not satisfy the requirements of IC 6-3-2-12(b). Taxpayer has not provided sufficient documentation to rebut the Department's position.

**FINDING**

Taxpayer's protest is denied.

**IV. Tax Administration – Negligence Penalty**

**DISCUSSION**

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. Taxpayer requests that all penalties be waived as it has acted in good faith at all times, and any remaining assessments are not the result of any willful disregard of Indiana's tax laws, or negligence on the part of taxpayer. Negligence is defined by 45 IAC 15-11-2(b), which states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) states in part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying our or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer was able to provide sufficient documentation to be sustained for the majority of the throwback sales in Issue I and was sustained on Issue II. While taxpayer was denied on Issue III, this was a new issue for the audit period. Therefore, taxpayer has demonstrated that it was not negligent in filing its returns.

**FINDING**

Taxpayer's protest is sustained.

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**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER: 98-0764**
**Sales and Use Tax**
**For Tax Periods: 1994-1996**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**1. Tax Administration – Hearing Procedure**

**Authority**: IC 6-8.1-5-1, *Ball v. Indiana Department of Revenue*, 563 N.E. 2d (Ind. 1990)

The taxpayer protests the length of time between the Indiana Department of Revenue's receipt of the protest and the date of the hearing.

**2. Sales and Use Tax – Crushing Equipment**
**Authority:** IC 6-2.5-3-2(a), IC 6-8.1-5-1(b), IC 6-2.5-5-3, 45 IAC 2.2-4-2

The taxpayer protests the assessment of tax on crushing equipment, its attachments, and its repair parts.

**3. Sales and Use Tax – Transportation of Materials**
**Authority:** IC 6-2.5-5-3

The taxpayer protests the assessment of tax on parts used to repair trucks, gasoline, and tires.

**4. Sales and Use Tax – Equipment Rentals**
**Authority:** IC 6-2.5-4-10, IC 6-2.5-2-1

The taxpayer protests the assessment of tax on certain equipment rentals.

**5. Sales and Use Tax – Sales to Indiana and its Instrumentalities**
**Authority:** IC 6-2.5-5-16, IC 6-8.1-5-1(c)

The taxpayer protests the assessment of tax on sales to an instrumentality of Indiana.

**6. Sales and Use Tax – Credit for Sales Tax Paid to Illinois**
**Authority:** IC 6-8.1-5-1(c)

The taxpayer requests a credit for sales tax paid to Illinois.

**7. Tax Administration – Negligence Penalty**
**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2(b)

The taxpayer protests the assessment of the negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is an Indiana corporation that operates in demolition, excavating, and related activities. The taxpayer's operations include the following:

1) Demolishes buildings and excavates the site.
2) Operates a dump site where fees are charged for dumping distress materials.
3) Hauls distressed materials to the dump site and charges fees.
4) Provides dumpster collection service used in the collection of disposable materials to construction contractors and others where fees are charged.
5) Processes distress concrete into usable stone for resale at retail and wholesale.
6) Sells scrap steel, sand, clay, and dirt at resale and wholesale.
7) Rents equipment.

After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of the assessment and a hearing was held. Further facts will be provided as necessary.

**1. Tax Administration – Hearing Procedure**

**DISCUSSION**

The taxpayer protests the length of time between the taxpayer's original protest letter and the actual hearing. The department received the taxpayer's protest to the assessment of tax on November 20, 1998. The protest went through the normal departmental procedures prior to its assignment to this hearing officer on February 5, 2001. On February 28, 2001, the hearing officer scheduled the matter for hearing on April 24, 2001. The taxpayer requested a continuance. The rehearing was rescheduled twice at the taxpayer's request. The hearing was finally held on June 25, 2002.

The taxpayer contends that this lapse of time violated the taxpayer's right to due process and a speedy trial. The taxpayer has failed to cite or explain how criminal proceedings are applicable to a civil hearing.

IC 6-8.1-5-1(c)(1) requires that the department set a hearing on any protest "at the Department's earliest convenient time..." The hearing officer originally set the hearing sixteen days after receipt of the file and then granted two taxpayer requests for continuance before holding the hearing. These actions satisfy the statutory requirement that the department hold the hearing at the department's earliest convenient time.

The taxpayer cites *Ball v. Indiana Department of Revenue*, 563 N.E. 2d (Ind. 1990) in support of its contention that it was prejudiced by the lapse of time prior to the hearing. In that case, the Court discusses due process in relation to the original notification of proposed assessment to the taxpayer. The taxpayer makes no protest concerning its receipt of a notification that it owed tax to the state. The *Ball* case did touch on whether or not the collection of taxes should be barred by the doctrine of laches. The Court determined that if the department did not act in an unusually dilatory manner, the doctrine of laches does not bar collection of a tax. There is no indication in this case that the department acted in an unusually dilatory manner. Therefore, the doctrine of laches does not bar the state's further prosecution of the matter.

**FINDING**

The taxpayer's protest is denied.

**2. Sales and Use Tax – Crushing Equipment**

Pursuant to IC 6-2.5-3-2(a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1(b).

The taxpayer's second protest concerns the assessment of use tax on crushing equipment, attachments to the crushing equipment, and repair parts for the crushing equipment. The taxpayer contends that its raw material is the concrete slabs. Since the crusher then acts directly upon the concrete slabs to break them into smaller pieces, the taxpayer considers it integral and essential in the production of the taxpayer's final product, the crushed stone. Therefore the taxpayer contends that the crusher and its repair parts qualify for the directly used in direct production exemption pursuant to IC 6-2.5-5-3.

The taxpayer errs in this conclusion. Rather than performing the first step in the process of producing crushed stone, the crushing equipment is actually tangible personal property used in the taxpayer's service of demolishing buildings, collecting the waste, and hauling the waste away. The law provides no exemption for this use of tangible personal property used in providing a service. The Regulations specifically state at 45 IAC 2.2-4-2 that service providers are liable for the sales tax or the complementary use tax on tangible personal property used in the provision of the service. There is no indication that the taxpayer paid sales tax at the time of the purchase of the tangible personal property that the taxpayer uses to provide the service. Therefore, the taxpayer properly owes use tax.

**FINDING**

The taxpayer's protest is denied.

**3. Sales and Use Tax – Transportation of Materials**

**DISCUSSION**

The taxpayer protests the department's assessment of use tax on repair parts, gasoline, and tires for the trucks that move the slabs of concrete to the facility where the concrete is processed into crushed stone. The taxpayer contends that the trucks move the product from the first step of the production process, the demolition of buildings, to the next step in the production process, the crushing of concrete into crushed stone at the taxpayer's facility, just like a conveyor built moves work in process in a factory. Therefore, the taxpayer argues that the truck repair parts, gasoline, and tires would qualify for exemption just like the conveyor belt at the factory qualifies for the direct use in direct production pursuant to IC 6-2.5-5-3.

The department, as discussed in issue two, finds that the demolition and preparation for shipping at the demolition sites is not the first step in the production of crushed stone but rather an ancillary activity to the provision of a service. Therefore the comparison of the trucks and their repair parts, tires and gasoline to the exempt conveyor belt moving work in process is inappropriate. The law does not provide any exemption for the protested items.

**FINDING**

The taxpayer's protest is denied.

**4. Sales and Use Tax – Equipment Rentals**

**DISCUSSION**

The taxpayer protests the assessment of tax on certain equipment rentals used in the demolition of a brewery. The front of the brewery is located in Indiana. The silos that were demolished were located in Illinois. The taxpayer contends that since the operations were all Illinois in character, the Indiana sales tax is not due. The taxpayer supports this contention with its statement that it paid Illinois taxes and bargained with Illinois labor unions.

IC 6-2.5-4-10 defines persons who lease tangible personal property as retail merchants making retail transactions. All retail transactions in Indiana are subject to the sales tax pursuant to IC 6-2.5-2-1. In the taxpayer's case, an Indiana corporation rented tangible personal property that was delivered in Indiana. The retail transaction took place in Indiana. The department properly assessed the sales tax.

**FINDING**

The taxpayer's protest is denied.

**5. Sales and Use Tax – Sales to Indiana and its Instrumentalities**

**DISCUSSION**

The taxpayer sold stone to a corporation that worked with waste disposal. The taxpayer contends that the sales of stone to this corporation qualified for the exemption provided at IC 6-2.5-5-16 as follows:

> Transactions involving tangible personal property,... are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:
>
> (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); and
>
> (2) predominantly uses the property, commodities, or service to perform its governmental functions.

Pursuant to IC 6-8.1-5-1(c), the department's tax assessment is prima facie evidence that the tax is owed and the taxpayer has the burden of proving that any assessment is incorrect. As proof that the stone sales qualify for this exemption, the taxpayer offers the corporation's name which includes the name of an Indiana city and the term "waste systems." The corporation's name does not prove that it is a governmental entity, agency, or subdivision. The name also does not prove that the corporation qualified as a solid waste management district pursuant to the applicable statutes. Exempt status relies on whether or not the corporation is actually a part of the government and whether or not the corporation is actually performing government functions. Many corporations include city names without actually being a part of the named city. The department's records indicate that the subject corporation was actually an independent for profit corporation. The taxpayer did not sustain its burden of proof.

The taxpayer also protests that sales to another company qualify for exemption pursuant to this statute. The taxpayer, however, does not offer any evidence in support of this contention. Therefore, the taxpayer does not sustain its burden of proof that the subject sales are not subject to the sales tax.

**FINDING**

The taxpayer's protest is denied.

**6. Sales and Use Tax – Credit for Sales Tax Paid to Illinois**

**DISCUSSION**

The taxpayer protests the assessment of use tax on items that it rented from an Illinois concern. The taxpayer alleges that it paid Illinois sales tax on those items and should receive an Indiana credit for the sales tax paid to Illinois. The taxpayer was unable to provide any documentary evidence substantiating its claim that it paid Illinois sales tax on the rentals. Without any documentary evidence, pursuant to IC 6-8.1-5-1(c) the taxpayer does not sustain its burden of proving that the assessed tax is not actually due and owing to Indiana.

**FINDING**

The taxpayer's protest is denied.

**7. Tax Administration – Negligence Penalty**

**DISCUSSION**

The taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

> "Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

The taxpayer failed to follow the law, regulations, and generally available departmental instructions by failing to register as a retail merchant, to pay sales tax on the clearly taxable rental of an office trailer, and to retain adequate records for the auditor's examination. The department properly imposed the negligence penalty.

**FINDING**

The taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0120000174. LOF

**LETTER OF FINDINGS NUMBER: 00-0174**
**Individual Income Tax**
**Calendar Years 1996 and 1997**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Indiana Adjusted Gross Income – Distributive Share of Income from S Corporation**

**Authority**: 45 IAC 3.1-1-7

Taxpayer protests the limiting of its business losses.

**STATEMENT OF FACTS**

Taxpayer is a 100% shareholder in an S Corporation. Per 45 IAC 3.1-1-7, "Indiana residents with income from partnerships and Subchapter S corporations are subject to Adjusted Gross Income Tax on their distributive share of partnership or corporate income." The S-Corporation incurred losses for the years 1996 and 1997. Taxpayer deducted the entire losses on its 1040 Individual Income Tax Returns.

An administrative hearing was conducted on May 15, 2001 in which the taxpayer's representatives state that the wrong basis was utilized limiting taxpayer's losses from its business; i.e. contributed loans were not included in the basis. At hearing, taxpayer was advised to produce loan documentation in order to reduce the assessment. On June 18, 2001, September 17, 2001, and February 8, 2002, the Department asked the Taxpayer's representative to provide the necessary information. The February letter also advised the taxpayer that the Letter of Findings would be written if no response was forthcoming. No further information has been provided.

**I. Indiana Adjusted Gross Income – Distributive Share of Income from S Corporation**

**DISCUSSION**

Taxpayer is a shareholder in an S Corporation that had losses. The audit limited taxpayer's losses to its basis in the S Corporation's stock in accordance with Internal Revenue Code Section 1366 (d).

Taxpayer's representative states it would provide loan documentation in order to reduce the audit.

In at least three attempts after hearing, the Department's legal representative asked the taxpayer for information to allow a reduction in the assessment. Taxpayer provided nothing to aid in the resolution of the audit.

**FINDING**

Taxpayer's protest is denied.

**DEPARTMENT OF STATE REVENUE**

0420010264.LOF

**LETTER OF FINDINGS NUMBER: 01-0264**
**Sales and Use Tax**
**For Tax Years 1998 through 1999**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales/Use Tax – Imposition**

**Authority**: IC 6-2.5-2-1; IC 6-2.5-3-2(a); IC 6-2.5-4-1; IC 6-8.1-5-1(b)

Taxpayer protests the assessment of sales and use tax.

**II. Tax Administration – Abatement of Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is the sole proprietor of a used vehicle business. Taxpayer acquires most of the vehicles that he sells from auto auctions in Indiana and Florida per his customers' specifications. Taxpayer was audited for tax years ending 1998 and 1999. Pursuant to the audit, a review of the "Summary by Short Dealer ID Number" for the year ending 1998 (a document acquired from the Indiana Bureau of Motor Vehicles) revealed that taxpayer failed to report and remit the gross retail tax on the sale of a vehicle. The audit further revealed that taxpayer also failed to pay sales tax on the purchase of a variety of miscellaneous items including, a travel trailer used as taxpayer's office, stone for the parking lot, and a market report and a market guide subscription. Based upon taxpayer's errors, the Department assessed additional sales and use tax liability. In addition, the Department imposed a 10% negligence penalty.

**I. Sales/Use Tax – Imposition**

**DISCUSSION**

Taxpayer first argues that the auditor erred in determining that he failed to report and remit sales tax on the sale of a vehicle. At hearing, taxpayer was unable to provide evidence that sales tax was collected at the time of the sale.

Pursuant to IC 6-2.5-2-1, a sales tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property.

Here, the auditor determined that taxpayer made a taxable sale in Indiana but failed to remit the full amount of sales tax due to the Department of Revenue. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b). Taxpayer has submitted no evidence indicating that the sales tax assessment was wrong. Therefore, taxpayer is liable for the full amount of the sales tax assessed as a result of the audit report.

Taxpayer also protests the Department's assessment of use tax on the travel trailer used as taxpayer's office, the stone for the parking lot, and the subscriptions for the market report and the used car market guide. "An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2(a).

The above-mentioned items are all tangible personal property for use in taxpayer's used vehicle business. No sales tax was collected and remitted for these items at the time of purchase. Therefore, under IC 6-2.5-3-2(a), taxpayer should have self-assessed and remitted use tax on these items.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Abatement of Penalty**

**DISCUSSION**

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. IC 6-8.1-10-2.1(d) states that if a person subject to the negligence penalty imposed under said section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the Department shall waive the penalty. 45 IAC 15-11-2 defines negligence as the failure to use reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or Department regulations.

In order to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. 45 IAC 15-11-2. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...." 45 IAC 15-11-2(c). In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits. *Id*.

Taxpayer has failed to set forth a basis for establishing that he exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Given the totality of the circumstances, waiver of the penalty is inappropriate in this instance.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0120010265.LOF

**LETTER OF FINDINGS NUMBER: 01-0265**
**Adjusted Gross Income for Individuals**
**For Tax Years 1997 through 1999**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Adjusted Gross Income For Individuals – Unreported Income**

**Authority**: IC 6-8.1-5-1(a); IC 6-8.1-5-4(a)

Taxpayer protests the Department's assessment of additional individual income tax liability.

**II. Tax Administration – Abatement of Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

Taxpayer is the sole proprietor of a used vehicle business and a used vehicle dealer. Taxpayer acquires most of the vehicles that he sells from auto auctions in Indiana and Florida per customers' specifications. Taxpayer maintained no formal records of sales, cost of goods sold, or business expenses. Nevertheless, for the tax years in question, taxpayer reported his net profit from his business on *Schedule C-EZ* of *Form 1040 - Net Profit from Business* for federal income tax purposes. One of the requirements for filing a *Schedule C-EZ* form is business expenses must be $2,500.00 or less.

Pursuant to an audit, taxpayer's *Schedule C-EZs* were examined for calendar years ending 1998 and 1999. Taxpayer was unable to provide his federal income tax return and other supporting tax documents for calendar year ending 1997. The audit revealed errors in taxpayer's reported federal taxable income. For calendar years ending 1998 and 1999, taxpayer reported $4,400.00 and $4,300.00 respectively in gross receipts. From the documents available, it was determined that taxpayer underestimated his adjusted gross income by at least twenty-five percent (25%), in that taxpayer's cost of goods sold was determined to be $141,865.00 for calendar year ending 1998, and $183,045.00 for calendar year ending 1999. For calendar year ending 1997, adjustments were made using the best information available. Due to the errors, the Department assessed additional individual income tax liability against taxpayer, and concluded that taxpayer should have filed a *Schedule C* (Form 1040) tax return.

**I. Adjusted Gross Income For Individuals – Unreported Income**

**DISCUSSION**

Taxpayer protests the method used by the Department to determine taxpayer's true business income for tax years 1997, 1998 and 1999. Taxpayer failed to maintain complete records as required by IC 6-8.1-5-4(a), which states: "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records."

Due to the lack of complete records, the auditor had to estimate the assessment by reconstructing taxpayer's vehicle sales, cost of goods sold, and business expenses. The Department made the proposed assessment pursuant to IC 6-8.1-5-1(a), which states in part: "If the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the unpaid tax on the basis of the best information available to the department." IC 6-8.1-5-1(a) also states: "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

The Department determined that taxpayer arbitrarily selected a total expense amount that was less than $2,500.00 and filed the *Schedule C-EZ* (Form 1040). From the documentation provided, the Department determined that taxpayer's cost of goods sold was well over $100,000.00 for each of the tax years in question. Taxpayer has protested the results of the audit, but has provided no evidence to support that protest. As such, the Department did not err in assessing taxpayer additional individual income tax liability on the underreported amounts, and determining that taxpayer should have filed a federal *Schedule C* (Form 1040).

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Abatement of Penalty**

**DISCUSSION**

Taxpayer protests the imposition of a ten percent (10%) negligence penalty. IC 6-8.1-10-2.1(d) states that if a person subject to the negligence penalty imposed under said section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the Department shall waive the penalty. 45 IAC 15-11-2 defines negligence as the failure to use reasonable care, caution or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or Department regulations.

In order to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. 45 IAC 15-11-2. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...." 45 IAC 15-11-2(c). In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits. *Id*.

Taxpayer has failed to set forth a basis for establishing that he exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Given the totality of the circumstances, waiver of the penalty is inappropriate in this instance.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420010341.LOF

**LETTER OF FINDINGS NUMBER: 01-0341**
**State Gross Retail Tax**
**For Years 1998 and 1999**

**NOTICE:** Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. State Gross Retail Tax – Adequate Documentation**

**Authority**: 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's State Gross Retail tax.

**STATEMENT OF FACTS**

Taxpayer is a sole proprietorship. Taxpayer sells and engraves trophies, plaques, and various award items. An audit found that in some instances the taxpayer sold these items without collecting the required sales tax and without an exemption certificate from the purchaser. Additionally; taxpayer provided tangible property and services, using various materials for these transactions, but did not provide the auditor with sufficient information to calculate the relative percentage for each type of transaction.

**I. State Gross Retail Tax – Adequate Documentation**

**DISCUSSION**

At the hearing, taxpayer's representative stated that further effort by the taxpayer had secured additional exemption certificates for the Department's review.

This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Subject to the guidelines above, the Department will grant credit for the applicable transactions for which a valid exemption certificate has been provided. Also, as required by the above guidelines, no credit will be granted for transactions for which no certificate has been provided. Taxpayer provided no proof or means of determining a percentage of transactions subject to use tax; consequently the use tax assessment will not be adjusted. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has established a basis for reversal of part of the sales tax assessment, but no basis for an adjustment of the use tax assessment.

**FINDING**

Taxpayer's protest is sustained in part as to the sales tax assessment and denied as to the use tax assessment.

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**DEPARTMENT OF STATE REVENUE**

0220020275.LOF

**LETTER OF FINDINGS NUMBER: 02-0275**
**Indiana Corporate Income Tax**
**For the Tax Years 1995 through 1999**

**NOTICE:** Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Sales of Steel Manufacturing Equipment – Gross Income Tax**

**Authority**: U.S. Const. art. I, § 8; IC 6-2.1-2-2; IC 6-2.1-3-3; Indiana Dept. of Revenue v. Brown Boveri Corp., 439 N.E.2d 561 (Ind. 1982); Mueller Brass Co. v. Gross Income Tax Division, Indiana Dept. of Revenue, 265 N.E.2d 704 (Ind. 1971); Indiana Dept. of Revenue v. Surface Combustion Corp., 111 N.E.2d 50 (Ind. 1953); Gross Income Tax Division, State of Indiana v. Fort Pitt Bridge Works, 86 N.E.2d 685 (Ind. 1949); 45 IAC 1-1-120; 45 IAC 1-1-120(1)(c); 45 IAC 1-1-121(b); 45 IAC 1-1-121(d); 45 IAC 1.1-3-3(a); 45 IAC 1.1-3-3(c)(6); 45 IAC 1.1-3-3(d)

Taxpayer maintains that income derived from the construction, installation, and sale of equipment to Indiana steel manufacturers is not subject to the state's Gross Income Tax because the transactions came within the definition of "interstate commerce."

**II. Abatement of the Ten Percent Negligence and Underpayment Penalties**

**Authority**: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c)

Taxpayer asks the Department exercise its discretion to abate both the "underpayment" and ten percent negligence penalties on the ground that the taxpayer exercised reasonable care in attempting to comply with the state's corporate income tax laws.

**STATEMENT OF FACTS**

Taxpayer is an out-of-state company which designs, assembles, and then sells manufacturing equipment. Some of this equipment is designed for and then sold to Indiana steel companies. Taxpayer does not manufacture the various component parts of this equipment. Instead, it subcontracts with in-state, out-of-state, and foreign vendors to acquire the necessary components. According to taxpayer, it closely supervises the construction of the component parts at the vendors' locations and then accepts delivery of those parts at those same locations. After taxpayer accepts delivery, it arranges for shipment to the customer's manufacturing site by way of common carrier. Once the component parts have arrived at the customer's Indiana location, taxpayer arranges for subcontractors to assemble the component parts. However, taxpayer closely supervises the subcontractors' work because taxpayer is ultimately responsible to the customer for "installation and commissioning of the equipment."

The Department of Revenue (Department) conducted an audit of taxpayer's financial records covering the years 1995 through 1999. The audit concluded that taxpayer should have been paying income tax on the money it received from the Indiana customers with whom it had done business. Taxpayer disagreed with that conclusion arguing that – as an out-of-state entity – the transactions were exempt from Gross Income Tax under the Interstate Commerce Clause. Taxpayer submitted a protest, an administrative hearing was conducted, and this Letter of Findings followed.

**DISCUSSION**

**I. Sales of Steel Manufacturing Equipment – Gross Income Tax**

Indiana Gross Income Tax (IC 6-2.1-0.6 to 6-2.1-8-7) "is imposed upon the receipt of: (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident of Indiana." IC 6-2.1-2-2 To assure that only income properly subject to a state tax is assessed Gross Income Tax, IC 6-2.1-3-3 provides that "[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution." IC 6-2.1-3-3 was passed in recognition of the fact that the Commerce Clause requires that Indiana not unduly burden commerce between the states. Therefore, Indiana may not impose a tax that discriminates against interstate commerce in favor of intrastate commerce. "While a state may impose a tax burden that is reasonable in light of the incidence of commercial contact by the taxpayer with [the state], a tax system which may produce a multiple taxation burden is proscribed." Mueller Brass Co. v. Gross Income Tax Division, Indiana Dept. of Revenue, 265 N.E.2d 704, 717 (Ind. 1971).

Taxpayer argues that the Indiana sales in question fell within the protection afforded by the Interstate Commerce Clause which reserves to the federal government the power to "regulate Commerce... among the several states...." U.S. Const. art. I, § 8. More specifically, taxpayer – for the first of the four years here at issue – cites to 45 IAC 1-1-120(1)(c) which exempts from the Gross Income Tax certain sales made by non-residents to Indiana customers in which the out-of-state sellers perform installation services intrinsically related to the original sale. In regard to "Nontaxable in-shipments," the regulation states that, "As a general rule, income derived from sales made by nonresident sellers to Indiana buyers is not subject to gross income tax unless the seller was engaged in business activity within the state and such activity was connected with or facilitated the sales." 45 IAC 1-1-120. Specifically, the regulation exempts those sales "made by a nonresident where the product sold is, because of its size or weight, shipped in parts; and the seller, because of his special skill or expertise, assembles or installs the product at the buyer's place of business with no additional services rendered." 45 IAC 1-1-120(1)(c). Taxpayer maintains that Indiana may not tax the money it received during 1995 through 1998 because that Indiana source income is protected by the Interstate Commerce Clause and falls within the definition of 45 IAC 1-1-120.

The Department promulgated new regulations governing the Gross Income Tax. Those new regulations became effective January 1, 1999, and govern taxpayer's 1999 Indiana income. Taxpayer maintains that the state may not tax its 1999 Indiana income because that money falls within the definition of "Gross income derived from business conducted in interstate commerce...." 45 IAC 1.1-3-3(a). Taxpayer cites to 45 IAC 1.1-3-3(c)(6) in support of its position. That portion of the regulation requires, in part, as follows:

> 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... (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.

Taxpayer cites to Indiana Dept. of Revenue v. Surface Combustion Corp., 111 N.E.2d 50 (Ind. 1953) for support of its contention that the sale of the steel-making equipment to its Indiana customers took place within interstate commerce and the proceeds are exempt from the Gross Income Tax. In Surface Combustion, appellee taxpayer was an Ohio based furnace manufacturer. It sold furnaces to an Indiana customer, was assessed Gross Income Tax on the income derived from the sales, and brought an action seeking a refund of those taxes. The court determined that appellee taxpayer had constructed the furnaces at its Ohio facility. Thereafter, appellee taxpayer transported the smaller furnaces to the Indiana customer's site. The larger furnaces were assembled at the Ohio facility, disassembled, and shipped to the Indiana site; alternatively, the larger furnaces were only partially assembled at the Ohio facility before being "knocked down," transported and reassembled at the Indiana customer's site. In all cases, the court found that the "parties contemplated and intended that the furnace... should be shipped and transported from appellee's plant at Toledo, Ohio to the customer's plant in Indiana...." Id. 53.

In Surface Combustion, it was the Indiana customer's responsibility to provide a foundation, plumbing, and electric wiring in preparation for the installation of the furnaces. Id. It was appellee taxpayer's own responsibility to provide the "specially trained factory engineers, supervisors, and workmen to assemble... install, align, and adjust all of [the furnaces] at the customer's plant in order to assure a proper functioning furnace which was necessary to consummate and complete the sale." Id.

The court rejected the Department's contention that it was entitled to levy the Gross Income Tax against appellee taxpayer's income derived from the sale of the furnaces. The court found that, "the tax sought to be recovered was levied upon the gross receipts of appellee from interstate commerce transactions within and without the State of Indiana." Id. at 69. The court concluded that imposition of the tax "directly burdens, and interferes with, the free flow of such commerce between the State of Ohio and the State of Indiana and is invalid as being in conflict with Article I, of § 8 of the Constitution of the United States." Id.

The court found that the "thing" which the Indiana customer purchased from appellee in Ohio, was a "heat treating furnace complete in one functional unit." Id. at 62. In support of that conclusion, the court noted that, "There is no evidence that the furnaces were made, built, fabricated, created or brought into existence in Indiana." Id. The Indiana installation work performed by appellee taxpayer consisted "only in the reassembling and installing the furnaces which had been purchased in the State of Ohio and taken apart for the convenience of shipment." Id. Appellee taxpayer's in-state activity was "intrinsically related to and inherently a part of the sale; and because of their complexity their installation and testing was essential to the making of the sale." Id. The sales of the furnaces were "clearly sales of personal chattels in interstate commerce and the installation and reassembling where required, were inherently a part of, and a necessary incident to, the sale." Id.

Taxpayer also cites to Indiana Dept. of Revenue v. Brown Boveri Corp., 439 N.E.2d 561 (Ind. 1982) in support of the proposition that sales of its steel-making equipment is not subject to the Gross Income Tax. In Brown Boveri, plaintiff taxpayer was an out-of-state company which had entered into a contract with an Indiana manufacturer for the sale of an induction melting system. The parties' sales agreement was for the "turn-key" delivery of a system that would produce molten iron. "The system was pre-fabricated at [plaintiff taxpayer's] plant, broken down for shipment and reassembled at the [Indiana customer's] plant." Id. at 563. Plaintiff taxpayer conducted certain activities at the Indiana site because it "was necessary for [plaintiff taxpayer] to engage in various activities to guarantee proper planning and coordination of the project." Id. Plaintiff taxpayer's in-state activities "included reassembly of the equipment, removing obsolete equipment, pouring foundations, trenching, and reinforcement of existing structures." Id.

The court disagreed with the Department's argument that plaintiff taxpayer's performance of activities within Indiana removed the transaction from the protection afforded interstate commerce. Id. at 564. The court found that the transaction between plaintiff taxpayer and the Indiana customer was "indeed interstate commerce such that taxation of gross income resulting therefrom [was] prohibited." Id. The transaction was for the "sale of a functioning system for a lump sum," in which "all of the component parts were pre-fabricated outside Indiana, disassembled for shipment, and then reassembled on the job site." Id. Plaintiff taxpayer's local activities did not take the sale of the melting system outside interstate commerce protection because "the local activities of [plaintiff taxpayer] were intrinsically related to and inherently part of the sale in interstate commerce." Id.

In both Brown Boveri and Surface Combustion, the out-of-state taxpayer constructed equipment and then shipped that equipment – either piece-meal or as a complete unit – to the Indiana customer. The court found, in both instances, that the sale of the equipment was interstate in character while taxpayers' in-state activities – installing and testing the equipment – were inherently related to the original out-of-state sale.

Taxpayer entered into numerous subsidiary transactions most of which are entirely irrelevant to the taxpayer's protest. Pursuant to those subsidiary transactions, taxpayer hired subcontractors to construct individual component parts. In some cases, taxpayer was closely involved in the actual fabrication of these components. Taxpayer – in some instances, together with the Indiana customer – closely monitored the components' construction in order to assure that components conformed to design standards and in order to assure that the components were completed in a timely fashion. At some point, taxpayer took possession of the components and shipped them to the Indiana destination by means of common carrier. Because of their size, some of the components were partially disassembled before shipment.

None of these numerous subsidiary transactions are relevant to taxpayer's protest because taxpayer is not engaged in the business of selling unassembled components to the Indiana customers. It is the sales of the finished steel-making machines to the Indiana customers which underlie the taxpayer's protest.

Taxpayer's sale of its steel-making machines is not identical to the transactions described in Brown Boveri and Surface Combustion. In Surface Combustion, the court stated that there was "no evidence that the furnaces were made, built, fabricated, created, or brought into existence in Indiana." Surface Combustion, 111 N.E.2d at 62. While the numerous individual components may have existed outside of Indiana, there is every indication that the steel-making machines themselves were "made, built, created, [and] brought into existence in Indiana." Brown Boveri, 439 N.E.2d at 563. In Brown Boveri, the court found that, "The system was pre-fabricated at [taxpayer's] plant, broken down for shipment and reassembled at the [Indiana] plant." Id. The taxpayer's own steel-making machines were not pre-fabricated outside the state, broken down for shipment, and reassembled at the Indiana customers' steel plant. Instead, the steel-making machines were not brought into existence until taxpayer transported the components to the site and then assembled those components into the steel-making device which taxpayer sold to the Indiana customers. Taxpayer's sales of steel-making machines were not interstate transactions with the taxpayer's performance of Indiana installation activities merely incidental to the sale of the steel-making machines. Instead, taxpayer's initial construction and sale of the steel-making machines occurred in Indiana and the proceeds are properly subject to the state's Gross Income Tax.

Taxpayer's sales of the steel-making equipment is analogous to the activities of appellee manufacturer in Gross Income Tax Division, State of Indiana v. Fort Pitt Bridge Works, 86 N.E.2d 685 (Ind. 1949). In that case, the manufacturer – a Pennsylvania based corporation – arranged for the construction, fabrication, and assembly of certain buildings within the state. The manufacturer "furnished and fabricated the steel and shipped it from its plants in Ohio or Pennsylvania" to the customer's location within Indiana. Id. at 687. Thereafter, a subcontractor received the material and performed all the work necessary for the "construction of the buildings for which the steel was furnished." Id. The manufacturer treated the receipts as not subject to Indiana's Gross Income Tax because, according to the manufacturer, "it had nothing to do with the activity and business conducted in Indiana by [the subcontractor] and that it [was] not liable for tax upon the price paid for the steel and fabrication... because the fabrication occurred outside the state and furnishing the steel was an interstate transaction." Id. at 688. The court disagreed with the manufacturer's contention on the ground that, "A corporation which contracts in the state of its residence to do work in a foreign state subjects itself to the jurisdiction of such foreign state, notwithstanding it employs independent contractors to do the actual work and does no part of the actual work itself." Id. at 689. The manufacturer's income was subject to Indiana's Gross Income Tax because "it was derived from an activity for which it was responsible. It came from its business in Indiana, carried on through the medium of a subcontractor acting independently as to the manner and method, but acting for [the manufacturer] in the accomplishment of the result which it contracted to bring about." Id.

The court rejected the manufacturer's argument that the transaction was interstate in nature because the court did not believe the contract "was a contract of sale with construction work in Indiana as a mere incident." Id. at 691. Even though the component parts were initially manufactured at an out-of-state location, "the transaction as a whole was local in nature and subject to local tax and regulation." Id. The court stated that it had "no hesitance in saying that the State of Indiana [had] the right to apply its gross income tax to business actually transacted within its borders, notwithstanding that interstate commerce, as an incident, may have intervened in at some point in the transaction...." Id. at 692.

The taxpayer's own acquisition of components from its hundreds of suppliers was merely incidental to the assembly and sale of the steel-making machines to its Indiana customers. The proceeds from sales of the steel-making machines are subject to the state's Gross Income Tax because the sales transactions were local and nature and not inherently part of interstate commerce. There is no indication Indiana's imposition of Gross Income Tax discriminates against interstate commerce or imposes a multiple taxation burden on taxpayer.

The taxpayer's 1995 through 1998 transactions fall within the purview of the state's Gross Income Tax scheme as set out in 45 IAC 1-1-121(b) which states that:

> Gross receipts from the performance of construction projects in Indiana are subject to gross income tax. This is true even when the contractor is a nonresident and even when he subcontracts all Indiana work to local businesses and has no other contact with the state except to ship goods manufactured elsewhere into the state for installation by local workmen.

Taxpayer's Indiana activities are not merely "incidental services taking place within the State, which may be tax-exempt as a transaction in interstate commerce." 45 IAC 1-1-121(d). Taxpayer is not merely setting the equipment "on bases or connecting to pipes, supports, etc., provided by the customer." Id. Rather, taxpayer clearly "performs additional services, such as installation, testing, construction, etc." entitling the Department to treat the transaction as a "construction project" the proceeds of which are properly subject to the state's Gross Income Tax. Id. *See also* 45 IAC 1.1-3-3(d).

**FINDING**

Taxpayer's protest is respectfully denied.

**II. Abatement of the Ten Percent Negligence and Underpayment Penalties**

At the conclusion of the audit review, taxpayer was assessed a ten percent negligence penalty. According to taxpayer, the Department assessed an "underpayment penalty" for the 1999 tax year pursuant to IC 6-8.1-10-2.1.

IC 6-8.1-10-2.1 requires that a ten percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Taxpayer filed no Indiana tax returns for 1995, 1996, 1997, 1998, and 1999 on the ground that had no tax liability for those years. While the sales of the steel-making equipment arguably implicated transactions involved in interstate commerce, taxpayer received substantial income from the provision of related services within the state. Its determination that it had zero tax liability during the five years falls outside a reasonable definition of "ordinary business care and prudence" and does not warrant abatement of the associated penalties.

**FINDING**

Taxpayer's protest is respectfully denied.

**DEPARTMENT OF STATE REVENUE**

0220020283.LOF

**LETTER OF FINDINGS NUMBER: 02-0283**
**Adjusted Gross, Supplemental Net, and Unrelated Business Income Tax**
**For the Years Ending 1996 through 2000**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Adjusted Gross and Supplemental Net Income Tax – Unrelated Business Income**

**Authority**: IC 35-45-5-3; IC 6-2.5-5-25; IC 6-2.1-3-23; IC 6-3-2-3.1(a); IC 6-3-1-17(a); IC 6-8.1-5-1; 45 IAC 3.1-1-68.

The taxpayer protests the imposition of adjusted gross and supplemental net income tax on proceeds from illegal gambling machines.

**II. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1; 45 IAC 15-11-1 & 2

The taxpayer protests the Department's imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

As a result of an Indiana Excise Police incident report dated December 21, 1994, the Department conducted an income tax audit based upon the Taxpayer's possession of illegal gambling machines discovered at its location. The Taxpayer's representative admitted that some time after the original investigation by the Indiana Excise Police the taxpayer removed the illegal machines from the premises. He also states that the taxpayer began using the illegal machines again in December of 1998.

**I. Adjusted Gross and SNIT – Unrelated Business Income**

**DISCUSSION**

On Tuesday, December 20, 1994 the Indiana State Excise Police conducted an investigation of the taxpayer's premises. The Officers observed three (3) electronic gambling machines in a side room off the barroom area. The taxpayer's administrator admitted that monetary payoffs were being made on the machines at the rate of 10¢ each. The taxpayer's administrator, having been advised of his Miranda rights, stated that he supplied the bartender each day with a start up fund of at least $1,000 for the machines, and that payoffs are made out of this fund on a daily basis. A weekly ledger sheet was maintained showing monetary amounts paid day by day during the week. A bank bag with $1, 050 was in a drawer behind the bar and the ledger sheet was found on the back bar.

Under Indiana Code section 35-45-5-3 the machines operated in taxpayer's establishment constitute illegal gambling. Proceeds from illegal gambling are considered unrelated business income and subject to Indiana gross or adjusted gross and supplemental net income tax.

In its protest letter, the taxpayer provided affidavits of its past Governors stating that to the best of their knowledge no illegal gambling machines were located on the premises from May 1, 1995 through April 30, 1998. In December of 1998, the taxpayer's representative states that they once again had illegal gambling machines in their Lodge. Taxpayer argues that the amount of money attributable to the machines was significantly less according to their records. The taxpayer's representative provided the Department with records, which allegedly show the net revenue from the illegal machines. These figures were obtained from the distributor who actually owned the machines (the lodge failed to keep any records). The taxpayer also maintains that the pay out on the machines was eighty percent (80%). The net proceeds were then split between the owner of the machines and the Lodge.

IC 35-45-5-3 provides in pertinent part:

> A person who knowingly or intentionally: … (3) maintains, in a place accessible to the public slot machines, one-ball machines or variants thereof… commits professional gambling, a Class D felony.

The Department and the Internal Revenue Service have held that that illegal gambling is always unrelated to a nonexempt organization's exempt purpose. Exemption from tax for exempt organizations is tied to the gross income tax provisions with respect to exempt organizations. IC 6-2.5-5-25. As provided under IC 6-2.1-3-23, exempt organizations are not entitled to exemption from gross income received by a taxpayer that is derived from an unrelated trade or business, as defined in Section 513 of the Internal Revenue Code. Thus, the Department's determination was guided by I.R.C. § 513, which provides, in part, the following:

> …The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Pursuant to IC 6-3-2-3.1(a) and IC 6-3-1-17(a), the Indiana General Assembly has expressly adopted the Code's tax treatment, with respect to Code section 501(c) organizations, for purposes of the Indiana adjusted gross and supplemental income tax analysis. Moreover, the Department's rule 45 IAC 3.1-1-68 defines an unrelated trade or business under the same guidelines as IRC section

513, and the rule also subjects any unrelated business income to the Indiana taxes. Additionally, the rule cites taxpayers to Code sections 511 through 515 for guidance in determining whether income is subject to the taxes.

Pursuant to IC 6-8.1-5-1 if the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

As to whether the Department's audit figures or the taxpayers are correct, comes down to an issue of credibility. The Department used figures based upon the amount of revenue seized by the Indiana State Excise Police in its investigation of taxpayer's Lodge. The taxpayer provides affidavits signed by several past Governors of taxpayer's organization. The affidavits are self serving and weak evidence at best. As for the figures supplied by the taxpayer, the numbers were received from an individual who owned the illegal machines and shared in their illegal profit. The Department will not place any reliance on self-serving information gained from someone engaged in illegal activities.

**FINDING**

The taxpayer's protest is denied.

**II. Tax Administration – Liability for 10% Negligence Penalty**

**DISCUSSION**

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent. 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

In this instance, the taxpayer has not shown reasonable cause. The taxpayer has not provided to the Department's satisfaction, sufficient justification for why the negligence penalty should be waived.

**FINDING**

The taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020390LOF
0420020392LOF

**LETTER OF FINDINGS NUMBER: 02-0390 & 02-0392**
**Sales Tax**
**For Years 1997, 1998, 1999, and 2000**

**NOTICE**: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Tax Administration – Waiver of Penalty**

**Authority:** 45 IAC 15-11-4; 45 IAC 15-5-7(3); IC § 6-8.1-10-4

Taxpayer seeks waiver of the penalties because the tax liabilities were not due to fraudulent intent.

**STATEMENT OF FACTS**

Taxpayer formed a partnership for a sign business in 1997. Taxpayer then reorganized into a LLC in April of 1998. Taxpayer conducted business and invoiced customers for retail sales tax throughout the years at issue but did not register as a retail merchant or start remitting the collected sales tax to the state until 1999 and 2000. An audit determined the amount at issue and a 100% fraud penalty was assessed. Taxpayer protests only the fraud penalty, arguing that an accountant reviewed and filed returns for them for the years in question.

**I. Tax Administration – Waiver of Penalty**

**DISCUSSION**

Finding the liabilities were due to taxpayer's failure to pay taxes with "the fraudulent intent of evading the tax" IC § 6-8.1-10-4, the Department imposed a one hundred percent penalty. "Fraudulent intent" is defined in 45 IAC 15-11-4, pertinently, as;

An act is fraudulent if it is an actual, intentional wrongdoing, and the intent required is the specific purpose of evading tax believed to be owing.

Five elements are required by 45 IAC 15-5-7(3) to establish the taxpayer's actions as fraudulent, these items are:

Misrepresentation of a material fact: A person must truthfully and correctly report all information required by the Indiana Code and the department's regulations. Any failure to correctly report such information is a misrepresentation of a material fact. Failure to file a return may be a misrepresentation.

Taxpayer made no filings and did not register as a retail merchant for either entity during the first two years of the period at issue.

(B) Scienter: This is a legal term meaning guilty knowledge or previous knowledge of a state of facts, such as evasion of tax, which it was a person's duty to guard against. A person must have actual knowledge of the responsibility of reporting the information under contention. However, the reckless making of statements without regard to their truth or falsity may serve as an imputation of scienter for purpose of proving fraud.

The income generated was generated by retail sales, receipts from which showed a charge for sales tax. Taxpayer presents no evidence of any payment of the required sales tax, and taxpayer's knowledge of this requirement is evident from taxpayer's collection of it throughout the audit period, but not remitting any of the amounts collected until the 1999 transactions.

(C) Deception: Deception operates on the mind of the victim of the fraud. If a person's actions or failure to act causes the department to believe a given set of facts which are not true, the person has deceived the department.

Taxpayer's failure to register either entity or file monthly sales tax returns caused the department to believe no retail sales were occurring until taxpayer began reporting and remitting in 1999 and 2000.

(D) Reliance: Reliance also concerns the state of mind of the victim and is generally considered along with deception. If the person's actions, failure to act, or misrepresentations cause the department to rely on these acts to the detriment or injury of the department, the reliance requirement of fraud will be met.

As was noted under deception, the taxpayer's actions prevented the department's receipt of the tax already collected but never reported or remitted for 1997 and 1998.

(E) Injury: The fraud instituted upon the department must cause an injury. This can be satisfied simply by the fact that the misrepresentation(s) caused the department not to have collected the money which properly belongs to the state of Indiana.

No tax was collected on the retail sales, thus the money which properly belongs to the state of Indiana was not paid, although taxpayer did collect money for this from customers for 1997 and 1998 without remitting the money to the state.

Taxpayer operated a substantial business operation, incorporating and expanding the operation over the period at issue. All aspects of the business operation that are available indicate that taxpayer was a capable business operator who deliberately maintained an operation with minimal and even misleading documentation of income and business arrangements. Taxpayer provides no evidence that his business's retail sales were ever voluntarily reported, the tax was only assessed after the retail sales were discovered as part of an audit. Aside from arguing that an accountant was responsible, taxpayer offers no explanation for the failure to register as a retail merchant or to report and pay the sales tax even though it was collected from customers. Taxpayer's actions were intentional and actual wrongdoing was conducted over the first two years covered by the audit, and the logical result of these actions was for the specific purpose of evading taxes. Consequently, the fraud penalty is appropriate for 1997 and 1998, but not 1999 and 2000 when taxpayer was reporting and remitting sales tax on transactions.

**FINDINGS**

Taxpayer's protest is denied as to the penalty for 1997 and 1998, sustained as to 1999 and 2000.

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**DEPARTMENT OF STATE REVENUE**

0420020423.LOF

**LETTER OF FINDINGS NUMBER: 02-0423**
**Sales and Use Taxes**
**Calendar Years 1998, 1999, and 2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Selling at Retail – Best Information Available**

**Authority**: 45 IAC 2.2-6-8; IC 6-8.1-5-1

Taxpayer protests the entire audit.

**STATEMENT OF FACTS**

The Taxpayer is engaged in the business of installing and servicing residential and commercial heating and cooling systems. The audit was based upon best information available as allowed under IC 6-8.1-5-1 (a) because the taxpayer did not supply all of the documents requested for the audit and the documents that were provided were incomplete. During the audit period, the taxpayer performed both taxable and exempt jobs. Taxpayer did not reply to the hearing officer's request for additional information, therefore a hearing was scheduled which the taxpayer did not attend or reply to.

A projection was used to determine the total revenue for the taxpayer as minimal records were made available to the auditor.

Taxpayer submitted several protest letters stating that the proposed assessments are without reasonable foundation and were assessed using a flawed theory.

**I. Selling at Retail – Best Information Available**

**DISCUSSION**

In reviewing the audit report and the file, it is noted that the assessment stems from best information available for sales taxes and the taxpayer had numerous opportunities to provide additional information, either to the auditor or to the hearing officer. Taxpayer provided nothing to aid in the resolution of the audit.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0120020445.LOF

**LETTER OF FINDINGS NUMBER: 02-0445**
**Individual Income Tax**
**Calendar Years 1998, 1999, and 2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Individual Income Tax – Best Information Available**

**Authority**: 45 IAC 15-5-1

Taxpayer protests the entire audit.

**STATEMENT OF FACTS**

The Taxpayer is engaged in the business of installing and servicing residential and commercial heating and cooling systems. The audit was based upon best information available as allowed under IC 6-8.1-5-1 (a) because the taxpayer did not supply all of the documents requested for the audit and the documents that were provided were incomplete. During the audit period, the taxpayer performed both taxable and exempt jobs. Taxpayer did not reply to the hearing officer's request for additional information, therefore a hearing was scheduled which the taxpayer did not attend or reply to.

A projection was used in the Sales Tax Audit to determine the total revenue for the taxpayer as minimal records were made available to the auditor. During the audit, it was discovered that the taxpayer had not been reporting all of the income from the operation of its business. The results from the sales and use tax audit lead the Department to believe that the net profit from the operation of taxpayer's business was more than the wages reported by the taxpayer on his Federal Income Tax returns and that the taxpayer's Federal adjusted gross income was understated.

Taxpayer submitted several protest letters stating that the proposed assessments are without reasonable foundation and were assessed using a flawed theory.

**I. Individual Income Tax – Best Information Available**

**DISCUSSION**

In reviewing the audit report and the file, it is noted that the assessment stems from best information available from the sales tax audit. The auditor had determined that the net profit from the operation of taxpayer's business was more than the wages reported by the taxpayer on his Federal Income Tax returns and the taxpayer had numerous opportunities to provide additional information, either to the auditor or to the hearing officer. Taxpayer provided nothing to aid in the resolution of the audit.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

28200020451.LOF

**LETTER OF FINDINGS NUMBER: 02-0451 CSET**
**Controlled Substance Excise Tax**
**For Tax Period: 2001**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**1. Controlled Substance Excise Tax – Imposition**

**Authority:** IC 6-7-3-5; IC 6-8.1-5-1 (b), Hurst v. Department of Revenue, 720 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax. 1999)

The taxpayer protests the imposition of the Controlled Substance Excise Tax.

**STATEMENT OF FACTS**

On August 1, 2001, police discovered marijuana in a car belonging to the taxpayer. On April 12, 2002, the appropriate County Prosecuting Attorney sent the Indiana Department of Revenue, hereinafter referred to as the "department," a request for the assessment of controlled substance excise tax relating to the defendant's possession of marijuana. The department issued a Record of Jeopardy Finding, Jeopardy Assessment, Notice and Demand on August 14, 2002 in a base tax amount of $71,864.10. The taxpayer filed a protest to the assessment. A hearing on the protest to the imposition of the controlled substance excise tax was held on October 29, 2002.

**1. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. Departmental assessments are presumed to be correct and the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1 (b).

Possession of marijuana subject to the imposition of the tax can be either actual or constructive. Hurst v. Department of Revenue, 720 N.E.2d 370 (Ind. Tax. 1999), Hall v. Department of Revenue, 720 N.E.2d 1287 (Ind. Tax 1999). Although both direct and circumstantial evidence may prove constructive possession, proof of presence in the vicinity of drugs, presence on property where drugs are located, or mere association with the possessor is not sufficient. Hurst at 374-375. To prove constructive possession, there must be a showing that the taxpayer had not only the requisite intent but also the capability to maintain dominion and control over the substance. Hurst at 374.

In the Hall case, the Indiana Department of Revenue assessed Controlled Substance Excise Tax on a husband and wife. The couple owned and lived together in a residence. The marijuana was grown in a basement room with a locked door. Only the husband had a key to the room. Although the wife co-owned the house, lived in the house, did laundry in the room adjacent to the room which housed the marijuana, and the smell of marijuana permeated the house, the Court found that the wife did not have the capability to maintain dominion and control over the marijuana. Therefore she did not constructively possess the marijuana and the Controlled Substance Excise Tax was improperly imposed against the wife.

In this case, the taxpayer's husband was an active retailer of marijuana. He stated and the police report confirms that he stored the marijuana in a locked safe in the basement. In the afternoon of August 1, 2001, while the taxpayer was at work, the taxpayer's husband was informed by telephone that the police were investigating and arresting the parties associated with the marijuana trade. After receipt of this call, the taxpayer's husband took the marijuana from the locked safe in the basement and put it in the back of the car he normally drove. Then he parked the car, with the marijuana in it, on another person's property before the taxpayer returned home from work. The taxpayer did not have knowledge of the marijuana or access to the car from the time the marijuana was placed in the car until the time the police arrested the taxpayer's husband. When the police arrived at 11:00 p.m. that evening, they questioned both the husband and the wife. The husband showed the police the locked safe where he kept the marijuana in the basement and took the police to the marijuana in the trunk of the car. The police also found $11,861.00 cash under the couple's mattress. The police arrested the husband.

At the hearing, several witnesses testified that they had been in the taxpayer's home on many occasions including times that they just dropped by without an invitation and never smelled the odor of marijuana. The taxpayer and her husband both stated that the taxpayer did not know how to open the safe, the husband had always stored large amounts of cash in the house because he did not trust banks, and the taxpayer almost never drove the car in which the marijuana was found.

In both the Hall case and this case, the husband kept the marijuana locked in an enclosure to which the wife had no access. Although the odor of marijuana was evident in the Hall's house, the Court still found that the wife did not exercise dominion and control over the marijuana. In the taxpayer's situation, there is even less evidence that the taxpayer knew of the marijuana or was capable of exercising dominion and control over the marijuana. The only indication that the taxpayer possessed the marijuana was that it was stored in the couple's house, it was found in the couple's car, and she was married to the person who actually intended and was capable of maintaining dominion and control over the marijuana. As stated in the Hurst case, those factors alone are not adequate to determine that a person constructively possessed marijuana.

The taxpayer has sustained her burden of proving that she did not actually or constructively possess the subject marijuana.

**FINDING**

The taxpayer's protest is sustained.

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**DEPARTMENT OF STATE REVENUE**

0220020535P.LOF

**LETTER OF FINDINGS NUMBER: 02-0535P**
**Gross and Adjusted Gross Income Tax**
**For Calendar Year 1999**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was assessed a penalty for the underpayment of estimated income taxes. Taxpayer protests the proposed penalty assessment for the underpayment of estimated tax and states that it operated at a loss for the first two quarters of 1999. Taxpayer cites Indiana Code 6-3-4-4.1(c), and Regulation 45 IAC 3.1-1-92 that a payment of adjusted gross income tax is not required.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalties assessed for the underpayment of estimated income taxes and merely states that it operated at a loss for the first two quarters of 1999 and no payment was required for those quarters. Taxpayer paid one hundred percent of its tax by the due date of the return.

To avoid the penalty, the quarterly estimate must equal at least twenty percent (20%) of the total income tax liability for the current taxable year or twenty-five percent (25%) of the final income tax liability for the prior taxable year. Taxpayer failed to make the quarterly estimated payments and has not provided reasonable cause to allow a penalty waiver. Procedures should have been in effect to assure that taxes were timely paid.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020536P.LOF

**LETTER OF FINDINGS NUMBER: 02-0536P**
**Corporate Income Tax**
**For Fiscal Year Ended September 30, 2001**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer failed to remit its entire tax liability by the due date of the return for fiscal year 2001. The department issued a penalty billing.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer, in a letter dated December 18, 2002 states that it had recently moved its tax department to Florida. As a result there was a lack of sufficient staffing and its estimated payments and estimated tax due were improperly calculated. In addition, it has consolidated the tax function for many subsidiaries. Taxpayer requests that it not be penalized because it conducted its tax affairs in a reasonable manner and made a good faith effort to accurately file its Indiana tax return and pay its taxes.

IC 6-8.1-6-1 (c) states:

"If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax return are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax."

Taxpayer did not pay ninety percent of the tax due by the due date. Taxpayer paid $66,031 on May 1, 2002 that generated a penalty.

The taxpayer has not provided reasonable cause to allow a penalty waiver.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020539P.LOF

**LETTER OF FINDINGS NUMBER: 02-0539P**
**Sales Taxes**
**For Periods Ended May 31, 2002 and June 30, 2002**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10.1

Taxpayer protests the interest assessed.

**STATEMENT OF FACTS**

Taxpayer was assessed a late filing penalty for May 31, 2002 and June 30, 2002. Taxpayer protests the penalty and interest assessed because the company went through a turbulent period. It closed its office to relocate to another city and the turnover in the accounting department reached one hundred percent. In the past two months, it has had three controllers, so previously well-defined routines were disrupted.

Taxpayer filed its May 2002 return on June 21, 2002 and its June 2002 return on August 22, 2002.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it has an unblemished record in filing tax returns and paying tax. Taxpayer further states that it went through a turbulent period, culminating in the closure of its locations and moving to new corporate offices in Indianapolis.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer has a responsibility to remit tax collected and should have had procedures in place to assure that the returns are timely filed and the tax timely paid. Taxpayer filed the May and June taxes late and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Interest**

**DISCUSSION**

Taxpayer protests the interest assessed, however, the Department has no authority to waive interest.

**FINDING**

Taxpayer's protest is denied.

**CONCLUSION**

Taxpayer's protest is denied for issues I and II.

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**DEPARTMENT OF STATE REVENUE**

0220020540P.L0F

**LETTER OF FINDINGS NUMBER: 02-0540P**
**Gross and Adjusted Gross Income Tax**
**Fiscal Years Ended 06/27/99 and 07/02/2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited and found to have placed its service income into low rate gross income that amounted to seventy-five percent (75%) of its gross income tax liability. Taxpayer requests an abatement of the penalty.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer states that it incorrectly applied the incorrect tax rate for the years at issue and has, in prior years as well as subsequent years used the correct tax rate. Taxpayer requests that the penalties be abated.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to correctly tax its gross income at the high rate of tax. Taxpayer failed to assure that the tax returns were correctly filed and apparently failed to verify the tax rates, which is clearly negligent. The taxpayer has not provided reasonable cause to allow a penalty waiver.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020546P.LOF

**LETTER OF FINDINGS NUMBER: 02-0546P**
**Gross and Adjusted Gross Income Tax**
**For Fiscal Year Ended September 30, 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**
**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the proposed penalty assessment for the late payment of its income tax. The due date of the return was January 31, 2002. Taxpayer filed its return late with payment of seventy-eight percent (78%) of its tax liability. The Department issued its late payment assessment on August 14, 2002.

Taxpayer filed a penalty protest letter dated September 16, 2002 and states that the estimated Indiana apportionment percentage was lower than the actual percentage determined during the preparation of the final Indiana Corporation Income Tax Return.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it has historically computed and paid Indiana income tax on a timely and accurate basis. Taxpayer further states it made an error in computing its apportionment percentage.

Taxpayer did not make payment by the original due date of the return as required under IC 6-8.1-10-2.1 (a)(2). The penalty is ten percent (10%) of the amount of the tax not paid, if the person fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment.

Taxpayer made approximately seventy-eight percent (78%) of its tax payment after the due date of the return and has not provided reasonable cause to allow the Department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020548P.LOF

**LETTER OF FINDINGS NUMBER: 02-0548P**
**Sales Tax**
**For Calendar Years 1998, 1999, 2000, and 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**
**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed ST-103's for calendar years 1998 through 2000 for sales tax collected and not remitted. Taxpayer was assessed a ten percent (10%) negligence penalty and interest.

Taxpayer, in a letter dated August 23, 2002 requests that the department waive the penalty because it voluntarily took the responsibility of the filing and payment of back taxes.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) penalty and updated interest for its voluntarily filed sales tax returns and reports most of the states abated all or a portion of the penalty. In addition to the penalty, some states abated one hundred percent or a portion of the interest due. Taxpayer further states that there was confusion on whether the lessor or the lessee is responsible for remitting the taxes on the rentals of tangible personal properties in Indiana.

Taxpayer failed to file and remit timely the sales tax it had collected. Taxpayer was also negligent in making itself aware of the tax laws in the State of Indiana when it has rental property in the State. Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed and the Department has no authority to waive interest.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0120020549P.LOF

**LETTER OF FINDINGS NUMBER: 02-0549P**
**Individual Income Tax**
**Calendar Year 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, in a letter dated November 5, 2002, requests an abatement of the penalty. Taxpayer states he is a bona fide resident of Canada, has a driver's license issued by Canada, has a dispatch office based in Indiana, his office is based in his residence in Canada, and his principal activity of transport driver takes him throughout Canada and the United States. Taxpayer further states that he files Indiana returns as non-residents and requests the same automatic extension of two months to file and pay tax as permitted by the IRS.

Taxpayer filed its return late with a tax balance due of $1,170. The Department adjusted the return for an error in the Proration Section that changed the total exemptions from $1,820 to $1,730 resulting in additional tax in the amount of $ 3.03.

The taxpayer did not file an extension to file the return late.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer states that it filed its Indiana return as non-residents and requests the same automatic extension of two months to file and pay tax as permitted by the IRS.

Taxpayer remitted no tax by the original due date of the return. According to IC 6-3-4-3, returns shall be filed with the department on or before the 15$^{th}$ day of the fourth month following the close of the taxable year. IC 6-8.1-10.2.1 allows a ten percent (10%) penalty to be assessed if the full amount of tax shown on the person's return is not remitted by the due date of the return.

Taxpayer did not petition the department for a filing extension as required by IC 6-8.1-6-1(a) and has not provided reasonable cause to allow the Department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020550P.LOF

**LETTER OF FINDINGS NUMBER: 02-0550P**
**Income Tax**
**For Calendar Year 2000**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its S-Corporation income tax return thirteen days late for the tax year ending December 31, 2000. The department issued a penalty billing.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer states that the business was discontinued and there are no assets. Taxpayer requests that the penalty be waived.

Taxpayer failed to timely file its IT20-S return for calendar year 2000. Departmental records indicate the taxpayer has not filed for dissolution.

IC 6-8.1-10-2.1(g) states:

A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars ($10) for each day that the return is past due, up to a maximum of two hundred fifty dollars ($250).

Taxpayer filed its return thirteen days late. The department finds that a negligence penalty is proper.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020551P.LOF

**LETTER OF FINDINGS NUMBER: 02-0551P**
**Gross Income Tax**
**For Calendar Year 2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10.1

Taxpayer protests the interest assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty and interest assessment for the late payment of its income tax. Taxpayer states that an independent accounting firm prepared its corporate income tax for the year in question and it entrusted its accounting firm to fully and accurately complete its corporate income taxes. Upon receiving notice from the Department that there was a discrepancy, it submitted an Amended Corporation Income Tax Return along with a check in the amount of $6,679.09 for the balance due.

Taxpayer filed a penalty and interest protest letter dated September 3, 2002.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it filed an amended return with the tax balance due. Taxpayer states it relies on its accounting firm to prepare it tax returns correctly.

Taxpayer did not make payment by the original due date of the return. The tax was paid late on August 8, 2002 and incurs a late payment penalty.

Taxpayer has not provided reasonable cause to allow the Department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Interest**

**DISCUSSION**

Taxpayer protests the interest assessed and provided no additional reasons.

The Department has no statutory authority to waive interest.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020553P.LOF

**LETTER OF FINDINGS NUMBER: 02-0553P**
**Gross Income Tax**
**For Calendar Year Ended December 31, 2000**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10-1

Taxpayer protests the interest assessed.

**STATEMENT OF FACTS**

Taxpayer protests the proposed penalty assessment for the late payment and the underpayment of its income tax. Taxpayer filed its return late with payment of seventy-five percent (75%) of its tax liability. The Department issued its late payment assessment and underpayment assessments. Taxpayer paid the estimated underpayment penalty.

Taxpayer filed a penalty protest letter dated October 31, 2002 with a partial payment of $6,684 referring to a letter dated August 27, 2002 that it sent earlier. The letter states that its accounting firm prepares it tax returns and made the error in the preparation of the return.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that its accounting firm made the error.

Taxpayer did not make payment by the original due date of the return as required under IC 6-8.1-10-2.1 (a)(2). The penalty is ten percent (10%) of the amount of the tax not paid, if the person fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment.

Taxpayer made approximately seventy-eight percent (75%) of its tax payment after the due date of the return and has not provided reasonable cause to allow the Department to waive the penalty. The taxpayer has the same responsibility as its accounting firm.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Interest**

**DISCUSSION**

The taxpayer protests the interest assessed.

The Department has no authority to waive interest.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020556P.LOF

**LETTER OF FINDINGS NUMBER: 02-0556P**
**Gross and Adjusted Gross Income Tax**
**For Calendar Years 1999 and 2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its calendar years 1999 and 2000 returns late and was assessed a late penalty. Taxpayer filed a Federal Extension of time. The Department allows an additional thirty days. The Taxpayer paid $4,657 and $3,994 for calendar years 1999 and 2000 respectively on October 13, 2000 and August 8, 2002.

Taxpayer filed a penalty protest dated November 13, 2002. Taxpayer states it applied for an extension and made estimated payments. When the taxpayer calculated its tax liability, it resulted in a balance due. Taxpayer states it included the penalty for underpayment with its tax payment. The taxpayer received notices charging a late payment penalty and interest because payment in full was not received by April 15th. Taxpayer has paid the interest due and requests the waiver of the late payment penalty for calendar years 1999 and 2000.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed for the late payment of tax and has not provided reasonable cause for failure to make payment timely.

IC 6-8.1-6-1 (c) states:

"If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax return are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax."

Taxpayer failed to remit its tax timely and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020557P.LOF

**LETTER OF FINDINGS NUMBER: 02-0557P**
**Sales and Use Tax**
**Calendar Years 1999, 2000, and 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a recreational center and leases the building, land, and equipment from its partnership. At audit, it was determined that the taxpayer failed to self assess and remit use tax on clearly taxable items such as office and building supplies, a safe, a computer, and other miscellaneous items and had no use tax accrual system in place. Taxpayer failed to collect and remit sales tax on the vending machine items.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it was not aware that parts and repair of its mechanical equipment were subject to sales or use tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer did not have a use tax accrual system in place, did not collect and remit sales tax on vending machine items, and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020558P.LOF

**LETTER OF FINDINGS NUMBER: 02-0558P**
**Use Tax**
**For Calendar Years 1999, 2000, and 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana

Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer, a partnership that owns land, building and equipment of a recreation center, was audited for calendar years 1999, 2000, and 2001. The holdings are leased to a related company. Taxpayer is not required to register for sales tax. Taxpayer purchased items upon which no sales tax was collected nor paid.

Taxpayer requests abatement of the penalty because it was not aware that parts and repairs to its mechanical equipment were subject to sales or use tax.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer purchased equipment exempt. Taxpayer protests the penalty assessed because it was not aware that parts and repairs of its mechanical equipment were subject to tax.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Ignorance of Indiana tax laws is not reasonable cause. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0420020560P.LOF

**LETTER OF FINDINGS NUMBER: 02-0560P**
**Sales Tax and Use Tax**
**For Calendar Years 1999 and 2000**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Upon audit, it was discovered that the taxpayer failed to remit all of its collected Sales Tax and failed to charge and remit tax on a portion of its taxable sales.

Taxpayer, in a letter dated November 14, 2002 requests that the department waive the penalty because the controller made accounting errors related to the recording and payment of sales tax collected. Compounding the problem was the controller's failure to report the problem to taxpayer's management. The lack of communication to management continued from the time of the tax underpayments until after the termination of the controller's employment. Taxpayer states that it reasonably relied on the controller regarding tax issues. Taxpayer requests waiver of the penalty.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) penalty because it failed to correctly report its taxable sales.

Taxpayer protested penalties assessed and states it relied on its controller to correctly remit tax collected. Taxpayer further states it has instituted procedures to assure that sales tax is remitted timely.

Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed. An employee's failure to remit the tax is not reasonable cause.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0320020562P.LOF

**LETTER OF FINDINGS NUMBER: 02-0562P**
**Withholding Tax**
**For August 31, 2002**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its WH-1 payment late and was assessed a late payment penalty. In a letter dated October 23, 2002, taxpayer protests the penalty assessed. Taxpayer states that its trainee inadvertently neglected to complete the transmission portion of the process. Taxpayer requests a penalty waiver because its intent is to fully remit all withholdings on an accurate and timely basis.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) penalty because it paid its tax after the due date of the return for August 31, 2002.

Taxpayer, in a letter dated October 23, 2002 protested the penalty assessed and stated that it relied on a trainee to remit the tax due.

Actions of the taxpayer's employee are also the actions of the taxpayer. Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0320020563P.LOF

**LETTER OF FINDINGS NUMBER: 02-0563P**
**Withholding Tax**
**For August 31, 2002**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its WH-1 payment late and was assessed a late payment penalty. In a letter dated October 23, 2002, taxpayer protests the penalty assessed. Taxpayer states that its trainee inadvertently neglected to complete the transmission portion of the process. Taxpayer requests a penalty waiver because its intent is to fully remit all withholdings on an accurate and timely basis.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) penalty because it paid its tax after the due date of the return for August 31, 2002.

Taxpayer, in a letter dated October 23, 2002 protested the penalty assessed and stated that it relied on a trainee to remit the tax due.

Actions of the taxpayer's employee are also the actions of the taxpayer. Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0320020564P.LOF

**LETTER OF FINDINGS NUMBER: 02-0564P**
**Withholding Tax**
**For August 31, 2002**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its WH-1 payment late and was assessed a late payment penalty. In a letter dated October 23, 2002, taxpayer protests the penalty assessed. Taxpayer states that its trainee inadvertently neglected to complete the transmission portion of the process. Taxpayer requests a penalty waiver because its intent is to fully remit all withholdings on an accurate and timely basis.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer was assessed a ten percent (10%) penalty because it paid its tax after the due date of the return for August 31, 2002.

Taxpayer, in a letter dated October 23, 2002 protested the penalty assessed and stated that it relied on a trainee to remit the tax due.

Actions of the taxpayer's employee are also the actions of the taxpayer. Taxpayer has not provided reasonable cause to allow a waiver of the penalty assessed.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0220020565P.LOF

**LETTER OF FINDINGS NUMBER: 02-0565P**
**Gross and Adjusted Gross Income Tax**
**For Fiscal Year Ended June 30, 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**II. Tax Administration – Interest**

**Authority:** IC 6-8.1-10.1

Taxpayer protests the interest assessed.

**STATEMENT OF FACTS**

Taxpayer filed its return with payment on March 26, 2002 and was assessed a late penalty. The original due date of the return was October 15, 2001. Taxpayer filed for a Federal Extension of time until March 15, 2002. The Department allows an additional thirty days. The Taxpayer's tax liability was $6,920 that it remitted after the due date.

Taxpayer filed a penalty and interest protest dated November 19, 2002. Taxpayer states it filed its return on March 26, 2002.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it filed its return late based upon the advice of its outside tax professionals. Taxpayer filed its return on March 26, 2002 that is within the extension period.

Taxpayer was assessed a penalty for the late payment of its taxes, not for the late filing thereof.

IC 6-8.1-6-1 (c) states:

"If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax return are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax."

Taxpayer failed to remit its tax timely and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration – Interest**

**DISCUSSION**

Taxpayer protests the interest assessed.

The Department has no statutory authority to waive interest.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

0320020577P.LOF through 0320020596P.LOF

**LETTER OF FINDINGS NUMBER: 02-0577P through 02-0596P**
**Withholding Tax**
**Calendar Year 2001**

**NOTICE**: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority**: IC 6-8.1-10-6; 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer filed its WH-3 late and was assessed ten dollars ($10) for each late filed W-2.

Taxpayer protests the penalties assessed and states that it had not received its returns that were due on February 28, 2002. Taxpayer states that hand prepared sheets were mailed after its telephone call prior to the end of February. The returns and payments were submitted on March 15, 2002.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer requests the department waive the penalties for its failure to file information returns timely because it had not received the WH-3 reconciliations. Taxpayer states that it immediately filed the returns upon receipt of duplicate copies. Taxpayer further states that it has been timely with its tax filings and payments since the companies began operations.

The Annual Withholding Tax Reconciliation Returns show that the W-2 forms were submitted to the Department on March 15, 2002, which was clearly late. A review of taxpayer's overall history indicates that the taxpayers had other late filed returns for which penalties were assessed. For the year 2001, departmental records indicate that the WH-3's were mailed in November 2001 and indicate no post office returns.

IC 6-8.1-10-6 (b) states:

"If a person fails to file an information return required by the department, a penalty of ten dollars ($10) for each failure to file a timely return, not to exceed twenty-five thousand dollars ($25,000) in any one (1) calendar year, is imposed."

Penalty applies to the late filing of information returns, as the taxpayer has not provided reasonable cause for its failure to file.

**FINDING**

Taxpayer's protest is denied.

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**DEPARTMENT OF STATE REVENUE**

02980759.SLOF

**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 98-0759 SLOF**
**Corporate Income Tax**
**For Tax Periods: 1995**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**1. Adjusted Gross Income Tax – Business Income**

**Authority**: IC 6-3-1-20, 45 IAC 3.1-1-1-30, 45 IAC 3.1-1-1-29, The May Department Store Company v. Indiana Department of State Revenue, 749 N.E.2d 651 (Ind. Tax 2001)

The taxpayer protests the classification of certain income as business income.

**2. Adjusted Gross Income Tax – Property Ratio**

**Authority:** IC 6-3-2-2, IC 6-8.1-5-1(b)

The taxpayer protests the use of the property ratio in determining the tax due.

**STATEMENT OF FACTS**

The taxpayer is an Ohio corporation whose principal business activity is the producing and wholesaling of shoes and the retailing of apparel, shoes and eyewear. The taxpayer sold its retail apparel and eyewear through its own stores in Indiana and other states. The shoes were sold through its own stores and through stores belonging to other business entities in Indiana and other states. In 1995, the taxpayer sold its shoe division to a Missouri corporation and its retail apparel division to a Connecticut corporation.

The Indiana Department of Revenue (department) audited the taxpayer for the years 1988 through 1996. The taxpayer protested several adjustments. A hearing was held on the protests and a Letter of Findings issued. The taxpayer requested and was granted a rehearing on the issues of the classification of certain receipts as business income and the use of the property ratio in determining the tax due.

**1. Adjusted Gross Income Tax – Business Income**

The department classified the receipts from the sale of the taxpayer's shoe and retail clothing divisions as business income. Pursuant to this classification, the receipts were apportioned and included in the Indiana sales factor. The taxpayer contends that the receipts should have been classified as derived from non-business income and not included in the taxpayer's Indiana income.

In The May Department Store Company v. Indiana Department of State Revenue, 749 N.E.2d 651 (Ind. Tax 2001), the Indiana Tax Court determined that IC 6-3-1-20 provides for both a transactional test and a functional test in determining whether income is business or non-business in nature. Id. at 662-3.

The Court looked to 45 IAC 3.1-1-29 and 30 for guidance in determining whether income is business or non-business income under the transactional test. These regulations state "... the critical element in determining whether income is 'business income' or 'non-business income' is the identification of the transactions and activity which are the elements of a particular trade or business." Id. at 664. 45 IAC 3.1-1-30 lists several factors in making this determination. These include the nature of the taxpayer's trade or business; substantiality of the income derived from activities and relationship of income derived from activities to overall activities; frequency, number or continuity of the activities and transactions; length of time income producing property was owned; and taxpayer's purpose in acquiring and holding the property producing income. In May, the Court found that the transactional test was not met when a retailer sold a retailing division to a competitor because the taxpayer was not in the business of selling entire divisions. Id. at 664.

The nature of this taxpayer's business included the manufacture of shoes and the sale of shoes, apparel and eyeglasses. Almost all of the taxpayer's income derived from transactions associated with these activities. The taxpayer had owned the shoe production and sale businesses for a significant period of time. The sale of the shoe and retail clothing divisions was an unusual transaction for the taxpayer since it was not in the business of selling entire divisions. The sale of these divisions does not meet the transactional test for business income.

The functional test focuses on the property being disposed of by the taxpayer. Id. at 664. Specifically the functional test requires examining the relationship of the property at issue with the business operations of the taxpayer. Id. at 664. In order to satisfy the functional test the property generating income must have been acquired, managed and disposed of by the taxpayer in a process integral to taxpayer's regular trade or business operations. Id. at 664. The Court in May defined "integral" as part or constituent component necessary or essential to complete the whole. Id. at 664-5. Therefore, the proceeds from the sale were not business income under the functional test.

In determining that the income from the sale of the shoe and retail apparel divisions constituted business income, the original Letter of Findings held as follows:

In the taxpayer's situation, a foreign eye care business purchased the taxpayer to acquire the eyeglasses and eye care division. The purchasing corporation disposed of the shoe division so it could further its regular business operations in the area of eye care. Therefore, the sale of the shoe division was necessary to complete the purchaser's regular trade of providing eye care and eyeglasses. The proceeds of this sale constituted business income under the functional test.

The taxpayer argued that this conclusion was in error because it referred only to the completion of the purchaser's eye care business rather than the taxpayer's eye care business. Further, the taxpayer argues that since it eventually went out of business, the sale of the two divisions could not have been an integral part of the taxpayer's regular trade or business operations.

The purchase of the taxpayer by the foreign eye care business changed the taxpayer's business. After this time, the focus of the taxpayer's business was the eye care division rather than the shoe and retail apparel divisions. The taxpayer corporation was managed in a fashion to promote that eye care business. Management decisions were made to make the taxpayer's eye care business as complementary to the purchaser's eye care business as possible. The shoe and retail apparel divisions would not further that function of the taxpayer's eye care business and its merger with the foreign corporation. Therefore, the sale of the two divisions actually was necessary and integral to the taxpayer's overall business purpose of preparing the taxpayer's business for full merger with the purchaser's business. After the merger, it was unnecessary to have two corporate structures to manage the combined eye care businesses. Therefore, the taxpayer corporation was dissolved. That later dissolution did not, however, indicate that the earlier sale of the divisions was not integral to the taxpayer's business at the time of the sale prior to the dissolution of the corporation.

The income from the sale of the shoe and retail apparel divisions constituted business income.

**FINDING**

The taxpayer's protest is denied.

**2. Adjusted Gross Income Tax – Property Ratio**

Pursuant to IC 6-3-2-2, taxpayer corporations must pay adjusted gross income tax on the proportion of the corporation's business income that was derived from Indiana. The income from the sale of the retail apparel and shoe divisions had been determined to be business income. Therefore, a determination had to be made as to what percentage of the income would be properly apportioned to Indiana. In the audit, the department calculated a ratio comparing the property in Indiana to property located elsewhere. The department then multiplied the entire amount of the business income by this property ratio to determine the income properly subject to Indiana taxation.

The taxpayer contends that the department erred in using this calculus. Rather, the taxpayer contends, the department should have calculated a ratio comparing the Indiana sales to sales in other states and used this sales ratio to determine the proper amount of tax due. The taxpayer supports this contention by stating that the sales ratio more accurately measures the proportion of the income from Indiana because it is based on pricing, number of items sold, and advertising.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). The department used the property ratio because those were the figures used in the taxpayer's workpapers and the taxpayer had used the property ratio to determine its Indiana gross income tax liability. The taxpayer was unable to sustain its burden of proving that it was incorrect for the department to use the property ratio in determining the adjusted gross income tax due to Indiana on the income from the sale of the shoe and retail apparel divisions.

**FINDING**

The taxpayer's protest is denied.