

IC 6-5.5-2

Chapter 2. Imposition of Tax

IC 6-5.5-2-1

Computation of franchise tax

Sec. 1. (a) There is imposed on each taxpayer a franchise tax measured by the taxpayer's apportioned income for the privilege of exercising its franchise or the corporate privilege of transacting the business of a financial institution in Indiana. The amount of the tax for a taxable year shall be determined by multiplying the applicable rate under subsection (b) times the remainder of:

- (1) the taxpayer's apportioned income; minus
- (2) the taxpayer's deductible Indiana net operating losses as determined under this section; minus
- (3) the taxpayer's net capital losses minus the taxpayer's net capital gains computed under the Internal Revenue Code for each taxable year or part of a taxable year beginning after December 31, 1989, multiplied by the apportionment percentage applicable to the taxpayer under this chapter for the taxable year of the loss.

A net capital loss for a taxable year is a net capital loss carryover to each of the five (5) taxable years that follow the taxable year in which the loss occurred.

(b) The following are the applicable tax rates to be used under subsection (a):

- (1) For taxable years beginning before January 1, 2014, eight and five-tenths percent (8.5%).
- (2) For taxable years beginning after December 31, 2013, and before January 1, 2015, eight percent (8.0%).
- (3) For taxable years beginning after December 31, 2014, and before January 1, 2016, seven and five-tenths percent (7.5%).
- (4) For taxable years beginning after December 31, 2015, and before January 1, 2017, seven percent (7.0%).
- (5) For taxable years beginning after December 31, 2016, and before January 1, 2019, six and five-tenths percent (6.5%).
- (6) For taxable years beginning after December 31, 2018, and before January 1, 2020, six and twenty-five hundredths percent (6.25%).
- (7) For taxable years beginning after December 31, 2019, and before January 1, 2021, six percent (6.0%).
- (8) For taxable years beginning after December 31, 2020, and before January 1, 2022, five and five-tenths percent (5.5%).
- (9) For taxable years beginning after December 31, 2021, and before January 1, 2023, five percent (5.0%).
- (10) For taxable years beginning after December 31, 2022, four and nine-tenths percent (4.9%).

(c) The amount of net operating losses deductible under subsection (a) is an amount equal to the net operating losses computed under the

Internal Revenue Code, adjusted for the items set forth in IC 6-5.5-1-2, that are:

(1) incurred in each taxable year, or part of a year, beginning after December 31, 1989; and

(2) attributable to Indiana.

(d) The following apply to determining the amount of net operating losses that may be deducted under subsection (a):

(1) The amount of net operating losses that is attributable to Indiana is the taxpayer's total net operating losses under the Internal Revenue Code for the taxable year of the loss, adjusted for the items set forth in IC 6-5.5-1-2, multiplied by the apportionment percentage applicable to the taxpayer under this chapter for the taxable year of the loss.

(2) A net operating loss for any taxable year is a net operating loss carryover to each of the fifteen (15) taxable years that follow the taxable year in which the loss occurred.

(e) The following provisions apply to a combined return computing the tax on the basis of the income of the unitary group when the return is filed for more than one (1) taxpayer member of the unitary group for any taxable year:

(1) Any net capital loss or net operating loss attributable to Indiana in the combined return shall be prorated between each taxpayer member of the unitary group by the quotient of:

(A) the receipts of that taxpayer member attributable to Indiana under section 4 of this chapter; divided by

(B) the receipts of all taxpayer members of the unitary group attributable to Indiana.

(2) The net capital loss or net operating loss for that year, if any, to be carried forward to any subsequent year shall be limited to the capital gains or apportioned income for the subsequent year of that taxpayer, determined by the same receipts formula set out in subdivision (1).

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.21; P.L.68-1991, SEC.4; P.L.1-1992, SEC.19; P.L.6-2000, SEC.1; P.L.93-2013, SEC.5; P.L.80-2014, SEC.10.

IC 6-5.5-2-2

Repealed

(As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.22. Repealed by P.L.6-2000, SEC.5.)

IC 6-5.5-2-3

Apportioned income of taxpayer not filing combined return

Sec. 3. For a taxpayer that is not filing a combined return, the taxpayer's apportioned income consists of the taxpayer's adjusted gross income for that year multiplied by the quotient of:

(1) the taxpayer's total receipts attributable to transacting business in Indiana, as determined under IC 6-5.5-4; divided by

(2) the taxpayer's total receipts from transacting business in all

taxing jurisdictions, as determined under IC 6-5.5-4.
As added by P.L.347-1989(ss), SEC.1. Amended by P.L.6-2000, SEC.2.

IC 6-5.5-2-4

Apportioned income of taxpayer filing combined return for unitary group

Sec. 4. For a taxpayer filing a combined return for its unitary group, the group's apportioned income for a taxable year consists of:

- (1) the aggregate adjusted gross income, from whatever source derived, of the members of the unitary group; multiplied by
- (2) the quotient of:
 - (A) all the receipts of the taxpayer members of the unitary group that are attributable to transacting business in Indiana; divided by
 - (B) the receipts of all the members of the unitary group from transacting business in all taxing jurisdictions.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.68-1991, SEC.5; P.L.6-2000, SEC.3.

IC 6-5.5-2-5

Repealed

(As added by P.L.347-1989(ss), SEC.1. Amended by P.L.68-1991, SEC.6. Repealed by P.L.6-2000, SEC.5.)

IC 6-5.5-2-5.3

Repealed

(As added by P.L.21-1990, SEC.23. Repealed by P.L.6-2000, SEC.5.)

IC 6-5.5-2-6

Credit for nonresident taxpayer

Sec. 6. (a) A nonresident taxpayer is entitled to a credit against the tax due under this article for the amount of net income tax, franchise tax, or other tax measured by net income that is due to the nonresident taxpayer's domiciliary state for a taxable year if:

- (1) the receipt of interest or other income from a loan or loan transaction is attributed both to the taxpayer's domiciliary state under that state's laws and also to Indiana under IC 6-5.5-4; and
 - (2) the principal amount of the loan is at least two million dollars (\$2,000,000).
- (b) The amount of the credit for each taxable year is the lesser of:
- (1) the portion of the net income tax, franchise tax, or other tax measured by net income actually paid by the nonresident taxpayer to its domiciliary state that is attributable to the loan or loan transaction; or
 - (2) the portion of the franchise tax due to Indiana under this article that is attributable to the loan or loan transaction.

The amount determined under subdivisions (1) and (2) shall be

reduced by the amount of any credit for the tax due from the nonresident taxpayer under this article (calculated without the allowance for the credit provided under this section) and that may be used by the nonresident taxpayer in calculating the income tax due under the laws of the nonresident taxpayer's domiciliary state.

(c) As used in this section:

(1) "loan" or "loan transaction" refers to an obligation created in a single transaction to pay or repay a sum of money attributed as provided in subsection (a)(1);

(2) the "principal amount" of a loan is limited to the principal amount specified in the loan documents at the time of making the loan and reasonably expected to be advanced during the term of the loan, even though there is more than one (1) advancement. If the loan is a participation loan (as defined in IC 6-5.5-4-13), the principal amount must be calculated separately for each participant and is equal to that portion of the loan committed by each participant; and

(3) a "taxpayer's domiciliary state" is the taxing jurisdiction in which its commercial domicile is located.

(d) The amount of tax attributable to a loan or loan transaction, under the laws of the taxpayer's domiciliary state or under this article, is the portion of the total tax due to each state in an amount equal to the same proportion as the receipts from the loan or loan transaction bear to the total of the taxpayer's receipts.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.24; P.L.68-1991, SEC.7.

IC 6-5.5-2-7

Exemptions

Sec. 7. Notwithstanding any other provision of this article, there is no tax imposed on the adjusted gross income or apportioned income of the following:

(1) Insurance companies subject to the tax under any of the following:

(A) IC 27-1-18-2.

(B) IC 27-1-2-2.3.

(C) IC 6-3.

(2) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System).

(3) Any corporation that is exempt from income tax under Section 1363 of the Internal Revenue Code.

(4) Any corporation exempt from federal income taxation under the Internal Revenue Code, except for the corporation's unrelated business income. However, this exemption does not apply to a corporation exempt from federal income taxation under Section 501(c)(14) of the Internal Revenue Code.

As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.25; P.L.68-1991, SEC.8; P.L.1-2003, SEC.47; P.L.269-2003, SEC.11; P.L.129-2014, SEC.2.

IC 6-5.5-2-8

Partnerships; grantor or beneficiary of a trust; information return; withholding

Sec. 8. (a) If a corporation is:

- (1) transacting the business of a financial institution (as defined in IC 6-5.5-1-17(d)); and
- (2) is a partner in a partnership or the grantor and beneficiary of a trust transacting business in Indiana and the partnership or trust is conducting in Indiana an activity or activities that would constitute the business of a financial institution if transacted by a corporation;

the corporation is a taxpayer under this article and shall, in calculating the corporation's tax liability under this article, include in the corporation's adjusted or apportioned income the corporation's percentage of the partnership or trust adjusted gross income or apportioned income.

(b) A partnership or trust covered by subsection (a):

- (1) shall file an information return on an appropriate schedule, with capital and operating losses, modifications, and credits required by this article and any other items specified in the return form by the department. If the taxpayer is a nonresident, or is a member of a unitary group with nonresident members filing a combined return, the return must show the apportionment percentage and supporting amounts necessary to compute the tax under IC 6-5.5-4. A partner's percentage share of the receipts of a taxpayer, for the purpose of apportionment, shall be calculated by using the partner's share of the partnership adjusted gross income;
- (2) is subject to the provisions of IC 6-5.5-7-3 relating to taxpayers and IC 6-5.5-7-4 relating to persons when filing the information return; and
- (3) shall withhold from all nonresident corporate partners or beneficiaries an amount prescribed in withholding instructions issued by the department. The amount required to be withheld shall be based upon the rate of tax prescribed in IC 6-5.5-2, unless the partner or beneficiary provides the partnership or trust with a written declaration that the partner or beneficiary is not subject to the tax. In such a case the amount withheld shall be the amount prescribed in the withholding instructions issued by the department based upon the Indiana adjusted gross income tax rates. The department shall issue procedures and directions for the withholding required by this subsection that are similar to those contained in IC 6-3-4 concerning the withholding of taxes.

As added by P.L.21-1990, SEC.26. Amended by P.L.68-1991, SEC.9.