

### **IC 6-5.5-3**

#### **Chapter 3. Business Transaction Rules**

### **IC 6-5.5-3-1**

#### **Transacting business within state**

Sec. 1. For the purposes of this article, a taxpayer is transacting business within Indiana in a taxable year only if the taxpayer:

- (1) maintains an office in Indiana;
- (2) has an employee, representative, or independent contractor conducting business in Indiana;
- (3) regularly sells products or services of any kind or nature to customers in Indiana that receive the product or service in Indiana;
- (4) regularly solicits business from potential customers in Indiana;
- (5) regularly performs services outside Indiana that are consumed within Indiana;
- (6) regularly engages in transactions with customers in Indiana that involve intangible property, including loans, but not property described in section 8(5) of this chapter, and result in receipts flowing to the taxpayer from within Indiana;
- (7) owns or leases tangible personal or real property located in Indiana; or
- (8) regularly solicits and receives deposits from customers in Indiana.

*As added by P.L.347-1989(ss), SEC.1.*

### **IC 6-5.5-3-2**

#### **Maintains office**

Sec. 2. For purposes of this chapter, a taxpayer is considered to maintain an office wherever the taxpayer has established a regular, continuous, and fixed place of business.

*As added by P.L.347-1989(ss), SEC.1.*

### **IC 6-5.5-3-3**

#### **Conducting business**

Sec. 3. An employee, representative, or independent contractor is considered to be conducting business in Indiana if:

- (1) the employee, representative, or independent contractor is regularly engaged in the business of the taxpayer in Indiana;
- (2) the office from which the employee's, representative's, or independent contractor's activities are directed or controlled is located in Indiana and a majority of the employee's, representative's, or independent contractor's service is not performed in any other taxing jurisdiction; or
- (3) a contribution to the Indiana employment security fund is required under IC 22-4-2 with respect to compensation paid to the employee.

*As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.27.*

#### **IC 6-5.5-3-4**

##### **Regularly solicit business; presumption**

Sec. 4. A person is presumed, subject to rebuttal, to regularly solicit business within Indiana if:

- (1) the person conducts activities described in section 1(3), 1(5), and 1(6) of this chapter with twenty (20) or more customers within Indiana during the taxable year; or
- (2) the sum of the person's assets, including the assets arising from loan transactions, and the absolute value of the person's deposits attributable to Indiana equal at least five million dollars (\$5,000,000).

*As added by P.L.347-1989(ss), SEC.1. Amended by P.L.21-1990, SEC.28; P.L.68-1991, SEC.10.*

#### **IC 6-5.5-3-5**

##### **Tangible assets, intangible assets, and deposits attributable to state**

Sec. 5. For purposes of this chapter, tangible assets are attributable to this state if they are located in Indiana. Intangible assets are attributable to this state if the income earned on those assets is attributable to this state under this article. Deposits are attributed to this state if they are deposits made by this state or residents, political subdivisions, or agencies and instrumentalities of this state regardless of whether the deposits are accepted or maintained by the taxpayer at locations within Indiana.

*As added by P.L.347-1989(ss), SEC.1.*

#### **IC 6-5.5-3-6**

##### **Tangible property; located in state**

Sec. 6. Except as otherwise provided in section 7 of this chapter, tangible property, including leased property, is considered to be located in Indiana if the property is physically situated in Indiana.

*As added by P.L.347-1989(ss), SEC.1.*

#### **IC 6-5.5-3-7**

##### **Moving property; located in state**

Sec. 7. For purposes of this article, tangible personal property that is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, and mobile equipment, is considered to be located in Indiana if:

- (1) the operation of the property is entirely in Indiana; or
- (2) the operation of the property is not entirely in Indiana and:
  - (A) the operation outside Indiana is occasional and incidental to the operation in Indiana;
  - (B) the principal base of operations from which the property is sent out is in Indiana; or
  - (C) Indiana is the commercial domicile of the lessee or other

user of the property and there is no principal base of operations.

*As added by P.L.347-1989(ss), SEC.1.*

### **IC 6-5.5-3-8**

#### **Events not considered transacting business in state**

Sec. 8. Notwithstanding any other provision of this chapter, a taxpayer, except for a trust company formed under IC 28-1-4, is not considered to be transacting business in Indiana if the only activities of the taxpayer in Indiana are or are in connection with any of the following:

- (1) Maintaining or defending an action or suit.
- (2) Filing, modifying, renewing, extending, or transferring a mortgage, deed of trust, or security interest.
- (3) Acquiring, foreclosing, or otherwise conveying property in Indiana as a result of a default under the terms of a mortgage, deed of trust, or other security instrument relating to the property.
- (4) Selling tangible personal property, if taxation under this article is precluded by 15 U.S.C. 381 through 384.
- (5) Owning an interest in the following types of property, including those activities within Indiana that are reasonably required to evaluate and complete the acquisition or disposition of the property, the servicing of the property or the income from the property, the collection of income from the property, or the acquisition or liquidation of collateral relating to the property:
  - (A) An interest in a real estate mortgage investment conduit, a real estate investment trust, or a regulated investment company (as those terms are defined in the Internal Revenue Code).
  - (B) An interest in a loan backed security representing ownership or participation in a pool of promissory notes or certificates of interest that provide for payments in relation to payments or reasonable projections of payments on the notes or certificates.
  - (C) An interest in a loan or other asset from which the interest is attributed in IC 6-5.5-4-4, IC 6-5.5-4-5, and IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.
  - (D) An interest in the right to service or collect income from a loan or other asset from which interest on the loan or other asset is attributed in IC 6-5.5-4-4, IC 6-5.5-4-5, and IC 6-5.5-4-6 and in which the payment obligations were solicited and entered into by a person that is independent and not acting on behalf of the owner.
  - (E) An amount held in an escrow or a trust account with respect to property described in this subdivision.
- (6) Acting:

- (A) as an executor of an estate;
- (B) as a trustee of a benefit plan;
- (C) as a trustee of an employees' pension, profit sharing, or other retirement plan;
- (D) as a trustee of a testamentary or inter vivos trust or corporate indenture; or
- (E) in any other fiduciary capacity, including holding title to real property in Indiana.

*As added by P.L.347-1989(ss), SEC.1. Amended by P.L.68-1991, SEC.11.*