SOME INDIANA DEPARTMENT OF STATE REVENUE COMMISSIONER’S DIRECTIVES WHICH ARE DIRECTLY APPLICABLE TO THE SUPPLEMENTAL NET INCOME TAX OF THE STATE OF INDIANA

Table Of Contents

Table Of Contents ................................................................. -i-

Some Indiana Department Of State Revenue Commissioner’s Directives Which Are Directly Applicable To The Supplemental Net Income Tax Of The State Of Indiana .................................................. -1-

Commissioner’s Directive #2 ...................................................... -1-

Commissioner’s Directive #4 ...................................................... -2-

Commissioner’s Directive #6 ...................................................... -3-

Commissioner’s Directive #7 ...................................................... -4-

Commissioner’s Directive #14 ..................................................... -4-
Some Indiana Department Of State Revenue Commissioner’s Directives Which Are Directly Applicable To The Supplemental Net Income Tax Of The State Of Indiana

Commissioner's Directive #2
February 1976

Subject: TAXATION OF INDIANA DESTINATION SALES UNDER THE GROSS INCOME TAX ACT

Introduction
The purpose of this directive is to outline the Department's position on the treatment of Indiana destination sales under the Gross Income Tax Act. Central to this position is the Department's interpretation and application of the existing state and federal cases on this subject.

Case Law
The two recent Indiana cases dealing with this subject are Gross Income Tax Division v. Owens-Corning Fiberglass, 251 N.E.2d 818 (1969) and Mueller Brass Co. v. Gross Income Tax Division, 265 N.E.2d 704 (1971). Both these cases dealt with sales initiated, negotiated and serviced by out-of-state home office personnel of the taxpayer and home office personnel of the Indiana customer. The court recognized that these sales would be non-taxable if the contact by the Indiana personnel of the taxpayer was either non-existent or insignificant. The Mueller Brass case also discussed the taxability of sales when the State is divided into territories. Sales made to customers in northern Indiana by Mueller Brass were viewed as non-taxable because: 1) the orders were initiated by out-of-state personnel; 2) the goods were shipped into Indiana from another state; 3) the orders were mailed to out-of-state offices where acceptance was made and payments received, and 4) the contact with the taxpayer's office in the southern territory was incidental to the sales. The court, however, noted that sales generated in the southern territory by the Indianapolis office were taxable even though the orders were sent out-of-state for acceptance. The activities of the Indianapolis salesmen consisted of furnishing information on new products, assistance with engineering applications, product installation lessons, follow-up assistance on orders and providing a source of communication with the manufacturer.

The two U.S. Supreme Court decisions dealing with this subject are General Motors Corp. v. Washington, 377 U.S. 436, 84 Sup. Ct. 1564, (1964) and Standard Pressed Steel Co. v. Washington, 95 Sup. Ct. 706, (1975). In the General Motors case, the court upheld Washington's taxation of General Motor's un-apportioned gross receipts from wholesale sales to its Washington dealers of motor vehicles, parts and accessories manufactured outside the state. The court felt that the presence of warehouses and 40 employees within the state constituted a "bundle of corporate activities." In the Standard Pressed Steel case, the court found that the activities of the taxpayer's employee, Martinson, in Washington lead to the realization and continuation of "valuable and lasting contractual relations" between the taxpayer and its customer, Boeing, which gave rise to sales subject to taxation. The employee, who did not solicit orders, used his technical expertise and goodwill to promote his company's products. The orders, for aerospace fasteners, were negotiated between Boeing and the taxpayer's home office personnel in Pennsylvania.

In applying the above cases, the Department also looks to the principles enunciated in Norton Company v. Department of Revenue of Illinois, 340 U. S. 534, 71 Sup. Ct. 377 (1951). Norton was a Massachusetts manufacturer with a branch office and sales outlet in Chicago. The home office, in Massachusetts, received orders from Illinois customers by direct mail and through the Chicago branch. Some orders received by direct mail were filled by shipment direct to customers from Massachusetts and some were filled by shipping to the Chicago branch from which they were delivered to the customers. The court ruled that receipts were taxable if the business was channeled through the Chicago branch either in obtaining the orders or in making deliveries although the goods were shipped from Massachusetts.

Discussion
Each of the above discussed cases enunciated broad principles dealing with the subject of taxation of destination sales. Each case also has limited scope: 1) In Mueller Brass and Owens-Corning, the non-taxability of "house accounts" was upheld due to a lack of any substantial Indiana contact with the sales. Thus, these cases cannot be read as affording a blanket exemption to house accounts. As the Standard Pressed Steel case points out, the substantial activity by Martinson was enough to tax what was clearly a house account between the taxpayer and Boeing. 2) The decision of exempting sales made into northern Indiana by Mueller Brass was again upheld because the southern territory operations only had incidental contact with these sales. The court did not address itself to whether the sales would be taxable if the Indianapolis office salesmen performed activities in northern Indiana as they did in southern Indiana. 3) In General Motors, the car, parts and accessory sales were taxed because the taxpayer's divisions generating those sales had a "bundle of activity" in Washington. Sales by other divisions whose activity was incidental...
in comparison to the motor vehicle division's bundle of activity were not considered taxable. The Department has adhered to this distinction when dealing with a large corporation having many operations (such as divisions or product lines) with varying levels of Indiana activity. 4) In Standard Pressed Steel, the state did not tax sales made to other customers in Washington where there was an absence of "valuable and lasting contractual relations" by its employees. The Department recognizes the validity of this distinction and has applied this case only in situations where one or more employees of the taxpayer, in their Indiana activity, is directly responsible for "valuable and lasting contractual relations" between the taxpayer and its Indiana customer or where a taxpayer also has a bundle of activity in its Indiana operations.

It is also important to note that the Department is not applying adjusted gross income tax standards on taxing Indiana destination sales for gross income tax purposes. Under the adjusted gross income tax, all destination sales must be reflected in the numerator of a taxpayer's sales factor if his activities within the state are beyond mere solicitation as defined in Public Law 86-272,73 Stat. 555, 15 U.S.C. Sec. 381 (1959).

The Department feels that decisions on the taxability of Indiana destination sales can only be determined on a case by case analysis of all relevant factors. A pending matter may have aspects of all the above discussed cases and the Department's aim is to use the decisions to separate the taxable and non-taxable income. What must be emphasized is that the Department will be consistent in the application of these cases a will be consistent in the application of these cases and will use the case or cases which best exemplify the operations of the particular taxpayer being examined.

Commissioner’s Directive #4
Revised November 2000
(replaces Directive #4 dated August 16, 1983)

Disclaimer: Commissioner’s directives are intended to provide non-technical 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 is not binding on either the Department or the taxpayer. Therefore, the information provided in this directive should serve only as a foundation for further investigation and study of the current law and procedures covered here.

Subject: Collection of Tax From Transient Merchants
References: IC 6-2.1-2; IC 6-2.1-5; IC 6-2.5-2; IC 6-2.8-8; IC 6-3-4; IC 6-3-5; IC 6-8-1; IC 6-8.1-5; IC 25-37-1

Introduction
The purpose of this directive is to outline the Department’s position on the collection of sales tax, gross income tax, and adjusted gross income tax, from transient merchants.

Sales Tax
Under IC 6-2.5-2-2, a 5% sales tax is imposed on retail merchants’ transactions which constitute selling at retail. Generally, before selling at retail in Indiana, a merchant is required to obtain a Registered Retail Merchant Certificate under IC 6-2.5-8. Retail merchants which have no certificate (or an invalid one) are subject to imprisonment and a fine (Class B misdemeanor). Finally, failure to remit any taxes collected by any retail merchant may also subject the merchant to a longer prison term and a higher fine (Class D felony). These criminal penalties are in addition to the civil sanctions and procedures described below. However, in lieu of a Registered Retail Merchant Certificate, a “transient merchant” (defined in IC 25-37-1 as someone who engages in temporary business in Indiana) must obtain a transient merchant license from the county auditor of the county in which the merchant intends to do business. Ten days before applying to the auditor for a license, the merchant must send a written notice to the Department. The notice in general must contain the following:
(1) The period of time and the location from which the merchant intends to transact business;
(2) The approximate value of the items to be offered for sale;
(3) Any other information requested by the Department or required by Departmental rule.

If the transient merchant does not hold a valid certificate or license, any tax collected by the merchant is to be paid to a Department representative on request. If the merchant fails to remit the tax collected based on his sales, a notice of tax due will be issued, based on the best information available. Failure to pay the tax due will result in the issuance of a warrant, to be served on the transient merchant the next time the merchant is in the state. Refusal to pay the warrant can result in levy and execution on the merchant’s property. These civil sanctions and procedures are in addition to the criminal penalties described above.
Gross Income Tax
Under IC 6-2.1-2-2, a tax is imposed on the taxable gross income of nonresident corporations derived from activities within Indiana. The rate of the gross income tax is three-tenths of one percent (.003%).
Under IC 6-2.1-5-1.1, a taxpayer is required to file a quarterly gross income tax return if his estimated liability exceeds $1,000 in any year.
However, IC 6-8.12-5-3 allows the Department to make an immediate assessment of tax, interest, and penalties if it is determined that a taxpayer intends to: depart the state, remove his property, conceal his person or property, or to do any thing to jeopardize, prejudice, or render ineffective, proceedings to collect the tax. If the tax is not paid upon demand, a warrant will be issued. This warrant will be served on the taxpayer the next time the taxpayer is in the state. Refusal to pay the warrant can result in levy and execution on the taxpayer’s property.
Any tax paid under the above-cited law which is found to be in excess of the amount due may be claimed as a refund under IC 6-8-1-9.1

Individual Income Tax
Under IC 6-3-2-1, a tax is imposed on nonresidents’ adjusted gross income derived from sources within Indiana.

While IC 6-3-5-1 provides that nonresidents from states having reciprocal agreements with Indiana are not subject to Indiana adjusted gross income tax, such reciprocal agreements only apply to salaries, wages, tips and commissions. Therefore, this Indiana Code section is not applicable to proceeds from transient merchant sales.
Under IC 6-3-4-4.1, a taxpayer is required to make a declaration of estimated tax if the taxpayer expects to owe $400 or more income tax on the income from which tax is not withheld under IC 6-3-4-8. IC 6-8.1-5-3, however, allows the Department to make an immediate assessment of tax, interest and penalties for the same reasons outlined under “Gross Income Tax”, above.
The warrant procedure will be used if the tax is not paid on demand.
Any taxes paid under preceding statutory provisions which are found to be in excess of the amount due may be claimed as refunds under IC 6-8.1-9-1.

Commissioner’s Directive #6
Revised May 1992
(Replaces Directive Dated November 15, 1978)

Disclaimer: Commissioner’s Directives are intended to provide non-technical 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: DISCLOSURE OF INFORMATION CONCERNING NOT-FOR-PROFIT ORGANIZATIONS

The Indiana Department of Revenue is required by IC 6-2.1-8-4 to make available for public inspection all applications for exemption and all annual reports filed by not-for-profit organizations under IC 6-2.1-3-19, IC 6-2.1-3-20, IC 6-2.1-3-21 and IC 6-2.1-3-22. However, certain information contained within these reports is confidential pursuant to IC 6-8.1-7-1(a). The purpose of this Directive is to explain to the public what information is available for inspection and the procedure to follow for inspecting these documents.
IC 6-8.1-7-1(a) prohibits, unless in accordance with a judicial order, the disclosure to the public of "the amount of tax paid by any taxpayer, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return?" Therefore, certain information contained in documents filed by not-for-profit organizations is confidential and not open to inspection by the public.
Specifically, the following three items cannot be revealed:
1) information concerning employees’ salaries that might be contained in the annual report of an employee pension plan;
2) information which would reveal a trade secret, patent, or other privileged information; and,
3) the names and addresses of contributors to an organization.
By statute, these documents are available for public inspection during the regular working hours of the Department. These hours are from 8:15 A.M. to 4:45 P.M.. However, when a request is made to inspect specific records, it will take a certain amount of time to purge such records of confidential information. Therefore, it is recommended that a person wishing to inspect these
records submit a written request several days in advance to the Department. This request should include: the name(s) of the person(s) requesting the information, the date and time at which the examination is requested, the organization(s) about which the information is requested, and the specific document(s) requested, i.e., application for exemption IT-35 and/or annual report IT-35AR.

The request should be mailed to Not-for-Profit Section, Compliance Division, Indiana Department of Revenue, Indiana Government Center North, Indianapolis, Indiana 46204.

Commissioner’s Directive #7
November 1978

Subject: CONFIDENTIALITY PROVISIONS

The purpose of this directive is to reaffirm the Department's position regarding the strict confidentiality restraints imposed on any and all federal tax information sent to this Department by taxpayers, their legal representatives or received through other means.

In addition to the various federal income tax forms which are confidential by virtue of state statutory penalties, such other forms as the federal estate tax forms (i.e. Form 706, Form 712) are likewise confidential. The information contained on those forms is received for tax determination and collection purposes only. The department, its counsel, agents, clerks or any other person shall not divulge the gross estate, assets, the amount of estate tax paid or any other information disclosed by any federal report filed with the Department except to agents or employees of the Department or to the Attorney General or any other legal representative of the state in an action in respect to the amount of state tax due.

The penalty for violation of this Directive shall be immediate dismissal of the offending employee from state employment. This Directive is in addition to all other confidentiality requirements of the Department with respect to other kinds of federal and state tax returns.

Commissioner's Directive #14
December 1989

Disclaimer: Commissioner's Directives are intended to provide non-technical 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: FINANCIAL INSTITUTIONS TAX

Introduction
The purpose of this Directive is to present an overview of Indiana's most recent addition to its tax structure. This overview is intended to highlight the major areas of the new law and promote a general understanding of its basic principles.

The Indiana Department of Revenue has been specifically mandated by law to report to the General Assembly in several respects including the recommendation of amendments to aid in the collection of the new tax. In the event that amendments are made in the next session of the General Assembly, which ends March 15, 1990, a Directive will be published to reflect such changes in the statute.

The Department has also been mandated to publish Regulations for the new tax before January 1, 1991. Subsequent to the close of the legislative session in March, 1990 and prior to July 1990, the Department intends to have a proposed draft of the Regulations available.

Authority
House Enrolled Act 1625 (1989) added a new Article to Indiana's Code which provides a franchise tax measured by net income for corporations transacting the business of a financial institution in the State of Indiana (IC 6-5.5). The new law is effective for taxable years that begin after December 31, 1989. The tax is imposed at a rate of 8.5%.

Resident financial institutions which heretofore have been subject to tax under I.C. 6-5 will be subject to the new franchise tax. I.C. 6-5.5-9-4(a)(4). The new law also extends Indiana tax jurisdiction to nonresident financial institutions and to nonbank entities that transact the "business of a financial institution" in Indiana.
New Nexus Rules
I.C. 6-5.5 adopts an economic presence method for determining the jurisdictional basis for taxing nonresidents who conduct the business of a financial institution in Indiana.

"The Business of a Financial Institution"
Two categories of activities constitute the "business of a financial institution" for purposes of the franchise tax. The first category encompasses the activities of the traditional regulated financial institutions. I.C. 6-5.5-1-17-(d)(1). The second category includes the activities conducted by any corporation which derives 80% of its income from making loans and extending credit, finance leasing and credit card operations. I.C. 6-5.5-1-17(d)(2).

Taxpayers
The term "taxpayer" includes traditionally regulated financial institutions, their holding companies and the subsidiaries of either, as well as any other corporation organized under the laws of the United States, Indiana, another taxing jurisdiction or a foreign government, which is carrying on the business of a financial institution. I.C. 6-5.5-1-17(a).

Taxpayers are differentiated on the basis of their resident or nonresident status. A resident taxpayer is a taxpayer which is commercially domiciled in Indiana and transacts the business of a financial institution in this State. If a taxpayer is a resident taxpayer, all income received by the taxpayer is automatically attributable to Indiana and such income is subject to the financial institutions tax.

A nonresident taxpayer is a taxpayer which is not commercially domiciled in Indiana but transacts the business of a financial institution in this State. I.C. 6-5.5-1-4. Chapter 3 of I.C. 6-5.5 establishes the rules for determining when the activities of nonresident corporations constitute transacting business in Indiana. A taxpayer is transacting business in Indiana for purposes of the franchise tax when it satisfies any of the following eight tests:

- maintains an office in Indiana;
- has an employee, representative, or independent contractor conducting business in Indiana;
- regularly sells products or services of any kind or nature to customers in Indiana that receive the product or service in Indiana;
- regularly solicits business from potential customers in Indiana;
- regularly performs services outside Indiana that are consumed within Indiana;
- 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;
- Owns or leases tangible personal or real property located in Indiana; or
- regularly solicits and receives deposits from customers in Indiana.

Only a portion of a non-resident taxpayer's income is subject to the tax. The statute employs a single factor receipts formula to determine the percentage of the nonresident taxpayer's income which is taxable. The single factor receipts formula is derived by dividing the gross receipts attributable to transacting business in Indiana by the taxpayer's total receipts from transacting business in all taxing jurisdictions.

Exemptions and Exclusions
Three specific types of corporations are exempted from the franchise tax:
(1) Insurance companies subject to the tax under I.C. 27-1-18-2 or I.C. 6-2.1; (2) International banking facilities (as defined in Regulation D of the Board of Governors of the Federal Reserve System); and (3) Any corporation that is exempt from income tax under Section 1363 of the Internal Revenue Code. I.C. 6-5.5-2-7.

An exclusion is also provided for those financial institutions whose Indiana activities are limited to certain activities. These activities include 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 in 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 owners.
(E) An amount held in an escrow or a trust account with respect to property described in this subdivision.  
I.C. 6-5.5-3-8(5)

Method of Filing Returns
The statute permits taxpayers to report on a separate or a combined basis. Members of a unitary group file collectively on one combined return. No provision is made for filing consolidated returns.

Combined Returns
If the Department of Revenue determines that a taxpayer's income within Indiana is not fairly represented, the Department may require the filing of a combined return by a taxpayer which is a member of a unitary group. I.C. 6-5.5-5-1(a).
If the taxpayer, which is a member of a unitary group, determines that its income within Indiana is not fairly represented, the law states that the taxpayer may "petition" the Department to file a combined return. I.C. 6-5.5-5-1(a). Such petition requirement will be satisfied by the filing of a combined return and completing the requisite schedules included in the Financial Institutions Tax Returns (FIT-20).
If a combined return is warranted, each taxpayer which is a member of a unitary group is obligated to file a combined return which includes all operations of the unitary business, but the unitary group should collectively file one return. I.C. 6-5.5-5-2; I.C. 6-5.5-6-1. The statute requires that the combined return include the adjusted gross income of all members of the group even if some of the members are not subject to the tax under I.C. 6-5.5. See I.C. 6-5.5-5-2. The statute provides an exclusion for the income of corporations or other entities organized in foreign countries, except a federal or State branch of a foreign bank or its subsidiary which transacts business in Indiana. I.C. 6-5.5-5-2.
The term "unitary business" is defined as business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. I.C. 6-5.5-1-18(a).
The term may be applied within a single entity or between multiple entities and without regard to whether each entity is a corporation, a partnership or a trust.
The term "unitary group" is defined as those entities that are engaged in the unitary business wholly within, or within and outside, Indiana. I.C. 6-5.5-1-18(a). Unity is presumed if there is unity of ownership, operation, or unity of use as evidenced by centralized management, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are holding companies, regulated financial institutions or engaged in the business of a financial institution. I.C. 6-5.5-1-18(b) Unity of ownership exists for a corporation if it is a member of a group of two or more business entities, 50% of whose voting stock is owned by a common owner or owners or by one or more of the member corporations of the group. I.C. 6-5.5-1-18(c).

Resident Taxpayer Computation
Resident taxpayers, with the exception of credit unions and investment companies, compute the franchise tax as follows:

Federal Taxable Income (I.R.C. Section 63) ____________
Add:
A. Deduction/losses included on federal income tax return not allowed on the Indiana return:
   (1) Net operating losses (NOL) ____________
   (2) Net capital losses ____________
   (3) Bad debt deduction ____________
   (4) Charitable contributions ____________
   (5) State income and franchise taxes ____________
   (6) Local property taxes ____________
B. Interest income on state and municipal obligations not included in federal taxable income ____________
Deduct:
A. Bad Debts actually charged off ____________
B. Associated expenses to carry state and municipal obligations (I.R.C. Section 265) ____________
C. Bad debt reserve transition adjustment included in federal taxable income because of a tax accounting method change ____________
Indiana Adjusted Gross Income $___________
Deduct:
* A. Indiana net operating losses (NOL) ____________
 B. Indiana net capital losses (deductible to the extent of net capital gains) ____________
Indiana Taxable Income ____________
Tax Rate X 8.5%
Tax before Credits ____________
** A) Credit for taxes actually paid to other states (_______________)
*** B) Other credits (_______________)

Indiana Franchise Tax Liability $__________

For purposes of Indiana's NOL, if there is a negative taxable income when the franchise taxable income is determined, the same may be carried forward. Such carryforward must be incurred after December 31, 1989 and may be carried forward 15 years. Losses are not carried back. NOL's available on December 31, 1989 cannot be carried forward. I.C. 6-5.5-3-1(b)-(c).

** (a) A resident taxpayer or a resident member of a unitary group is entitled to a credit against the tax due under this article.
(b) The amount of the credit equals the lesser of:
(1) The amount of creditable tax actually paid by the resident taxpayer or member to any other taxing jurisdiction on the resident taxpayer's or member's adjusted gross income; or
(2) an amount equal to the amount of creditable tax that would be due at the tax rate set forth under this article on the lesser of:
   (A) the taxpayer's adjusted gross income that is subject to taxation by the other taxing jurisdiction; or
   (B) the taxpayer's adjusted gross income that is attributable to the other taxing jurisdiction under the rules for attributing gross receipts under this article.

(c) As used in this section, "creditable tax" means in the case of a taxing jurisdiction that:
(1) measures its tax using net income:
   (A) a direct net income tax; or
   (B) a franchise or other tax measured by net income; or
(2) is not covered by subdivision (1):
   (A) a tax based on deposits, investment capital or shares, net worth or capital, or a combination of these tax bases; or
   (B) any other tax that is imposed instead of an income tax.

I.C. 6-5.5-2-5.

*** Other credits include: teacher summer employment credit; credit for donations of high technology equipment to schools; investment credits; enterprise zone loan interest credit; industrial recovery tax credit; and credit for enterprise zone adjusted gross income.

In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under I.C. 28-7-1-24.
In the case of an investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:
the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by
the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.
I.C. 6-5.5-1-2(c).

Nonresident Taxpayer Computation

Nonresident taxpayers, with the exception of credit unions and investment companies, compute the franchise tax as follows:

Federal Taxable Income (I.R.C. Section 63)_______________

Add:
A. Deduction/losses included on federal income tax return not allowed on the Indiana return:
   (1) Net operating losses (NOL) ____________________
   (2) Net capital losses ____________________
   (3) Bad debt deduction ____________________
   (4) Charitable contributions ____________________
   (5) State income and franchise taxes ____________________
   (6) Local property taxes ____________________
B. Interest income on state and municipal obligations not included in federal taxable income ____________________

Deduct:
A. Bad Debts actually charged off (_______________)
B. Associated expenses to carry state and municipal obligations (I.R.C. Section 265) (_______________)
C. Bad debt reserve transition adjustment included in federal taxable income because of a tax accounting method change (_______________)

Indiana Adjusted Gross Income $__________

Apportionment factor: receipts attributable to Indiana total receipts = %__________
Indiana Adjusted Gross Income ____________

Deduct:
*Indiana net operating losses (NOL) (______________)
**Indiana net capital losses (______________) (deductible to the extent of net capital gains)

Indiana Taxable Income _______________

Tax Rate X 8.5% _______________

Tax before credits _______________

***Less:
Nonresident taxpayers credit (________________)

Indiana Franchise Tax Liability ===============

*Indiana's net operating loss (NOL) for the nonresident taxpayer is multiplied by the apportionment factor. If there is a negative taxable income when the franchise taxable income is determined, the same may be carried forward. Such carryforward must be incurred after December 31, 1989 and may be carried forward 15 years. Losses are not carried back. NOL's available on December 31, 1989 cannot be carried forward. I.C. 6-5.5-2-1(b)-(c).

**Net capital loss multiplied by the apportionment factor - deductible to the extent of apportioned net capital gains. I.C. 6-5.5-2-1(a).

*** (a) A nonresident taxpayer is entitled to a credit against the tax due under this article for the amount of net income tax 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 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 net income tax due to Indiana under this article that is attributable to the loan or loan transaction.

I.C. 6-5.5-2-6.

In the case of a nonresident credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under I.C. 28-7-1-24 multiplied by their apportionment factor.

In the case of a nonresident investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:
the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

I.C. 6-5.5-1-2(c).

Payment of the Tax
The new franchise tax is payable directly to the Indiana Department of Revenue. Quarterly vouchers will be distributed in January 1990.

Forms
The Annual Return, Form FIT-20, will not be available until after the legislative session ends March 15, 1990. However, a packet of information and quarterly vouchers will be mailed in January 1990.
The packet may also be obtained after February 1, 1990 by writing to: Indiana Department of Revenue, Tax Policy and Appeals Division, State Office Building, Room 202, Indianapolis, Indiana 46204.