

SENATE BILL No. 438

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-5-3; IC 6-1.1-21.4-4; IC 6-2.5; IC 6-3-4; IC 6-3.1; IC 6-3.5-5-17.5; IC 6-5.5-6-6; IC 6-6-2.5; IC 6-7-1-17; IC 6-8.1; IC 7.1-6-2-8; IC 9-29-5-46; IC 27-1-2-2.3; IC 34-46-7.

Synopsis: State and local tax issues. Codifies the attorney-client and deliberative process privileges. Specifies that the definition of "storage" for purposes of the use tax does not include temporary storage of property for not more than 60 days for the purpose of the subsequent use of the property solely outside Indiana. Removes the 36 month rolling time limit on filing refund claims for utility purchases exempt from sales and use tax. Amends the sales tax exemption for medical equipment, supplies, and devices to: (1) restate the application of the sales tax exemption for medical equipment, supplies, and devices; and (2) provide a sales tax exemption for food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist. Amends the sales tax exemption for drugs, insulin, oxygen, blood, or blood plasma to restate the application of the sales tax exemption. Repeals the sales tax exemption for food and food ingredients prescribed as medically necessary by a physician. Amends the definition of "research and development activities" for purposes of the sales tax exemption for research and development equipment and property. Eliminates the double direct test currently applied in the sales tax exemption for recycling machinery, tools, and equipment. Provides guidance on when a retail merchant's certificate may be revoked. Establishes standards governing the date by which a taxpayer must notify the department of state revenue of a modification of a taxpayer's federal income tax return or tax liability for a taxable year. Requires an employer to file annual withholding tax reports (Form WH-3) not later than 31 days after the end of the calendar year. Removes the two-year time limitation for refund of employment tax withholdings. Provides
(Continued next page)

Effective: July 1, 2015.

Hershman

January 13, 2015, read first time and referred to Committee on Tax & Fiscal Policy.



that "base amount" and "qualified research expense" for purposes of the state research expense credit have the same meaning as those terms are defined under the Internal Revenue Code. Specifies that the federal research and development credit used for purposes of calculation of the Indiana research expense credit is the same as the federal research and development credit allowed under the Internal Revenue Code. Specifies that federal earned income tax credit used for purposes of calculating the Indiana earned income tax credit is the same as the federal earned income tax credit allowed under the Internal Revenue Code. Removes outdated references to earned income tax advance payments. Amends the special fuel tax law to specify that the tax applies to biodiesel produced at a biodiesel manufacturing plant located in Indiana. Defines "biodiesel manufacturing plant" as a facility or operation located in Indiana that manufactures or produces biodiesel. Eliminates the ability to purchase cigarette tax stamps using a letter of credit. Permits the department of state revenue to deny an application for a motor carrier in certain situations. Provides that, if a person is allowed an extension of time by the Internal Revenue Service to file a federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension. Provides that a tax judgment may be released and a tax warrant expunged if the commissioner of the department of state revenue determines that the release of the tax judgment and the expungement of the tax warrant are in the best interest of the state. Aligns the administrative procedures for protesting refund denials and proposed assessments. Provides that the interest required to be paid on an overpayment of tax begins to accrue: (1) on the date the tax was due; or (2) the date the tax was paid; whichever is later. Provides that the interest rate that applies to an excess tax payment is the same as the interest rate established by the commissioner of the department of state revenue for failure to file a return. Provides that, in the case of a refund claim exceeding \$10,000, the interest rate that applies to an excess tax payment is the same as the interest rate as computed on the return of state investments. Provides that fees paid for the registration of commercial motor vehicles and collected by the department of state revenue must be deposited in the motor carrier regulation fund. Amends the definition of "captive insurer" for insurance regulation and taxation purposes. Provides that the department of state revenue may charge a fee to a vehicle owner for collecting the wheel tax. Specifies that the fees collected must be deposited in the motor carrier regulation fund. Changes the tax court's standard of review of department of state revenue decisions. Makes technical corrections and conforming amendments.



Introduced

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 438

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-5-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2015]: Sec. 3. **(a)** No agency, except as
3 provided in this chapter, shall have any right to name, appoint, employ,
4 or hire any attorney or special or general counsel to represent it ~~or~~
5 ~~perform any legal service in behalf of such the~~ agency and the state
6 without the written consent of the attorney general. **If an agency hires**
7 **an attorney for the purpose of providing in-house legal advice and**
8 **services, the written consent of the attorney general is not required.**
9 **(b) An attorney employed by an agency is subject to**
10 **IC 34-46-3-1 and Indiana Rules of Trial Procedure 26(B),**
11 **commonly referred to as the attorney-client and work product**
12 **privileges, if the requirements to assert the protection and privilege**
13 **have been satisfied.**
14 SECTION 2. IC 6-1.1-21.4-4, AS AMENDED BY P.L.145-2012,
15 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

2015

IN 438—LS 7415/DI 120



1 JULY 1, 2015]: Sec. 4. (a) The board, after review by the budget
 2 committee, shall determine the terms of any loan made under this
 3 chapter. The interest rate on the loan is the interest rate established by
 4 the commissioner of the department of state revenue under
 5 ~~IC 6-8.1-10-1~~ **IC 6-8.1-10-1(c)** minus two percent (2%), but in no case
 6 shall the interest rate be less than one percent (1%).

7 (b) The total amount of loans under this chapter may not exceed the
 8 following:

9 (1) Six million dollars (\$6,000,000) for all calendar years ending
 10 before January 1, 2012.

11 (2) The sum of the amounts approved under section 3(b) of this
 12 chapter for all calendar years beginning after December 31, 2011,
 13 plus the outstanding balance of all loans that were made under
 14 this chapter before 2012.

15 (c) An eligible school corporation receiving a loan under this
 16 chapter must repay the loan within seventy-two (72) months after the
 17 date on which the loan is made.

18 (d) The board may disburse in installments the proceeds of a loan
 19 made under this chapter.

20 (e) An eligible school corporation may repay a loan made under this
 21 chapter from any sources of revenue.

22 (f) The obligation to repay a loan made under this chapter is not a
 23 basis for an eligible school corporation to obtain an excessive tax levy
 24 under IC 6-1.1-19.

25 (g) Whenever the board receives a payment on a loan made under
 26 this chapter, the board shall deposit the amount paid in the
 27 counter-cyclical revenue and economic stabilization fund.

28 SECTION 3. IC 6-2.5-1-21.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2015]: **Sec. 21.5. "Licensed practitioner"**
 31 **means an individual who is a doctor, dentist, veterinarian, or other**
 32 **practitioner licensed to prescribe, dispense, and administer drugs**
 33 **to human beings or animals in the course of the practitioner's**
 34 **professional practice of treating patients.**

35 SECTION 4. IC 6-2.5-3-1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. For purposes of this
 37 chapter:

38 (a) "Use" means the exercise of any right or power of ownership
 39 over tangible personal property.

40 (b) "Storage" means the keeping or retention of tangible personal
 41 property in Indiana for any purpose except ~~the subsequent use of that~~
 42 ~~property solely outside Indiana.~~ **temporary storage.**



1 (c) "A retail merchant engaged in business in Indiana" includes any
 2 retail merchant who makes retail transactions in which a person
 3 acquires personal property or services for use, storage, or consumption
 4 in Indiana and who:

5 (1) maintains an office, place of distribution, sales location,
 6 sample location, warehouse, storage place, or other place of
 7 business which is located in Indiana and which the retail
 8 merchant maintains, occupies, or uses, either permanently or
 9 temporarily, either directly or indirectly, and either by the retail
 10 merchant or through a representative, agent, or subsidiary;

11 (2) maintains a representative, agent, salesman, canvasser, or
 12 solicitor who, while operating in Indiana under the authority of
 13 and on behalf of the retail merchant or a subsidiary of the retail
 14 merchant, sells, delivers, installs, repairs, assembles, sets up,
 15 accepts returns of, bills, invoices, or takes orders for sales of
 16 tangible personal property or services to be used, stored, or
 17 consumed in Indiana;

18 (3) is otherwise required to register as a retail merchant under
 19 IC 6-2.5-8-1; or

20 (4) may be required by the state to collect tax under this article to
 21 the extent allowed under the Constitution of the United States and
 22 federal law.

23 **(d) "Temporary storage" means the keeping or retention of**
 24 **tangible personal property in Indiana for a period of not more than**
 25 **sixty (60) days and only for the purpose of the subsequent use of**
 26 **that property solely outside Indiana.**

27 ~~(d)~~ (e) Notwithstanding any other provision of this section, tangible
 28 or intangible property that is:

29 (1) owned or leased by a person that has contracted with a
 30 commercial printer for printing; and

31 (2) located at the premises of the commercial printer;

32 shall not be considered to be, or to create, an office, a place of
 33 distribution, a sales location, a sample location, a warehouse, a storage
 34 place, or other place of business maintained, occupied, or used in any
 35 way by the person. A commercial printer with which a person has
 36 contracted for printing shall not be considered to be in any way a
 37 representative, an agent, a salesman, a canvasser, or a solicitor for the
 38 person.

39 SECTION 5. IC 6-2.5-5-5.1, AS AMENDED BY P.L.137-2012,
 40 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2015]: Sec. 5.1. (a) As used in this section, "tangible personal
 42 property" includes electrical energy, natural or artificial gas, water,



1 steam, and steam heat.

2 (b) Transactions involving tangible personal property are exempt
3 from the state gross retail tax if the person acquiring the property
4 acquires it for direct consumption as a material to be consumed in the
5 direct production of other tangible personal property in the person's
6 business of manufacturing, processing, refining, repairing, mining,
7 agriculture, horticulture, floriculture, or arboriculture. This exemption
8 includes transactions involving acquisitions of tangible personal
9 property used in commercial printing.

10 (c) A refund claim based on the exemption provided by this section
11 for electrical energy, natural or artificial gas, water, steam, and steam
12 heat may not cover transactions that occur more than thirty-six (36)
13 months before the date of the refund claim.

14 SECTION 6. IC 6-2.5-5-18, AS AMENDED BY P.L.265-2013,
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2015]: Sec. 18. (a) As used in this section, "legend drug"
17 means a drug (as defined in IC 6-2.5-1-17) that is also a legend
18 drug for purposes of IC 16-18-2-199.

19 (b) As used in this section, "nonlegend drug" means a drug (as
20 defined in IC 6-2.5-1-17) that is not a legend drug.

21 (c) Transactions involving the following are exempt from the
22 state gross retail tax if the end user acquires the property upon a
23 prescription or drug order (as defined in IC 16-42-19-3) that is
24 required by law for the transaction from a licensed practitioner:

25 (1) Sales or rentals of Durable medical equipment (including a
26 repair or a replacement part) that:

27 (A) can withstand repeated use;

28 (B) is exclusively used to serve a medical purpose;

29 (C) is not useful to a person in the absence of an illness or
30 injury;

31 (D) is not worn in or on the body; and

32 (E) is required to correct or alleviate injury to,
33 malfunction of, or removal of a part of the human body.

34 (2) Mobility enhancing equipment (including a repair or
35 replacement part) that:

36 (A) is used exclusively to provide or increase the ability to
37 move from one (1) place to another and that is appropriate
38 for use either in a home or a motor vehicle;

39 (B) is not used by persons with normal mobility; and

40 (C) does not include any motor vehicle or equipment on a
41 motor vehicle normally provided by a motor vehicle
42 manufacturer.



1 (3) Prosthetic devices, **including** artificial limbs, orthopedic
 2 devices, dental prosthetic devices, eyeglasses, contact lenses (**and**
 3 **including a repair or a replacement part**) that:

4 (A) are worn in or on the body; and

5 (B) function:

6 (i) as a replacement for a missing body part;

7 (ii) to correct or prevent a medically diagnosed
 8 condition; or

9 (iii) to support normal function of an otherwise
 10 weakened body part.

11 and other medical supplies and devices are exempt from the state gross
 12 retail tax, if the sales or rentals are prescribed by a person licensed to
 13 issue the prescription.

14 (4) Other medical supplies or devices that are used exclusively
 15 for medical treatment of a medically diagnosed condition,
 16 including a medically diagnosed condition due to:

17 (A) injury;

18 (B) bodily dysfunction; or

19 (C) surgery.

20 (b) (5) Sales of Hearing aids aid devices are exempt from the
 21 state gross retail tax if the hearing aids are fitted or dispensed by
 22 a person licensed or registered for that purpose. In addition, sales
 23 of hearing aid parts, attachments, or accessories are exempt from
 24 the state gross retail tax. For purposes of this subsection, a
 25 hearing aid is a device which is that are worn on the body and
 26 which is designed to aid, improve, or correct defective human
 27 hearing, **including:**

28 (A) parts;

29 (B) attachments;

30 (C) batteries; or

31 (D) accessories;

32 reasonably necessary for use of a hearing aid device.

33 (c) Sales of colostomy bags, ileostomy bags, and the medical
 34 equipment, supplies, and devices used in conjunction with those bags
 35 are exempt from the state gross retail tax.

36 (d) Sales of equipment and devices used to administer insulin are
 37 exempt from the state gross retail tax.

38 (6) Legend drugs and nonlegend drugs, if:

39 (A) a registered pharmacist makes the sale to the patient
 40 upon the prescription of a practitioner; or

41 (B) the licensed practitioner makes the sale to the patient.

42 (7) A nonlegend drug, if:



- 1 **(A) the nonlegend drug is dispensed upon an original**
 2 **prescription or a drug order (as defined in IC 16-42-19-3);**
 3 **and**
 4 **(B) the ultimate user of the drug is a person confined to a**
 5 **hospital or health care facility.**
 6 **(8) Food, food ingredients, and dietary supplements that are**
 7 **sold by a licensed practitioner or pharmacist.**
 8 **(d) Transactions involving the following are exempt from the**
 9 **state gross retail tax if the patient acquires the property for the**
 10 **patient's own use without a prescription or drug order:**
 11 **(1) Hearing aid devices that are:**
 12 **(A) worn on the body and designed to aid, improve, or**
 13 **correct defective human hearing, and including:**
 14 **(i) parts;**
 15 **(ii) attachments;**
 16 **(iii) batteries; or**
 17 **(iv) accessories;**
 18 **reasonably necessary for the use of a hearing aid device;**
 19 **and**
 20 **(B) fitted or dispensed by a person licensed or registered**
 21 **for that purpose.**
 22 **(2) Colostomy bags, ileostomy bags, and the medical**
 23 **equipment, supplies, and devices used in conjunction with**
 24 **those bags.**
 25 **(3) Devices and equipment used to administer insulin.**
 26 **(4) Insulin, oxygen, blood, and blood plasma, if purchased for**
 27 **medical purposes.**
 28 SECTION 7. IC 6-2.5-5-19 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 19. (a) As used in this
 30 section, "legend drug" means a drug as defined in IC 6-2.5-1-17 that is
 31 also a legend drug for purposes of IC 16-18-2-199.
 32 (b) As used in this section, "nonlegend drug" means a drug (as
 33 defined in IC 6-2.5-1-17) that is not a legend drug.
 34 (c) Sales of legend drugs and sales of nonlegend drugs are exempt
 35 from the state gross retail tax if:
 36 (1) a registered pharmacist makes the sale upon the prescription
 37 of a practitioner who is licensed to prescribe, dispense, and
 38 administer those drugs to human beings or animals in the course
 39 of his professional practice; or
 40 (2) the licensed practitioner makes the sales.
 41 (d) Sales of a nonlegend drug are exempt from the state gross retail
 42 tax, if:



1 (1) the nonlegend drug is dispensed upon an original prescription
2 or a drug order (as defined in IC 16-42-19-3); and

3 (2) the ultimate user of the drug is a person confined to a hospital
4 or health care facility.

5 (e) Sales of insulin, oxygen, blood, or blood plasma are exempt from
6 the state gross retail tax, if the purchaser purchases the insulin, oxygen,
7 blood, or plasma for medical purposes.

8 (f) Sales of drugs, insulin, oxygen, blood, and blood plasma are
9 exempt from the state gross retail tax if:

10 (1) the purchaser is a practitioner licensed to prescribe, dispense,
11 and administer drugs to human beings or animals; and

12 (2) the purchaser buys the items for:

13 (c) **Transactions involving drugs, insulin, oxygen, blood, and**
14 **blood plasma are exempt from the state gross retail tax if**
15 **purchased by a licensed practitioner (as defined in IC 6-2.5-1-21.5)**
16 **or a health care facility (as defined in IC 16-18-2-161(a)) for the**
17 **purpose of:**

18 (A) (1) direct consumption in his practice; **treating patients;** or

19 (B) (2) resale to a patient that the practitioner is treating, in the
20 case of sales of legend or nonlegend drugs.

21 SECTION 8. IC 6-2.5-5-21.5 IS REPEALED [EFFECTIVE JULY
22 1, 2015]. Sec. 21.5. Sales of food and food ingredients prescribed as
23 medically necessary by a physician licensed to practice medicine in
24 Indiana are exempt from the state gross retail tax if:

25 (1) a registered pharmacist makes the sale upon the prescription
26 of a practitioner who is licensed to practice medicine in Indiana;
27 or

28 (2) the licensed practitioner makes the sale of the food and food
29 ingredients described in this section.

30 SECTION 9. IC 6-2.5-5-40, AS AMENDED BY P.L.288-2013,
31 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2015]: Sec. 40. (a) As used in this section, "research and
33 development activities" **includes design, refinement, and testing of**
34 **prototypes of new or improved commercial products before sales**
35 **have begun for the purpose of determining facts, theories, or**
36 **principles, or for the purpose of increasing scientific knowledge**
37 **that may lead to new or enhanced products. The term does not**
38 include any of the following:

39 (1) Efficiency surveys.

40 (2) Management studies.

41 (3) Consumer surveys.

42 (4) Economic surveys.



- 1 (5) Advertising or promotions.
 2 (6) Research in connection with **nontechnical activities,**
 3 **including** literary, historical, **social sciences, economics,**
 4 **humanities, psychology,** or similar projects.
 5 (7) Testing for purposes of quality control.
 6 **(8) Market and sales research.**
 7 **(9) Product market testing, including product testing by**
 8 **product consumers or through consumer surveys for**
 9 **evaluation of consumer product performance or consumer**
 10 **product usability.**
 11 **(10) The acquisition, investigation, or evaluation of another's**
 12 **patent, model, production, or process, including investigation**
 13 **or evaluation of investment potential.**
 14 **(11) The providing of sales services or any other service,**
 15 **whether technical or nontechnical in nature.**
 16 **(12) The design, refinement, or testing of manufacturing**
 17 **processes.**
 18 (b) As used in this section, "research and development equipment"
 19 means tangible personal property that:
 20 (1) consists of or is a combination of:
 21 (A) laboratory equipment;
 22 (B) computers;
 23 (C) computer software;
 24 (D) telecommunications equipment; or
 25 (E) testing equipment;
 26 (2) has not previously been used in Indiana for any purpose; and
 27 (3) is acquired by the purchaser for the purpose of research and
 28 development activities devoted directly to experimental or
 29 laboratory research and development for:
 30 (A) new products;
 31 (B) new uses of existing products; or
 32 (C) improving or testing existing products.
 33 (c) As used in this section, "research and development property"
 34 means tangible personal property that:
 35 (1) has not previously been used in Indiana for any purpose; and
 36 (2) is acquired by the purchaser for the purpose of research and
 37 development activities devoted to experimental or laboratory
 38 research and development for:
 39 (A) new products;
 40 (B) new uses of existing products; or
 41 (C) improving or testing existing products.
 42 **(d) For purposes of subsection (c)(2), an activity is devoted to**



1 experimental or laboratory research and development if the
 2 activity is considered essential and integral to research and
 3 development activities, and involves:

4 (1) a method or process that:

5 (A) physically incorporates property into other tangible
 6 personal property;

7 (B) causes a direct physical, chemical, or similar change to
 8 property;

9 (C) transports or stores property;

10 (D) measures or verifies a change in property;

11 (E) physically controls or directs the physical movement or
 12 operation of property;

13 (F) physically records the flow of property;

14 (G) produces energy for property; or

15 (H) performs maintenance or repair of property;

16 that is the subject of, or directly used in, research and
 17 development activities;

18 (2) control of atmospheric or other environmental conditions
 19 required for research and development activities;

20 (3) performance of maintenance or repair of property
 21 (including maintenance equipment) that is directly used in
 22 research and development activities;

23 (4) storage, removal, or transport of waste resulting from
 24 research and development activities;

25 (5) control of pollution or environmental quality, or
 26 performance of environmental protection activities that are
 27 directly related to research and development activities; or

28 (6) performance of safety or security measures that are
 29 directly related to research and development activities.

30 The term does not include incidental activities.

31 (e) For purposes of subsection (c)(2), an activity is not
 32 considered to be devoted to experimental or laboratory research
 33 and development if the activity involves:

34 (1) heating, cooling, or illumination of office buildings;

35 (2) capital improvements to real property;

36 (3) janitorial services;

37 (4) personnel services or accommodations;

38 (5) inventory control functions;

39 (6) management or supervisory functions;

40 (7) marketing;

41 (8) training;

42 (9) accounting or similar administrative functions; or



- 1 **(10) any other function that is incidental to the research and**
 2 **development activity.**
 3 ~~(d)~~ **(f)** A retail transaction:
 4 (1) involving research and development equipment; and
 5 (2) occurring after June 30, 2007, and before July 1, 2013;
 6 is exempt from the state gross retail tax.
 7 ~~(e)~~ **(g)** A retail transaction:
 8 (1) involving research and development property; and
 9 (2) occurring after June 30, 2013;
 10 is exempt from the state gross retail tax.
 11 ~~(f)~~ **(h)** The exemption provided by subsection ~~(e)~~ **(g)** applies
 12 regardless of whether the person that acquires the research and
 13 development property is a manufacturer or seller of the new or existing
 14 products specified in subsection ~~(e)~~~~(2)~~: **(c)(2)**.
 15 ~~(g)~~ **(i)** For purposes of this section, a retail transaction shall be
 16 considered as having occurred after June 30, 2013, to the extent that
 17 delivery of the property constituting selling at retail is made after that
 18 date to the purchaser or to the place of delivery designated by the
 19 purchaser. However, a transaction shall be considered as having
 20 occurred before July 1, 2013, to the extent that the agreement of the
 21 parties to the transaction is entered into before July 1, 2013, and
 22 payment for the property furnished in the transaction is made before
 23 July 1, 2013, notwithstanding the delivery of the property after June 30,
 24 2013. This subsection expires January 1, 2017.
 25 SECTION 10. IC 6-2.5-5-45.8, AS ADDED BY P.L.137-2012,
 26 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2015]: Sec. 45.8. (a) For purposes of this section,
 28 IC 6-2.5-4-5, and section 30 of this chapter, the following definitions
 29 apply:
 30 (1) "Recycling" means the processing of recycling materials and
 31 other tangible personal property into a product for sale if the
 32 product is predominantly composed of recycling materials. The
 33 term does not include the following:
 34 (A) The demolition of improvements to real estate.
 35 (B) The processing of tangible personal property primarily for
 36 disposal in a licensed solid waste disposal facility rather than
 37 for sale.
 38 (C) The collection of recycling materials. ~~by licensed motor~~
 39 ~~vehicles.~~
 40 (2) "Recycling materials" means tangible personal property,
 41 including metal, paper, glass, plastic, textile, or rubber, that:
 42 (A) is considered "scrap" by industry standards or has no more



1 than scrap value;
 2 (B) is a byproduct of another person's manufacturing or
 3 production process;
 4 (C) was previously manufactured or incorporated into a
 5 product;
 6 (D) would otherwise reasonably be expected to be destined for
 7 disposal in a licensed solid waste disposal facility; or
 8 (E) has been removed or diverted from the solid waste stream
 9 for sale, use, or reuse as raw materials, regardless of whether
 10 or not the materials require subsequent processing or
 11 separation from each other.

12 (3) "Processing of recycling materials" means
 13 ~~(A) the activities involved in collecting or otherwise receiving~~
 14 ~~recycling materials and other tangible personal property; and~~
 15 ~~(B) creating a product for sale by changing the original form,~~
 16 use, or composition of the property (whether manually,
 17 mechanically, chemically, or otherwise) through weighing,
 18 sorting, grading, separating, shredding, crushing, compacting,
 19 breaking, cutting, baling, shearing, torching, wire-stripping, or
 20 other means.

21 **(4) "Occupationally engaged in the business of recycling"**
 22 **means to process recycling materials with the intention of**
 23 **processing such materials at a profit.**

24 (b) Transactions involving machinery, tools, and equipment are exempt
 25 from the state gross retail tax if:
 26 (1) the person acquiring that property acquires it for **the person's**
 27 direct use **or consumption** in the ~~direct~~ processing of recycling
 28 materials; and
 29 (2) the person acquiring that property is occupationally engaged
 30 in **the business of** recycling.

31 (c) Transactions involving recycling materials and other tangible
 32 personal property to be **used or** consumed in the processing of
 33 recycling materials or to become a part of the product produced by the
 34 processing of recycling materials are exempt from the state gross retail
 35 tax if:
 36 (1) the person acquiring that property acquires it for **the person's**
 37 direct use **or consumption** in the ~~direct~~ processing of recycling
 38 materials; and
 39 (2) the person acquiring that property is occupationally engaged
 40 in **the business of** recycling.

41 SECTION 11. IC 6-2.5-8-7, AS AMENDED BY P.L.196-2013,
 42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection. Good cause for revocation may include the following:

(1) ~~Sale or solicitation of a sale involving a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5):~~

(2) ~~Failure to collect sales tax on a sale involving a synthetic drug or a synthetic drug lookalike substance:~~

(1) Failure to:

(A) file a return required under this chapter or for any tax collected for the state in trust; or

(B) remit any tax collected for the state in trust.

(2) Violation of any provision under IC 35.

(3) Being subject to a court order under IC 7.1-2-6-7, IC 32-30-6-8, IC 32-30-7, or IC 32-30-8.

The department may revoke a certificate before a criminal adjudication or without a criminal prosecution being filed. If the department gives notice of an intent to revoke based on an alleged violation of subdivision ~~(1)~~ or (2), the department shall hold a public hearing to determine whether good cause exists. If the department finds in a public hearing by a preponderance of the evidence that a person has committed a violation described in subdivision ~~(1)~~ or (2), the department shall proceed in accordance with subsection (i) (if the violation resulted in a criminal conviction) or subsection (j) (if the violation resulted in a judgment for an infraction).

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

(1) file the returns required by IC 6-2.5-6-1; or

(2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

(1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and

(2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.



- 1 (d) The statement filed under subsection (c) must state that:
2 (1) information obtained by the board, bureau, or commission
3 under IC 6-8.1-7-1 indicates that the certificate holder has not
4 complied with IC 6-9; and
5 (2) the board, bureau, or commission has determined that
6 significant harm will result to the county from the certificate
7 holder's failure to comply with IC 6-9.
- 8 (e) The department shall revoke or suspend a certificate issued
9 under section 1 of this chapter after at least five (5) days notice to the
10 certificate holder if:
11 (1) the certificate holder owes taxes, penalties, fines, interest, or
12 costs due under IC 6-1.1 that remain unpaid at least sixty (60)
13 days after the due date under IC 6-1.1; and
14 (2) the treasurer of the county to which the taxes are due requests
15 the department to revoke or suspend the certificate.
- 16 (f) The department shall reinstate a certificate suspended under
17 subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid
18 or the county treasurer requests the department to reinstate the
19 certificate because an agreement for the payment of taxes and any
20 penalties due under IC 6-1.1 has been reached to the satisfaction of the
21 county treasurer.
- 22 (g) The department shall revoke a certificate issued under section
23 1 of this chapter after at least five (5) days notice to the certificate
24 holder if the department finds in a public hearing by a preponderance
25 of the evidence that the certificate holder has violated IC 35-45-5-3,
26 IC 35-45-5-3.5, or IC 35-45-5-4.
- 27 (h) If a person makes a payment for the certificate under section 1
28 or 3 of this chapter with a check, credit card, debit card, or electronic
29 funds transfer, and the department is unable to obtain payment of the
30 check, credit card, debit card, or electronic funds transfer for its full
31 face amount when the check, credit card, debit card, or electronic funds
32 transfer is presented for payment through normal banking channels, the
33 department shall notify the person by mail that the check, credit card,
34 debit card, or electronic funds transfer was not honored and that the
35 person has five (5) days after the notice is mailed to pay the fee in cash,
36 by certified check, or other guaranteed payment. If the person fails to
37 make the payment within the five (5) day period, the department shall
38 revoke the certificate.
- 39 (i) If the department finds in a public hearing by a preponderance of
40 the evidence that a person has a conviction for a violation of
41 IC 35-48-4-10.5 and the conviction involved the sale of or the offer to
42 sell, in the normal course of business, a synthetic drug or a synthetic



1 drug lookalike substance by a retail merchant in a place of business for
 2 which the retail merchant has been issued a registered retail merchant
 3 certificate under section 1 of this chapter, the department:

4 (1) shall suspend the registered retail merchant certificate for the
 5 place of business for one (1) year; and

6 (2) may not issue another retail merchant certificate under section
 7 1 of this chapter for one (1) year to any person:

8 (A) that:

9 (i) applied for; or

10 (ii) made a retail transaction under;

11 the retail merchant certificate suspended under subdivision
 12 (1); or

13 (B) that:

14 (i) owned or co-owned, directly or indirectly; or

15 (ii) was an officer, a director, a manager, or a partner of;

16 the retail merchant that was issued the retail merchant
 17 certificate suspended under subdivision (1).

18 (j) If the department finds in a public hearing by a preponderance of
 19 the evidence that a person has a judgment for a violation of
 20 IC 35-48-4-10.5 as an infraction and the violation involved the sale of
 21 or the offer to sell, in the normal course of business, a synthetic drug
 22 or a synthetic drug lookalike substance by a retail merchant in a place
 23 of business for which the retail merchant has been issued a registered
 24 retail merchant certificate under section 1 of this chapter, the
 25 department:

26 (1) may suspend the registered retail merchant certificate for the
 27 place of business for six (6) months; and

28 (2) may withhold issuance of another retail merchant certificate
 29 under section 1 of this chapter for six (6) months to any person:

30 (A) that:

31 (i) applied for; or

32 (ii) made a retail transaction under;

33 the retail merchant certificate suspended under subdivision
 34 (1); or

35 (B) that:

36 (i) owned or co-owned, directly or indirectly; or

37 (ii) was an officer, a director, a manager, or a partner of;

38 the retail merchant that was issued the retail merchant
 39 certificate suspended under subdivision (1).

40 SECTION 12. IC 6-3-4-6, AS AMENDED BY P.L.172-2011,
 41 SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2015]: Sec. 6. (a) Any taxpayer, upon request by the



1 department, shall furnish to the department a true and correct copy of
 2 any tax return which the taxpayer has filed with the United States
 3 Internal Revenue Service which copy shall be certified to by the
 4 taxpayer under penalties of perjury.

5 (b) Each taxpayer shall notify the department of any modification as
 6 **provided in subsection (c)** of:

7 (1) a federal income tax return filed by the taxpayer after January
 8 1, 1978; or

9 (2) the taxpayer's federal income tax liability for a taxable year
 10 which begins after December 31, 1977.

11 The taxpayer shall file the notice on the form prescribed by the
 12 department within one hundred twenty (120) days after the
 13 modification is made if the modification was made before January 1,
 14 2011, and one hundred eighty (180) days after the modification is made
 15 if the modification is made after December 31, 2010.

16 (c) **For purposes of subsection (b), a modification occurs on the**
 17 **date on which a:**

18 (1) **taxpayer files an amended federal income tax return;**

19 (2) **final determination is made concerning an assessment of**
 20 **deficiency;**

21 (3) **final determination is made concerning a claim for refund;**

22 (4) **taxpayer waives the restrictions on assessment and**
 23 **collection of all, or any part, of an underpayment of federal**
 24 **income tax by signing a federal Form 870, or any other Form**
 25 **prescribed by the Internal Revenue Service for that purpose.**

26 **For purposes of this subdivision:**

27 (A) **a final determination does not occur with respect to**
 28 **any part of the underpayment that is not covered by the**
 29 **waiver; and**

30 (B) **if the signature of an authorized representative of the**
 31 **Internal Revenue Service is required to execute a waiver,**
 32 **the date of the final determination is the date of signing by**
 33 **the authorized representative of the Internal Revenue**
 34 **Service;**

35 (5) **taxpayer enters into a closing agreement with the Internal**
 36 **Revenue Service concerning the taxpayer's tax liability under**
 37 **Section 7121 of the Internal Revenue Code that is a final**
 38 **determination. The date the taxpayer enters into a closing**
 39 **agreement under this subdivision is the date the closing**
 40 **agreement is signed by an authorized representative of the**
 41 **Internal Revenue Service; or**

42 (6) **modification or alteration in an amount of tax is otherwise**



1 **made that is a final determination;**
 2 **for a taxable year, regardless of whether a modification results in**
 3 **an underpayment or overpayment of tax.**

4 **(d) For purposes of subsection (c)(2) through (c)(6), a final**
 5 **determination means an action or decision by a taxpayer, the**
 6 **Internal Revenue Service (including the Appeals Division), the**
 7 **United States Tax Court, or any other United States federal court**
 8 **concerning any disputed tax issue that:**

9 **(1) is final and conclusive; and**

10 **(2) cannot be reopened or appealed by a taxpayer or the**
 11 **Internal Revenue Service as a matter of law.**

12 ~~(e)~~ (e) If the federal modification results in a change in the
 13 taxpayer's federal or Indiana adjusted gross income, the taxpayer shall
 14 file an Indiana amended return within one hundred twenty (120) days
 15 after the modification is made if the modification was made before
 16 January 1, 2011, and one hundred eighty (180) days after the
 17 modification is made if the modification is made after December 31,
 18 2010.

19 SECTION 13. IC 6-3-4-8, AS AMENDED BY P.L.158-2013,
 20 SECTION 86, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2015]: Sec. 8. (a) Except as provided in subsection (d), every
 22 employer making payments of wages subject to tax under this article,
 23 regardless of the place where such payment is made, who is required
 24 under the provisions of the Internal Revenue Code to withhold, collect,
 25 and pay over income tax on wages paid by such employer to such
 26 employee, shall, at the time of payment of such wages, deduct and
 27 retain therefrom the amount prescribed in withholding instructions
 28 issued by the department. The department shall base its withholding
 29 instructions on the adjusted gross income tax rate for persons, on the
 30 total rates of any income taxes that the taxpayer is subject to under
 31 IC 6-3.5, and on the total amount of exclusions the taxpayer is entitled
 32 to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). However, the
 33 withholding instructions on the adjusted gross income of a nonresident
 34 alien (as defined in Section 7701 of the Internal Revenue Code) are to
 35 be based on applying not more than one (1) withholding exclusion,
 36 regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and
 37 IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final
 38 return for the taxable year. Such employer making payments of any
 39 wages:

40 (1) shall be liable to the state of Indiana for the payment of the tax
 41 required to be deducted and withheld under this section and shall
 42 not be liable to any individual for the amount deducted from the



- 1 individual's wages and paid over in compliance or intended
 2 compliance with this section; and
 3 (2) shall make return of and payment to the department monthly
 4 of the amount of tax which under this article and IC 6-3.5 the
 5 employer is required to withhold.
- 6 (b) An employer shall pay taxes withheld under subsection (a)
 7 during a particular month to the department no later than thirty (30)
 8 days after the end of that month. However, in place of monthly
 9 reporting periods, the department may permit an employer to report and
 10 pay the tax for a calendar year reporting period, if the average monthly
 11 amount of all tax required to be withheld by the employer in the
 12 previous calendar year does not exceed one thousand dollars (\$1,000).
 13 An employer using a reporting period (other than a monthly reporting
 14 period) must file the employer's return and pay the tax for a reporting
 15 period no later than the last day of the month immediately following
 16 the close of the reporting period.
- 17 (c) For purposes of determining whether an employee is subject to
 18 taxation under IC 6-3.5, an employer is entitled to rely on the statement
 19 of an employee as to the employee's county of residence as represented
 20 by the statement of address in forms claiming exemptions for purposes
 21 of withholding, regardless of when the employee supplied the forms.
 22 Every employee shall notify the employee's employer within five (5)
 23 days after any change in the employee's county of residence.
- 24 (d) A county that makes payments of wages subject to tax under this
 25 article:
 26 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and
 27 (2) for the performance of the duties of the precinct election
 28 officer imposed by IC 3 that are performed on election day;
 29 is not required, at the time of payment of the wages, to deduct and
 30 retain from the wages the amount prescribed in withholding
 31 instructions issued by the department.
- 32 (e) Every employer shall, at the time of each payment made by the
 33 employer to the department, deliver to the department a return upon the
 34 form prescribed by the department showing:
 35 (1) the total amount of wages paid to the employer's employees;
 36 (2) the amount deducted therefrom in accordance with the
 37 provisions of the Internal Revenue Code;
 38 (3) the amount of adjusted gross income tax deducted therefrom
 39 in accordance with the provisions of this section;
 40 (4) the amount of income tax, if any, imposed under IC 6-3.5 and
 41 deducted therefrom in accordance with this section; and
 42 (5) any other information the department may require.



1 Every employer making a declaration of withholding as provided in this
 2 section shall furnish the employer's employees annually, but not later
 3 than thirty (30) days after the end of the calendar year, a record of the
 4 total amount of adjusted gross income tax and the amount of each
 5 income tax, if any, imposed under IC 6-3.5, withheld from the
 6 employees, on the forms prescribed by the department. **In addition, the**
 7 **employer shall file Form WH-3 annual withholding tax reports**
 8 **with the department not later than thirty-one (31) days after the**
 9 **end of the calendar year.**

10 (f) All money deducted and withheld by an employer shall
 11 immediately upon such deduction be the money of the state, and every
 12 employer who deducts and retains any amount of money under the
 13 provisions of this article shall hold the same in trust for the state of
 14 Indiana and for payment thereof to the department in the manner and
 15 at the times provided in this article. Any employer may be required to
 16 post a surety bond in the sum the department determines to be
 17 appropriate to protect the state with respect to money withheld pursuant
 18 to this section.

19 (g) The provisions of IC 6-8.1 relating to additions to tax in case of
 20 delinquency and penalties shall apply to employers subject to the
 21 provisions of this section, and for these purposes any amount deducted
 22 or required to be deducted and remitted to the department under this
 23 section shall be considered to be the tax of the employer, and with
 24 respect to such amount the employer shall be considered the taxpayer.
 25 In the case of a corporate or partnership employer, every officer,
 26 employee, or member of such employer, who, as such officer,
 27 employee, or member is under a duty to deduct and remit such taxes,
 28 shall be personally liable for such taxes, penalties, and interest.

29 (h) Amounts deducted from wages of an employee during any
 30 calendar year in accordance with the provisions of this section shall be
 31 considered to be in part payment of the tax imposed on such employee
 32 for the employee's taxable year which begins in such calendar year, and
 33 a return made by the employer under subsection (b) shall be accepted
 34 by the department as evidence in favor of the employee of the amount
 35 so deducted from the employee's wages. Where the total amount so
 36 deducted exceeds the amount of tax on the employee as computed
 37 under this article and IC 6-3.5, the department shall, after examining
 38 the return or returns filed by the employee in accordance with this
 39 article and IC 6-3.5, refund the amount of the excess deduction.
 40 However, under rules promulgated by the department, the excess or any
 41 part thereof may be applied to any taxes or other claim due from the
 42 taxpayer to the state of Indiana or any subdivision thereof. ~~No refund~~



1 shall be made to an employee who fails to file the employee's return or
 2 returns as required under this article and IC 6-3.5 within two (2) years
 3 from the due date of the return or returns. In the event that the excess
 4 tax deducted is less than one dollar (\$1), no refund shall be made.

5 (i) This section shall in no way relieve any taxpayer from the
 6 taxpayer's obligation of filing a return or returns at the time required
 7 under this article and IC 6-3.5, and, should the amount withheld under
 8 the provisions of this section be insufficient to pay the total tax of such
 9 taxpayer, such unpaid tax shall be paid at the time prescribed by
 10 section 5 of this chapter.

11 (j) Notwithstanding subsection (b), an employer of a domestic
 12 service employee that enters into an agreement with the domestic
 13 service employee to withhold federal income tax under Section 3402
 14 of the Internal Revenue Code may withhold Indiana income tax on the
 15 domestic service employee's wages on the employer's Indiana
 16 individual income tax return in the same manner as allowed by Section
 17 3510 of the Internal Revenue Code.

18 (k) To the extent allowed by Section 1137 of the Social Security
 19 Act, an employer of a domestic service employee may report and remit
 20 state unemployment insurance contributions on the employee's wages
 21 on the employer's Indiana individual income tax return in the same
 22 manner as allowed by Section 3510 of the Internal Revenue Code.

23 (l) A person who knowingly fails to remit trust fund money as set
 24 forth in this section commits a Level 6 felony.

25 SECTION 14. IC 6-3.1-4-1, AS AMENDED BY P.L.193-2005,
 26 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2015]: Sec. 1. As used in this chapter:

28 "Base amount" means base amount (as defined in Section 41(c) of
 29 the Internal Revenue Code) ~~as in effect on January 1, 2001~~; modified
 30 by considering only Indiana qualified research expenses and gross
 31 receipts attributable to Indiana in the calculation of the taxpayer's:

- 32 (1) fixed base percentage; and
- 33 (2) average annual gross receipts.

34 "Indiana qualified research expense" means qualified research
 35 expense that is incurred for research conducted in Indiana.

36 "Qualified research expense" means qualified research expense (as
 37 defined in Section 41(b) of the Internal Revenue Code). ~~as in effect on~~
 38 ~~January 1, 2001~~;

39 "Pass through entity" means:

- 40 (1) a corporation that is exempt from the adjusted gross income
 41 tax under IC 6-3-2-2.8(2);
- 42 (2) a partnership;



1 (3) a limited liability company; or

2 (4) a limited liability partnership.

3 "Research expense tax credit" means a credit provided under this
4 chapter against any tax otherwise due and payable under IC 6-3.

5 "Taxpayer" means an individual, a corporation, a limited liability
6 company, a limited liability partnership, a trust, or a partnership that
7 has any tax liability under IC 6-3 (adjusted gross income tax).

8 SECTION 15. IC 6-3.1-4-4 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. The provisions of
10 Section 41 of the Internal Revenue Code ~~as in effect on January 1,~~
11 ~~2001,~~ and the regulations promulgated in respect to those provisions
12 ~~and in effect on January 1, 2001,~~ are applicable to the interpretation
13 and administration by the department of the credit provided by this
14 chapter, including the allocation and pass through of the credit to
15 various taxpayers and the transitional rules for determination of the
16 base period.

17 SECTION 16. IC 6-3.1-21-6, AS AMENDED BY P.L.229-2011,
18 SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2015]: Sec. 6. (a) Except as provided by subsection (b), an
20 individual who is eligible for an earned income tax credit under Section
21 32 of the Internal Revenue Code ~~as it existed before being amended by~~
22 ~~the Tax Relief, Unemployment Insurance Reauthorization, and Job~~
23 ~~Creation Act of 2010 (P.L. 111-312),~~ is eligible for a credit under this
24 chapter equal to nine percent (9%) of the amount of the federal earned
25 income tax credit that the individual:

26 (1) is eligible to receive in the taxable year; and

27 (2) claimed for the taxable year;

28 under Section 32 of the Internal Revenue Code. ~~as it existed before~~
29 ~~being amended by the Tax Relief, Unemployment Insurance~~
30 ~~Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).~~

31 (b) In the case of a nonresident taxpayer or a resident taxpayer
32 residing in Indiana for a period of less than the taxpayer's entire taxable
33 year, the amount of the credit is equal to the product of:

34 (1) the amount determined under subsection (a); multiplied by

35 (2) the quotient of the taxpayer's income taxable in Indiana
36 divided by the taxpayer's total income.

37 (c) If the credit amount exceeds the taxpayer's adjusted gross
38 income tax liability for the taxable year, the excess ~~less any advance~~
39 ~~payments of the credit made by the taxpayer's employer under~~
40 ~~IC 6-3-4-8 that reduce the excess,~~ shall be refunded to the taxpayer.

41 SECTION 17. IC 6-3.1-21-8, AS AMENDED BY P.L.172-2011,
42 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2015]: Sec. 8. To obtain a credit under this chapter, a taxpayer
 2 must claim the ~~advance payment~~ or credit in the manner prescribed by
 3 the department of state revenue. The taxpayer shall submit to the
 4 department of state revenue all information that the department of state
 5 revenue determines is necessary for the calculation of the credit
 6 provided by this chapter.

7 SECTION 18. IC 6-3.5-5-17.5 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 9 [EFFECTIVE JULY 1, 2015]: **Sec. 17.5. The department of state**
 10 **revenue may charge a fee permitted under IC 9-29 for collecting**
 11 **the wheel tax. The fees collected shall be deposited in the motor**
 12 **carrier regulation fund.**

13 SECTION 19. IC 6-5.5-6-6 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Each taxpayer
 15 shall notify the department in writing of any alteration or modification
 16 of a federal income tax return filed with the United States Internal
 17 Revenue Service for a taxable year that begins after December 31,
 18 1988, including any modification or alteration in the amount of tax,
 19 regardless of whether the modification or assessment results from an
 20 assessment.

21 (b) The taxpayer shall file the notice in the form required by the
 22 department within one hundred twenty (120) days after the alteration
 23 or modification is made by the taxpayer or finally determined,
 24 whichever occurs first.

25 (c) **For purposes of this section, a modification or alteration**
 26 **occurs on the date on which a:**

- 27 (1) **taxpayer files an amended federal income tax return;**
 28 (2) **final determination is made concerning an assessment of**
 29 **deficiency;**
 30 (3) **final determination is made concerning a claim for refund;**
 31 (4) **taxpayer waives the restrictions on assessment and**
 32 **collection of all, or any part, of an underpayment of federal**
 33 **income tax by signing a federal Form 870, or any other Form**
 34 **prescribed by the Internal Revenue Service for that purpose.**
 35 **For purposes of this subdivision:**

36 (A) **a final determination does not occur with respect to**
 37 **any part of the underpayment that is not covered by the**
 38 **waiver; and**

39 (B) **if the signature of an authorized representative of the**
 40 **Internal Revenue Service is required to execute a waiver,**
 41 **the date of the final determination is the date of signing by**
 42 **the authorized representative of the Internal Revenue**



- 1 **Service;**
 2 **(5) taxpayer enters into a closing agreement with the Internal**
 3 **Revenue Service concerning the taxpayer's tax liability under**
 4 **Section 7121 of the Internal Revenue Code that is a final**
 5 **determination. The date the taxpayer enters into a closing**
 6 **agreement under this subdivision is the date the closing**
 7 **agreement is signed by an authorized representative of the**
 8 **Internal Revenue Service; or**
 9 **(6) modification or alteration in an amount of tax is otherwise**
 10 **made that is a final determination;**
 11 **for a taxable year, regardless of whether a modification or**
 12 **alteration results in an underpayment or overpayment of tax.**
 13 **(d) For purposes of subsection (c)(2) through (c)(6), a final**
 14 **determination means an action or decision by a taxpayer, the**
 15 **Internal Revenue Service (including the Appeals Division), the**
 16 **United States Tax Court, or any other United States federal court**
 17 **concerning any disputed tax issue that:**
 18 **(1) is final and conclusive; and**
 19 **(2) cannot be reopened or appealed by a taxpayer or the**
 20 **Internal Revenue Service as a matter of law.**
 21 **(e) Notwithstanding subsections (a) through (d), if a taxpayer**
 22 **files an amended federal income tax return for a taxable year, the**
 23 **taxpayer shall also file an amended Indiana financial institutions**
 24 **tax return (as required by the department) and a copy of the**
 25 **taxpayer's amended federal income tax return with the department**
 26 **not later than the date that is one hundred eighty (180) days after**
 27 **the date of the taxpayer's amended federal income tax return.**
 28 **(f) The taxpayer shall pay an additional tax or penalty due under**
 29 **this article upon notice or demand from the department.**
 30 **SECTION 20. IC 6-6-2.5-1.6 IS ADDED TO THE INDIANA**
 31 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 32 **[EFFECTIVE JULY 1, 2015]: Sec. 1.6. As used in this chapter,**
 33 **"biodiesel manufacturing plant" means a facility or operation that:**
 34 **(1) is located in Indiana; and**
 35 **(2) manufactures or produces biodiesel.**
 36 **SECTION 21. IC 6-6-2.5-20 IS AMENDED TO READ AS**
 37 **FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 20. As used in this**
 38 **chapter, "received" means the removal from any refinery or terminal**
 39 **(including a biodiesel manufacturing plant) in Indiana, or the entry**
 40 **into Indiana of any special fuel for consumption, use, sale, or**
 41 **warehousing, except for transfers in bulk into or within a terminal in**
 42 **Indiana between registered suppliers. The tax imposed under section**



1 28 of this chapter with respect to special fuel removed from terminals
 2 within Indiana and with respect to special fuel which is the subject of
 3 a tax precollection agreement pursuant to section 35(j) of this chapter,
 4 shall be imposed at the same time and in the same manner as the tax
 5 imposed by Sections 4081 to 4083 of the Internal Revenue Code. The
 6 definitions of the terms "removal", "entry", and "transfers in bulk" shall
 7 have the same meanings described in the Internal Revenue Code or
 8 Code of Federal Regulations.

9 SECTION 22. IC 6-6-2.5-20.5 IS ADDED TO THE INDIANA
 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2015]: **Sec. 20.5. As used in this chapter,**
 12 **"refinery" has the meaning set forth in 26 CFR 48.4081-1. The**
 13 **term includes a biodiesel manufacturing plant.**

14 SECTION 23. IC 6-6-2.5-23 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 23. As used in this
 16 chapter, "supplier" means a person that imports or acquires
 17 immediately upon import into Indiana special fuel by pipeline or
 18 marine vessel from within a state, territory, or possession of the United
 19 States into a terminal or that imports special fuel into Indiana from a
 20 foreign country, or that produces, manufactures, or refines special fuel
 21 within Indiana **(including a person that produces or manufactures**
 22 **biodiesel fuel or blended biodiesel fuel at a biodiesel manufacturing**
 23 **plant),** or that owns special fuel in the pipeline and terminal
 24 distribution system in Indiana, and is subject to the general taxing or
 25 police jurisdiction of Indiana, and in any case is also registered under
 26 Section 4101 of the Internal Revenue Code for transactions in taxable
 27 motor fuels in the bulk distribution system. A terminal operator shall
 28 not be considered a supplier merely because the terminal operator
 29 handles special fuel consigned to it within a terminal.

30 SECTION 24. IC 6-6-2.5-57.5 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2015]: **Sec. 57.5. (a) Each person operating**
 33 **a biodiesel manufacturing plant in Indiana shall file monthly**
 34 **reports of operations within Indiana on forms prescribed by the**
 35 **department. The department may require the reporting of any**
 36 **information the department considers reasonably necessary.**

37 **(b) For purposes of reporting and determining tax liability**
 38 **under this chapter, every licensee shall maintain inventory records**
 39 **as required by the department.**

40 SECTION 25. IC 6-7-1-17, AS AMENDED BY P.L.131-2008,
 41 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2015]: Sec. 17. (a) Distributors who hold certificates and



1 retailers shall be agents of the state in the collection of the taxes
 2 imposed by this chapter and the amount of the tax levied, assessed, and
 3 imposed by this chapter on cigarettes sold, exchanged, bartered,
 4 furnished, given away, or otherwise disposed of by distributors or to
 5 retailers. Distributors who hold certificates shall be agents of the
 6 department to affix the required stamps and shall be entitled to
 7 purchase the stamps from the department at a discount of one and
 8 two-tenths cents (\$.012) per individual package of cigarettes as
 9 compensation for their labor and expense.

10 (b) The department may permit distributors who hold certificates
 11 and who are admitted to do business in Indiana to pay for revenue
 12 stamps within thirty (30) days after the date of purchase. However, the
 13 privilege is extended upon the express condition that:

14 (1) except as provided in subsection (c), a bond ~~or letter of credit~~
 15 satisfactory to the department, in an amount not less than the sales
 16 price of the stamps, is filed with the department;

17 (2) proof of payment is made of all property taxes, excise taxes,
 18 and listed taxes (as defined in IC 6-8.1-1-1) for which any such
 19 distributor may be liable; and

20 (3) payment for the revenue stamps must be made by electronic
 21 funds transfer (as defined in IC 4-8.1-2-7).

22 The bond, ~~or letter of credit~~, conditioned to secure payment for the
 23 stamps, shall be executed by the distributor as principal and by a
 24 corporation duly authorized to engage in business as a surety company
 25 ~~or financial institution~~ in Indiana.

26 (c) ~~If a distributor has at least five (5) consecutive years of good~~
 27 ~~credit standing with the state, the distributor shall not be required to~~
 28 ~~post a bond or letter of credit under subsection (b):~~

29 SECTION 26. IC 6-8.1-4-5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 31 1, 2015]: **Sec. 5. (a) The department may deny an application under**
 32 **section 4(c) of this chapter if the applicant has had a registration**
 33 **revoked under section 4(f) of this chapter or any other applicable**
 34 **statute.**

35 (b) **The department may deny an application described in**
 36 **section 4(c) of this chapter if the applicant's business is operated,**
 37 **managed, or otherwise controlled by or affiliated with a person,**
 38 **including the applicant, a relative, family member, responsible**
 39 **officer, or shareholder, whom the department has determined is**
 40 **covered by any of the following:**

41 (1) **Failed to file all tax returns or information reports with**
 42 **the department required under IC 6, IC 8, or IC 9.**



1 **(2) Failed to pay all taxes, penalties, and interest required to**
 2 **the department under IC 6, IC 8, or IC 9.**

3 **(3) Failed to pay any registration or license plate fees for**
 4 **vehicles that were at any point owned or operated by the**
 5 **person or for which the person was responsible for payment.**

6 **(4) Failed to return a license plate described in subdivision (3)**
 7 **to the department.**

8 **(5) Has an unsatisfactory safety rating under 49 CFR Part**
 9 **385.**

10 **(6) Has multiple violations of IC 9 or a rule adopted under**
 11 **IC 9.**

12 **(c) The department may deny any application described in**
 13 **section 4(c) of this chapter if the applicant is a motor carrier whose**
 14 **business is operated, managed, or otherwise controlled by or**
 15 **affiliated with a person, including an owner, relative, family**
 16 **member, responsible officer, or shareholder, whom the department**
 17 **has determined is covered by any item listed in subsection (b).**

18 **(d) If the applicant has altered a cab card or permit, the**
 19 **department shall bill the carrier automatically for the violation.**

20 SECTION 27. IC 6-8.1-5-1, AS AMENDED BY P.L.172-2011,
 21 SECTION 86, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2015]: Sec. 1. (a) As used in this section, "letter of findings"
 23 includes a supplemental letter of findings.

24 (b) If the department reasonably believes that a person has not
 25 reported the proper amount of tax due, the department shall make a
 26 proposed assessment of the amount of the unpaid tax on the basis of the
 27 best information available to the department. The amount of the
 28 assessment is considered a tax payment not made by the due date and
 29 is subject to IC 6-8.1-10 concerning the imposition of penalties and
 30 interest. The department shall send the person a notice of the proposed
 31 assessment through the United States mail.

32 (c) ~~If the person has a surety bond guaranteeing payment of the tax~~
 33 ~~for which the proposed assessment is made, the department shall~~
 34 ~~furnish a copy of the proposed assessment to the surety:~~ The notice of
 35 proposed assessment is prima facie evidence that the department's
 36 claim for the unpaid tax is valid. The burden of proving that the
 37 proposed assessment is wrong rests with the person against whom the
 38 proposed assessment is made.

39 (d) The notice shall state that the person has forty-five (45) days
 40 from the date the notice is mailed, if the notice was mailed before
 41 January 1, 2011, and sixty (60) days from the date the notice is mailed,
 42 if the notice was mailed after December 31, 2010, to pay the



1 assessment or to file a written protest. If the person files a protest and
2 requires a hearing on the protest, the department shall:

- 3 (1) set the hearing at the department's earliest convenient time;
4 and
5 (2) notify the person by United States mail of the time, date, and
6 location of the hearing.

7 (e) The department may hold the hearing at the location of its choice
8 within Indiana if that location complies with IC 6-8.1-3-8.5.

9 (f) ~~No later than sixty (60) days~~ After conducting a hearing on a
10 protest, or after making a decision on a protest when no hearing is
11 requested, the department shall issue a letter of findings and shall send
12 a copy of the letter through the United States mail to the person who
13 filed the protest and to the person's surety, if the surety was notified of
14 the proposed assessment under subsection (b). The department may
15 continue the hearing until a later date if the taxpayer presents
16 additional information at the hearing or the taxpayer requests an
17 opportunity to present additional information after the hearing.

18 (g) A person that disagrees with a decision in a letter of findings
19 may request a rehearing not more than thirty (30) days after the date on
20 which the letter of findings is issued by the department. The
21 department shall consider the request and may grant the rehearing if the
22 department reasonably believes that a rehearing would be in the best
23 interests of the taxpayer and the state.

24 (h) If a person disagrees with a decision in a letter of findings, the
25 person may appeal the decision to the tax court. However, the tax court
26 does not have jurisdiction to hear an appeal that is filed more than ~~sixty~~
27 **(60) ninety (90)** days after the date on which:

- 28 (1) the letter of findings is issued by the department, if the person
29 does not make a timely request for a rehearing under subsection
30 (g) on the letter of findings; or
31 (2) the department issues a denial of the person's timely request
32 for a rehearing under subsection (g) on the letter of findings.

33 (i) The tax court shall ~~hear an appeal~~ **review legal conclusions set**
34 **forth in a final decision issued** under subsection (h) de novo and
35 without a jury. **The tax court shall grant deference to the**
36 **department's findings of fact and interpretation of a statute or rule**
37 **that the department is responsible for enforcing.** The tax court may
38 do the following:

- 39 (1) Uphold or deny any part of the assessment that is appealed.
40 (2) Assess the court costs in a manner that the court believes to be
41 equitable.
42 (3) Enjoin the collection of a listed tax under IC 33-26-6-2.



1 (j) The department shall demand payment, as provided in
 2 IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest,
 3 and penalties that it finds owing because:

- 4 (1) the person failed to properly respond within the forty-five (45)
 5 day period;
 6 (2) the person requested a hearing but failed to appear at that
 7 hearing; or
 8 (3) after consideration of the evidence presented in the protest or
 9 hearing, the department finds that the person still owes tax.

10 (k) The department shall make the demand for payment in the
 11 manner provided in IC 6-8.1-8-2.

12 (l) Subsection (b) does not apply to a motor carrier fuel tax return.

13 SECTION 28. IC 6-8.1-5-2, AS AMENDED BY P.L.182-2009(ss),
 14 SECTION 251, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) Except as otherwise provided
 16 in this section, the department may not issue a proposed assessment
 17 under section 1 of this chapter more than three (3) years after the latest
 18 of the date the return is filed, or either of the following:

- 19 (1) The due date of the return.
 20 (2) In the case of a return filed for the state gross retail or use tax,
 21 the gasoline tax, the special fuel tax, the motor carrier fuel tax, the
 22 oil inspection fee, or the petroleum severance tax, the end of the
 23 calendar year which contains the taxable period for which the
 24 return is filed.

25 (b) If a person files a utility receipts tax return (IC 6-2.3), an
 26 adjusted gross income tax (IC 6-3), supplemental net income tax
 27 (IC 6-3-8) (repealed), county adjusted gross income tax (IC 6-3.5-1.1),
 28 county option income tax (IC 6-3.5-6), or financial institutions tax
 29 (IC 6-5.5) return that understates the person's income, as that term is
 30 defined in the particular income tax law, by at least twenty-five percent
 31 (25%), the proposed assessment limitation is six (6) years instead of the
 32 three (3) years provided in subsection (a).

33 (c) In the case of the motor vehicle excise tax (IC 6-6-5), the tax
 34 shall be assessed as provided in IC 6-6-5-5 and IC 6-6-5-6 and shall
 35 include the penalties and interest due on all listed taxes not paid by the
 36 due date. A person that fails to properly register a vehicle as required
 37 by IC 9-18 and pay the tax due under IC 6-6-5 is considered to have
 38 failed to file a return for purposes of this article.

39 (d) In the case of the commercial vehicle excise tax imposed under
 40 IC 6-6-5.5, the tax shall be assessed as provided in IC 6-6-5.5 and shall
 41 include the penalties and interest due on all listed taxes not paid by the
 42 due date. A person that fails to properly register a commercial vehicle



1 as required by IC 9-18 and pay the tax due under IC 6-6-5.5 is
2 considered to have failed to file a return for purposes of this article.

3 (e) In the case of the excise tax imposed on recreational vehicles
4 and truck campers under IC 6-6-5.1, the tax shall be assessed as
5 provided in IC 6-6-5.1 and must include the penalties and interest due
6 on all listed taxes not paid by the due date. A person who fails to
7 properly register a recreational vehicle as required by IC 9-18 and pay
8 the tax due under IC 6-6-5.1 is considered to have failed to file a return
9 for purposes of this article. A person who fails to pay the tax due under
10 IC 6-6-5.1 on a truck camper is considered to have failed to file a return
11 for purposes of this article.

12 (f) If a person files a fraudulent, unsigned, or substantially blank
13 return, or if a person does not file a return, there is no time limit within
14 which the department must issue its proposed assessment.

15 (g) If any part of a listed tax has been erroneously refunded by the
16 department, the erroneous refund may be recovered through the
17 assessment procedures established in this chapter. An assessment
18 issued for an erroneous refund must be issued:

- 19 (1) within two (2) years after making the refund; or
20 (2) within five (5) years after making the refund if the refund was
21 induced by fraud or misrepresentation.

22 (h) If, before the end of the time within which the department may
23 make an assessment, the department and the person agree to extend
24 that assessment time period, the period may be extended according to
25 the terms of a written agreement signed by both the department and the
26 person. The agreement must contain:

- 27 (1) the date to which the extension is made; and
28 (2) a statement that the person agrees to preserve the person's
29 records until the extension terminates.

30 The department and a person may agree to more than one (1) extension
31 under this subsection.

32 (i) If a taxpayer's **federal taxable income, federal adjusted gross**
33 **income, or federal income tax liability** for a taxable year is modified
34 due to the assessment of a federal deficiency or the filing of an
35 amended federal income tax return, a modification as provided under
36 **IC 6-3-4-6(c) and IC 6-3-4-6(d) (for the adjusted gross income tax),**
37 **or a modification or alteration as provided under IC 6-5.5-6-6(c)**
38 **and IC 6-5.5-6-6(d) (for the financial institutions tax),** then the date
39 by which the department must issue a proposed assessment under
40 section 1 of this chapter for tax imposed under IC 6-3 is extended to six
41 (6) months after the date on which the notice of modification is filed
42 with the department by the taxpayer.



1 SECTION 29. IC 6-8.1-6-1, AS AMENDED BY P.L.190-2014,
 2 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2015]: Sec. 1. (a) This subsection does not apply to a person's
 4 Indiana adjusted gross income tax return or a person's financial
 5 institutions tax return. If a person responsible for filing a tax return is
 6 unable to file the return by the appropriate due date, the person may
 7 petition the department, before that due date, for a filing extension.
 8 When the department receives the petition, the department shall grant
 9 the person a sixty (60) day extension.

10 (b) If a person responsible for filing a tax return has received an
 11 extension of the due date and is still unable to file the return by the
 12 extended due date, the person may petition the department for another
 13 extension. The person must include in the petition a statement of the
 14 reasons for the person's inability to file the return by the due date. If the
 15 department finds that the person's petition is proper and that the person
 16 has good cause for requesting the extension, the department may
 17 extend the person's due date for any period that the department deems
 18 reasonable under the circumstances. The department may allow
 19 additional, successive extensions if the person properly petitions for the
 20 extension before the end of the person's current extension period.

21 (c) The following apply only to a person's Indiana adjusted gross
 22 income tax return or a person's financial institutions tax return:

23 (1) If the Internal Revenue Service allows a person an extension
 24 on the person's federal income tax return, the corresponding due
 25 dates for the person's Indiana income tax returns are automatically
 26 extended for the same period as the federal extension. ~~plus thirty~~
 27 ~~(30) days.~~

28 (2) If a person petitions the department for a filing extension for
 29 the person's Indiana adjusted gross income tax return or financial
 30 institutions tax return without obtaining an extension for filing the
 31 person's federal income tax return, the department shall extend
 32 the person's due date for the person's Indiana adjusted gross
 33 income tax return or financial institutions tax return for the same
 34 period that the person would have been allowed under subdivision

35 (1) if the person had been granted an extension by the Internal
 36 Revenue Service.

37 (d) A person submitting a petition for an extension under this
 38 section is not required to include any payment of tax with the petition.
 39 However, a person obtaining an extension under this section must pay
 40 at least ninety percent (90%) of the tax that is reasonably expected to
 41 be due on the original due date by that due date, or the person may be
 42 subject to the penalties imposed for failure to pay the tax.



1 (e) Any tax that remains unpaid during an extension period accrues
 2 interest at a rate established under IC 6-8.1-10-1 from the original due
 3 date, but that tax will not accrue any late payment penalties until the
 4 extension period has ended. Any penalties must be determined based
 5 on the amount of tax not paid on or before the end of the extension
 6 period after application of payments provided under IC 6-8.1-8-1.5 and
 7 determined as of the deadline of the extension period.

8 SECTION 30. IC 6-8.1-8-2, AS AMENDED BY P.L.293-2013(ts),
 9 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3 and
 11 sections 16 and 17 of this chapter, the department must issue a demand
 12 notice for the payment of a tax and any interest or penalties accrued on
 13 the tax, if a person files a tax return without including full payment of
 14 the tax or if the department, after ruling on a protest, finds that a person
 15 owes the tax before the department issues a tax warrant. The demand
 16 notice must state the following:

17 (1) That the person has ten (10) days from the date the department
 18 mails the notice to either pay the amount demanded or show
 19 reasonable cause for not paying the amount demanded.

20 (2) The statutory authority of the department for the issuance of
 21 a tax warrant.

22 (3) The earliest date on which a tax warrant may be filed and
 23 recorded.

24 (4) The statutory authority for the department to levy against a
 25 person's property that is held by a financial institution.

26 (5) The remedies available to the taxpayer to prevent the filing
 27 and recording of the judgment.

28 If the department files a tax warrant in more than one (1) county, the
 29 department is not required to issue more than one (1) demand notice.

30 (b) If the person does not pay the amount demanded or show
 31 reasonable cause for not paying the amount demanded within the ten
 32 (10) day period, the department may issue a tax warrant for the amount
 33 of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,
 34 and fees established under section 4(b) of this chapter when applicable.
 35 When the department issues a tax warrant, a collection fee of ten
 36 percent (10%) of the unpaid tax is added to the total amount due.

37 (c) When the department issues a tax warrant, it may not file the
 38 warrant with the circuit court clerk of any county in which the person
 39 owns property until at least twenty (20) days after the date the demand
 40 notice was mailed to the taxpayer. The department may also send the
 41 warrant to the sheriff of any county in which the person owns property
 42 and direct the sheriff to file the warrant with the circuit court clerk:



- 1 (1) at least twenty (20) days after the date the demand notice was
 2 mailed to the taxpayer; and
 3 (2) no later than five (5) days after the date the department issues
 4 the warrant.
- 5 (d) When the circuit court clerk receives a tax warrant from the
 6 department or the sheriff, the clerk shall record the warrant by making
 7 an entry in the judgment debtor's column of the judgment record,
 8 listing the following:
- 9 (1) The name of the person owing the tax.
 10 (2) The amount of the tax, interest, penalties, collection fee,
 11 sheriff's costs, clerk's costs, and fees established under section
 12 4(b) of this chapter when applicable.
 13 (3) The date the warrant was filed with the clerk.
- 14 (e) When the entry is made, the total amount of the tax warrant
 15 becomes a judgment against the person owing the tax. The judgment
 16 creates a lien in favor of the state that attaches to all the person's
 17 interest in any:
- 18 (1) chose in action in the county; and
 19 (2) real or personal property in the county;
 20 excepting only negotiable instruments not yet due.
- 21 (f) A judgment obtained under this section is valid for ten (10) years
 22 from the date the judgment is filed. The department may renew the
 23 judgment for additional ten (10) year periods by filing an alias tax
 24 warrant with the circuit court clerk of the county in which the judgment
 25 previously existed.
- 26 (g) A judgment arising from a tax warrant in a county shall be
 27 released by the department:
- 28 (1) after the judgment, including all accrued interest to the date of
 29 payment, has been fully satisfied; or
 30 (2) if the department determines that the tax assessment or the
 31 issuance of the tax warrant was in error.
- 32 (h) If the department determines that the filing of a tax warrant was
 33 in error **or if the commissioner determines that the release of the**
 34 **judgment and expungement of the tax warrant are in the best**
 35 **interest of the state**, the department shall mail a release of the
 36 judgment to the taxpayer and the circuit court clerk of each county
 37 where the warrant was filed. The circuit court clerk of each county
 38 where the warrant was filed shall expunge the warrant from the
 39 judgment debtor's column of the judgment record. The department shall
 40 mail the release and the order for the warrant to be expunged as soon
 41 as possible but no later than seven (7) days after:
 42 (1) the determination by the department that the filing of the



- 1 warrant was in error; and
2 (2) the receipt of information by the department that the judgment
3 has been recorded under subsection (d).
4 (i) If the department determines that a judgment described in
5 subsection (h) is obstructing a lawful transaction, the department shall
6 immediately upon making the determination mail:
7 (1) a release of the judgment to the taxpayer; and
8 (2) an order requiring the circuit court clerk of each county where
9 the judgment was filed to expunge the warrant.
10 (j) A release issued under subsection (h) or (i) must state that the
11 filing of the tax warrant was in error. Upon the request of the taxpayer,
12 the department shall mail a copy of a release and the order for the
13 warrant to be expunged issued under subsection (h) or (i) to each major
14 credit reporting company located in each county where the judgment
15 was filed.
16 (k) The commissioner shall notify each state agency or officer
17 supplied with a tax warrant list of the issuance of a release under
18 subsection (h) or (i).
19 (l) If the sheriff collects the full amount of a tax warrant, the sheriff
20 shall disburse the money collected in the manner provided in section
21 3(c) of this chapter. If a judgment has been partially or fully satisfied
22 by a person's surety, the surety becomes subrogated to the department's
23 rights under the judgment. If a sheriff releases a judgment:
24 (1) before the judgment is fully satisfied;
25 (2) before the sheriff has properly disbursed the amount collected;
26 or
27 (3) after the sheriff has returned the tax warrant to the department;
28 the sheriff commits a Class B misdemeanor and is personally liable for
29 the part of the judgment not remitted to the department.
30 (m) A lien on real property described in subsection (e)(2) is void if
31 both of the following occur:
32 (1) The person owing the tax provides written notice to the
33 department to file an action to foreclose the lien.
34 (2) The department fails to file an action to foreclose the lien not
35 later than one hundred eighty (180) days after receiving the
36 notice.
37 (n) A person who gives notice under subsection (m) by registered
38 or certified mail to the department may file an affidavit of service of the
39 notice to file an action to foreclose the lien with the circuit court clerk
40 in the county in which the property is located. The affidavit must state
41 the following:
42 (1) The facts of the notice.



1 (2) That more than one hundred eighty (180) days have passed
2 since the notice was received by the department.

3 (3) That no action for foreclosure of the lien is pending.

4 (4) That no unsatisfied judgment has been rendered on the lien.

5 (o) Upon receipt of the affidavit described in subsection (n), the
6 circuit court clerk shall make an entry showing the release of the
7 judgment lien in the judgment records for tax warrants.

8 SECTION 31. IC 6-8.1-9-1, AS AMENDED BY P.L.137-2012,
9 SECTION 109, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) If a person has paid more tax
11 than the person determines is legally due for a particular taxable
12 period, the person may file a claim for a refund with the department.
13 Except as provided in subsections ~~(f)~~ (j) and ~~(g)~~ (k), in order to obtain
14 the refund, the person must file the claim with the department within
15 three (3) years after the latter of the following:

16 (1) The due date of the return.

17 (2) The date of payment.

18 For purposes of this section, the due date for a return filed for the state
19 gross retail or use tax, the gasoline tax, the special fuel tax, the motor
20 carrier fuel tax, the oil inspection fee, or the petroleum severance tax
21 is the end of the calendar year which contains the taxable period for
22 which the return is filed. The claim must set forth the amount of the
23 refund to which the person is entitled and the reasons that the person
24 is entitled to the refund.

25 (b) After considering the claim and all evidence relevant to the
26 claim, the department shall issue a decision on the claim, stating the
27 part, if any, of the refund allowed and containing a statement of the
28 reasons for any part of the refund that is denied. The department shall
29 mail a copy of the decision to the person who filed the claim. **The**
30 **decision on the claim is prima facie evidence the decision is valid.**
31 If the person disagrees with a part of the decision **on the claim**, the
32 person may file a protest and request a hearing with the department.
33 ~~The department shall mail a copy of the decision to the person who~~
34 ~~filed the protest. If the department allows the full amount of the refund~~
35 ~~claim, a warrant for the payment of the claim is sufficient notice of the~~
36 ~~decision. The burden of proving that the decision on the claim is~~
37 ~~wrong rests with the person who filed the claim.~~

38 (c) If the person disagrees with any part of the department's
39 decision, the person may appeal the decision, regardless of whether or
40 not the person protested the tax payment or whether or not the person
41 has accepted a refund. The person must file the appeal with the tax
42 court. The tax court does not have jurisdiction to hear a refund appeal



- 1 suit, if:
- 2 (1) the appeal is filed more than ninety (90) days after the later of
- 3 the date the department mails:
- 4 (A) the decision of denial of the claim to the person; or
- 5 (B) the decision made on the protest filed under subsection
- 6 (b); or
- 7 (2) the appeal is filed both before the decision is issued and
- 8 before the one hundred eighty-first day after the date the person
- 9 files the claim for refund with the department.
- 10 (d) The tax court shall hear the appeal de novo and without a jury;
- 11 and after the hearing may order or deny any part of the appealed
- 12 refund. The court may assess the court costs in any manner that it feels
- 13 is equitable. The court may enjoin the collection of any of the listed
- 14 taxes under IC 33-26-6-2. The court may also allow a refund of taxes;
- 15 interest, and penalties that have been paid to and collected by the
- 16 department.
- 17 (c) The decision on the claim must state that the person has sixty
- 18 (60) days from the date the decision is mailed to file a written
- 19 protest. If the person files a protest and requires a hearing on the
- 20 protest, the department shall:
- 21 (1) set the hearing at the department's earliest convenient
- 22 time; and
- 23 (2) notify the person by United States mail of the time, date,
- 24 and location of the hearing.
- 25 (d) The department may hold the hearing at the location of its
- 26 office within Indiana if that location complies with IC 6-8.1-3-8.5.
- 27 (e) After conducting a hearing on a protest, or after making a
- 28 decision on a protest when no hearing is requested, the department
- 29 shall issue a memorandum of decision or order denying a refund
- 30 and shall send a copy of the decision through the United States mail
- 31 to the person who filed the protest. If the department allows the
- 32 full amount of the refund claim, a warrant for the payment of the
- 33 claim is sufficient notice of the decision. The department may
- 34 continue the hearing until a later date if the taxpayer presents
- 35 additional information at the hearing or the taxpayer requests an
- 36 opportunity to present additional information after the hearing.
- 37 (f) A person that disagrees with a decision in a memorandum of
- 38 decision or order denying a refund may request a rehearing not
- 39 more than thirty (30) days after the date on which the
- 40 memorandum of decision or order denying a refund is issued by
- 41 the department. The department shall consider the request and
- 42 may grant the rehearing if the department reasonably believes that



1 a rehearing would be in the best interests of the taxpayer and the
2 state.

3 (g) If a person disagrees with a decision in a memorandum of
4 decision or order denying a refund, the person may appeal the
5 decision to the tax court. However, the tax court does not have
6 jurisdiction to hear an appeal that is filed more than ninety (90)
7 days after the date on which:

8 (1) the memorandum of decision or order denying a refund is
9 issued by the department, if the person does not make a timely
10 request for a rehearing under subsection (f) on the letter of
11 findings; or

12 (2) the department issues a denial of the person's timely
13 request for a rehearing under subsection (f) on the
14 memorandum of decision or order denying a refund.

15 (h) The tax court shall review legal conclusions contained within
16 a final decision issued under subsection (g) using a de novo
17 standard of review and without a jury. The tax court shall grant
18 deference to the department's findings of fact and interpretation
19 of statutes and regulations that the department is charged with
20 enforcing. The tax court may do the following:

21 (1) Order or deny any part of the refund that is appealed.

22 (2) Assess the court costs in a manner that the court believes
23 is equitable.

24 (3) Enjoin the collection of a listed tax under IC 33-26-6-2.

25 (e) (i) With respect to the motor vehicle excise tax, this section
26 applies only to penalties and interest paid on assessments of the motor
27 vehicle excise tax. Any other overpayment of the motor vehicle excise
28 tax is subject to IC 6-6-5.

29 (f) (j) If a taxpayer's **federal taxable income, federal adjusted**
30 **gross income, or** federal income tax liability for a taxable year is
31 modified by the Internal Revenue Service, and the modification would
32 result in a reduction of the tax legally due, the due date by which the
33 taxpayer must file a claim for refund with the department is the later of:

34 (1) the date determined under subsection (a); or

35 (2) the date that is one hundred eighty (180) days after the date on
36 which the taxpayer is notified of the modification by the Internal
37 Revenue Service as provided under:

38 (A) IC 6-3-4-6(c) and IC 6-3-4-6(d) (for the adjusted gross
39 income tax); or

40 (B) IC 6-5.5-6-6(c) and IC 6-5.5-6-6(d) (for the financial
41 institutions tax).

42 (g) (k) If an agreement to extend the assessment time period is



1 entered into under IC 6-8.1-5-2(h), the period during which a person
 2 may file a claim for a refund under subsection (a) is extended to the
 3 same date to which the assessment time period is extended.

4 SECTION 32. IC 6-8.1-9-2, AS AMENDED BY P.L.293-2013(ts),
 5 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2015]: Sec. 2. (a) If the department finds that a person has
 7 paid more tax for a taxable year than is legally due, the department
 8 shall apply the amount of the excess against any amount of that same
 9 tax that is assessed and is currently due. The department may then
 10 apply any remaining excess against any of the listed taxes that have
 11 been assessed against the person and that are currently due. Subject to
 12 subsection (c), if any excess remains after the department has applied
 13 the overpayment against the person's tax liabilities, the department
 14 shall either refund the amount to the person or, at the person's request,
 15 credit the amount to the person's future tax liabilities.

16 (b) Subject to subsection (c), if a court determines that a person has
 17 paid more tax for a taxable year than is legally due, the department
 18 shall refund the excess amount to the person.

19 (c) As used in this subsection, "pass through entity" means a
 20 corporation that is exempt from the adjusted gross income tax under
 21 IC 6-3-2-2.8(2), a partnership, a limited liability company, or a limited
 22 liability partnership and "pass through income" means a person's
 23 distributive share of adjusted gross income for a taxable year
 24 attributable to the person's interest in a pass through entity. This
 25 subsection applies to a person's overpayment of adjusted gross income
 26 tax for a taxable year if:

27 (1) the person has filed a timely claim for refund with respect to
 28 the overpayment under IC 6-8.1-9-1;

29 (2) the overpayment:

30 (A) is with respect to a taxable year beginning before January
 31 1, 2009;

32 (B) is attributable to amounts paid to the department by:

33 (i) a nonresident shareholder, partner, or member of a pass
 34 through entity;

35 (ii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 36 on behalf of a nonresident shareholder, partner, or member
 37 of the pass through entity; or

38 (iii) a pass through entity under IC 6-3-4-12 or IC 6-3-4-13
 39 on behalf of a nonresident shareholder, partner, or member
 40 of another pass through entity; and

41 (3) the overpayment arises from a determination by the
 42 department or a court that the person's pass through income is not



1 includible in the person's adjusted gross income derived from
 2 sources within Indiana as a result of the application of
 3 IC 6-3-2-2(a)(5) and IC 6-3-2-2.2(g).

4 The department shall apply the overpayment to the person's liability for
 5 taxes that have been assessed and are currently due as provided in
 6 subsection (a) and apply any remaining overpayment as a credit or
 7 credits in satisfaction of the person's liability for listed taxes in taxable
 8 years beginning after December 31, 2008. If the person, including any
 9 successor to the person's interest in the overpayment, does not have
 10 sufficient liability for listed taxes against which to credit all the
 11 remaining overpayment in a taxable year beginning after December 31,
 12 2008, and ending before January 1, 2019, the taxpayer is not entitled
 13 for any taxable year ending after December 31, 2018, to have any part
 14 of the remaining overpayment applied, refunded, or credited to the
 15 person's liability for listed taxes. If an overpayment or part of an
 16 overpayment is required to be applied as a credit under this subsection
 17 to the person's liability for listed taxes for a taxable year beginning after
 18 December 31, 2008, and has not been determined by the department or
 19 a court to meet the conditions of subdivision (3) by the due date of the
 20 person's return for a listed tax for a taxable year beginning after
 21 December 31, 2008, the department shall refund to the person that part
 22 of the overpayment that should have been applied as a credit for such
 23 taxable year within ninety (90) days of the date that the department or
 24 a court makes the determination that the overpayment meets the
 25 conditions of subdivision (3). However, the department may establish
 26 a program to refund small overpayment amounts that do not exceed the
 27 threshold dollar value established by the department rather than
 28 crediting the amounts against tax liability accruing for a taxable year
 29 after December 31, 2008. A person that receives a refund or credit
 30 under this subsection shall file a report with the department in the form
 31 and in the schedule specified by the department that identifies under
 32 penalties of perjury the home state or other jurisdiction where the
 33 income subject to the refund or credit was reported as income
 34 attributable to that state or jurisdiction.

35 (d) An excess tax payment that is not refunded or credited against
 36 a current or future tax liability within ninety (90) days after the date the
 37 refund claim is filed, the date the tax payment was due, or the date the
 38 tax was paid, whichever is latest, accrues interest from:

- 39 **(1) the date the refund claim is filed, if the refund claim is filed**
 40 **before July 1, 2015; or**
 41 **(2) for a refund claim filed after June 30, 2015, the latest of:**
 42 **(A) the date the tax payment was due;**



- 1 **(B) the date the tax was paid; or**
 2 **(C) July 1, 2015;**
 3 at the rate established under IC 6-8.1-10-1 until a date, determined by
 4 the department, that does not precede by more than thirty (30) days, the
 5 date on which the refund or credit is made. As used in this subsection,
 6 "refund claim" includes **a return and** an amended return that indicates
 7 an overpayment of tax. **For purposes of this subsection only, the due**
 8 **date for the payment of the state gross retail or use tax, the oil**
 9 **inspection fee, and the petroleum severance tax is December 31 of**
 10 **the calendar year that contains the taxable period for which the**
 11 **payment is remitted. Notwithstanding any other provision, no**
 12 **interest is due for any time before the filing of a tax return for the**
 13 **period and tax type for which a taxpayer files a refund claim.**
 14 (e) A person who is liable for the payment of excise taxes under
 15 IC 7.1-4-3 or IC 7.1-4-4 is entitled to claim a credit against the person's
 16 excise tax liability in the amount of the excise taxes paid in duplicate
 17 by the person, or the person's assignors or predecessors, upon both:
 18 (1) the receipt of the goods subject to the excise taxes, as reported
 19 by the person, or the person's assignors or predecessors, on excise
 20 tax returns filed with the department; and
 21 (2) the withdrawal of the same goods from a storage facility
 22 operated under 19 U.S.C. 1555(a).
 23 (f) The amount of the credit under subsection (e) is equal to fifty
 24 percent (50%) of the amount of excise taxes:
 25 (1) that were paid by the person as described in subsection (e)(2);
 26 (2) that are duplicative of excise taxes paid by the person as
 27 described in subsection (e)(1); and
 28 (3) for which the person has not previously claimed a credit.
 29 The credit may be claimed by subtracting the amount of the credit from
 30 the amount of the person's excise taxes reported on the person's
 31 monthly excise tax returns filed under IC 7.1-4-6 with the department
 32 for taxes imposed under IC 7.1-4-3 or IC 7.1-4-4. The amount of the
 33 credit that may be taken monthly by the person on each monthly excise
 34 tax return may not exceed ten percent (10%) of the excise tax liability
 35 reported by the person on the monthly excise tax return. The credit may
 36 be claimed on not more than thirty-six (36) consecutive monthly excise
 37 tax returns beginning with the month in which credit is first claimed.
 38 (g) The amount of the credit calculated under subsection (f) must be
 39 used for capital expenditures to:
 40 (1) expand employment; or
 41 (2) assist in retaining employment within Indiana.
 42 The department shall annually verify whether the capital expenditures



1 made by the person comply with this subsection.

2 SECTION 33. IC 6-8.1-10-1, AS AMENDED BY P.L.113-2014,
3 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2015]: Sec. 1. (a) If a person fails to file a return for any of the
5 listed taxes, fails to pay the full amount of tax shown on the person's
6 return by the due date for the return or the payment, or incurs a
7 deficiency upon a determination by the department, the person is
8 subject to interest on the nonpayment.

9 (b) The interest for a failure described in subsection (a) is the
10 adjusted rate established by the commissioner under subsection (c),
11 from the due date for payment. The interest applies to:

- 12 (1) the full amount of the unpaid tax due if the person failed to
13 file the return;
14 (2) the amount of the tax that is not paid, if the person filed the
15 return but failed to pay the full amount of tax shown on the return;
16 or
17 (3) the amount of the deficiency.

18 (c) The commissioner shall establish an adjusted rate of interest for
19 a failure described in subsection (a) and for an excess tax payment on
20 or before November 1 of each year. For purposes of subsection (b), the
21 adjusted rate of interest shall be the percentage rounded to the nearest
22 whole number that equals two (2) percentage points above the average
23 investment yield on state general fund money for the state's previous
24 fiscal year, excluding pension fund investments, as determined by the
25 treasurer of state on or before October 1 of each year and reported to
26 the commissioner. For purposes of IC 6-8.1-9-2(c), the adjusted rate of
27 interest for an excess tax payment must be the same as the adjusted rate
28 of interest determined under this subsection for a failure described in
29 subsection (a). The adjusted rates of interest established under this
30 subsection shall take effect on January 1 of the immediately succeeding
31 year.

32 **(d) This subsection applies beginning after December 31, 2015.**
33 **For purposes of IC 6-8.1-9-2(d), the adjusted rate of interest for an**
34 **excess tax payment is the same as the adjusted rate of interest**
35 **determined under this section for a failure described in subsection**
36 **(a). However, for a refund claim exceeding ten thousand dollars**
37 **(\$10,000), the adjusted rate of interest is the percentage rounded**
38 **to the nearest whole number that equals the average investment**
39 **yield on state general fund money for the state's previous fiscal**
40 **year, excluding pension fund investments, as determined by the**
41 **treasurer of state on or before October 1 of each year and reported**
42 **to the commissioner.**



1 ~~(d)~~ (e) For purposes of this section, the filing of a substantially blank
2 or unsigned return does not constitute a return.

3 ~~(e)~~ (f) Except as provided by IC 6-8.1-3-17(c), ~~and IC 6-8.1-5-2~~; the
4 department may not waive the interest imposed under this section.

5 ~~(f)~~ (g) Subsections (a) through (c) do not apply to a motor carrier
6 fuel tax return.

7 SECTION 34. IC 7.1-6-2-8 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) This section
9 applies whenever a civil penalty payable to the Richard D. Doyle youth
10 tobacco education and enforcement fund is imposed.

11 (b) The person liable for the civil penalty shall pay the full amount
12 of the civil penalty to the commission within thirty (30) days after final
13 judgment.

14 (c) A person who fails to pay a civil penalty within the time
15 specified in subsection (b) is liable for a late penalty equal to the
16 greater of the following:

17 (1) Twenty-five percent (25%) of the amount of the civil penalty
18 imposed under IC 35-46-1.

19 (2) The lesser of the following:

20 (A) Twenty-five dollars (\$25) multiplied by the number of
21 days that have elapsed after the date that the civil penalty was
22 imposed by a court.

23 (B) Five thousand dollars (\$5,000).

24 (d) A person who fails to pay a civil penalty within the time
25 specified in subsection (b) is liable for interest on the unpaid amount
26 of the:

27 (1) civil penalty imposed by a court; and

28 (2) late penalty imposed under this section.

29 The interest rate is the adjusted rate of interest as determined under
30 ~~IC 6-8.1-10-1~~ IC 6-8.1-10-1(c) payable from the date that payment of
31 the amount was due.

32 (e) A person who fails to pay a civil penalty within the time
33 specified in subsection (b) is liable for the reasonable documented
34 out-of-pocket expenses incurred in pursuing collection efforts.

35 (f) The commission shall collect the following:

36 (1) Civil penalties imposed by a court.

37 (2) Late penalties imposed under this section.

38 (3) Interest imposed under this section.

39 (4) Reasonable documented out-of-pocket expenses incurred in
40 pursuing collection efforts.

41 (g) Late penalties and interest imposed under this section shall be
42 deposited in the Richard D. Doyle youth tobacco education and



1 enforcement fund established by section 6 of this chapter.

2 SECTION 35. IC 9-29-5-46 IS ADDED TO THE INDIANA CODE
3 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
4 1, 2015]: **Sec. 46. The fees collected by the department of state
5 revenue for the registration of commercial motor vehicles under
6 this chapter shall be deposited in the motor carrier regulation
7 fund.**

8 SECTION 36. IC 27-1-2-2.3, AS ADDED BY P.L.129-2014,
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2015]: Sec. 2.3. (a) As used in this section, "captive insurer"
11 means a foreign company or an alien company:

- 12 (1) that is supervised in the foreign or alien jurisdiction;
- 13 (2) that is owned by a person that conducts business in Indiana;
- 14 (3) whose exclusive purpose is to insure property and casualty
15 risks of:

 - 16 (A) the parent entity described in subdivision (2);
 - 17 (B) affiliates of the parent entity; or
 - 18 (C) a controlled unaffiliated business;

19 which may include reinsuring (through risk-sharing
20 arrangements) property and casualty risks insured by other foreign
21 companies or alien companies described in subdivision (1); and
22 (4) that ~~has not more than two million dollars (\$2,000,000) of~~
23 ~~annual direct written premium.~~ **qualifies as an insurance
24 company under Section 831(b) of the Internal Revenue Code.**

25 (b) As used in this section, "controlled unaffiliated business" means
26 a business:

- 27 (1) that:

 - 28 (A) is not an affiliate of; and
 - 29 (B) has a contractual relationship with;

- 30 a parent entity described in subsection (a)(2) or an affiliate of the
31 parent entity; and
- 32 (2) the risks of which are managed by a captive insurer.

33 (c) Except as provided in this section, this article does not apply to
34 a captive insurer.

- 35 (d) A captive insurer that is doing business in Indiana:

 - 36 (1) is not required to obtain a certificate of authority in Indiana
37 **under IC 27-1-6 for domestic formation or under IC 27-1-17**
38 **for foreign company admission.**
 - 39 (2) shall register with the commissioner; and
 - 40 (3) shall, for each calendar year after 2012 in which the captive
41 insurer is doing business in Indiana, pay into the treasury of this
42 state a tax of two thousand five hundred dollars (\$2,500).



1 (e) A captive insurer that is required to pay the tax imposed for a
2 calendar year under subsection (d)(3) shall pay the tax as follows:

3 (1) For a tax imposed under subsection (d)(3) for calendar year
4 2013, the captive insurer shall pay the tax before July 1, 2014.

5 (2) For a tax imposed under subsection (d)(3) for a calendar year
6 after 2013, the captive insurer shall pay the tax before April 15 of
7 the following calendar year.

8 (f) The state and a political subdivision of the state shall not impose
9 a license fee or privilege or other tax on a captive insurer, except the
10 following:

11 (1) The tax described in subsection (d)(3).

12 (2) An applicable tax on real and tangible personal property of the
13 captive insurer.

14 SECTION 37. IC 34-46-7 IS ADDED TO THE INDIANA CODE
15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2015]:

17 **Chapter 7. Privileged Communications of State Officials and**
18 **Agencies.**

19 **Sec. 1. As used in this section:**

20 (1) "decision making activities and information" includes all
21 interexecutive, intraexecutive, and administrative agency
22 communications and any other records relating to a finalized
23 or ongoing decision making process; and

24 (2) "state official" includes agents of the state and entities
25 under a contract with the state.

26 **Sec. 2. To ensure that state officials can communicate candidly**
27 **among themselves while making decisions, and to preserve the**
28 **quality of executive and administrative agency decisions, the**
29 **following decision making activities and information are protected**
30 **by a deliberative process privilege and are not subject to discovery,**
31 **except as otherwise provided by statute:**

32 (1) Records that are advisory, expressions of thoughts, ideas,
33 recommendations, or opinions.

34 (2) Analyses engaged in for decision making purposes.

35 (3) Materials that pertain to consultative functions or are
36 otherwise deliberative in nature.

37 **Sec. 3. A person engaged in deliberative decision making**
38 **functions on behalf of the executive branch or an administrative**
39 **agency may not be compelled to testify regarding:**

40 (1) the person's, branch's, or agency's deliberative decision
41 making functions; or

42 (2) materials referred to in section (2)(1) of this chapter.



1 **Sec. 4. The deliberative process privilege applies to documents,**
 2 **testimony, and any other deliberative communications, regardless**
 3 **of form.**

4 **Sec. 5. A judicial inquiry into the motivation or reasoning of an**
 5 **executive or administrative agency decision maker is a substantial**
 6 **intrusion into the functions of the executive branch of government**
 7 **because these inquiries contradict the general bar against probing**
 8 **the mental processes involved in executive and administrative**
 9 **decision maker deliberations. For this reason, the deliberative**
 10 **process privilege applies whether a party is seeking judicial review**
 11 **on the merits of a decision or a judicial review of the decision**
 12 **making process.**

13 **Sec. 6. The following exceptions apply to the deliberative**
 14 **process privilege:**

15 **(1) Facts that exist independent from the thoughts, ideas,**
 16 **opinions, and analyses that encompass the process by which**
 17 **a decision was reached are not within this privilege.**

18 **(2) Once an executive or administrative decision is final, any**
 19 **subsequent materials are not protected under this section, but**
 20 **this subdivision does not affect whether a protection under**
 21 **another privilege or statute applies.**

22 **SECTION 38. [EFFECTIVE JULY 1, 2015] (a) The commissioner**
 23 **of the department of state revenue shall revise any schedule**
 24 **specifying the adjusted rate of interest for excess tax payments as**
 25 **necessary to comply with IC 6-8.1-10-1, as amended by this act.**

26 **(b) This SECTION expires December 31, 2015.**

