



COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 259, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 17.
- 2 Delete page 2.
- 3 Page 3, delete lines 1 through 39, begin a new paragraph and insert:
- 4 "SECTION 1. IC 6-3-2.1-2, AS AMENDED BY P.L.194-2023,
- 5 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 UPON PASSAGE]; Sec. 2. The following definitions apply throughout
- 7 this chapter:
- 8 (1) "Electing entity" means a pass through entity described in
- 9 IC 6-3-1-35 that is subject to Subchapter K or Subchapter S of the
- 10 Internal Revenue Code and makes the election under this chapter.
- 11 (2) "Entity owner" means the direct or indirect owners of an
- 12 electing entity that are ultimately taxable on the entity's income
- 13 under Subchapter K or Subchapter S of the Internal Revenue
- 14 Code, except an owner described in subdivision (4)(A) through
- 15 (4)(C).
- 16 (3) "Nonresident" means:
- 17 (A) a nonresident partner as defined by IC 6-3-4-12(n);
- 18 (B) a nonresident shareholder as defined by IC 6-3-4-13(n);
- 19 (C) a nonresident beneficiary as defined by ~~IC 6-3-4-15(i);~~
- 20 **IC 6-3-4-15(j);** or

1 (D) in the case of a shareholder of a corporation described in
 2 IC 6-3-2-2.8(2), a corporation described in Section 501(c)(3)
 3 of the Internal Revenue Code that is exempt from taxation
 4 under Section 501(a) of the Internal Revenue Code and that is
 5 not domiciled in Indiana;

6 whichever is applicable.

7 (4) "Owner" means a direct or indirect owner of an electing entity
 8 and includes a beneficiary of an estate or trust. However an owner
 9 shall not include:

10 (A) an entity described in IC 6-3-2-2.8(3) that is not a
 11 partnership, a trust, or a corporation described in
 12 IC 6-3-2-2.8(2);

13 (B) an entity described in IC 6-3-2-2.8(5); or

14 (C) any other entity as determined by the department and listed
 15 in instructions or guidance issued by the department.

16 (5) "Resident" means a partner, shareholder, or beneficiary:

17 (A) that, in the case of an individual, estate, or trust, is a
 18 resident of Indiana as defined in IC 6-3-1-12; or

19 (B) that is a partnership or corporation, including a corporation
 20 described in IC 6-3-2-2.8(1) or IC 6-3-2-2.8(2), that is
 21 domiciled in Indiana."

22 Page 6, delete lines 3 through 5, begin a new paragraph and insert:

23 "(j) If a partnership does not include all nonresident partners **that**
 24 **have distributive share income from the partnership:**

25 **(1) as determined under this article; and**

26 **(2) derived from Indiana sources;**

27 **of greater than zero dollars (\$0)** in the composite return, the
 28 partnership is subject to the penalty imposed under IC 6-8.1-10-2.1(j)."

29 Page 6, line 6, reset in roman "(k)".

30 Page 6, line 6, delete "(j)".

31 Page 6, line 17, reset in roman "(l)".

32 Page 6, line 17, delete "(k)".

33 Page 6, line 31, reset in roman "(m)".

34 Page 6, line 31, delete "(l)".

35 Page 6, line 31, reset in roman "(k),".

36 Page 6, line 31, delete "(j),".

37 Page 6, line 38, reset in roman "(n)".

38 Page 6, line 38, delete "(m)".

39 Page 9, delete lines 8 through 10, begin a new paragraph and insert:

40 "(k) If a corporation described in subsection (a) does not include all
 41 nonresident shareholders **who have distributive share income from**
 42 **the corporation:**

1 **(1) as determined under this article; and**
 2 **(2) derived from Indiana sources;**
 3 **of greater than zero dollars (\$0)** in the composite return, the
 4 corporation is subject to the penalty imposed under
 5 IC 6-8.1-10-2.1(j).".

6 Page 9, line 11, reset in roman "(l)".

7 Page 9, line 11, delete "(k)".

8 Page 9, line 22, reset in roman "(m)".

9 Page 9, line 22, delete "(l)".

10 Page 9, line 22, reset in roman "(l)".

11 Page 9, line 22, delete "(k)".

12 Page 9, line 29, reset in roman "(n)".

13 Page 9, line 29, delete "(m)".

14 Page 9, delete lines 33 through 42.

15 Delete pages 10 through 14.

16 Page 15, delete lines 1 through 29, begin a new paragraph and
 17 insert:

18 "SECTION 4. IC 6-3-4-15, AS AMENDED BY P.L.1-2023,
 19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 15. (a) A trust or estate shall, at the time that
 21 it distributes income (except income attributable to interest or
 22 dividends) to a nonresident beneficiary, deduct and retain therefrom the
 23 amount prescribed in the withholding instructions referred to in section
 24 8 of this chapter. The trust or estate so distributing income to a
 25 nonresident beneficiary:

26 (1) is liable to this state for the tax which it is required to deduct
 27 and retain under this section and is not liable to the beneficiary for
 28 the amount deducted from the distribution and paid to the
 29 department in compliance, or intended compliance, with this
 30 section; and

31 (2) shall pay the amount deducted to the department before the
 32 thirtieth day of the month following the distribution, unless an
 33 earlier date is specified by section 8.1 of this chapter.

34 If a trust or estate credits a beneficiary with pass through entity tax
 35 imposed under IC 6-3-2.1, the withholding required for that beneficiary
 36 under this section shall be reduced by the tax credited to the
 37 beneficiary under IC 6-3-2.1, but in no event shall the tax required to
 38 be withheld be reduced to less than zero dollars (\$0).

39 (b) A trust or estate shall, at the time that it makes a payment to the
 40 department under this section, deliver to the department a return which
 41 shows the total amounts distributed to the trust's or estate's nonresident
 42 beneficiaries, the amount deducted from the distributions under this

1 section, and any other information required by the department. The
2 trust or estate shall file the return on the form prescribed by the
3 department. A trust or estate which makes the deduction and retention
4 required by this section shall furnish to its nonresident beneficiaries
5 annually, but not later than thirty (30) days after the end of the trust's
6 or estate's taxable year, a record of the amount of tax deducted and
7 retained from the beneficiaries. The trust or estate shall furnish the
8 information on the form prescribed by the department.

9 (c) The money deducted and retained by a trust or estate under this
10 section is money of this state. Every trust or estate which deducts and
11 retains any money under this section shall hold the money in trust for
12 this state until it pays the money to the department in the manner and
13 at the time provided in this section. The department may require a trust
14 or estate to post a surety bond to protect this state with respect to
15 money deducted and retained by the trust or estate under this section.
16 The department shall determine the amount of the surety bond.

17 (d) The provisions of IC 6-8.1 relating to penalties or to additions to
18 tax in case of a delinquency apply to trusts and estates which are
19 subject to this section. For purposes of this subsection, any amount
20 deducted, or required to be deducted and remitted to the department,
21 under this section is considered the tax of the trust or estate, and with
22 respect to that amount, it is considered the taxpayer.

23 (e) Amounts deducted from distributions to nonresident
24 beneficiaries under this section during a taxable year of the trust or
25 estate are considered a partial payment of the tax imposed on the
26 nonresident beneficiary for his taxable year within or with which the
27 trust's or estate's taxable year ends. The department shall accept a
28 return made by the trust or estate under subsection (b) as evidence of
29 the amount of tax deducted from the income distributed to a
30 nonresident beneficiary.

31 (f) This section does not relieve a nonresident beneficiary of his
32 duty to file a return at the time required under IC 6-3. The nonresident
33 beneficiary shall pay any unpaid tax at the time prescribed by section
34 5 of this chapter.

35 (g) If a trust or estate fails to withhold and pay any amount of tax
36 required to be withheld under this section and thereafter the tax is paid
37 by the beneficiaries, the amount of tax paid by the beneficiaries may
38 not be collected from the trust or estate but it may not be relieved from
39 liability for interest or penalty otherwise due in respect to the failure to
40 withhold under IC 6-8.1-10.

41 (h) A trust or estate shall file a composite adjusted gross income tax
42 return on behalf of all nonresident beneficiaries. The composite return

must include each nonresident beneficiary regardless of whether the nonresident beneficiary has other Indiana source income.

(i) If a trust or estate does not include all nonresident beneficiaries that have distributable net income from the trust or estate:

(1) as determined under this article; and

(2) derived from Indiana sources;

of greater than zero dollars (\$0) in the composite return, the trust or estate is subject to the penalty imposed under IC 6-8.1-10-2.1(j).

(j) For purposes of this section, a "nonresident beneficiary" is:

(1) an individual who does not reside in Indiana;

(2) a trust that does not reside in Indiana;

(3) an estate that does not reside in Indiana;

(4) a partnership that is not domiciled in Indiana;

(5) a C corporation that is not domiciled in Indiana; or

(6) an S corporation that is not domiciled in Indiana.

(k) If a trust or estate is permitted an extension to file its income tax return under IC 6-8.1-6-1, then the return and payment due under this subsection shall be allowed the same treatment as the extended income tax return with respect to due dates, interest, and penalties under IC 6-8.1-6-1."

Page 15, line 32, reset in roman "IC 6-3-4-12(k)".

Page 15, line 33, delete "IC 6-3-4-12(j)".

Page 15, line 33, reset in roman "IC 6-3-4-13(l)".

Page 15, line 33, delete "IC 6-3-4-13(k)".

Page 17, delete lines 17 through 22, begin a new paragraph and insert:

"(j) If a pass through entity (as defined in IC 6-3-1-35) fails to include all nonresident partners, nonresident shareholders, or nonresident beneficiaries in a composite return as required by ~~IC 6-3-4-12(i)~~, **IC 6-3-4-12(j)**, ~~IC 6-3-4-13(j)~~, **IC 6-3-4-13(k)**, or ~~IC 6-3-4-15(h)~~, **IC 6-3-4-15(i)**, a penalty of five hundred dollars (\$500) per pass through entity is imposed on the pass through entity. **For purposes of this subsection:**

(1) no penalty shall be imposed on the failure to list nonresident partners, nonresident shareholders, or nonresident beneficiaries not described in IC 6-3-4-12(j),

IC 6-3-4-13(k), or IC 6-3-4-15(i), on a composite return; and

(2) the determination of whether a partner, shareholder, or beneficiary is required to be included on a composite return shall be determined at the time the pass through entity files its return required under IC 6-3 unless the determination by the

- 1 **pass through entity was the result of:**
- 2 **(A) fraud; or**
- 3 **(B) intentional or reckless disregard of IC 6-3 or the**
- 4 **Internal Revenue Code."**
- 5 Page 17, line 23, reset in roman "(k)".
- 6 Page 17, line 23, delete "(j)".
- 7 Page 17, line 35, reset in roman "(l)".
- 8 Page 17, line 35, delete "(k)".
- 9 Page 18, delete lines 11 through 42, begin a new paragraph and
- 10 insert:
- 11 "SECTION 6. [EFFECTIVE UPON PASSAGE] **IC 6-3-4-12,**
- 12 **IC 6-3-4-13, IC 6-3-4-15, and IC 6-8.1-10-21, all as amended by this**
- 13 **act, are effective for pass through entity returns due after passage**
- 14 **of this act, including any extensions allowable for the return."**
- 15 Renumber all SECTIONS consecutively.
- (Reference is to SB 259 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 12, Nays 0.

Senator Holdman, Chairperson