Indiana Department of Revenue
Indiana Government Center • 100 N. Senate Ave. Indianapolis, IN 46204 • dor.in.gov

Income Tax Information Bulletin	#119
Subject:	Internal Revenue Code Provisions Not Followed by Indiana and Clarification of Related Issues
Publication Date:	September 2024
Effective Date:	February 2022
References:	IC 6-3-1-11; IC 6-3.1-21-6

Replaces Bulletin #119, dated February 2022

Summary of Changes

Other than technical, nonsubstantive changes, this bulletin has been updated to clarify issues related to the Indiana disallowance of general student loan discharges and to clarify issues related to the proper period for deduction of COVID-related employee retention credit wages.

Introduction

Under IC 6-3-1-11, the definition of "Internal Revenue Code" is established as of a specific date. Prior to the 2021 session of the Indiana General Assembly, IC 6-3-1-11 defined "Internal Revenue Code" as the version in effect on Jan. 1, 2020. During the 2021 session, the Indiana General Assembly enacted a revised definition of "Internal Revenue Code" to include various items from which a tax provision that is enacted outside the Internal Revenue Code. Further, the definition of Internal Revenue Code was updated to March 31, 2021.

Because legislation is commonly enacted after the specified date but prior to when the Indiana General Assembly reconvenes each year, modifications made to the Internal Revenue Code after the specified date are not captured by Indiana. Further, these modifications are not listed in IC 6-3 or IC 6-5.5, so the modifications may not be readily apparent.

This bulletin is intended to provide a list of the most significant modifications necessary other than those specifically enumerated in IC 6-3 or IC 6-5.5 prior to March 31, 2021. In many cases, these modifications have been adopted retroactively by the Indiana General Assembly.

Any reference in this document to the “CARES Act” is to P.L. 116-136, enacted March 27, 2020. Any reference to the “COVID-related Tax Relief Act of 2020” is to Division N, Title II, Subtitle B of the Consolidated Appropriations Act, 2021, P.L 116-260, enacted Dec. 27, 2020. Any reference to the “Taxpayer Certainty and Disaster Tax Relief Act of 2020” is to Division EE of the Consolidated Appropriations Act, 2021. Any reference to the “American Rescue Plan Act of 2021” is to P.L. 117-2, enacted March 11, 2021.

The “**effective date**” listed above in this bulletin serves as a date for the Department’s issuance of an explanation or revised explanation of the treatment of various provisions in federal statutes and regulations. Unless specifically noted in this bulletin, the effects of conformity or nonconformity with federal law under Indiana law are determined by federal and state statutes and regulations, and any reporting of such effects is required unless the bulletin provides a treatment to the contrary. In other words, the date the items mentioned in this bulletin became effective for federal income tax purposes, but the fixed date in the definition of “Internal Revenue Code” provided in IC 6-3-1-11 created a difference between the Indiana definition of adjusted gross income and the federal definition as of that date. This bulletin merely provides guidance as to those differences. Furthermore, the publication of subsequent editions of this bulletin will not change that effective date of nonconformity or any impacts of nonconformity unless specifically noted in this bulletin. However, changes in Indiana law may impact various items and will be noted as appropriate.

Items Not Followed by Indiana After the 2021 General Assembly Regular Session

Above the Line Charitable Contribution Deduction

Pursuant to CARES Act § 2204, if an individual made a qualified charitable contribution deducted under IRC § 62(a)(22), IC 6-3-1-3.5(a)(26) requires the amount of that contribution must be added back in determining adjusted gross income for the 2020 tax year. If an individual is a part-year resident, only the portion deducted for federal income tax purposes and paid while the individual was an Indiana resident shall be required to be added back. This treatment is identical to the treatment prior to the updated definition of Internal Revenue Code.

Student Loan Payments by an Employer

For taxable years of an employee beginning after Dec. 31, 2019, IC 6-3-1-3.5(a)(27) requires the employee to add back the amount of such payments made by the employer and excluded from the employee’s gross income under IRC § 127(c)(1)(B), as added by the CARES Act § 2206(a) and extended by § 120 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020. This addback applies regardless of whether the employer makes the student loan payments to the employee or directly to the lender. Any other payment excluded from gross income under the previous IRC § 127(c)(1)(B) (now IRC § 127(c)(1)(C)) shall continue to be allowed as excludible from adjusted gross income by Indiana. This treatment is identical to the treatment prior to the updated definition of Internal Revenue Code.

However, if a payment is required to be added back under this provision, the interest that otherwise could have been deducted under IRC § 221 is allowable in determining Indiana adjusted gross income. For purposes of this computation, the regular phaseout and limitations under IRC § 221(b) apply.

Section 461*(l)* Loss Limitation Suspension

Under § 2304 of the CARES Act, the loss limitation under IRC § 461(*l*) was suspended for 2018, 2019, and 2020. Under IC 6-3-1-3.5(a)(29) and IC 6-3-1-3.5(f)(14), Indiana does not follow this treatment. Instead, an affected taxpayer will be required to:

1. Add back the amount of any current-year excess loss that would have been disallowed for federal income tax purposes in determining Indiana adjusted gross income, and
2. Add the amount disallowed under (1) to the individual's current year net operating loss available for carryover to future years.

The amount of allowable business losses are $250,000 for 2018, $255,000 for 2019, and $259,000 for 2020. For married couples filing a joint tax return, these amounts are doubled.

For instance, if a married couple had a 2020 business loss of $900,000 that would have been treated as an excess business loss prior to the CARES Act, they would add back $382,000 in determining adjusted gross income and add that $382,000 to their 2020 net operating loss available for carryforward in 2021 and later. In the event there is no net operating loss available for 2020, this would create a new 2020 net operating loss.

In addition, pursuant to the Indiana General Assembly's enactment of IC 6-3-1-3.5(a)(29) and IC 6-3-1-3.5(f)(14), if a taxpayer subject to the disallowance under this section has bonus depreciation or IRC § 179 adjustments for property placed in service during the year of the excess business loss (collectively, "depreciation adjustments"), then special attribution rules will apply. The portion of the depreciation adjustments equal to the disallowed excess business loss will be treated as occurring in the year <u>after</u> the property is placed into service, but not in excess of the depreciation adjustments. The remainder of the depreciation adjustments will be treated as a modification during the year in which the excess loss occurred. Further, any other adjustments required for bonus depreciation or IRC § 179 expensing will occur in the same year as normally required under Indiana law.

Business Meal Deductions

IRC § 274(n) was amended by § 210 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to allow a full deduction for business meals for amounts paid in 2021 and 2022. Indiana has enacted provisions in IC 6-3-1-3.5 and IC 6-5.5-1-2 specifically disallowing the full deduction for business meals and thus will not recognize IRC § 274(n)(2)(D). However, Indiana will allow a 50% deduction as a general rule and also will recognize the exceptions in IRC § 274(n)(2)(A), (B), and (C).

Unemployment Benefits

Section 9042 of the American Rescue Plan Act of 2021 enacted IRC § 85(c). This provision created a $10,200 per individual exclusion for unemployment compensation, provided that the taxpayer had adjusted gross income of less than $150,000.

Pursuant to IC 6-3-1-3.5(a)(33) as enacted by HEA 1436-2021, Indiana does not follow the exclusion permitted under IRC § 85(c). Accordingly, the amount of unemployment compensation otherwise excluded must be added back into Indiana adjusted gross income.

For purposes of IC 6-3-2-10, the deduction under that section is permitted based on the full amount of unemployment compensation, regardless of the federal exclusion. However, for purposes of computing the deduction, federal adjusted gross income on which the unemployment deduction is based must be increased by the amount of unemployment compensation excluded for federal income tax purposes. A revised deduction worksheet is included at the end of this bulletin as an appendix.

Student Loan Debt Discharge

Under Section 9675 of the American Rescue Plan Act of 2021, student loans discharged between Jan. 1, 2021, and Dec. 31, 2025, inclusive, are excluded from federal gross income under IRC § 108(f)(5). Under IC 6-3-1-3.5(a)(30), student loans discharged pursuant to this section are required to be added back into Indiana adjusted gross income.

However, the addback does not affect student loan discharges under IRC §108(f)(1)-(4). In addition, if a student loan is discharged while the borrower is insolvent, the exclusion under IRC § 108(a)(1)(B) is permitted and takes precedence for Indiana adjusted gross income tax purposes. Also, discharges under IRC §108(f)(5) resulting from the death or total and permanent disability of a student are not required to be added back.

Employee Retention Credit – Federally Disallowed Deductions

In the CARES Act, § 2301 enacted an employee retention credit, which was further clarified and extended by §§ 206 and 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020. In addition, the American Rescue Plan Act of 2021 enacted IRC § 3134, permitting a further credit for a portion of 2021.

Both § 2301(e) and IRC § 3134(e) included provisions that referenced IRC § 280C(a), which disallows wage deductions for federal income tax purposes when a credit is claimed based on the same wages. Indiana enacted provisions in both IC 6-3-1-3.5 and IC 6-5.5-1-2 that permit the federally-disallowed wage deductions as deductions in determining Indiana adjusted gross income. However, this allowance only pertains to wages disallowed for federal income tax purposes related to the coronavirus-related employee retention credit. Wage deductions disallowed under the disaster-related employee retention credit continue to be disallowed for Indiana adjusted gross income tax and financial institutions tax purposes.

The deduction must be reported in the same year in which the federal wage expense was properly disallowed. The deduction is allowable only for taxable years that include dates from March 13, 2020, to December 31, 2021, inclusive. The deduction is not allowable for taxable years beginning after December 31, 2021, unless the claimant had an unusual circumstance that prevented an otherwise-allowable wage deduction from being claimed until 2022 or later. The unusual circumstances are limited to situations where an issue such as a basis limitation for a pass-through entity would have precluded a deduction for an owner.

Federal Regulations Adopted After March 31, 2021

Indiana also adopts federal regulations in effect on March 31, 2021, as Indiana regulations to the extent such regulations are otherwise consistent with Indiana statutes and regulations. Because of this limitation, Indiana will not conform to any federal regulations adopted after March 31, 2021 unless and until the definition of Internal Revenue Code in IC 6-3-1-11 is updated to a later date. In addition, because the revised definition of Internal Revenue Code specifically addresses federal regulatory treatment for non-Internal Revenue Code regulations that affect tax attributes, those federal regulations not adopted by March 31, 2021, will be disregarded. However, Indiana has now adopted any federal regulations affecting tax attributes adopted between Jan. 1, 2020, and March 31, 2021, inclusive.

Notable Items for Which Indiana Follows Federal Treatment After the 2021 Indiana General Assembly Regular Session Retroactively but Did Not Follow Before the 2021 General Assembly.

Excess Deduction Upon Termination of a Trust

Prior to 2020, an excess deduction upon the termination of a trust was considered an itemized deduction. However, in 2020, the Internal Revenue Service adopted Treas. Reg. 1.642(h)-2 and 1.642(h)-5 allowing certain excess deductions upon termination of an estate or trust to be treated as deductible in determining adjusted gross income. Though the federal regulations are generally applicable to taxable years beginning after Oct. 19, 2020, taxpayers may elect the treatment under the regulations for taxable years beginning after Dec. 31, 2017, and on or before Oct. 19, 2020. Indiana did not recognize this allowance under the Internal Revenue Code as in effect on Jan. 1, 2020. However, Indiana will permit this treatment retroactively in the same manner as permitted for federal income tax purposes pursuant to the updated Internal Revenue Code conformity date of March 31, 2021.

Special Rules for Retirement Distributions

Section 2202 of the CARES Act (IRC § 72 note) and § 312 of Taxpayer Certainty and Disaster Tax Relief Act of 2020 permit special relief for coronavirus-related retirement plan distributions and loans. Any references to the CARES Act shall also be applied in a similar manner to the provisions in the Taxpayer Certainty and Disaster Tax Relief Act of 2020.

Section 2202(a)(5) of the CARES Act permits an individual to elect inclusion of CARES Act distributions over a three-year period. In addition, § 2202(a)(3) of the CARES Act permits repayments of distributions from retirement plans to be treated as qualified rollovers under certain conditions and to be excluded from federal adjusted gross income. This rule also applies to recontributions of withdrawals for home purchases described in § 302(b) of the Taxpayer Certainty and Disaster Tax Relief Act of 2020.

Further, § 2202(b)(1) of the CARES Act increased the maximum amount outstanding as a loan from a qualified employer plan. The first change was to increase the threshold under IRC § 72(p)(2)(A)(i) from $50,000 to $100,000. The second change was to increase the ceiling in IRC § 72(p)(2)(A)(ii) from one-half of the present value of the nonforfeitable accrued benefit of the employee to the full present value.

Under the Internal Revenue Code as in effect on Jan. 1, 2020, Indiana did not adopt these provisions. However, Indiana will permit the treatment provided under federal law retroactively pursuant to the updated Internal Revenue Code conformity date of March 31, 2021. The retroactive application for Indiana means that Indiana will follow the federal provisions to the same extent as permitted for federal income tax purposes. For purposes of 4 U.S.C. § 114, if an individual was an Indiana resident at the time of withdrawal, the amount withdrawn and subject to three-year averaging shall be treated as subject to Indiana tax even if the individual moved outside Indiana for taxable years 2021 and/or 2022.

NOTE: See the last section of this bulletin for further information on the treatment of retirement benefits in certain cases.

Depreciation on Qualified Improvement Property

Section 2307 of the CARES Act made two technical corrections relating to qualified improvement property. First, the depreciation life was changed from 39-year property to 15-year property, which in turn allowed the property to be subject to bonus depreciation under IRC § 168(k).

Under the Internal Revenue Code as in effect on Jan.1, 2020, Indiana did not adopt this provision. However, Indiana will allow qualified improvement property to be subject to the 15-year depreciation in life under federal law retroactively pursuant to the updated Internal Revenue Code conformity date of March 31, 2021. The retroactive treatment applies to all years for which 15-year class life for qualified improvement property applies. However, because of existing Indiana disallowance of bonus depreciation, any bonus depreciation claimed on qualified improvement property will be subject to modifications otherwise required for bonus depreciation property under Indiana law.

Treatment of Menstrual Care Products

Section 3702 of the CARES Act provides various changes related to menstrual care products, retroactive to Dec. 31, 2019. For purposes of this discussion, the definition of menstrual care products under IRC § 223(d)(2)(D), which applies to tampons, pads, and similar products, will be used.

Under the Internal Revenue Code as in effect on Jan. 1, 2020, Indiana did not adopt the exclusion from income for health plans under IRC § 106 or the exclusion from income for health savings accounts under IRC § 223. However, Indiana will permit the income exclusion for such distributions provided under federal law retroactively pursuant to the updated Internal Revenue Code conformity date of March 31, 2021.

Coronavirus-Related Teacher Supply Expenses

Section 275 of the COVID-related Tax Relief Act of 2020 requires that regulations be adopted or other guidance be issued regarding the allowance of certain COVID-related expenses related to preventing the spread of COVID-19 in determining the deduction allowable under IRC § 62(a)(2)(D)(ii) in calculating federal adjusted gross income. Because the statute was not in effect on Jan. 1, 2020, Indiana originally did not adopt this provision. However, as a result of the updated definition of Internal Revenue Code to March 31, 2021, Indiana has now adopted this provision retroactively. Further, Indiana will follow the Internal Revenue Service guidance issued under Rev. Proc. 2021-15. However, because the COVID-prevention expenses are not considered qualified expenses under IRC § 62(a)(2)(D)(ii) (the analogous reference to IRC § 62(a)(2)(D) as in effect on Dec. 31, 2013), the expenses are not allowable in computing the credit under IC 6-3-3-14.5.

Thirty-year Depreciation of Certain Residential Real Property

Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 amended IRC § 168 to allow certain residential rental property placed into service before Jan. 1, 2018, to be treated as being depreciable over 30 years as opposed to the original 40-year depreciation under the federal alternative depreciation system. Because this provision was enacted after Jan. 1, 2020, Indiana did not follow this provision. However, as a result of Indiana's adoption of the Internal Revenue Code as in effect on March 31, 2021, Indiana has now adopted this provision retroactively for all years affected by the Internal Revenue Code revision. This treatment for Indiana adjusted gross income tax applies not only for taxable year 2020, but also the 2018 and 2019 taxable years. No adjustment is necessary for property placed into service after December 31, 2017.

Extenders

In the case of various provisions of the Internal Revenue Code that expire, legislation has been enacted to permit the provision to be permanently enacted or extended for an additional period of time. For these provisions, Indiana initially did not recognize these because the Internal Revenue Code as of Jan. 1, 2020, included a Dec. 31, 2020, expiration date. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted these provisions retroactively.

These provisions are as follows:

1. The energy-efficient buildings deduction under IRC § 179D for property placed in service after Dec. 31, 2020.
2. Benefits provided to volunteer firefighters and emergency medical responders and excluded under IRC § 139B, for taxable years beginning after Dec. 31, 2020.

3. Extension of look-through treatment of payments between related controlled foreign corporations under foreign personal holding company rules under IRC § 954 after 2020.
4. Exclusion of discharge of indebtedness on qualified personal residences under IRC § 108(a)(1)(E) after Dec. 31, 2020.
5. Special seven-year depreciation for motorsports improvement property under IRC § 168(i) for property placed in service after Dec. 31, 2020.
6. Special expensing rules for certain productions under IRC § 181 for productions commencing after Dec. 31, 2020.
7. Special tax incentives for empowerment zones under IRC § 1391 *et. seq*. For purposes of IRC § 1393, the exclusion from income is not allowable for interest on such bonds after Dec. 31, 2020. However, the disallowance of extra IRC § 179 expensing permitted under IRC § 1397A and disallowance of gain nonrecognition under IRC § 1397B will continue after Dec. 31, 2020, even though Indiana has recoupled with the Internal Revenue Code as of March 31, 2021
8. Three-year depreciation for racehorses under IRC § 168(e)(3)(A)(i).
9. Accelerated depreciation of property on Indian reservations under IRC § 168(j).

Continuation Coverage Premium Assistance-Employer Income Inclusion

Section 9501(b)(1) of the American Rescue Plan Act of 2021 enacted a credit under IRC § 6432 for employers against payroll taxes. The credit is based on the amount of premiums that would have otherwise been paid by COBRA-eligible individuals but were reduced as a result of Section 9501(a)(1) of the American Rescue Plan Act of 2021 for premiums otherwise payable from April 1, 2021, to Sept. 30, 2021. As part of the credit, IRC § 6432(e) requires that the credit is included in the gross income of the entity. Indiana originally did not conform with the income inclusion required for federal income tax purposes because the inclusion was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted the income inclusion retroactively. Thus, any income required to be included under this section for federal income tax purposes also will be included in the taxpayer's Indiana adjusted gross income.

Continuation Coverage Premium Assistance-Employee Exclusion

Section 9501(b)(4) of the American Rescue Plan Act of 2021 enacted a new IRC § 139I. IRC § 139I excludes premium assistance under Section 9501(a)(1) of the American Rescue Plan Act of 2021 from gross income of eligible individuals. Indiana originally did not conform with the exclusion permitted for federal income tax purposes because the exclusion was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted this provision retroactively. Thus, Indiana has conformed with the federal income exclusion, and any income excluded for federal income tax purposes under this section is also excluded from the eligible individual's Indiana adjusted gross income.

Increase in Exclusion for Dependent Care Expenses

Section 9632 of the American Rescue Plan Act of 2021 enacted in increase of the exclusion for employer-paid dependent care expenses from $5,000 to $10,500 for taxable years beginning Jan. 1, 2021. Indiana originally did not conform with the increased exclusion permitted for federal income tax purposes because the exclusion was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted this provision retroactively. Thus, Indiana has conformed with the federal income exclusion, and any income excluded for federal income tax purposes under this section is also excluded from the eligible individual's Indiana adjusted gross income.

Credit for Sick Leave and Family Leave Pay-Income Inclusion

Section 9641 of the American Rescue Plan Act of 2021 enacted IRC § 3131, permitting credits against payroll taxes for sick leave pay paid to employees from April 1, 2021, to Sept. 30, 2021. As part of the credit, IRC § 3131(f)(3) requires that the credit is included in the gross income of the entity. Indiana originally did not conform with the income inclusion required for federal income tax purposes because the inclusion was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted this provision retroactively. Thus, any income required to be included under this section for federal income tax purposes also will be included in the taxpayer's Indiana adjusted gross income.

Section 9641 also enacted IRC § 3132, permitting credits against payroll taxes for family leave pay paid to employees from April 1, 2021, to Sept. 30, 2021. As part of the credit, IRC § 3132(f)(3) requires that the credit is included in the gross income of the entity. Indiana originally did not conform with the income inclusion required for federal income tax purposes because the inclusion was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted this provision retroactively. Thus, any income required to be included under this section for federal income tax purposes also will be included in the taxpayer's Indiana adjusted gross income.

Election for Allocating Interest on a Worldwide Basis

Section 9671 of the American Rescue Plan Act of 2021 repealed IRC § 864(f). Prior to repeal, this provision allowed domestic corporations that are part of a worldwide affiliated group to elect to allocate interest expense on a worldwide basis as if the group of corporations was a single corporation. Indiana originally did not conform with the disallowance of the election required for federal income tax purposes because the disallowance was not in the Internal Revenue Code as of Jan. 1, 2020. However, because Indiana has now adopted the Internal Revenue Code as in effect on March 31, 2021, Indiana has adopted this provision retroactively. Thus, Indiana will not permit treatment permitted by the now-repealed election. However, to the extent that future treatment of deductions is governed by the election prior to repeal, Indiana will continue to recognize federal tax treatment consistent with the federal election.

Federal Regulations Adopted Between Jan. 1, 2020, and March 31, 2021

Originally, Indiana did not adopt federal regulations adopted after Jan. 1, 2020, because Indiana's conformity date of Jan. 1, 2020, also included federal regulations. However, as a result of the updated conformity date of the Internal Revenue Code to March 31, 2021, Indiana has now adopted any federal regulations adopted between Jan.1, 2020, and March 31, 2021, inclusive, and with retroactive effect to the extent that such regulations are otherwise consistent with Indiana law and regulations.

Items That Indiana Followed Federal Treatment Both Before and After the 2021 Indiana General Assembly Regular Session

Indiana follows certain federal tax treatment for various exemptions, deductions, and other rules incorporated into federal law outside the Internal Revenue Code as of March 31, 2021. Most notably, Indiana follows the exclusion of Paycheck Protection Program loan forgiveness from adjusted gross income because the forgiveness is found in Title 15 of the United States Code. In addition, due to the addition of clarifying provisions outside the Internal Revenue Code in the COVID-related Tax Relief Act of 2020, Indiana permits the deductibility of related expenses, notwithstanding IRC § 265, and also follows partnership and S corporation account and basis rules contained in the clarifying provisions.

Accordingly, Indiana follows the tax provisions of the CARES Act, the COVID-related Tax Relief Act of 2020, and the American Rescue Plan Act of 2021 as to the following items:

1. Paycheck Protection Program Loans (15 U.S.C. 9005 and COVID-related Tax Relief Act of 2020 § 276)
2. Qualified Emergency Financial Aid Grants (20 U.S.C. 1001 note and COVID-related Tax Relief Act of 2020 § 277)
3. United States Treasury Program Management Authority Loans (15 U.S.C. 9008 and COVID-related Tax Relief Act of 2020 § 278)
4. Emergency EIDL Grants and Targeted EIDL Advances (15 U.S.C. 9009, COVID-related Tax Relief Act of 2020 § 278, and American Rescue Plan Act of 2021 § 9672)
5. Restaurant Revitalization Grants (American Rescue Plan Act of 2021 § 9673)

Apart from the specific items listed, various government grants may or may not be includible in federal adjusted gross income without a specific statutory provision governing tax treatment. Absent a provision enacted into the Internal Revenue Code after March 31, 2021, that specifically changes such treatment, Indiana will follow the federal treatment of taxation related to such grants with no modification.

In addition, Indiana will follow the safe harbor provided by the Internal Revenue Service in Rev. Proc. 2021-20. If a taxpayer elects to use the safe harbor provided in those sections for federal income tax purposes, the taxpayer should report any deductions for the same tax year as those deductions are actually deducted for federal income tax purposes. Conversely, if a taxpayer does not elect to use the federal safe harbor, the taxpayer may not take advantage of the safe harbor treatment for Indiana tax purposes.

Items from Which Indiana Has a Stand-Alone Decoupling but on Which Federal Legislation Had an Impact

Excess Interest Deductions under IRC § 163(j)

Section 2306 of the CARES Act modified the rules for the interest deduction under IRC § 163(j) to increase the allowance of interest from thirty percent (30%) of modified taxable income to fifty percent (50%) for 2019 and 2020. In addition, certain special provisions were enacted with regard to business interest expenses incurred by partnerships and S corporations for 2020. Indiana has adopted the Internal Revenue Code as in effect March 31, 2021, thus incorporating the federal changes into Indiana law.

However, in 2018, Indiana decoupled from the provisions of IRC § 163(j), allowing the full amount of the deduction. The allowance of the full deduction will continue to be allowed. However, the amount of the Indiana modification may change compared to previous years due to changes in federal law.

Net Operating Loss Changes

Section 2303 of the CARES Act amended IRC § 172 to permit net operating loss carrybacks and increased the allowance of net operating losses available as carryforwards. In addition, § 281 of the COVID-related Tax Relief Act of 2020 permitted waiver of certain modifications in determining farm losses. Indiana has adopted the Internal Revenue Code as in effect March 31, 2021, thus incorporating the federal changes into Indiana law.

Due to the Indiana specific addback for federal net operating loss deductions, Indiana conformity modifications, and specific provisions in IC 6-3-2-2.5, IC 6-3-2-2.6, and IC 6-5.5-2-1, the net effect is that, despite Indiana not recognizing these changes, Indiana's overall treatment will remain unchanged. However, the amount of the Indiana modification may change compared to previous years due to changes in federal law.

Earned Income Tax Credit Amendments

Section 211 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 permitted taxpayers to elect to use their 2019 earned income in lieu of their earned income for the first taxable year beginning in 2020. Because this provision was not in the Internal Revenue Code as of the date specified in IC 6-3.1-21-6, Indiana did not recognize this provision. Thus, the amount of earned income in 2020 alone must be used for purposes of determining the 2020 Indiana earned income tax credit.

In addition, Sections 9621 through 9626 of the American Rescue Plan Act of 2021 made several chances to the federal earned income tax credit. These changes include the following provisions.

1. For 2021, reduction in the minimum age for childless individuals to qualify for the credit from 25 years of age to 18 to 24 years, depending on the category of the individual.
2. For 2021, elimination of the maximum age of 64 years for childless individuals to qualify for the credit.
3. Increased earned income phase-in amounts and percentage for 2021 for childless individuals.
4. Qualification for individuals who have eligible children with no taxpayer identification number to claim an earned income tax credit as a childless individual.
5. Allowance for certain separated individuals to claim the credit.
6. Increase in the allowable amount of disqualified income that individuals could have without losing eligibility for the credit.
7. An election to use 2019 earned income in lieu of 2021 earned income.

Because this provision was not in the Internal Revenue Code as of the date specified in IC 6-3.1-21-6, Indiana will not recognize these provisions. Thus, these provisions were disregarded for purposes of the 2021 and 2022 Indiana earned income tax credit.

However, the date specified in IC 6-3.1-21-6 was updated to refer to the EIC as in effect on January 1, 2023, which was retroactive to be effective for the 2023 Indiana tax year. For purposes of the Indiana earned income tax credit computation, if there are any modifications required from federal adjusted gross income to Indiana adjusted gross income, those modifications are not considered as part of the Indiana earned income tax credit computation. Refer to Income Tax Information Bulletin #92 for more information on the EIC, available at in.gov/dor/resources/tax-library/information-bulletins/.

Reporting of Differences

Except as otherwise provided, in the cases where Indiana has decoupled from federal treatment without a return code specified (i.e., a three-digit code other than Code 120 or Code 147) or a specified line on the return being included:

1. For 2018 through 2020, any positive adjustment (i.e., increasing Indiana adjusted gross income) should be reported using Code 120.
2. For entities other than individuals, any adjustment for 2018 and 2019 should be reported using Code 120, regardless of whether the adjustment was positive or negative.
3. For 2020, any negative adjustment (i.e., decreasing Indiana adjusted gross income) should be reported using Code 147.
4. For 2021 and later years, a three-digit code will be provided to report the necessary adjustments.

If a return was filed for the 2020 tax year reporting a Code 120 or Code 147 adjustment for an item listed in the section on notable items, the taxpayer may be required to file an amended income tax return to reverse the adjustment.

If a return has been filed reporting a disallowed excess business loss under IRC §461(*l*), a net operating loss addback, or an interest deduction modification for a previous year and the amount has been changed under federal law, an amended return for that year is not necessary if (1) the only adjustment is to reflect a deduction that was changed as a result of the CARES Act and (2) the amount of tax for that year is unchanged. However, if an amended return is later filed for other reasons (e.g., claiming a previously-unclaimed credit), then the amended return for that year should reflect the corrected modification under these sections. Any changes should be reported using the same line or three-digit code as would have been used otherwise for the adjustment.

For the retroactive inclusion of unemployment income, a taxpayer should not file an amended Indiana income tax return if the income from unemployment was:

(1) included in federal adjusted gross income prior to the adoption of IRC § 85(c) in the American Rescue Plan Act of 2021; or
(2) the excluded amount was properly added back using Code 120.

For electronically-filed returns, the Department will attempt to make any required adjustments to include unemployment compensation in Indiana adjusted gross income, the deduction for unemployment compensation, and any related adjustments automatically. For returns filed on paper, any adjustment will be required to be filed on an amended return.

If an amended return is filed to reflect an inclusion of unemployment compensation, the taxpayer will be required to use Code 120 if the taxpayer lists federal adjusted gross income that has excluded the unemployment income as permitted under IRC § 85(c).

Special Treatment of 2020 Retirement Benefits

For retirement benefits subject to the special three-year averaging election for 2020 federal tax purposes, an individual who originally reported the full amount of retirement benefits may treat the full amount of retirement benefit as taxable for Indiana purposes for 2020 and not taxable for 2021 and 2022. This treatment is subject to the following conditions:

1. An original Indiana income tax return reporting the full amount of retirement benefits as subject to Indiana tax must have been filed before April 30, 2021.
2. An amended Indiana income tax return treating such benefits as subject to tax evenly over the three-year period must not have been filed.
3. Any modification for retirement benefits for 2020 must have been reported using Code 120, and any modifications for 2021 and 2022 must report the federal inclusion using Code 147.
4. If an amended Indiana return is filed for any reason prior to the filing of the 2021 tax year return, the taxpayer must report retirement income consistent with federal treatment.

The taxpayer must treat all related tax attributes consistent with the modifications stated in this section.

If you have any questions concerning this bulletin, contact the Tax Policy Division at taxpolicy@dor.in.gov.

Robert J. Grennes, Jr.
Commissioner
Indiana Department of Revenue

Appendix: 2020 Revised Unemployment Compensation Worksheet

2020 Revised Unemployment Compensation Worksheet			
Note: If you were married but filing separately, and you lived with your spouse at any time during the year, enter -0- on line 7 of the worksheet. However, if you were married but filing separately, and lived apart from your spouse the entire year, enter $12,000 on line 7.			
1.	Unemployment compensation included on IT-40, line 1 or on IT-40PNR, Schedule A, line 36B (do not include any unemployment compensation issued by the U. S. Railroad Retirement Board).	1	
2.	Unemployment compensation excluded from federal AGI (do not include any unemployment compensation issued by U. S. Railroad Retirement Board). If filing an IT-40PNR, only use the portion of unemployment compensation excluded from federal AGI earned while an Indiana resident.	2	
3.	Add lines 1 and 2.	3	
4.	Federal adjusted gross income from federal Form 1040/1040SR, line 11.	4	
5.	Unemployment compensation excluded from federal AGI.	5	
6.	Add lines 4 and 5.	6	
7.	Enter $12,000 if single, or $18,000 if married filing a joint return.	7	
8.	Subtract line 7 from line 6. If zero or less, enter -0-.	8	
9.	Enter one-half of the amount on line 8 (divide line 8 by the number 2).	9	
10.	Taxable unemployment compensation for Indiana purposes: enter the amount from either line 3 or line 9, whichever is smaller.	10	
11.	Subtract line 10 from line 3. Carry this amount to Schedule 2, line 10 (or Schedule C, Line 10 if filing Form IT-40PNR). If zero or less, enter -0-.	11	