

Your question was whether the late filing penalty would apply to those who work in Indiana, live in Michigan, whose employers withhold county tax but not state tax since there is a reciprocal agreement in place.

Yes, even those who would file the RNR need to file timely even if it is only filed to fulfill the county tax calculation obligation.

### **Penalty for failure to file by the due date when no remit is due and no valid extension exists**

The new penalty will first impact the 2009 individual income tax returns (IT-40, IT-40EZ, IT-40PNR, IT-40RNR – not the SC-40, as no one required to file may file an SC-40) due April 15, 2010.

Regarding reciprocal state residents' filing requirements:

- IC 6-3-4-1 (2) requires a nonresident with any Indiana-source income to file with Indiana
- IC 6-3-2-1 imposes a 3.4% adjusted gross income tax rate
- IC 6-3-5-1 exempts reciprocal state residents from the 3.4% adjusted gross income tax, but does not exempt reciprocal state residents from the requirement to file (IC 6-3-4-1)

Bottom line: the new penalty applies to IT-40RNR filers.

### **IC 6-8.1-10-3.5 Failure to file return; penalty for past due returns** *Effective 1-1-2009.*

Sec. 3.5. If a person fails to file a return on or before the due date as required by IC 6-3-4-1(1) or IC 6-3-4-1(2), where no remittance is due with the return, the person is subject to a penalty of ten dollars (\$10) per day for each day that the return is past due, up to a maximum of five hundred dollars (\$500). As added by P.L.131-2008, SEC.31.

### **IC 6-3-4-1 (1) Who must make returns**

Sec. 1. Returns with respect to taxes imposed by this act shall be made by the following:  
(1) Every resident individual having for the taxable year gross income in an amount greater than the modifications provided under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).

### **IC 6-3-4-1 (2) Who must make returns**

Sec. 1. Returns with respect to taxes imposed by this act shall be made by the following:  
(2) Every nonresident individual having for the taxable year any gross income from sources within the state of Indiana, except for a team member (as defined in IC 6-3-2-2.7) who is covered by a composite return filed under IC 6-3-2-2.7.

### **\*IC 6-3-5-1 Nonresidents; Indiana income (Reciprocal Agreement)**

Sec. 1. *The tax imposed* by IC 6-3-2 on the adjusted gross income derived from sources within the state of Indiana by persons who are nonresidents of this state, shall not be payable if the laws of the state or territory of residence of such persons, at the time such adjusted gross income was earned in this state, contained a reciprocal provision by which residents of this state were exempted from taxes imposed by such state on income earned in such state

### **IC 6-3-2-1 Tax rate**

Sec. 1. (a) Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

I hope the above information is helpful to you and your clients this filing season.  
Sincerely,

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