SENATE BILL No. 337

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-13-26; IC 6-3.1-22.

Synopsis: Tax credit for new machinery. Authorizes the economic development for a growing economy board to award an income tax credit for the purchase of new manufacturing machinery and equipment that fosters job retention in Indiana. Authorizes the board to determine the amount of the credit, which may be expressed as a percentage of the purchase price of the new machinery. Provides that the duration of the credit may not exceed ten years. Authorizes the board to increase the amount of the credit for machinery installed in a city having a population over 50,000, certain economically distressed counties, or a city, county, or town experiencing the closing or downsizing of a major employer. Requires a taxpayer awarded a tax credit to agree to maintain operations at the project location for at least two times the number of years as the term of the tax credit.

Effective: January 1, 2001.

Simpson

January 10, 2000, read first time and referred to Committee on Finance.

Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

SENATE BILL No. 337

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

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

SECTION 1. IC 6-3.1-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 26. (a) The economic development for a growing economy fund is established to be used exclusively for the purposes of this chapter **and IC 6-3.1-22,** including paying for the costs of administering this chapter **and IC 6-3.1-22.** The fund shall be administered by the department of commerce.

(b) The fund consists of collected fees, appropriations from the general assembly, and gifts and grants to the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter **and IC 6-3.1-22.** Expenditures from the fund are subject to appropriation by the general assembly and approval by the budget agency.

SECTION 2. IC 6-3.1-22 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]:

Chapter 22. New Manufacturing Machinery and Equipment Tax Credit

Sec. 1. As used in this chapter, "board" means the economic development for a growing economy board established by IC 6-3.1-13-12.

Sec. 2. As used in this chapter, "director" means the director of the department of commerce.

Sec. 3. As used in this chapter, "distressed area" means:

(1) a city that has a population of at least fifty thousand (50,000); or

(2) a county that meets at least two (2) of the following criteria of economic distress:

(A) The county's average rate of unemployment during the most recent five (5) year period for which data is available is equal to at least one hundred twenty-five percent (125%) of the average rate of unemployment for the United States for the same period.

(B) The county's per capita income is equal to or below eighty percent (80%) of the median county per capita income of the United States as determined by the most recently available figures from the United States Census Bureau.

(C) At least twenty percent (20%) of the county's residents have a total income for the most recent census year that is below the federal income poverty level.

Sec. 4. As used in this chapter, "eligible area" means a distressed area, a labor surplus area, or a situational distress area.

Sec. 5. As used in this chapter, "federal income poverty level" means the nonfarm income official poverty line as determined annually by the federal Office of Management and Budget.

Sec. 6. As used in this chapter, "labor surplus area" means an area designated as a labor surplus area by the United States Department of Labor.

Sec. 7. As used in this chapter, "manufacturing machinery and equipment" means engines, machinery, tools, and implements of every kind used or designed to be used, in refining and manufacturing.

Sec. 8. As used in this chapter, "new manufacturing machinery

and equipment" means manufacturing machinery and equipment for which the original use in Indiana begins with the taxpayer.

Sec. 9. As used in this chapter, "pass through entity" means:

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

(2) a partnership.

Sec. 10. As used in this chapter, "purchase" has the meaning set forth in Section 179(d)(2) of the Internal Revenue Code.

Sec. 11. As used in this chapter, "situational distress area" means a county, city, or town that has experienced or is experiencing a closing or downsizing of a major employer that will adversely affect the county's or municipal corporation's economy.

Sec. 12. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-2.1 (the gross income tax);

(2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(3) IC 6-3-8 (the supplemental net income tax);

(4) IC 27-1-18-2 (the insurance premiums tax); and

(5) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 13. As used in this chapter, "taxpayer" means a person, corporation, partnership, or other entity that has any state tax liability.

Sec. 14. As used in this chapter, "unit" means a county, city, or town.

Sec. 15. A unit experiencing a closing or downsizing of a major employer may petition the board to be designated as a situational distress area for a period not to exceed thirty-six (36) months. The petition must include written documentation that demonstrates all of the following adverse effects of the closing or downsizing on the local economy:

(1) The number of jobs lost by the closing or downsizing.

(2) The impact that the job loss has on the unit's unemployment rate as measured by the department of workforce development.

(3) The annual payroll associated with the job loss.

(4) The amount of state and local taxes associated with the job loss.

(5) The impact that the closing or downsizing has on the suppliers located in the county or municipal corporation.

Sec. 16. Subject to the conditions set forth in this chapter, a taxpayer is entitled to a credit against any state tax liability that may be imposed on the taxpayer for a taxable year beginning after December 31, 2000, if the taxpayer is awarded a credit by the board under this chapter for that taxable year.

Sec. 17. (a) The board may make credit awards under this chapter to foster job retention in Indiana.

(b) The credit shall be claimed for the taxable years specified in the taxpayer's tax credit agreement.

Sec. 18. A person that purchases new manufacturing machinery and equipment to retain jobs in Indiana may apply to the board to enter into an agreement for a tax credit under this chapter. The director shall prescribe the form of the application.

Sec. 19. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all the following conditions exist:

(1) The applicant's project will retain jobs in Indiana.

(2) The political subdivisions affected by the project have committed significant local incentives with respect to the project.

(3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not retaining jobs in Indiana.

(4) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

Sec. 20. (a) In determining the credit amount that should be awarded, the board shall take into consideration the following factors:

(1) The economy of the county where the purchase of new manufacturing machinery and equipment is to occur.

(2) The potential impact on the economy of Indiana.

(3) The incremental payroll attributable to the purchase.

(4) The capital investment attributable to the purchase.

(5) The amount the average wage paid by the applicant exceeds the average wage paid within the county in which the project will be located.

(6) The costs to Indiana and the affected political subdivisions with respect to the project.

(7) The financial assistance that is otherwise provided by Indiana and the affected political subdivisions.

(b) The board may increase the amount of the credit awarded under this chapter for the purchase of new manufacturing machinery and equipment that is installed in an eligible area.

Sec. 21. The board shall determine the amount and duration of a tax credit awarded under this chapter. The duration of the credit may not exceed ten (10) taxable years. The credit may be stated as a percentage of the purchase price of the new manufacturing machinery and equipment and may include a fixed dollar limitation. However, the credit amount claimed for a taxable year may not exceed the taxpayer's state tax liability for the taxable year.

Sec. 22. The board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the purchase of new manufacturing machinery and equipment that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the taxpayer shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit.

(5) A requirement that the taxpayer shall provide written notification to the director and the board not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(6) Any other performance conditions that the board determines are appropriate.

Sec. 23. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

Sec. 24. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

Sec. 25. If the director determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department of commerce of the noncompliance and request an assessment. The director shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter. After receiving a notice, the department of commerce shall make an assessment against the taxpayer under IC 6-8.1 for the amount stated in the director's notice.

Sec. 26. The department of commerce may adopt rules under IC 4-22-2 necessary to implement this chapter. The rules may provide for recipients of tax credits under this chapter to be charged fees to cover administrative costs of the tax credit program. Fees collected shall be deposited in the economic development for a growing economy fund established by IC 6-3.1-13-26.

SECTION 3. [EFFECTIVE JANUARY 1, 2001] **IC 6-3.1-22, as added by this act, applies to taxable years beginning after December 31, 2000.**