

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 2008 be amended to read as follows:

- 1 Page 52, between lines 20 and 21, begin a new paragraph and insert:
- 2 "SECTION 29. IC 6-3.1-26 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]:
- 5 **Chapter 26. Small Business Expansion Credit**
- 6 **Sec. 1. As used in this chapter, "acquire" means to:**
- 7 (1) produce qualified property for use in the taxpayer's trade
- 8 or business, including depreciable improvements to leased
- 9 property; or
- 10 (2) obtain the use of qualified property by purchase.
- 11 **Sec. 2. As used in this chapter, "credit" refers to a credit**
- 12 **provided by this chapter against state tax liability.**
- 13 **Sec. 3. As used in this chapter, "depreciable cost" means the**
- 14 **initial costs incurred by a taxpayer before putting qualified**
- 15 **property into service that would be allowable as a depreciation**
- 16 **deduction under Section 167 of the Internal Revenue Code or an**
- 17 **amortization deduction under Section 197 of the Internal Revenue**
- 18 **Code (as applicable), regardless of whether that method of**
- 19 **deduction is used by the taxpayer for federal income tax purposes.**
- 20 **Sec. 4. As used in this chapter, "pass through entity" means:**
- 21 (1) a corporation that is exempt from the adjusted gross
- 22 income tax under IC 6-3-2-2.8(2); or
- 23 (2) a
- 24 (A) partnership;

- 1 **(B) trust;**
 2 **(C) limited liability company; or**
 3 **(D) limited liability partnership;**
 4 **that is not taxed as a corporation under IC 6-3.**

5 **Sec. 5. As used in this chapter, "qualified property" refers to**
 6 **property that section 12 of this chapter indicates is eligible for a**
 7 **credit.**

8 **Sec. 6. As used in this chapter, "small business" means a sole**
 9 **proprietorship operated by a person, corporation, or pass through**
 10 **entity that:**

- 11 **(1) is independently owned and operated;**
 12 **(2) is not dominant in its field of operation; and**
 13 **(3) qualifies as a small business concern under the criteria**
 14 **established in 15 U.S.C. 632 (as in effect July 1, 2003) and the**
 15 **definitions and standards established by the administrator of**
 16 **the federal Small Business Administration for a small business**
 17 **concern under 15 U.S.C. 632 (as in effect July 1, 2003).**

18 **Sec. 7. As used in this chapter, "state tax liability" means tax**
 19 **liability for adjusted gross income tax under IC 6-3.**

20 **Sec. 8. As used in this chapter, "taxpayer" refers to a person or**
 21 **a corporation that has state tax liability in a taxable year or a pass**
 22 **through entity that is eligible for a credit under this chapter.**

23 **Sec. 9. As used in this chapter, "trade or business" means trade**
 24 **or business as the term is used in Section 167 of the Internal**
 25 **Revenue Code.**

26 **Sec. 10. As used in this chapter, "useful life" means the**
 27 **following:**

- 28 **(1) The period over which Section 167, 168, or 197 of the**
 29 **Internal Revenue Code (as applicable) requires a depreciation**
 30 **or allocation deduction to be taken for particular qualified**
 31 **property for federal income tax purposes, if the taxpayer does**
 32 **not elect to use a useful life determined under subdivision (2).**
 33 **(2) The period that 26 CFR 167(a)-1 would require a**
 34 **depreciation deduction to be taken if that method were**
 35 **applicable to the property. However, this subdivision applies**
 36 **only if the taxpayer elects this method of calculating useful life**
 37 **in the manner prescribed by the department.**

38 **Sec. 11. (a) The credit granted under this section applies only to**
 39 **taxable years beginning after December 31, 2005.**

- 40 **(b) A taxpayer that:**
 41 **(1) places qualified property in service in Indiana in a trade**
 42 **or business in a taxable year beginning after December 31,**
 43 **2005;**
 44 **(2) uses the qualified property in Indiana in a trade or**
 45 **business during the useful life of the qualified property; and**
 46 **(3) qualifies as a small business in the taxable year in which**
 47 **the taxpayer places the qualified property in service in**

1 **Indiana;**
 2 **is eligible for a credit.**

3 **Sec. 12. Subject to sections 13 through 17 of this chapter, the**
 4 **following property is eligible for a credit under this chapter:**

5 **(1) Tangible or intangible property for which a deduction for**
 6 **depreciation is allowable under Section 167 of the Internal**
 7 **Revenue Code (including software that is not a Section 197**
 8 **intangible, as determined under Section 197 of the Internal**
 9 **Revenue Code), regardless of whether the taxpayer takes a**
 10 **depreciation deduction under Section 167 of the Internal**
 11 **Revenue Code.**

12 **(2) Any license, right, or interest in a patent, copyright,**
 13 **formula, process, design, pattern, know-how, format, or other**
 14 **similar item for which an amortization deduction is allowable**
 15 **under Section 197 of the Internal Revenue Code, regardless of**
 16 **whether the taxpayer takes an amortization deduction under**
 17 **Section 197 of the Internal Revenue Code.**

18 **Sec. 13. (a) This section does not apply to a nonexclusive license,**
 19 **right, or interest in property described in section 12(2) of this**
 20 **chapter that is acquired directly from the person, corporation, or**
 21 **pass through entity that controls the right to grant nonexclusive**
 22 **licenses, rights, or interests in the property.**

23 **(b) To be eligible for a credit, property must not have been used**
 24 **in any other trade or business in Indiana for at least one (1) year**
 25 **before it is acquired by the taxpayer.**

26 **Sec. 14. Property is not eligible for a credit if:**

27 **(1) it is acquired from a shareholder, partner, or member of**
 28 **a taxpayer that has a relationship to the taxpayer described**
 29 **in Section 267(b) of the Internal Revenue Code;**

30 **(2) it is acquired from a member of the family (as determined**
 31 **under Section 267 of the Internal Revenue Code) of a**
 32 **shareholder, partner, or member that directly, indirectly,**
 33 **beneficially, by attribution (as determined under Section 1567**
 34 **of the Internal Revenue Code), or constructively owns at least**
 35 **fifty percent (50%) of the stock or other equity interest in a**
 36 **taxpayer;**

37 **(3) it is acquired by one (1) component member of a**
 38 **controlled group (as defined in Section 267 of the Internal**
 39 **Revenue Code) that includes the taxpayer or would be a**
 40 **component member if pass through entities were treated as**
 41 **corporations under Section 267 of the Internal Revenue Code;**

42 **(4) the basis of the property for federal income tax purposes,**
 43 **in the hands of the person acquiring it, is determined:**

44 **(A) in whole or in part by reference to the federal adjusted**
 45 **basis of the property in the hands of the person,**
 46 **corporation, or pass through entity from whom it was**
 47 **acquired; or**

1 **(B) under Section 1014(e) of the Internal Revenue Code; or**
 2 **(5) the property is used to substantially replace other**
 3 **property used by:**

4 **(A) the taxpayer; or**

5 **(B) another person, corporation, or pass through entity**
 6 **described in subdivision (1), (2), or (3);**
 7 **in a trade or business in Indiana.**

8 **Sec. 15. To be eligible for a credit, property must be primarily**
 9 **used in Indiana in a trade or business other than an excluded trade**
 10 **or business. For purposes of this section, rental or leasing of**
 11 **property to another person or entity shall be treated as an excluded**
 12 **trade or business.**

13 **Sec. 16. The following excluded property is not eligible for a**
 14 **credit:**

15 **(1) Motor vehicles licensed by the bureau of motor vehicles or**
 16 **by another state or country.**

17 **(2) Airplanes.**

18 **(3) Other off-premises transportation equipment.**

19 **Sec. 17. Property that is used in or as part of any of the**
 20 **following excluded facilities is not eligible for a credit:**

21 **(1) Private or commercial golf course.**

22 **(2) Country club.**

23 **(3) Massage parlor.**

24 **(4) Tennis club.**

25 **(5) Skating facility (including roller skating, skateboarding, or**
 26 **ice skating).**

27 **(6) Racquet sport facility (including any handball or**
 28 **racquetball court).**

29 **(7) Hot tub facility.**

30 **(8) Suntan facility.**

31 **(9) Racetrack.**

32 **(10) Any facility the primary purpose of which is:**

33 **(A) retail food and beverage service;**

34 **(B) automobile sales or service; or**

35 **(C) other retail.**

36 **(11) Residential property.**

37 **(12) A package liquor store that holds a liquor dealer's permit**
 38 **under IC 7.1-3-10 or any other entity that is required to**
 39 **operate under a license issued under IC 7.1.**

40 **Sec. 18. The amount of the credit accruing to a taxpayer for a**
 41 **taxable year is equal to the lesser of the following:**

42 **(1) Thirty percent (30%) of the depreciable cost of the**
 43 **qualified property placed in service in Indiana in a taxable**
 44 **year.**

45 **(2) Six hundred thousand dollars (\$600,000), in total, for all**
 46 **qualified property placed in service in Indiana in a taxable**
 47 **year.**

1 **Sec. 19. The taxpayer is eligible to:**

- 2 (1) apply the credit to the taxpayer's tax liability; or
 3 (2) distribute the credit to the taxpayer's members,
 4 shareholders, or partners (if the taxpayer is a pass through
 5 entity);

6 in the taxable year in which qualified property is placed in service
 7 in Indiana in a trade or business and in each of the immediately
 8 following four (4) taxable years.

9 **Sec. 20. Twenty percent (20%) of the credit amount determined**
 10 **under section 18 of this chapter, excluding any part of the credit**
 11 **carried forward from a prior taxable year, may be applied to the**
 12 **state tax liability of the taxpayer in each of the taxable years in**
 13 **which the taxpayer may take the credit under section 19 of this**
 14 **chapter.**

15 **Sec. 21. If the amount of the credit, after applying any part of**
 16 **the credit that is carried forward from a prior taxable year, is**
 17 **greater than the taxpayer's state tax liability for the taxable year,**
 18 **the taxpayer may carry forward the unused part of the credit to**
 19 **not more than ten (10) subsequent taxable years. The amount of**
 20 **the tax credit that is applied to the taxpayer's state tax liability**
 21 **reduces the amount of the credit that may be carried forward to a**
 22 **subsequent taxable year. A taxpayer is not eligible to carry back or**
 23 **obtain a refund of any unused credit.**

24 **Sec. 22. (a) If a pass through entity does not have state tax**
 25 **liability against which the credit may be applied, a shareholder,**
 26 **partner, or member of the pass through entity is entitled to a credit**
 27 **equal to:**

- 28 (1) the credit determined for the pass through entity for the
 29 taxable year; multiplied by
 30 (2) the percentage of the pass through entity's distributive
 31 income to which the shareholder, partner, or member is
 32 entitled.

33 **(b) The credit provided under subsection (a) is in addition to a**
 34 **credit to which a shareholder, partner, or member of a pass**
 35 **through entity is otherwise entitled under this chapter. However,**
 36 **a pass through entity and a shareholder, partner, or member of the**
 37 **pass through entity may not claim a credit under this chapter for**
 38 **the same qualified property.**

39 **Sec. 23. To receive the credit provided by this chapter, a:**

- 40 (1) taxpayer; or
 41 (2) shareholder, partner, or member of a taxpayer that is a
 42 pass through entity;

43 **must claim the credit on the person or corporation's annual state**
 44 **tax return or returns in the manner prescribed by the department.**
 45 **The person or corporation shall submit to the department all**
 46 **information that the department determines is necessary for the**
 47 **calculation of the credit provided by this chapter and for the**

1 determination of whether the person or corporation is eligible for
 2 the credit. The department may require a pass through entity to
 3 provide all information necessary to determine the amount of the
 4 credit to which a shareholder, partner, or member is entitled.

5 **Sec. 24.** For purposes of applying sections 25 through 26 of this
 6 chapter, if:

7 (1) the taxpayer places in service in a taxable year qualified
 8 property with depreciable cost, in total, of more than two
 9 million dollars (\$2,000,000); and

10 (2) section 18 of this chapter limits the total amount of the
 11 credit that is available for that taxable year to six hundred
 12 thousand dollars (\$600,000);

13 the credit shall be apportioned among the items of qualified
 14 property placed in service in Indiana in that taxable year in the
 15 manner prescribed by the department.

16 **Sec. 25.** The credit is reduced to zero (0) to the extent that the
 17 taxpayer uses:

18 (1) another credit provided under this article for the same
 19 property, an investment in the same property, compensation
 20 paid to an employee who uses the same property, or a project
 21 that involves the same property; or

22 (2) an enterprise zone deduction under IC 6-3-2-8 for
 23 compensation paid to an employee who uses the same
 24 property.

25 **Sec. 26.** Except as provided in sections 27 through 29 of this
 26 chapter, the credit provided by this chapter is reduced to the
 27 amount determined under section 30 of this chapter if the
 28 taxpayer:

29 (1) disposes of the qualified property; or

30 (2) otherwise permanently ceases to use the property as
 31 qualified property;

32 before the end of the useful life of the qualified property.

33 **Sec. 27.** A credit is not reduced to the extent that the qualified
 34 property ceases to be used in Indiana as a result of a loss arising
 35 from fire, storm, other casualty, or theft that would qualify for a
 36 casualty loss under Section 165 of the Internal Revenue Code.
 37 However, if the property is replaced, the replacement property is
 38 not eligible for an additional credit under this chapter.

39 **Sec. 28.** A credit is not reduced to the extent that property is:

40 (1) replaced by other property providing the same or similar
 41 function (with or without enhancements); and

42 (2) the replacement property is used as qualified property for
 43 at least the remainder of the useful life of the replaced
 44 property.

45 **Sec. 29. (a)** A credit is not reduced to the extent that:

46 (1) the basis of the property for federal income tax purposes,
 47 in the hands of the person, corporation, or pass through entity

1 acquiring it or otherwise obtaining control over it, is
2 determined:

3 (A) in whole or in part by reference to the federal adjusted
4 basis of the property in the hands of the person,
5 corporation, or pass through entity from whom it was
6 acquired; or

7 (B) under Section 1014(e) of the Internal Revenue Code;
8 (2) the person, corporation, or pass through entity acquiring
9 the property elects, in the manner prescribed by the
10 department, to be treated as the taxpayer for purposes of this
11 chapter; and

12 (3) the property continues to be used as qualified property for
13 at least the remainder of the useful life of the replaced
14 property, as determined as if the property were in the hands
15 of the original taxpayer that was eligible for the credit.

16 (b) The electing person, corporation, or pass through entity
17 shall be treated as the taxpayer for purposes of taking any credit
18 under this chapter and paying any recaptured amount under this
19 chapter.

20 Sec. 30. The reduced credit under section 26 of this chapter is
21 the amount determined under STEP FOUR of the following
22 formula:

23 STEP ONE: Determine the number of months in the useful
24 life of the qualified property beginning with the month in
25 which the qualified property is placed in service in Indiana in
26 a trade or business.

27 STEP TWO: Determine the number of months that the
28 property was used as qualified property beginning with the
29 month in which the qualified property is placed in service in
30 Indiana in a trade or business.

31 STEP THREE: Divide the STEP TWO amount by the STEP
32 ONE amount.

33 STEP FOUR: Multiple the depreciable cost of the property by
34 the STEP THREE result.

35 Sec. 31. (a) The difference between:

36 (1) the total amount of the credit for qualified property that
37 is:

38 (A) applied to state tax liability; or

39 (B) distributed to the shareholders, partners, or members
40 of the taxpayer, if the taxpayer is a pass through entity;
41 and

42 (2) the amount of the reduced credit;
43 shall be treated as a listed tax due from the taxpayer on the day
44 that the person, corporation, or pass through entity's annual
45 return is due for the taxable year in which the property
46 permanently ceases to be used as qualified property.

47 (b) However, the amount due under subsection (a) from a pass

1 through entity is reduced to the extent that the pass through entity
2 presents proof to the department that:

- 3 (1) credits distributed to shareholders, partners, or members
4 have not been applied to any state tax liability; or
5 (2) the shareholders, partners, or members have paid the tax
6 liability due from the pass through entity.

7 (c) If the taxpayer is a pass through entity, each of the
8 shareholders, partners, or members of the pass through entity shall
9 be treated as having a listed tax due for any amount of the tax
10 recapture that is not paid by the pass through entity in proportion
11 to the total credits allocated to the shareholder, partnership, or
12 member in or before the taxable year in which recapture occurs.

13 **Sec. 32. The department may adopt rules under IC 4-22-2 and
14 prescribe forms to implement this chapter.**

15 SECTION 30. IC 6-3.1-27 IS ADDED TO THE INDIANA CODE
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2003]:

18 **Chapter 27. Small Business Job Creation Credit**

19 **Sec. 1. As used in this chapter, "credit" refers to a credit
20 provided by this chapter against state tax liability.**

21 **Sec. 2. As used in this chapter, "employee expense" means the
22 sum of the following, attributable to a new employee, that are
23 incurred as out-of-pocket expenses by a taxpayer in a taxable year:**

- 24 (1) Wages and other compensation, including amounts that
25 constitute deferred compensation paid to a retirement plan
26 that qualifies the employee for a deferral of the federal
27 income taxes due on the amounts paid to the plan.
28 (2) The employer's share of Social Security taxes.
29 (3) State and federal unemployment taxes and any other
30 employee related premiums or payments required under
31 IC 22.
32 (4) Premiums or other payments made for pension, health
33 care, disability, or death benefits for the employee or other
34 person insured through the employee.

35 **Sec. 3. As used in this chapter, "full-time employee" means an
36 individual who is employed for consideration for at least thirty-five
37 (35) hours each week or who renders any other standard of service
38 generally accepted by custom or specified by contract as full-time
39 employment.**

40 **Sec. 4. (a) As used in this chapter "new employee" means a
41 full-time employee first employed by a taxpayer:**

- 42 (1) after the department of commerce issues a certification
43 under section 11 of this chapter for the taxpayer; and
44 (2) in the project that is the subject of a credit certification
45 under section 11 of this chapter.

46 **(b) The term does not include any of the following:**

- 47 (1) An employee of the taxpayer who performs a job that was

1 previously performed by another employee, if that job existed
2 for at least six (6) months before hiring the new employee.

3 (2) An employee of the taxpayer who was previously employed
4 in Indiana by a related member of the taxpayer and whose
5 employment was shifted to the taxpayer after the taxpayer
6 received a certification under section 10 of this chapter.

7 (3) A child, grandchild, parent, or spouse (other than a spouse
8 who is legally separated from the individual) of any individual
9 who:

10 (A) is an employee of the taxpayer (or self-employed as the
11 taxpayer); and

12 (B) has a direct or an indirect ownership interest of at least
13 five percent (5%) in the profits, capital, or value of the
14 taxpayer, as determined in accordance with Section 1563
15 of the Internal Revenue Code and regulations prescribed
16 under Section 1563 of the Internal Revenue Code or would
17 have at least a five percent (5%) if pass through entities
18 were treated as corporations under Section 1563 of the
19 Internal Revenue Code.

20 **Sec. 5. As used in this chapter, "pass through entity" means:**

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

23 (2) a:

24 (A) partnership;

25 (B) trust;

26 (C) limited liability company; or

27 (D) limited liability partnership;

28 that is not taxed as a corporation under IC 6-3.

29 **Sec. 6. As used in this chapter, "related member" means a**
30 **person, corporation, or pass through entity that, with respect to the**
31 **taxpayer during all or any part of the taxable year, is any one (1)**
32 **of the following:**

33 (1) A shareholder, partner, or member of a taxpayer that has
34 a relationship to the taxpayer described in Section 267(b) of
35 the Internal Revenue Code.

36 (2) A member of the family (as determined under Section 267
37 of the Internal Revenue Code) of a shareholder, partner, or
38 member that directly, indirectly, beneficially, by attribution
39 (as determined under Section 1567 of the Internal Revenue
40 Code), or constructively owns at least fifty percent (50%) of
41 the stock or other equity interest in a taxpayer.

42 (3) One (1) component member of a controlled group (as
43 defined in Section 267 of the Internal Revenue Code) that
44 includes the taxpayer or would be a component member if
45 pass through entities were treated as corporations under
46 Section 267 of the Internal Revenue Code.

47 **Sec. 7. As used in this chapter, "small business" means a sole**

1 proprietorship operated by a person, a corporation, or a pass
2 through entity that:

- 3 (1) is independently owned and operated;
4 (2) is not dominant in its field of operation; and
5 (3) qualifies as a small business concern under the criteria
6 established in 15 U.S.C. 632 (as in effect July 1, 2003) and the
7 definitions and standards established by the administrator of
8 the federal Small Business Administration for a small business
9 concern under 15 U.S.C. 632 (as in effect July 1, 2003).

10 Sec. 8. As used in this chapter, "state tax liability" means tax
11 liability for adjusted gross income tax under IC 6-3.

12 Sec. 9. As used in this chapter, "taxpayer" refers to a person or
13 corporation that has state tax liability in a taxable year or a pass
14 through entity that is eligible for a credit under this chapter.

15 Sec. 10. A taxpayer may apply to the department of commerce
16 to certify the taxpayer as a small business employer of at least five
17 (5) new employees in the manner and at the time prescribed by the
18 department of commerce. The taxpayer must provide sufficient
19 information for the department of commerce to determine that the
20 taxpayer is likely to qualify for the credit.

21 Sec. 11. (a) The department of commerce may require annual
22 recertification of a taxpayer as a small business employer or may
23 provide for a multiyear certification of a taxpayer as a small
24 business employer on the terms prescribed by the department of
25 commerce. If the department of commerce determines that the
26 applicant taxpayer is likely to qualify for a credit, the department
27 of commerce shall certify that the taxpayer is a small business
28 employer of at least five (5) new employees.

29 (b) The certification must include the following:

- 30 (1) A detailed description of the project that will result in the
31 employment of new employees.
32 (2) A description of the credit that will be allowed for each
33 taxable year under sections 13 and 14 of this chapter.
34 (3) A description of the duration of the credit and the first
35 taxable year for which the credit may be claimed under
36 section 15 of this chapter.
37 (4) A description of the method for determining the number
38 of new employees employed during a taxable year.
39 (5) A description of the requirement under section 20 of this
40 chapter that the taxpayer must employ at least the number of
41 new employees specified under subdivision (6) in the project
42 for at least one hundred twenty (120) months beginning with
43 the month specified in the certification.
44 (6) The minimum number of new employees that must be
45 employed in a project to qualify the taxpayer for a credit,
46 which may not be less than five (5), using data provided by the
47 taxpayer concerning the number of new employees that the

- 1 taxpayer is likely to employ and any other data available to
2 the department of commerce.
- 3 (7) The maximum number of new employees for which a
4 credit may be taken under this chapter, which may not exceed
5 fifty (50), using data provided by the taxpayer concerning the
6 number of new employees that the taxpayer is likely to employ
7 and any other data available to the department of commerce.
- 8 (8) The maximum total credit amount that may be taken
9 under this chapter, using data provided by the taxpayer
10 concerning the likely employee expenses that will be incurred
11 by the taxpayer and the number of new employees that the
12 taxpayer is likely to employ and any other data available to
13 the department of commerce.
- 14 (c) With the consent of the applicant taxpayer, a certification
15 issued under this section may be amended at any time.
- 16 Sec. 12. (a) The department of commerce may not certify a
17 full-time employee position as eligible for a credit if the full-time
18 employee position is in a facility described in IC 6-3.1-26-17.
- 19 (b) A credit is not available under this chapter for employee
20 expenses incurred for an individual employed in a facility
21 described in IC 6-3.1-26-17.
- 22 Sec. 13. (a) The credit granted by this section applies only to
23 taxable years beginning after December 31, 2005.
- 24 (b) A taxpayer that:
- 25 (1) is certified by the department of commerce as a small
26 business employer of at least five (5) new employees;
27 (2) employs at least five (5) new employees in Indiana in a
28 taxable year beginning after December 31, 2005; and
29 (3) qualifies as a small business in the taxable year in which
30 the taxpayer incurs employee expenses for new employees;
31 is eligible for a credit.
- 32 Sec. 14. The amount of the credit for a taxpayer in a taxable
33 year is equal to thirty percent (30%) of the employee expenses
34 attributable to the lesser of:
- 35 (1) the number of new employee's employed by the taxpayer
36 in each month of the taxable year; or
37 (2) the number of new employees specified by the department
38 of commerce in the certification under section 11 of this
39 chapter.
- 40 However, the total amount of credits that the taxpayer may take in
41 all taxable years may not exceed the amount specified in section
42 11(b)(8) of this chapter.
- 43 Sec. 15. The credit is available for employee expenses in each of
44 the five (5) taxable years beginning with the taxable year
45 immediately following the taxable year in which the taxpayer is
46 certified as a small business employer under section 11 of this
47 chapter.

1 **Sec. 16. If the amount of the tax credit, after applying any part**
 2 **of the credit that is carried forward from a prior taxable year, is**
 3 **greater than the taxpayer's state tax liability for the taxable year,**
 4 **the taxpayer may carry forward the unused part of the credit to**
 5 **not more than ten (10) subsequent taxable years. The amount of**
 6 **the tax credit that is applied to the taxpayer's state tax liability**
 7 **reduces the amount of the credit that may be carried forward to a**
 8 **subsequent taxable year. A taxpayer is not eligible to carry back or**
 9 **obtain a refund of any unused credit.**

10 **Sec. 17. (a) If a pass through entity does not have state tax**
 11 **liability against which the credit may be applied, a shareholder,**
 12 **partner, or member of the pass through entity is entitled to a credit**
 13 **equal to:**

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

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

19 **(b) The credit provided under subsection (a) is in addition to a**
 20 **credit to which a shareholder, partner, or member of a pass**
 21 **through entity is otherwise entitled under this chapter. However,**
 22 **a pass through entity and a shareholder or partner of the pass**
 23 **through entity may not claim a credit under this chapter for the**
 24 **same new employees.**

25 **Sec. 18. To receive the credit provided by this chapter, a:**

26 (1) taxpayer; or

27 (2) shareholder, partner, or member of a taxpayer that is a
 28 pass through entity;

29 **must claim the credit on the individual or entity's annual state tax**
 30 **return or returns in the manner prescribed by the department. The**
 31 **individual or entity shall submit to the department all information**
 32 **that the department determines is necessary for the calculation of**
 33 **the credit provided by this chapter and for the determination of**
 34 **whether the individual or entity is eligible for the credit. The**
 35 **department may require a pass through entity to provide sufficient**
 36 **information for the department to determine the amount of the**
 37 **credit to which a shareholder, partner, or member is entitled.**

38 **Sec. 19. The credit is reduced to zero (0) to the extent that the**
 39 **taxpayer uses:**

40 (1) another credit provided under this article for the same
 41 project, property used in the same project, an investment in
 42 the same project, or compensation paid to an employee who
 43 is employed in the same project or who uses property that is
 44 part of the same project; or

45 (2) an enterprise zone deduction under IC 6-3-2-8 for
 46 compensation paid to an employee who is employed in the
 47 same project or who uses property that is part of the same

1 project.

2 **Sec. 20.** Except as provided in sections 21 through 22 of this
3 chapter, the credit is reduced in any taxable year to the extent that
4 the taxpayer employs in the project fewer than the number of new
5 employees specified by the department of commerce in the
6 certification under section 11 of this chapter during any of the one
7 hundred twenty (120) consecutive months beginning with the
8 month specified in the certification under section 11 of this chapter.

9 **Sec. 21.** A credit is not reduced for any month to the extent that
10 the failure to employ at least the number of new employees
11 specified by the department of commerce in the certification under
12 section 11 of this chapter is a temporary reduction in employment
13 that occurs as a result of:

- 14 (1) a labor dispute; or
15 (2) a loss arising from fire, storm, other casualty, or theft that
16 would qualify for a casualty loss under Section 165 of the
17 Internal Revenue Code.

18 **Sec. 22. (a)** A credit is not reduced to the extent that:

- 19 (1) ownership or control of substantially all of the project is
20 transferred to another person, corporation, or pass through
21 entity;
22 (2) the person, corporation, or pass through entity acquiring
23 the project elects, in the manner prescribed by the
24 department, to be treated as the taxpayer for purposes of this
25 chapter; and
26 (3) the project continues to employ the number of new
27 employees specified by the department of commerce in the
28 certification under section 11 of this chapter after it is
29 acquired for the remainder of the period described in section
30 20 of this chapter.

31 (b) The electing person, corporation, or pass through entity
32 shall be treated as the taxpayer for purposes of taking any credit
33 under this chapter and paying any recaptured amount under this
34 chapter.

35 **Sec. 23.** The reduced credit under section 20 of this chapter is
36 the amount determined under STEP NINE of the following
37 formula:

38 **STEP ONE:** Determine the period beginning with the month
39 specified by the department of commerce in the certification
40 under section 11 of this chapter through the earlier of:

- 41 (A) the last month of the current taxable year; or
42 (B) the last month that the taxpayer is required under
43 section 20 of this chapter to employ new employees.

44 **STEP TWO:** For each month in the period determined under
45 STEP ONE, determine the lesser of:

- 46 (A) the number of new employees that the taxpayer
47 employed in the project in the month; or

- 1 **(B) the number of employees specified as eligible for a**
- 2 **credit in the certification under section 11 of this chapter.**
- 3 **STEP THREE: Determine the sum of the amounts determined**
- 4 **under STEP TWO.**
- 5 **STEP FOUR: Determine the greater of zero (0) or the number**
- 6 **of months remaining after the last month determined under**
- 7 **STEP ONE through the last month that the taxpayer is**
- 8 **required under section 20 of this chapter to employ new**
- 9 **employees.**
- 10 **STEP FIVE: Multiply the STEP FOUR amount by the lesser**
- 11 **of:**
- 12 **(A) the number of employees specified as eligible for a**
- 13 **credit in the certification under section 11 of this chapter,**
- 14 **if the reduction in employment is not a permanent**
- 15 **reduction in employment; or**
- 16 **(B) zero (0), if the reduction in employment is a permanent**
- 17 **reduction in employment.**
- 18 **STEP SIX: Add the STEP THREE amount and the STEP**
- 19 **FIVE amount.**
- 20 **STEP SEVEN: Multiply one hundred twenty (120) by the**
- 21 **number of employees specified as eligible for a credit in the**
- 22 **certification under section 11 of this chapter.**
- 23 **STEP EIGHT: Divide the STEP SIX result by the STEP**
- 24 **SEVEN result.**
- 25 **STEP NINE: Multiply the maximum credit amount specified**
- 26 **by the department of commerce in the certification under**
- 27 **section 11 of this chapter by the STEP EIGHT result.**
- 28 **Sec. 24. (a) The difference between:**
- 29 **(1) the total amount of the credit for new employee expenses**
- 30 **that is:**
- 31 **(A) applied to state tax liability ; or**
- 32 **(B) distributed to the shareholders, partners, or members**
- 33 **of the taxpayer, if the taxpayer is a pass through entity;**
- 34 **and**
- 35 **(2) the amount of the reduced credit;**
- 36 **shall be treated as a listed tax due on the day that the person,**
- 37 **corporation, or pass through entity's annual return is due for the**
- 38 **taxable year in which the taxpayer temporarily fails or**
- 39 **permanently ceases to employ at least the number of new**
- 40 **employees specified by the department of commerce in the**
- 41 **certification under section 11 of this chapter.**
- 42 **(b) The amount due is reduced by any amount of the credit that**
- 43 **is recaptured in a prior taxable year.**
- 44 **(c) The amount due from a pass through entity is reduced to the**
- 45 **extent that the pass through entity presents proof to the**
- 46 **department that:**
- 47 **(1) credits distributed to shareholders, partners, or members**

1 **have not been applied to any state tax liability; or**
2 **(2) the shareholders, partners, or members have paid the tax**
3 **liability due from the pass through entity.**
4 **(d) If the taxpayer is a pass through entity, each of the**
5 **shareholders, partners, or members of the pass through entity shall**
6 **be treated as having a listed tax due for any amount of the tax**
7 **recapture that is not paid by the pass through entity. The amount**
8 **due from a shareholder, partner, or member is the proportionate**
9 **amount of the total credits allocated to the shareholder,**
10 **partnership, or member in or before the taxable year in which**
11 **recapture occurs.**
12 **Sec. 25. The department may adopt rules under IC 4-22-2 and**
13 **prescribe forms to implement this chapter."**
14 Renumber all SECTIONS consecutively.
 (Reference is to HB 2008 as printed February 26, 2003.)

Representative Welch