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FISCAL IMPACT STATEMENT

LS 7382

BILL NUMBER: HB 1365

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BILL AMENDED: Mar 4, 2004

SUBJECT: Various State Tax Matters.

FIRST AUTHOR: Rep. Cochran

FIRST SPONSOR: Sen. Borst

BILL STATUS: Enrolled

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Pull Tab Prizes:* This bill increases the cap on the total prizes awarded for one pull tab, punchboard, or tip board game from \$2,000 to \$5,000. It increases the maximum single prize for one winning ticket in a pull tab, punchboard, or tip board game from \$300 to \$599.

Sales and Use Tax: The bill makes the following changes to the Sales and Use Tax: (1) Grants a credit against Indiana Use Tax for Sales Tax paid in another state for a vehicle, a watercraft, or an aircraft; (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail transaction; (3) Indicates that a deduction for Sales Tax paid on a purchase price that becomes uncollectible is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing; (4) Requires certain out-of-state entities to collect sales tax in Indiana; and (5) Provides that gross retail income does not include receipts attributable to installation charges if those charges are separately stated on the invoice.

The bill also repeals the Sales Tax on complimentary hotel rooms.

Net Operating Loss: The bill revises the manner in which net operating losses are computed.

Research Expense Income Tax Credit: The bill also makes the Research Expense Credit permanent (instead of expiring at the end of 2013).

Refundable EDGE Credits for Certain Pass Through Entities: The bill allows certain pass through entities owned wholly or in part by an electric cooperative to claim a refundable EDGE credit.

Hoosier Business Investment Tax Credit: This bill extends the Hoosier Business Investment Tax Credit by two years.

Inheritance Tax: The bill provides that an adopted child is not considered a Class A transferee for Inheritance Tax purposes unless the child was adopted before the child was totally emancipated.

Military Base Tax Incentives: This bill provides the following tax incentives to a business that locates new operations in certain qualified areas containing a completely or partially inactive or closed military base: (1) A sales tax exemption for sales of utility services or commodities made to the business within five years after the new operations commence; (2) An adjusted gross income tax rate of 5% for the year of relocation and the next succeeding four taxable years. It also provides a military base investment cost credit against state tax liability for a taxpayer who purchases an ownership interest in or otherwise invests in a business located in a qualified area. It provides that the tax incentives are not available to a business that does not have operations in a qualified area and that substantially reduces or ceases its operations at another location in Indiana in order to relocate them within the qualified area.

Military Base Technology Park: The bill indicates that a certified technology park can be created to enhance research and development or testing being done at an active military base.

Eminent Domain: This bill provides that, in an eminent domain proceeding, when the person seeking to acquire property does not agree with the owner of an interest in the property and files a complaint and a *lis pendens* notice, the filing of the complaint and *lis pendens* notice constitutes notice of the proceedings to all subsequent purchasers and persons taking encumbrances of the property.

Unclaimed Property: The bill provides that, under the law concerning unclaimed property, the Attorney General is not required to pay the prescribed rate for publishing a notice in a newspaper concerning property reported as a result of a demutualization of an insurance company.

CREDs: The bill provides that a taxpayer that is otherwise entitled to a Community Revitalization Enhancement District (CRED) Tax Credit may claim the credit regardless of whether any incremental Income or Sales Taxes have been deposited in the incremental tax financing fund established for the district or have been allocated to the district. It also provides that a district must terminate not later than 15 years after incremental Income or Sales Taxes are first allocated to the district. It provides that if the Budget Agency fails to act on an ordinance or a resolution designating a district within 120 days, the ordinance or resolution is considered approved. The bill permits an advisory commission on industrial development or the executive of a municipality or county to petition the Budget Agency for permission to modify the boundaries of a district. It also establishes a procedure and criteria for appealing a decision by the Department of State Revenue that a taxpayer is not eligible for the CRED Tax Credit because the taxpayer's business relocated operations into the district from another location in Indiana. The bill changes the square footage requirement that must be met before a district may be established in a certain area in Delaware County.

Tax Warrants: The bill authorizes the Department of State Revenue to publish on the Internet a list of taxpayers that are subject to tax warrants issued at least 24 months before the date of the publication of the list. It sunsets the authority to publish the list after June 30, 2006.

21st Century Research and Technology Fund Grant Office: This bill requires the Twenty-first Century Research and Technology Fund Board to establish and administer a grant office to work with federal agencies, state agencies, units of local government, colleges and universities, and private sector entities to develop and receive research and development grants. It creates the Emerging Technology Grant Fund to be administered by the Twenty-first Century Research and Technology Fund Board.

Local Rainy Day Funds: The bill reconciles two different versions of the statute allowing political

subdivisions to establish rainy day funds.

Borrowing for Local Public Works: It allows a political subdivision to borrow money to finance a public work project costing not more than \$2,000,000 by issuing a note to a financial institution.

Property Tax Abatements for Logistical Distribution Equipment and Information Technology: The bill authorizes certain counties and municipalities to provide property tax abatements for logistical distribution equipment and information technology equipment installed after June 30, 2004.

Property Tax Abatement Fee: It authorizes local governments to impose an optional property tax abatement fee.

Assessment of Low-Income Rental Housing: The bill provides that the value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low-income housing tax credit property.

Repeal of the Registration Fee for Converter Dollies: This bill also repeals the registration fee for converter dollies.

Muscatatuck State Developmental Center: The bill also provides for state employee group health insurance program eligibility for certain individuals who retired from Muscatatuck State Developmental Center under the state's retirement incentive program.

Study Committee on Passive Investment Corporations: The bill establishes the Interim Study Committee on Corporate Taxation to study the utilization of passive investment corporations by companies doing business in Indiana.

Effective Date: January 1, 2004 (retroactive); March 1, 2004 (retroactive); Upon Passage; April 1, 2004; July 1, 2004; January 1, 2005.

Explanation of State Expenditures: The Department of State Revenue (DOR) will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the changes contained in this bill. The Department's current resources should be sufficient to absorb additional costs associated with the implementation of the changes.

Military Base Tax Incentives: The DOR also would be required to make certain eligibility determinations relating to the investment tax credit claimed for debt financing to businesses in certain military base areas. The Indiana Department of Commerce (IDOC) also would incur administrative expenses relating to determining eligibility and credit amounts for the investment credit for debt financing. These expenses presumably could be absorbed given the existing budget and resources of each agency.

Unclaimed Property: This provision addresses the expected increase in unclaimed property reported to the Attorney General as a result of the demutualization of insurance companies. The bill allows the Attorney General to make special arrangements with newspapers to publish a notice of unclaimed property reported as a result of an insurance company demutualization. Based on reports of unclaimed property from recent insurance company demutualizations, the Attorney General roughly estimates that this provision could reduce future expenditures on published legal notices in newspapers by up to \$2 M over the next two to three years. Costs associated with publishing these legal notices are paid from the Abandoned Property Fund.

CREDs: The State Budget Committee and State Budget Agency must review proposed boundary modifications for Community Revitalization Enhancement Districts. The changes made by the bill could potentially create additional administrative demands for the Department of State Revenue in determining eligibility for the CRED Tax Credit. However, the additional demands presumably can be absorbed given DOR's existing budget and resources, since the DOR already conducts the determination process and there are reportedly only three CREDs operating at this time - in Bloomington, Marion, and South Bend. The DOR also must calculate the base income tax amount and the base gross retail amount for areas added to a CRED under an approved boundary modification.

Tax Warrants: The bill requires the DOR to compile a list of taxpayers subject to tax warrants in excess of \$1,000 in taxes and penalties that have been outstanding for at least 24 months. The list must include the taxpayer's name, address, and the amount of tax owed. Each month, the Department is required to publish the list on AccessIndiana and make the list available for public inspection. However, prior to including a name on the published list, the Department is required to notify the delinquent taxpayer at least two weeks prior to the list's publication. DOR currently is required to prepare a list of outstanding tax warrants monthly and certify the list to the Bureau of Motor Vehicles. DOR estimates that there are approximately 40,100 warrants that would meet the 24-month specifications of this bill. They estimate that it would cost approximately \$43,000 in development costs to generate this list for the Internet with search capabilities. Standard postage costs for the initial monthly notice would be about \$14,840. There will be some ongoing costs to replace the report monthly. The provision sunsets on June 30, 2006, so DOR will only have these expenses in FY 2005 and FY 2006.

21st Century Research and Technology Fund Grant Office: The bill authorizes the Indiana 21st Century Research and Technology Fund Board to establish and administer a grant office beginning July 1, 2004. The bill provides that the grant office assist state agencies, units of local government, public and private colleges and universities, private sector for-profit and nonprofit entities, and other entities in Indiana in researching, developing, and receiving grants and funding from the federal government, private foundations, or any other funding source. As the bill does not require the 21st Century Research and Technology Board to establish the grant office or undertake the specified grant office activities, it will have no fiscal impact unless the Board chooses to pursue such activities. Under current statute the 21st Century Board may use money in the 21st Century Research and Technology Fund to cover administrative expenses. Currently, three administrative staff members are employed by the Board.

Muscatatuck State Developmental Center: The proposal will likely have little to no impact on state expenditures. State expenditures would only be affected to the extent that the proposal allows a relatively older, more costly population into the risk pool for all state employees. However, fewer than ten people are expected to be affected by the proposal.

Assuming that older people incur more medical expenses than younger ones, the risk pool could incur more costs. If the additional costs are sufficient to increase costs to the entire risk pool, the health care insurance costs could increase for the state and/or for state employees. The impact would depend on the health care costs for eligible individuals who retired from Muscatatuck State Developmental Center and who elected to participate in the state employee group health insurance program. The retirees would be responsible for paying both the state-paid portion of the health insurance premium (which for 2004 is \$385 for family coverage and \$140 for single) plus the employee's portion (which ranged from \$25.32 to \$144.22 for family coverage and \$6.54 to \$69.79 for single).

Individuals qualify if they were employed by Muscatatuck State Developmental Center on November 1, 2002; retired under the state's retirement incentive program that was effective November 1, 2002, and ended June

14, 2003; met the years of service and years of participation requirements if one year of additional service credit is added to the individual's total years of service for every five years of creditable state service; and prorated months of additional service credit are added to the individual's total years of service for any additional years of creditable state service. Individuals must apply for participation in the group health insurance program before December 31, 2005.

Explanation of State Revenues:

Pull Tab Prizes: The bill changes two prize value limits for pull tab, punchboard, and tip board games operated by licensed charitable organizations. Specifically, the bill increases the total prizes limit for a single pull tab, punchboard, or tip board game from \$2,000 to \$5,000. In addition, the bill increases from \$300 to \$599 the limit for a single prize awarded for one winning ticket in a pull tab, punchboard, or tip board game. Since these changes could potentially increase the average and aggregate value of prizes awarded in these games, overall spending on pull tab, punchboard, and tip board games also might increase. If overall play of these games does increase, it could potentially increase the gross revenue of licensed charitable gaming organizations. This would affect the Charity Gaming License Fee. This assumes that gross revenue from other charitable gaming doesn't decline as players spend more on pull tab, punchboard, and tip board games. Increased play of pull tab, punchboard, and tip board games could lead to an increase in sales of these devices to licensed charitable gaming organizations. This could increase revenue from the Charity Gaming Excise Tax on sales of pull tabs, punchboards, and tip boards.

Current law permits a bona fide civic, educational, political, religious, senior citizens, or veterans organization to hold a charity gaming license for purposes of conducting charity gaming events, including sale of pull tabs, punchboards, and tip boards. The Charity Gaming License Fee ranges from \$25 to \$25,000 depending on the total gross revenue earned from charity gaming by a licensed organization. The Charity Gaming Excise Tax on pull tabs, punchboards, and tip boards is based on the wholesale price of these devices when sold to organizations by distributors and manufacturers. In FY 2003, 2,201 charity gaming licences were issued by the DOR resulting in \$3.9 M in license fees. The Charity Gaming Excise Tax resulted in approximately \$1.3 M in revenue during FY 2003. License fee and excise tax revenue is deposited in the Charity Gaming Enforcement Fund to pay the charity gaming administrative costs incurred by the DOR. Revenue remaining in the Fund after payment of administrative costs is distributed quarterly to the Build Indiana Fund.

Sales and Use Tax: The bill contains changes to the state's Sales and Use Tax law that would impact state Sales Tax revenue.

Sales and Use Tax Credits: This bill contains two provisions that impact the Sales and Use Tax exemptions and credits associated with the motor vehicle, trailer, watercraft, and aircraft sales. Under current law, sales of motor vehicles, trailers, watercraft, and aircraft that are immediately shipped out of state, delivered for title and used out of state, or those that are not registered for use in Indiana are exempt from the state Sales Tax. This bill removes this exemption and makes the sale of these vehicles subject to the state Sales Tax.

The bill also makes an accompanying change in current law to allow persons who purchase vehicles, watercraft, and aircraft in other states to receive a credit against Indiana's Use Tax for sales taxes paid in another state on the same item. For example, if an Indiana resident purchases a boat in Wisconsin for use in Indiana and the purchaser pays Wisconsin's 5% Sales Tax, this bill would allow the purchaser to receive a credit against Indiana's 6% Use Tax on the taxes paid in Wisconsin. In this example, the purchaser's Indiana Use Tax liability would be limited to the 1% difference between Indiana's and Wisconsin's tax rates.

The changes above are expected to have, on net, a positive impact on state Sales and Use Tax revenue. The full impact of these changes are currently unspecifiable. However, given the large volume of currently exempt vehicle sales in Indiana, the impact of this bill on state Sales Tax revenue is expected to be significant.

Sales Tax on Satellite Television Providers: This provision changes current law to specify that satellite broadcasts of radio or television signals that terminate in Indiana are subject to the state's Sales Tax. (Cable television service is subject to the state's Sales Tax.) The provision is retroactive to March 1, 2004. Prior to a June 16, 2003, ruling by the state's Tax Court, sales of satellite television service were subject to the state's Sales Tax. The DOR estimates that, absent the language proposed in the bill, the state would lose approximately \$12 M each year in Sales Tax revenue.

Assignability of Sales Tax Deductions: This provision specifies that Sales Tax deductions for bad debt are only assignable if the retail merchant that paid the tax liability assigns the right to the deduction in writing. The impact on this provision on state Sales Tax revenue is expected to be negligible.

Retail Merchants: This bill requires certain entities that are closely related to out-of-state business entities that engage in taxable activities in Indiana to register as a retail merchant in Indiana and, when applicable, to collect Indiana's Sales and Use Tax. This provision is expected to have an unspecifiable positive impact on state Sales Tax revenue.

Sales Tax on Delivery and Installation Charges: Upon passage, installation charges which are separately stated on a retail merchant's invoice are not subject to the state's Sales Tax. The provision is expected to cause a slight reduction in state Sales Tax revenue. (Beginning January 1, 2004, certain delivery and installation charges became subject to the state's Sales Tax insofar as they are included in a retail merchant's gross income from the sale of a taxable good.)

Repeal of the Sales Tax on Complimentary Hotel Rooms: Based on early data from the DOR, it is estimated that repealing the Sales Tax on complimentary hotel rooms will reduce state Sales Tax revenue by approximately \$2.1 M each year. The repeal of the tax becomes effective April 1, 2004.

The Sales Tax on complimentary hotel rooms went into effect on July 1, 2003, and applies to complimentary rooms offered by all hotels, including those associated with casino riverboats. According to DOR filing data, only five of the eight casino riverboats that have adjacent hotels have reported Sales Tax remittances on complimentary rooms during the second quarter of FY 2004. Data is not yet available on the amount, if any, of Sales Taxes paid on complimentary rooms from hotels not associated with the casino riverboats.

Revenue from the state's 6% Sales Tax is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%). (Prior to making a retail transaction in Indiana, retailers are required to register with the Department of State Revenue. The fee associated with registration is \$25. Fee revenue is deposited in the state General Fund.)

Net Operating Loss: The bill simplifies the calculation of Indiana net operating loss. Under the bill, Indiana net operating loss is equal to the taxpayer's federal net operating loss adjusted for a variety of modifications for the same taxable year that the net operating loss was incurred. These modifications include adding back state income taxes, property taxes, and charitable contributions, deducting interest on U.S. Government obligations, and other modifications. Then, the apportionment percentage is applied to determine the Indiana portion of the net operating loss. The number of years that a firm is allowed to take an Indiana net operating loss carryover and/or carryback is the same as the number of years allowed in the IRS Code: a carryforward

for up to 20 years following the loss year and a carryback for up to 2 years preceding the loss year.

The impetus behind this provision of the bill is a court ruling which found that the method used on the tax forms to calculate Indiana net operating loss is different from the method described in the current law. The method of calculating Indiana net operating loss that is prescribed on Indiana tax forms and used by the vast majority of businesses claiming the net operating loss deduction is very similar to the method that is presented in the bill. As a result, the bill should cause little disruption in the way that firms calculate net operating loss and any corresponding carryback or carryforward. The statutory change proposed in the bill should have little effect on Adjusted Gross Income Tax revenues.

Research Expense Income Tax Credit: This credit is currently set to expire on December 31, 2013. This bill would eliminate the expiration date and make this credit permanent. It is difficult to estimate the exact impact of continuing this tax credit indefinitely since it is dependent on both the amount of research expenses individual taxpayers make during the year and their total tax liability. This permanent extension would affect revenue collections beginning in FY 2014 and years after.

Background: P.L. 242-2002 (ss) increased this credit from 5% to 10% of qualified expenses for tax years beginning January 1, 2003, and eliminated the apportionment factor used to calculate the credit. P.L. 224-2003 extended this tax credit until December 31, 2013. The total estimated cost of this credit at the higher rate is expected to range from approximately \$50 M to \$75 M annually. Over the past six years when the credit was set at a 5% rate, the Research Expense Credit has ranged from a low of \$9.2 M in FY 1996 to a high of \$24.2 M in FY 1999. In FY 2000 \$19.4 M were claimed, and in FY 2001 \$21.9 M were claimed at the 5% rate. No data is available on the amount of credits which might be claimed under the changes made by P.L. 242-2002(ss).

With additional incentives created for research and development activity based in the state of Indiana, the revenue loss from this credit could increase by an indeterminable amount. The credit provides \$100,000 for each \$1 M in new research expenses. Increased expenditures on research activities could also generate additional Adjusted Gross Income and Sales Tax revenue if these expenses are used to hire additional employees or purchase related equipment.

The Research Expense Tax Credit affects revenue collections deposited in the General Fund and the Property Tax Replacement Fund.

Refundable EDGE Credits for Certain Pass Through Entities: The bill authorizes the EDGE Board to award *refundable* EDGE credits (instead of a nonrefundable EDGE credit as provided under current statute) to a pass through entity owned wholly or in part by an electric cooperative that is incorporated in Indiana as a nonprofit corporation. The pass through entity must be a limited liability company or limited liability partnership. In order to award the refundable EDGE credit, the EDGE Board must make a finding that the average wage to be paid by the pass through entity will be at least twice the average wage paid within the county in which the pass through entity's project will be located. Under current statute, EDGE credits awarded to a pass through entity having no tax liability may be claimed by shareholders or partners in proportion to their distributive income from the pass through entity. However, if the owner is a nonprofit entity, it would not have a tax liability against which to use the EDGE credits. Thus, the provision could increase applications for EDGE credits that otherwise would not have occurred. However, the amount of EDGE credits that could potentially be awarded due to this provision is indeterminable and would be contingent on action by the EDGE Board.

Under current statute, businesses that (1) create new investment and jobs in Indiana or (2) undertake projects

to retain existing jobs in Indiana are eligible for EDGE credits. As it applies to investment that creates new jobs, the EDGE Program is designed to provide a revenue-neutral incentive for businesses to create new investment and jobs in Indiana. Such businesses receive credits equal to the individual income taxes withheld for employees filling the newly created positions. Since revenue from these employees would not have been collected in the absence of the new development, the state does not incur a net loss by redistributing the incremental income tax revenue as tax credits to businesses. For job retention projects, no new revenue would be realized since no new jobs would be created. As a result, EDGE credits for job retention are paid from existing revenues, resulting in a net loss to the state equal to the amount of EDGE credits granted to businesses for job retention. However, if a business were to select a more profitable alternative project site and move out of Indiana, there could be an even greater loss of revenue from the reduction in individual (employee's) and corporate taxes.

Hoosier Business Investment Tax Credit: The bill extends the tax credit for two years through tax year 2007. The impact of this change is indeterminable. Under current statute, the investment tax credit can only be awarded for qualified investment during tax years 2004 and 2005.

Under current statute, the EDGE Board is authorized to award a taxpayer (an individual, corporation, partnership, or other entity with a tax liability) a nonrefundable tax credit for expenditures on qualified investment that the Board determines will foster job creation and higher wages in Indiana. The current tax credit is equal to 30% of the qualified investment. A taxpayer may claim the credit against a taxpayer's Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, or Financial Institutions Tax liability. If a pass through entity does not have a tax liability, the credit may be claimed by shareholders or partners in proportion to their distributive income from the pass through entity. The tax credit may only be awarded for qualified investment made during tax year 2004 or 2005. The credit is nonrefundable and may not be carried back. Unused tax credits may be carried over for up to nine years after the year in which the investment was made. The credit amount that the taxpayer may *claim* in the taxable year in which the investment is made is equal to the lesser of: (1) 30% of the qualified investment or (2) the taxpayer's state tax liability growth.

Inheritance Tax: The bill specifies that for Inheritance Tax purposes adoptions must take place before the adopted child is totally emancipated. A relationship between the adopting parent and child must exist for at least 10 years and have begun before the child's fifteenth birthday. This statute prohibits adult adoptions for the purpose of reducing Inheritance Tax liability. According to the Department of State Revenue, there have been a few cases of adult adoption for purposes of reducing Inheritance Tax liability in the past few years, one of which resulted in a \$61,000 reduction in Inheritance Tax revenue.

Military Base Tax Incentives: The bill establishes three new tax incentives relating to businesses that locate new operations or expand existing operations within the boundaries of: (1) a military base that is scheduled for closing or closed; (2) a Military Base Reuse Area; (3) an Economic Development Area established in connection with a closed military base; or (4) a Military Base Recovery Site. Currently, there are three installations in Indiana that are both Enterprise Zones and Military Base Reuse Areas - Grissom AFB in Miami County, Fort Benjamin Harrison in Marion County, and the Indiana Army Ammunition Plant in Clark County.

The total amount that could potentially be claimed by businesses under the three tax incentives is indeterminable. The net revenue impact of these tax incentives depends on the extent that collections on taxable activities attributable to new business locations or business expansion within the military base areas is less than or exceeds the tax incentives claimed. It also depends on the extent that collections relating to relocated operations in the military base areas are less than or exceed the taxes that would otherwise have been collected on these operations elsewhere in the state. However, if the business location or expansion

would have occurred in the absence of the tax incentives, the net impact would be the total of the incentives claimed by businesses. The incentives for businesses locating within these areas are as follows.

(1) The bill provides a Sales Tax exemption for utility services purchased by a business that relocates or expands all or part of its operations to a facility in one of the above-described military base areas; and uses the utility services within 5 years of commencing operations in the facility.

(2) The bill reduces the Adjusted Gross Income (AGI) Tax rate from 8.5% to 5% for a corporation that locates all or part of its operations to one of the above-described military base areas. The rate reduction applies only to income derived by the corporation from sources within the military base area during the taxable year in which the corporation located or expanded operations in the area, and the next four succeeding taxable years.

(3) The bill establishes a nonrefundable AGI Tax credit (the Military Base Investment Cost Credit) for investment in a business that locates all or part of its operations to one of the above-described military base areas. Creditable investment would include both equity financing and debt financing. The bill allows the Indiana Department of Commerce to award credits for the cost of investment and for jobs created due to the investment. The percentage credits allowed vary depending upon the type of investment, the type of business, and the number of jobs created. (The credits are the same as those provided under the existing Enterprise Zone Investment Cost Credit.) The taxpayer may carry over any unused credit amount to subsequent taxable years. The taxpayer is not eligible to carry back any unused credit. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity.

Generally, the three new tax incentives do not apply to a business that substantially reduces or ceases operations at another location in Indiana. (Note: This condition does not apply to equity financing under the Military Base Investment Cost Credit.) However, the incentives apply if the Department of State Revenue determines that the business had existing operations in the military base area and the relocated operations are an expansion of those existing operations. The Sales Tax exemption is effective for transactions occurring after June 30, 2004. The income tax incentives are effective beginning in tax year 2005. Contingent on project startups, the fiscal impact could potentially begin in FY 2005 - with monthly Sales Tax remittances and changes in estimated quarterly income tax payments.

Military Base Technology Park: The bill provides that a proposed certified technology park could be approved if the application for the park demonstrates significant support or commitment of certain facilities, services, activities, or funding from a military research and development or testing facility on an active U. S. military base or other military installation. Under current statute, an applicant could be approved by demonstrating significant support or commitment of certain facilities, services, activities, or funding from an institution of higher education or a private, research-based institute. The impact of this provision is currently indeterminable. However, this could potentially facilitate the establishment of a certified technology park in conjunction with facilities or ongoing activities at the Naval Surface Warfare Center at Crane, Indiana.

Current statute provides for the Indiana Department of Commerce to certify technology parks proposed by local redevelopment commissions to encourage the location of high-technology businesses within these areas. The technology park is authorized to capture incremental property taxes and incremental revenue from state income taxes, local option income taxes, and Sales Taxes generated in the park. However, a park is prohibited from capturing more than \$5 M over its life in incremental income and Sales Tax revenue generated in the park.

CRED Tax Credit: The bill provides that a taxpayer who is otherwise entitled to the Community

Revitalization Enhancement District Tax Credit for a taxable year may claim the credit regardless of whether incremental income or Sales Tax revenue has been: (1) deposited in an incremental tax financing fund or (2) allocated to the CRED. This provision is expected to result in no fiscal impact, as current statute does not prohibit a taxpayer from claiming the credit under the conditions specified above in (1) and (2).

Under current statute, a taxpayer who makes a qualified investment for the redevelopment or rehabilitation of property located within a CRED is entitled to the CRED Tax Credit. The tax credit is based on 25% of the qualified investment. The expenditures must be made under a plan adopted by an advisory commission on industrial development and approved by the Department of Commerce. The tax credit may be used to reduce the taxpayer's tax liability against the Adjusted Gross Income Tax, CAGIT, COIT, CEDIT, the Insurance Premiums Tax, and the Financial Institutions Tax. A taxpayer is not entitled to a credit if they substantially reduce or cease to operate in another area of the state in order to relocate within the district.

Reduction in Operations Outside a CRED: The bill changes the conditions under which a taxpayer that reduces operations elsewhere in Indiana to relocate operations in a CRED remains eligible for the CRED Tax Credit. Potentially, the changes could increase the number of individual and corporate taxpayers that qualify for the CRED Tax Credit. However, the increase in qualified taxpayers and the fiscal impact as a result are indeterminable.

Under current statute, a taxpayer is not entitled to the tax credit to the extent that the taxpayer substantially reduces or ceases its operations elsewhere in Indiana to relocate them within a CRED. However, a taxpayer that reduces or ceases operations remains eligible for the tax credit provided: (1) the taxpayer had existing operations in the CRED; and (2) the operations relocated to the CRED are an expansion of the taxpayer's operations in the CRED. Current statute requires the DOR to make eligibility determinations. This condition for eligibility for taxpayers that reduce operations elsewhere in Indiana is not changed by the bill.

The bill specifies reductions in operations that are *substantial* and would disqualify a taxpayer from claiming the CRED Tax Credit. However, the bill also specifies additional conditions under which a taxpayer that reduces operations elsewhere in Indiana remains eligible for the CRED Tax Credit. The additional eligibility conditions require that the taxpayer relocates all or part of its non-CRED operations for any of the reasons specified below in (A) through (F); or (2) the taxpayer has not terminated or reduced the pension or health insurance obligations payable to employees or former employees of the non-CRED operation with their consent. (Note: Condition (F) below is specified in current law.)

- (A) The lease on property necessary for the non-CRED operation has been involuntarily lost through no fault of the taxpayer.
- (B) The space available at the location of the non-CRED operation cannot accommodate planned expansion needed by the taxpayer.
- (C) The building for the non-CRED operation has been certified as uninhabitable by a state or local building authority.
- (D) The building for the non-CRED operation has been totally destroyed through no fault of the taxpayer.
- (E) The renovation and construction costs at the location of the non-CRED operation are more than 1.5 times the costs of purchase, renovation, and construction of a facility in the CRED, as certified by three independent estimates.
- (F) The taxpayer had existing operations in the district, and the nondistrict operations relocated to the district are an expansion of the taxpayer's operations in the district.

The bill also provides that a taxpayer remains eligible for the credit under (C) or (D) only if the criteria in (E) are also met.

Tax Warrants- Secondary Impact: If the publication of these lists increases the collection of existing tax warrants, additional revenue will be generated. It is unknown how much of the delinquent taxes would be collected sooner due to the publications of these lists. However, it is estimated that after eliminating those warrants which are deemed “exhausted, uncollectible, or under protest, the *minimum* amount of tax liabilities from these warrants, due to the \$1,000 threshold, could be at least \$144 M.

Repeal of the Registration Fee for Converter Dollies: Since the Bureau of Motor Vehicles registers the converter dollies as trailers, the specific revenue loss is indeterminable. The fund affected is the Motor Vehicle Highway Account.

Study Committee on Passive Investment Corporations: The bill establishes an interim study committee to investigate the use of passive investment corporations by companies doing business in Indiana. The committee will operate under policies adopted by the Legislative Council and will be staffed by the Legislative Services Agency. Legislative Council resolutions in the past have established budgets for interim study committees ranging from \$6,000 to \$9,000 for committees with fewer than 16 members. This interim committee expires November 1, 2004.

Explanation of Local Expenditures: *Borrowing for Local Public Works:* Currently, political subdivisions may issue bonds to finance public works projects but may not issue negotiable notes. This provision would allow municipalities to finance public work projects costing no more than \$2 M by executing a negotiable note with a financial institution in Indiana.

Municipalities may be able to save expenses related to holding a bond sale if one is not required under this bill. Holding a bond sale usually requires certain fixed expenditures, such as having a third party financial advisor involved in the issuing process, which could keep bond issues for such small projects from being cost effective.

This provision also includes a remonstrance process that allows tax payers to petition the negotiable note.

Explanation of Local Revenues:

Eminent Domain: The provision will require a person to file a *lis pendens* notice along with a complaint in order for there to be a notice of proceedings related to property. Filing a *lis pendens* notice, which is public record, allows all persons to see that litigation is pending on a piece of property.

The fiscal impact of this provision is dependent on filing fees charged by circuit court clerks and the number of additional *lis pendens* notices filed. Revenue from filing fees is generally deposited in a county’s general fund.

CRED Expansion and Expiration: The bill would allow an existing CRED to be expanded, provided the State Budget Committee and the State Budget Agency find that the area to be added to a CRED meets the criteria required for CRED designation. The bill requires the advisory commission on industrial development or the county or municipal legislative body that designated the CRED to submit a petition for approval of the boundary modifications to the State Budget Committee and State Budget Agency. The bill specifies a method to be used by the DOR to determine the gross retail and income tax base period amounts for the area added to a CRED. The bill also specifies deadlines within which this determination must be made. The impact of this change is indeterminable, but would depend on the potential for expansion of the CREDs currently operating or those that may operate in the future.

The bill also changes the expiration of a CRED from 15 years from the time of designation to 15 years after incremental income or Sales Taxes are allocated to the CRED. Depending upon the time that elapses from the time of designation to the time at which incremental income or Sales Tax revenue is generated in a CRED, this change could potentially increase the number of years that incremental revenue is diverted to a CRED.

Current statute authorizes the designation of CREDs in the City of Marion and municipalities in Allen, Delaware, Monroe, and St. Joseph Counties. P.L. 224-2003 also authorized the City of Indianapolis and all second class cities to designate CREDs. CREDs have been established in Bloomington, Marion, and South Bend. Only two distributions of incremental sales and income taxes have been made. Bloomington has received \$492,005, and Marion has received \$24,241. The following taxes may be allocated to a CRED: Gross Retail and Use Taxes, the Adjusted Gross Income Tax, and CAGIT, COIT, and CEDIT. Incremental tax allocations to CREDs designated under P.L. 224-2003 are limited to 75% of the incremental tax revenue up to \$750,000 per year. Allocations to other CREDs are limited to \$1.0 M per year in incremental tax revenues. This revenue is to be deposited in the Industrial Development Fund of the city designating the CRED. A CRED is limited to 15 years at the time of designation. Current law also allows all taxing units, except townships, to impose a levy for the Industrial Development Fund at a rate of up to \$0.0167 per \$100 of assessed valuation. The proceeds from the tax levy may be pledged for the payment of bonds and obligations issued in a CRED.

Property Tax Abatements for Logistical Distribution Equipment and Information Technology: Under current law, new manufacturing equipment and new research & development equipment may qualify for property tax abatements. The abatements are available for up to ten years.

This bill would allow abatements for new “logistical distribution equipment and new “information technology (IT) equipment installed after June 30, 2004, and before January 1, 2006, in economic revitalization areas in Allen, Grant, Huntington, Madison, and Wells Counties.

Logistical distribution equipment would consist of racks, scanners, separators, conveyors, forklifts, moving equipment, packaging equipment, sorting and picking equipment, and software.

IT equipment would include equipment and software used in the fields of information processing, office automation, telecommunication facilities and networks, informatics, network administration, software development, and fiber optics.

If there is an increase in development because of this proposal, the new property would, at some point, be placed on the tax rolls. This could help spread the property tax burden and could possibly reduce some tax rates. However, if one assumes that the investment would be made with or without the abatement, an increase in abatements (ERAs) could also cause a delay of the shift of the property tax burden from all taxpayers to the owners of the new property until the property is placed on the tax rolls. In all cases, the granting of an abatement is a local decision.

Property Tax Abatement Fee: Under this bill, the economic revitalization area (ERA) designating body would be permitted to impose a fee upon taxpayers in the ERA that is equal to a percentage of the taxpayers’ abated property taxes. The percentage would be set by resolution of the designating body and could not exceed 15%. Additionally, the fee would be limited to \$100,000.

The fee, including the fee percentage, would have to be incorporated into the initial approval of the statement of benefits and the deduction, with the property owner’s consent at the time of approval. The fee could be assessed only against abatements that are approved after June 30, 2004, and could not be assessed against

abatements in a residentially distressed area. Taxpayers that fail to pay the fee could lose their abatement.

Fee revenue would have to be distributed to one or more public or nonprofit entities that promote economic development within the area served by the designating body.

The amount of revenue generated by this bill would depend on (1) the property tax savings from abatements approved after June 30, 2004, and (2) the fee percentage, if any, adopted by the designating bodies.

Assessment of Low-Income Rental Housing: The bill would prohibit consideration of tax credits or government subsidies in determining the value of low-income rental housing.

Under SEA 1-2004, all rental property with more than four units must be valued under the approach (cost, sales, or income capitalization) that yields the lowest valuation. The income capitalization approach would most likely yield the lowest assessment for low-income rental housing. The restrictions on the income considered could reduce the value of some low-income rental property in certain situations. There is a great deal of uncertainty surrounding the issue of when and how subsidies are to be considered under current statutory law, current case law, and the new market value assessment rule. Currently, the assessment of low-income housing property under the income method might or might not consider the income from subsidies. Under this bill, these assessments definitely would not consider subsidy income.

State Agencies Affected: Department of State Revenue; Bureau of Motor Vehicles; Indiana Department of Commerce; Indiana 21st Century Research and Technology Fund Board; State Budget Committee; State Budget Agency; EDGE Board; Department of Personnel; Family and Social Services Administration; Department of Local Government Finance.

Local Agencies Affected: Local units with closed military bases or CREDS; circuit court clerks; political subdivisions.

Information Sources: Tom Conley and Mike Ralston, Department of State Revenue; Bob Lain, State Budget Agency, 317-232-3471; BMV Cash Audit, Draft Copy for CY 2003; Indiana Department of State Revenue, *Charity Gaming Annual Report*, November 1, 2003. Kelly Streepy, 21st Century Research and Technology Fund Board, (317) 233-4332.

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