

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1365 be amended to read as follows:

- 1 Page 3, between lines 6 and 7, begin a new paragraph and insert:
- 2 "SECTION 4. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE
- 3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2004]: **Sec. 39. (a) As used in this section, "product" includes**
- 5 **the following:**
- 6 (1) **A pilot model, a process, a formula, an invention, a**
- 7 **technique, a patent, or a similar property.**
- 8 (2) **Property to be used in a taxpayer's trade or business.**
- 9 (3) **Property to be held for sale, lease, or license, regardless**
- 10 **of whether the property is ultimately placed in service, sold,**
- 11 **leased, or licensed.**
- 12 (b) **As used in this section, "research and development" means**
- 13 **laboratory or experimental activity to develop or improve a**
- 14 **product or to discover information that would eliminate**
- 15 **uncertainty concerning the development or improvement of a**
- 16 **product.**
- 17 (c) **The term "research and development" does not include any**
- 18 **of the following:**
- 19 (1) **The ordinary testing or inspection of materials or**
- 20 **products for quality control. The quality control testing to**
- 21 **which this subdivision applies includes testing or inspection**
- 22 **to determine whether particular units of materials or**
- 23 **products conform to specified parameters. Quality control**

1 testing does not include testing to determine if the design of
2 a product is appropriate.

3 (2) Efficiency surveys.

4 (3) Management studies.

5 (4) Consumer surveys.

6 (5) Advertising or promotions.

7 (6) The acquisition of another's patent, model, production,
8 process, or other product.

9 (7) Research in connection with literary, historical, or similar
10 projects.

11 (8) Activities to ascertain the existence, location, extent, or
12 quality of any deposit of oil, gas, ore, or other mineral.

13 (9) Assembly, construction, or installation of property that is
14 placed in service or held for sale, lease, or license.

15 (d) As used in this section, "uncertainty" means the
16 unavailability to the taxpayer of information necessary to
17 establish the capability or method for developing or improving the
18 product or the appropriate design of the product.

19 (e) Transactions involving tangible personal property are
20 exempt from the state gross retail tax if the person acquiring the
21 property acquires it for direct use in research and development."

22 Page 14, between lines 1 and 2, begin a new paragraph and insert:

23 "SECTION 9. IC 6-3-1-24 IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JANUARY 1, 2005]: Sec. 24. The term "sales" means all
25 gross receipts of the taxpayer not allocated under ~~IC 6-3-2-2(g)~~
26 IC 6-3-2-2(e) through ~~IC 6-3-2-2(k)~~, IC 6-3-2-2(i), other than
27 compensation (as defined in section 23 of this chapter)."

28 Page 22, between lines 16 and 17, begin a new paragraph and insert:

29 "(s) This section expires January 1, 2005.

30 SECTION 16. IC 6-3-2-2.1 IS ADDED TO THE INDIANA CODE
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
32 JANUARY 1, 2005]: Sec. 2.1. (a) With regard to corporations and
33 nonresident persons, "adjusted gross income derived from sources
34 within Indiana", for the purposes of this article, means and
35 includes:

36 (1) income from real or tangible personal property located in
37 Indiana;

38 (2) income from doing business in Indiana;

39 (3) income from a trade or profession conducted in Indiana;

40 (4) compensation for labor or services rendered within
41 Indiana;

42 (5) income from stocks, bonds, notes, bank deposits, patents,
43 copyrights, secret processes and formulas, good will,

1 trademarks, trade brands, franchises, and other intangible
 2 personal property if the receipt from the intangible is
 3 attributable to Indiana under section 2.2 of this chapter; and
 4 (6) any business income, regardless of whether it is described
 5 in this subsection.

6 In the case of nonbusiness income described in subsection (e),
 7 only so much of such income as is allocated to Indiana under
 8 subsections (f) through (i) shall be considered to be derived from
 9 sources within Indiana. In the case of business income, only so
 10 much of such income as is apportioned to Indiana under
 11 subsection (b) shall be considered to be derived from sources
 12 within Indiana. In the case of compensation of a team member (as
 13 defined in section 2.7 of this chapter), only the part of income
 14 determined to be Indiana income under section 2.7 of this chapter
 15 is considered derived from sources within Indiana. In the case of
 16 a corporation that is a life insurance company (as defined in
 17 Section 816(a) of the Internal Revenue Code) or an insurance
 18 company that is subject to tax under Section 831 of the Internal
 19 Revenue Code, only so much of the income as is apportioned to
 20 Indiana under subsection (p) is considered derived from sources
 21 within Indiana.

22 (b) Except as provided in subsection (j) and subject to
 23 subsection (m), if business income of a corporation or a
 24 nonresident person is derived from sources within Indiana and
 25 from sources outside Indiana, then the business income derived
 26 from sources within Indiana shall be determined by multiplying
 27 the business income derived from sources both within and outside
 28 Indiana by the sales factor.

29 (c) The sales factor is a fraction, the numerator of which is the
 30 total sales of the taxpayer in Indiana during the taxable year, and
 31 the denominator of which is the total sales of the taxpayer
 32 everywhere during the taxable year. Sales include receipts from
 33 intangible property and receipts from the sale or exchange of
 34 intangible property. However, with respect to a foreign
 35 corporation, the denominator does not include sales made in a
 36 place that is outside the United States. Receipts from intangible
 37 personal property are derived from sources within Indiana if the
 38 receipts from the intangible personal property are attributable to
 39 Indiana under section 2.2 of this chapter. Sales of tangible
 40 personal property are in Indiana if:

41 (1) the property is delivered or shipped to a purchaser, other
 42 than the United States government, within Indiana,
 43 regardless of the f.o.b. point or other conditions of the sale;

1 or
 2 (2) the property is shipped from an office, a store, a
 3 warehouse, a factory, or other place of storage in Indiana
 4 and:

5 (A) the purchaser is the United States government; or
 6 (B) the taxpayer is not taxable in the state of the
 7 purchaser.

8 Gross receipts derived from commercial printing as described in
 9 IC 6-2.5-1-10 shall be treated as sales of tangible personal
 10 property for purposes of this chapter.

11 (d) Sales, other than receipts from intangible property covered
 12 by subsection (c) and sales of tangible personal property, are in
 13 Indiana if:

14 (1) the income-producing activity is performed in Indiana; or
 15 (2) the income-producing activity is performed both within
 16 and outside Indiana and a greater proportion of the
 17 income-producing activity is performed in Indiana than in
 18 any other state, based on costs of performance.

19 (e) Rents and royalties from real or tangible personal property,
 20 capital gains, interest, dividends, or patent or copyright royalties,
 21 to the extent that they constitute nonbusiness income, shall be
 22 allocated as provided in subsections (f) through (i).

23 (f)(1) Net rents and royalties from real property located in
 24 Indiana are allocable to Indiana.

25 (2) Net rents and royalties from tangible personal property are
 26 allocated to Indiana:

27 (i) if and to the extent that the property is utilized in
 28 Indiana; or

29 (ii) in their entirety if the taxpayer's commercial domicile is
 30 in Indiana and the taxpayer is not organized under the laws
 31 of or taxable in the state in which the property is used.

32 (3) The extent of utilization of tangible personal property in a
 33 state is determined by multiplying the rents and royalties by a
 34 fraction, the numerator of which is the number of days of physical
 35 location of the property in the state during the rental or royalty
 36 period in the taxable year, and the denominator of which is the
 37 number of days of physical location of the property everywhere
 38 during all rental or royalty periods in the taxable year. If the
 39 physical location of the property during the rental or royalty
 40 period is unknown or unascertainable by the taxpayer, tangible
 41 personal property is used in the state in which the property was
 42 located at the time the rental or royalty payer obtained
 43 possession.

1 **(g)(1) Capital gains and losses from sales of real property**
2 **located in Indiana are allocable to Indiana.**

3 **(2) Capital gains and losses from sales of tangible personal**
4 **property are allocable to Indiana if:**

5 **(A) the property had a situs in Indiana at the time of the**
6 **sale; or**

7 **(B) the taxpayer's commercial domicile is in Indiana and the**
8 **taxpayer is not taxable in the state in which the property had**
9 **a situs.**

10 **(3) Capital gains and losses from sales of intangible personal**
11 **property are allocable to Indiana if the taxpayer's commercial**
12 **domicile is in Indiana.**

13 **(h) Interest and dividends are allocable to Indiana if the**
14 **taxpayer's commercial domicile is in Indiana.**

15 **(i)(1) Patent and copyright royalties are allocable to Indiana:**

16 **(A) if and to the extent that the patent or copyright is**
17 **utilized by the taxpayer in Indiana; or**

18 **(B) if and to the extent that the patent or copyright is**
19 **used by the taxpayer in a state in which the taxpayer is**
20 **not taxable and the taxpayer's commercial domicile is in**
21 **Indiana.**

22 **(2) A patent is used in a state to the extent that it is**
23 **employed in production, fabrication, manufacturing, or other**
24 **processing in the state or to the extent that a patented**
25 **product is produced in the state. If the basis of receipts from**
26 **patent royalties does not permit allocation to states or if the**
27 **accounting procedures do not reflect states of utilization, the**
28 **patent is used in the state in which the taxpayer's**
29 **commercial domicile is located.**

30 **(3) A copyright is used in a state to the extent that printing**
31 **or other publication originates in the state. If the basis of**
32 **receipts from copyright royalties does not permit allocation**
33 **to states or if the accounting procedures do not reflect states**
34 **of use, the copyright is used in the state in which the**
35 **taxpayer's commercial domicile is located.**

36 **(j) If the allocation and apportionment provisions of this article**
37 **do not fairly represent the taxpayer's income derived from**
38 **sources within the state of Indiana, the taxpayer may petition for**
39 **or the department may require, in respect to all or any part of the**
40 **taxpayer's business activity, if reasonable:**

41 **(1) separate accounting;**

42 **(2) the inclusion of one (1) or more additional factors that**
43 **will fairly represent the taxpayer's income derived from**

1 sources within Indiana; or
 2 (3) the employment of any other method to effectuate an
 3 equitable allocation and apportionment of the taxpayer's
 4 income.

5 (k) In the case of two (2) or more organizations, trades, or
 6 businesses owned or controlled directly or indirectly by the same
 7 interests, the department shall distribute, apportion, or allocate
 8 the income derived from sources within Indiana between and
 9 among those organizations, trades, or businesses in order to fairly
 10 reflect and report the income derived from sources within Indiana
 11 by various taxpayers.

12 (l) For purposes of allocation and apportionment of income
 13 under this article, a taxpayer is taxable in another state if:

- 14 (1) in that state the taxpayer is subject to a net income tax,
 15 a franchise tax measured by net income, a franchise tax for
 16 the privilege of doing business, or a corporate stock tax; or
 17 (2) that state has jurisdiction to subject the taxpayer to a net
 18 income tax regardless of whether, in fact, the state does or
 19 does not.

20 (m) Notwithstanding subsections (j) and (k), the department
 21 may not, under any circumstances, require that income,
 22 deductions, and credits attributable to a taxpayer and another
 23 entity be reported in a combined income tax return for any
 24 taxable year, if the other entity is:

- 25 (1) a foreign corporation; or
 26 (2) a corporation that is classified as a foreign operating
 27 corporation for the taxable year by section 2.4 of this
 28 chapter.

29 (n) Notwithstanding subsections (j) and (k), the department
 30 may not require that income, deductions, and credits attributable
 31 to a taxpayer and another entity not described in subsection
 32 (m)(1) or (m)(2) be reported in a combined income tax return for
 33 any taxable year, unless the department is unable to fairly reflect
 34 the taxpayer's adjusted gross income for the taxable year through
 35 use of other powers granted to the department by subsections (j)
 36 and (k).

37 (o) Notwithstanding subsections (m) and (n), one (1) or more
 38 taxpayers may petition the department under subsection (j) for
 39 permission to file a combined income tax return for a taxable
 40 year. The petition to file a combined income tax return must be
 41 completed and filed with the department not more than thirty (30)
 42 days after the end of the taxpayer's taxable year.

43 (p) This subsection applies to a corporation that is a life

1 **insurance company (as defined in Section 816(a) of the Internal**
 2 **Revenue Code) or an insurance company that is subject to tax**
 3 **under Section 831 of the Internal Revenue Code. The**
 4 **corporation's adjusted gross income that is derived from sources**
 5 **within Indiana is determined by multiplying the corporation's**
 6 **adjusted gross income by a fraction:**

7 (1) **the numerator of which is the direct premiums and**
 8 **annuity considerations received during the taxable year for**
 9 **insurance upon property or risks in the state; and**

10 (2) **the denominator of which is the direct premiums and**
 11 **annuity considerations received during the taxable year for**
 12 **insurance upon property or risks everywhere.**

13 **The term "direct premiums and annuity considerations" means**
 14 **the gross premiums received from direct business as reported in**
 15 **the corporation's annual statement filed with the department of**
 16 **insurance.**

17 SECTION 17. IC 6-3-2-2.4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.4. (a) For
 19 purposes of section ~~2(o)~~ 2(m) of this chapter, a corporation is a foreign
 20 operating corporation for a particular taxable year if it has eighty
 21 percent (80%) or more of its total business activity occurring outside
 22 the United States during the taxable year.

23 (b) For purposes of determining the amount of a corporation's
 24 business activity that occurs within the United States, the department
 25 shall determine the sum of that corporation's United States property
 26 factor and its United States payroll factor and divide that sum by two
 27 (2). If the quotient exceeds two-tenths (0.2), then less than eighty
 28 percent (80%) of the corporation's business shall be considered to have
 29 occurred outside the United States. If the quotient equals or is less than
 30 two-tenths (0.2), then eighty percent (80%) or more of the
 31 corporation's business shall be considered to have occurred outside the
 32 United States. If a corporation's United States property factor or its
 33 United States payroll factor has a denominator of zero (0), then the sum
 34 of the two (2) factors shall be divided by one (1) and not by two (2).

35 (c) The United States property factor of a corporation is a fraction.
 36 The numerator of the fraction is the average value of the corporation's
 37 real and tangible personal property owned or rented and used in the
 38 United States during the taxable year, and the denominator of the
 39 fraction is the average value of all the corporation's real and tangible
 40 personal property owned or rented and used anywhere in the world
 41 during the taxable year. Property owned by the corporation shall be
 42 valued at its original cost. Property rented by the corporation shall be
 43 valued at eight (8) times the net annual rental rate. The corporation's net
 44 annual rental rate is the annual rental rate paid by the corporation less
 45 any annual rental rate received by the corporation from subrentals. The

1 average value of property shall be determined by averaging the values
 2 at the beginning and ending of the taxable year, but the department may
 3 require the averaging of monthly values during the taxable year if
 4 reasonably required to reflect properly the average value of the
 5 corporation's property.

6 (d) The United States payroll factor of a corporation is a fraction.
 7 The numerator of the fraction is the total compensation to individuals
 8 paid in the United States during the taxable year by the corporation, and
 9 the denominator of the fraction is the total compensation to individuals
 10 paid anywhere in the world during the taxable year by the corporation.
 11 Compensation to an individual is paid in the United States if:

12 (1) the individual's service is performed entirely within the United
 13 States;

14 (2) the individual's service is performed both within and outside
 15 the United States, but the service performed outside the United
 16 States is incidental to the individual's service within the United
 17 States; or

18 (3) the individual is a resident of the United States, some of the
 19 service is performed in the United States, and:

20 (A) the base of operations or, if there is no base of operations,
 21 the place from which the service is directed or controlled is in
 22 the United States; or

23 (B) the base of operations or, if there is no base of operations,
 24 the place from which the service is directed or controlled is not
 25 in a jurisdiction that is outside the United States and that is
 26 where some part of the service is performed.

27 SECTION 18. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss),
 28 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JANUARY 1, 2005]: Sec. 2.6. (a) This section applies to a corporation
 30 or a nonresident person, for a particular taxable year, if the taxpayer's
 31 adjusted gross income for that taxable year is reduced because of a
 32 deduction allowed under Section 172 of the Internal Revenue Code for
 33 a net operating loss. For purposes of section 1 of this chapter, the
 34 taxpayer's adjusted gross income, for the particular taxable year,
 35 derived from sources within Indiana is the remainder determined under
 36 STEP FOUR of the following formula:

37 STEP ONE: Determine, in the manner prescribed in section 2 or
 38 2.1 of this chapter, the taxpayer's adjusted gross income, for the
 39 taxable year, derived from sources within Indiana, as calculated
 40 without the deduction for net operating losses provided by Section
 41 172 of the Internal Revenue Code.

42 STEP TWO: Determine, in the manner prescribed in subsection
 43 (b), the amount of the taxpayer's net operating losses that are
 44 deductible for the taxable year under Section 172 of the Internal
 45 Revenue Code, as adjusted to reflect the modifications required by
 46 IC 6-3-1-3.5, and that are derived from sources within Indiana.

1 STEP THREE: Enter the larger of zero (0) or the amount
2 determined under STEP TWO.

3 STEP FOUR: Subtract the amount entered under STEP THREE
4 from the amount determined under STEP ONE.

5 (b) For purposes of STEP TWO of subsection (a), the modifications
6 that are to be applied are those modifications required under
7 IC 6-3-1-3.5 for the same taxable year during which each net operating
8 loss was incurred. In addition, for purposes of STEP TWO of
9 subsection (a), the amount of a taxpayer's net operating losses that are
10 derived from sources within Indiana shall be determined in the same
11 manner that the amount of the taxpayer's income derived from sources
12 within Indiana is determined, under section 2 **or 2.1** of this chapter, for
13 the same taxable year during which each loss was incurred. Also, for
14 purposes of STEP TWO of subsection (a), the following procedures
15 apply:

16 (1) The taxpayer's net operating loss for a particular taxable year
17 shall be treated as a positive number.

18 (2) A modification that is to be added to federal adjusted gross
19 income or federal taxable income under IC 6-3-1-3.5 shall be
20 treated as a negative number.

21 (3) A modification that is to be subtracted from federal adjusted
22 gross income or federal taxable income under IC 6-3-1-3.5 shall
23 be treated as a positive number.

24 (4) A net operating loss under this section shall be considered even
25 though in the year the taxpayer incurred the loss the taxpayer was
26 not subject to the tax imposed under section 1 of this chapter
27 because the taxpayer was:

28 (A) a life insurance company (as defined in Section 816(a) of
29 the Internal Revenue Code); or

30 (B) an insurance company subject to tax under Section 831 of
31 the Internal Revenue Code."

32 Page 25, between lines 26 and 27, begin a new paragraph and insert:
33 "SECTION 21. IC 6-3-3-10, AS AMENDED BY P.L.269-2003,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JANUARY 1 ,2005]; Sec. 10. (a) As used in this section:

36 "Base period wages" means the following:

37 (1) In the case of a taxpayer other than a pass through entity,
38 wages paid or payable by a taxpayer to its employees during the
39 year that ends on the last day of the month that immediately
40 precedes the month in which an enterprise zone is established, to
41 the extent that the wages would have been qualified wages if the
42 enterprise zone had been in effect for that year. If the taxpayer did
43 not engage in an active trade or business during that year in the
44 area that is later designated as an enterprise zone, then the base
45 period wages equal zero (0). If the taxpayer engaged in an active
46 trade or business during only part of that year in an area that is

1 later designated as an enterprise zone, then the department shall
2 determine the amount of base period wages.

3 (2) In the case of a taxpayer that is a pass through entity, base
4 period wages equal zero (0).

5 "Enterprise zone" means an enterprise zone created under
6 IC 4-4-6.1.

7 "Enterprise zone adjusted gross income" means adjusted gross
8 income of a taxpayer that is derived from sources within an enterprise
9 zone. Sources of adjusted gross income shall be determined with
10 respect to an enterprise zone, to the extent possible, in the same manner
11 that sources of adjusted gross income are determined with respect to
12 the state of Indiana under ~~IC 6-3-2-2~~ **IC 6-3-2-2.1**.

13 "Enterprise zone gross income" means gross income of a taxpayer
14 that is derived from sources within an enterprise zone.

15 "Enterprise zone insurance premiums" means insurance premiums
16 derived from sources within an enterprise zone.

17 "Monthly base period wages" means base period wages divided by
18 twelve (12).

19 "Pass through entity" means a:

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

22 (2) partnership;

23 (3) trust;

24 (4) limited liability company; or

25 (5) limited liability partnership.

26 "Qualified employee" means an individual who is employed by a
27 taxpayer and who:

28 (1) has his principal place of residence in the enterprise zone in
29 which he is employed;

30 (2) performs services for the taxpayer, ninety percent (90%) of
31 which are directly related to the conduct of the taxpayer's trade or
32 business that is located in an enterprise zone;

33 (3) performs at least fifty percent (50%) of his services for the
34 taxpayer during the taxable year in the enterprise zone; and

35 (4) in the case of an individual who is employed by a taxpayer that
36 is a pass through entity, was first employed by the taxpayer after
37 December 31, 1998.

38 "Qualified increased employment expenditures" means the following:

39 (1) For a taxpayer's taxable year other than his taxable year in
40 which the enterprise zone is established, the amount by which
41 qualified wages paid or payable by the taxpayer during the taxable
42 year to qualified employees exceeds the taxpayer's base period
43 wages.

44 (2) For the taxpayer's taxable year in which the enterprise zone is
45 established, the amount by which qualified wages paid or payable
46 by the taxpayer during all of the full calendar months in the

1 taxpayer's taxable year that succeed the date on which the
 2 enterprise zone was established exceed the taxpayer's monthly
 3 base period wages multiplied by that same number of full calendar
 4 months.

5 "Qualified state tax liability" means a taxpayer's total income tax
 6 liability incurred under:

- 7 (1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax) with
- 8 respect to enterprise zone adjusted gross income;
- 9 (2) IC 27-1-18-2 (insurance premiums tax) with respect to
- 10 enterprise zone insurance premiums; and
- 11 (3) IC 6-5.5 (the financial institutions tax);

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

15 "Qualified wages" means the wages paid or payable to qualified
 16 employees during a taxable year.

17 "Taxpayer" includes a pass through entity.

18 (b) A taxpayer is entitled to a credit against the taxpayer's qualified
 19 state tax liability for a taxable year in the amount of the lesser of:

- 20 (1) the product of ten percent (10%) multiplied by the qualified
- 21 increased employment expenditures of the taxpayer for the taxable
- 22 year; or
- 23 (2) one thousand five hundred dollars (\$1,500) multiplied by the
- 24 number of qualified employees employed by the taxpayer during
- 25 the taxable year.

26 (c) The amount of the credit provided by this section that a taxpayer
 27 uses during a particular taxable year may not exceed the taxpayer's
 28 qualified state tax liability for the taxable year. If the credit provided by
 29 this section exceeds the amount of that tax liability for the taxable year
 30 it is first claimed, then the excess may be carried back to preceding
 31 taxable years or carried over to succeeding taxable years and used as a
 32 credit against the taxpayer's qualified state tax liability for those taxable
 33 years. Each time that the credit is carried back to a preceding taxable
 34 year or carried over to a succeeding taxable year, the amount of the
 35 carryover is reduced by the amount used as a credit for that taxable
 36 year. Except as provided in subsection (e), the credit provided by this
 37 section may be carried forward and applied in the ten (10) taxable years
 38 that succeed the taxable year in which the credit accrues. The credit
 39 provided by this section may be carried back and applied in the three (3)
 40 taxable years that precede the taxable year in which the credit accrues.

41 (d) A credit earned by a taxpayer in a particular taxable year shall be
 42 applied against the taxpayer's qualified state tax liability for that taxable
 43 year before any credit carryover or carryback is applied against that
 44 liability under subsection (c).

45 (e) Notwithstanding subsection (c), if a credit under this section
 46 results from wages paid in a particular enterprise zone, and if that

1 enterprise zone terminates in a taxable year that succeeds the last
 2 taxable year in which a taxpayer is entitled to use the credit carryover
 3 that results from those wages under subsection (c), then the taxpayer
 4 may use the credit carryover for any taxable year up to and including
 5 the taxable year in which the enterprise zone terminates.

6 (f) A taxpayer is not entitled to a refund of any unused credit.

7 (g) A taxpayer that:

8 (1) does not own, rent, or lease real property outside of an
 9 enterprise zone that is an integral part of its trade or business; and

10 (2) is not owned or controlled directly or indirectly by a taxpayer
 11 that owns, rents, or leases real property outside of an enterprise
 12 zone;

13 is exempt from the allocation and apportionment provisions of this
 14 section.

15 (h) If a pass through entity is entitled to a credit under subsection
 16 (b) but does not have state tax liability against which the tax credit may
 17 be applied, an individual who is a shareholder, partner, beneficiary, or
 18 member of the pass through entity is entitled to a tax credit equal to:

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

21 (2) the percentage of the pass through entity's distributive income
 22 to which the shareholder, partner, beneficiary, or member is
 23 entitled.

24 The credit provided under this subsection is in addition to a tax credit
 25 to which a shareholder, partner, beneficiary, or member of a pass
 26 through entity is entitled. However, a pass through entity and an
 27 individual who is a shareholder, partner, beneficiary, or member of a
 28 pass through entity may not claim more than one (1) credit for the
 29 qualified expenditure.

30 SECTION 22. IC 6-3.1-4-6, AS AMENDED BY P.L.224-2003,
 31 SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2004]: Sec. 6. ~~Notwithstanding the other provisions of this~~
 33 ~~chapter, a taxpayer is not entitled to a credit for Indiana qualified~~
 34 ~~research expense incurred after December 31, 2013.~~ Notwithstanding
 35 Section 41 of the Internal Revenue Code, the termination date in Section
 36 41(h) of the Internal Revenue Code does not apply to a taxpayer who
 37 is eligible for the credit under this chapter for the taxable year in which
 38 the Indiana qualified research expense is incurred."

39 Page 31, between lines 6 and 7, begin a new paragraph and insert:

40 "SECTION 28. IC 6-8.1-6-5, AS AMENDED BY P.L.254-2003,
 41 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JANUARY 1, 2005]: Sec. 5. The department shall request from each
 43 taxpayer the amount of the taxpayer's gross income (as defined in
 44 Section 61 of the Internal Revenue Code) derived from sources within
 45 or outside Indiana using the provisions applicable to determining the
 46 source of adjusted gross income that are set forth in ~~IC 6-3-2-2.~~

1 **IC 6-3-2-2.1.** The taxpayer shall itemize the amount of gross income
2 derived from each source.

3 SECTION 29. IC 9-13-2-78 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 78. "Indiana
5 resident" refers to a person who is one (1) of the following:

6 (1) A person who has been living in Indiana for at least one
7 hundred eighty-three (183) days during a calendar year and who
8 has a legal residence in another state. However, the term does not
9 include a person who has been living in Indiana for any of the
10 following purposes:

11 (A) Attending an institution of higher education.

12 (B) Serving on active duty in the armed forces of the United
13 States.

14 (2) A person who is living in Indiana if the person has no other
15 legal residence.

16 (3) A person who is registered to vote in Indiana.

17 (4) A person who has a child enrolled in an elementary or a
18 secondary school located in Indiana.

19 (5) A person who has more than one-half (1/2) of the person's
20 gross income (as defined in Section 61 of the Internal Revenue
21 Code) derived from sources in Indiana using the provisions
22 applicable to determining the source of adjusted gross income that
23 are set forth in ~~IC 6-3-2-2~~ **IC 6-3-2-2.1**. However, a person who
24 is considered a resident under this subdivision is not a resident if
25 the person proves by a preponderance of the evidence that the
26 person is not a resident under subdivisions (1) through (4)."

27 Page 32, between lines 3 and 4, begin a new paragraph and insert:

28 "SECTION 32. [EFFECTIVE JANUARY 1, 2005] **IC 6-3-1-24 and**
29 **IC 6-3-2-2.4, both as amended by this act, and IC 6-3-2-2.1, as**
30 **added by this act, apply only to taxable years beginning after**
31 **December 31, 2004.**

32 SECTION 33. [EFFECTIVE JULY 1, 2004] **For purposes of**
33 **IC 6-2.5-5-39, as added by this act, all transactions shall be**
34 **considered as having occurred after June 30, 2004, to the extent**
35 **that delivery of the property or services constituting selling at**
36 **retail is made after that date to the purchaser or to the place of**
37 **delivery designated by the purchaser. However, a transaction shall**
38 **be considered as having occurred before July 1, 2004, to the extent**
39 **that the agreement of the parties to the transaction was entered**
40 **into before July 1, 2004, and payment for the property or services**
41 **furnished in the transaction is made before July 1, 2004,**
42 **notwithstanding the delivery of the property or services after June**
43 **30, 2004."**

44 Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

Representative Borrer