
SENATE BILL No. 378

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-23-5.5-17; IC 6-3.1.

Synopsis: Biodiesel and ethanol tax incentives. Increases the maximum amount of diesel production tax credits, blended biodiesel production tax credits, blended diesel retail sales tax credits, and ethanol production tax credits that may be granted. Transfers responsibility for determining whether a person is qualified for a credit and allocating the maximum amount of available credits from the department of state revenue to the recycling and energy development board. Extends the blended diesel retail sales tax credits to dealers that distribute blended diesel at retail by a means other than a metered pump. Corrects an internal reference. Makes other related changes.

Effective: Upon passage; January 1, 2005 (retroactive).

Weatherwax, Jackman, Waterman

January 11, 2005, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 378



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

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

1 SECTION 1. IC 4-23-5.5-17 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 17. (a) The definitions
4 in IC 6-3.1-27 and IC 6-3.1-28 apply throughout this section. A
5 term used in this section that is defined in both IC 6-3.1-27 and
6 IC 6-3.1-28 refers to the term as defined in:**

- 7 (1) IC 6-3.1-27 whenever this section applies to the
8 certification of a person for a credit under IC 6-3.1-27; and
- 9 (2) IC 6-3.1-28 whenever this section applies to the
10 certification of a person for a credit under IC 6-3.1-28.

11 **In addition, as used in this section, "person" refers to a taxpayer
12 or a pass through entity.**

13 **(b) A person that:**

- 14 (1) produces or has taken a substantial step, as determined by
15 the board, toward producing biodiesel, blended biodiesel, or
16 ethanol at a facility; or
- 17 (2) distributes or has taken a substantial step, as determined



1 by the board, toward distributing blended biodiesel at retail;
2 may apply to the board for a determination of the person's
3 eligibility for a tax credit under any combination of IC 6-3.1-27-8,
4 IC 6-3.1-27-9, IC 6-3.1-27-10, or IC 6-3.1-28-7.

5 (c) Subject to this section, the board shall issue to each
6 qualifying applicant a certification that:

7 (1) certifies the person as eligible for the tax credits for which
8 the person applied;

9 (2) identifies the facilities or retail distribution system covered
10 by the certification; and

11 (3) allocates to the person the lesser of:

12 (A) the maximum allowable credit for which the person is
13 eligible under IC 6-3.1-27-8, IC 6-3.1-27-9, IC 6-3.1-27-10,
14 or IC 6-3.1-28-11; or

15 (B) a credit equal to the level of production or distribution
16 at retail demonstrated as economically viable under the
17 business plan submitted to the board by the person.

18 (d) To qualify for certification under subsection (c), a person
19 must do the following:

20 (1) Submit an application for the credit on the forms and in
21 the manner prescribed by the board for the credit that is the
22 subject of the application.

23 (2) Demonstrate through a business plan and other
24 information presented to the board that the level of
25 production or distribution at retail proposed by the person is
26 feasible and economically viable.

27 (e) The board shall record the time of filing of each application
28 submitted under this section. The board shall grant certifications
29 under this section to qualifying applicants in the chronological
30 order in which the applications for the same type of credit are filed
31 until the maximum allowable credit for that type of credit is fully
32 allocated.

33 (f) The board may terminate a certification or reduce an
34 allocation of a credit granted under this section only if the board
35 determines, after a hearing, that the person granted the
36 certification or allocation has failed to:

37 (1) substantially comply with the business plan that is the
38 basis for the certification or allocation; or

39 (2) submit the information needed by the board to determine
40 whether the person has substantially complied with the
41 business plan that is the basis of the certification or allocation.

42 If an allocation of a credit is terminated or reduced, the unused

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1 credit becomes available for allocation to other qualifying
2 applicants in the chronological order in which the applications for
3 the same type of credit are filed until the maximum allowable
4 credit for that type of credit is fully allocated. The board may
5 approve an amendment to a business plan or a transfer of a
6 certificate of eligibility in conformity with the terms and conditions
7 specified by the board in rules adopted by the board under
8 IC 4-22-2.

9 (g) The board shall give the department of state revenue written
10 notice of each action taken under this section.

11 SECTION 2. IC 6-3.1-27-2.5 IS ADDED TO THE INDIANA
12 CODE AS A NEW SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 2.5. As
14 used in this chapter, "board" refers to the Indiana recycling and
15 energy development board created by IC 4-23-5.5-2.**

16 SECTION 3. IC 6-3.1-27-3.2 IS ADDED TO THE INDIANA
17 CODE AS A NEW SECTION TO READ AS FOLLOWS
18 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3.2. As
19 used in this chapter, "distribute at retail" means to sell or
20 otherwise distribute for consideration to an end user in Indiana.**

21 SECTION 4. IC 6-3.1-27-3.5 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: **Sec. 3.5. As
24 used in this chapter, "facility" refers to a facility that is located in
25 Indiana and is for the production of:**

- 26 (1) biodiesel;
- 27 (2) blended biodiesel that is blended with biodiesel produced
- 28 at a facility located in Indiana; or
- 29 (3) both biodiesel and blended biodiesel, as described in
- 30 subdivision (2).

31 SECTION 5. IC 6-3.1-27-8 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
33 Sec. 8. (a) A taxpayer that **has been certified by the board as eligible
34 for a credit under this section and** produces biodiesel at a facility
35 located in Indiana is entitled to a credit against the taxpayer's state tax
36 liability equal to the product of:

- 37 (1) one dollar (\$1); multiplied by
- 38 (2) the number of gallons of biodiesel:
 - 39 (A) produced at the Indiana facility during the taxable year;
 - 40 and
 - 41 (B) used to produce blended biodiesel.
- 42 (b) The credit provided by this section shall be reduced by any

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1 credit or subsidy that the taxpayer is entitled to receive from the federal
2 government for the production of biodiesel by the taxpayer.

3 (c) The total amount of credits allowed a taxpayer (or, if the
4 person producing the biodiesel is a pass through entity, the
5 shareholders, partners, or members of the pass through entity)
6 under this section may not exceed one million dollars (\$1,000,000) for
7 all taxpayers and all taxable years. The total amount of credits
8 allowed under this section may not exceed three million dollars
9 (\$3,000,000) for all taxpayers and all taxable years.

10 SECTION 6. IC 6-3.1-27-9 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
12 Sec. 9. (a) A taxpayer that has been certified by the board as eligible
13 for a credit under this section and produces blended biodiesel at a
14 facility located in Indiana is entitled to a credit against the taxpayer's
15 state tax liability equal to the product of:

- 16 (1) two cents (\$0.02); multiplied by
17 (2) the number of gallons of blended biodiesel:
18 (A) produced at the Indiana facility; and
19 (B) blended with biodiesel produced at a facility located in
20 Indiana.

21 (b) The credit provided by this section shall be reduced by any
22 credit or subsidy that the taxpayer is entitled to receive from the federal
23 government for the production of blended biodiesel by the taxpayer.

24 (c) (b) The total amount of credits allowed a taxpayer (or, if the
25 person producing the blended biodiesel is a pass through entity, the
26 shareholders, partners, or members of the pass through entity)
27 under this section may not exceed one million dollars (\$1,000,000) for
28 all taxpayers and all taxable years. The total amount of credits
29 allowed under this section may not exceed three million dollars
30 (\$3,000,000) for all taxpayers and all taxable years.

31 SECTION 7. IC 6-3.1-27-10 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
33 Sec. 10. (a) A taxpayer that:

- 34 (1) is a dealer that has been certified by the board as eligible
35 for a credit under this section; and
36 (2) operates a service station in Indiana at which distributes at
37 retail blended biodiesel is sold and dispensed through a metered
38 pump in a taxable year;

39 is entitled to a credit against the taxpayer's state tax liability.

40 (b) The amount of the credit allowed under this section is the
41 product of:

- 42 (1) one cent (\$0.01); multiplied by

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1 (2) the total number of gallons of blended biodiesel sold and
2 dispensed distributed at retail in a taxable year. through all the
3 metered pumps located at a service station described in
4 subsection (a)(2):

5 (c) The credit allowed under this section must be computed
6 separately for each service station operated by the taxpayer that meets
7 the requirements of subsection (a)(2):

8 (d) (c) The total amount of credits allowed a taxpayer (or, if the
9 person selling and dispensing the blended biodiesel is a pass
10 through entity, the shareholders, partners, or members of the pass
11 through entity) under this section may not exceed one million dollars
12 (\$1,000,000) for all taxpayers and all taxable years. The total amount
13 of credits allowed under this section may not exceed three million
14 dollars (\$3,000,000) for all taxpayers and all taxable years.

15 SECTION 8. IC 6-3.1-27-13 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
17 Sec. 13. To receive the credit provided by this chapter, a taxpayer must
18 do the following:

- 19 (1) Claim the credit on the taxpayer's state tax return or returns in
- 20 the manner prescribed by the department. The taxpayer shall
- 21 (2) Provide a copy of the certificate of the board finding:
- 22 (A) that the taxpayer; or
- 23 (B) if the taxpayer is a shareholder, partner, or member of
- 24 a pass through entity, that the pass through entity;
- 25 is eligible for the credit under IC 4-23-5.5-17.
- 26 (3) Submit to the department proof of all information that the
- 27 department determines is necessary for the calculation of the
- 28 credit provided by this chapter.

29 The department may require a pass through entity to provide the
30 informational reports that the department determines necessary
31 for the department to calculate the percentage of a credit provided
32 by this chapter to which a shareholder, partner, or member of the
33 pass through entity is entitled.

34 SECTION 9. IC 6-3.1-28-7 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
36 Sec. 7. Subject to section 11 of this chapter, a taxpayer that has been
37 certified by the board as eligible for a credit under this section and
38 produces ethanol at a facility is entitled to a credit against the
39 taxpayer's state tax liability equal to the product of:

- 40 (1) twelve and one-half cents (\$.125); multiplied by
- 41 (2) the number of gallons of ethanol produced at the Indiana
- 42 facility.

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1 SECTION 10. IC 6-3.1-28-10 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 3 Sec. 10. To receive the credit provided by this chapter, a taxpayer must
 4 do the following:

5 (1) Claim the credit on the taxpayer's state tax return or returns in
 6 the manner prescribed by the department.

7 (2) Provide a copy of the board's certificate finding:

8 (A) that the ~~facility taxpayer~~; or

9 (B) **if the taxpayer is a shareholder, partner, or member of
 10 a pass through entity, that the pass through entity;**

11 is a ~~qualified facility~~ **eligible for the credit** under IC 4-23-5.5-17.

12 (3) Submit to the department proof of all information that the
 13 department determines is necessary for the calculation of the
 14 credit provided by this chapter.

15 **The department may require a pass through entity to provide the
 16 informational reports that the department determines necessary
 17 for the department to calculate the percentage of the credit
 18 provided by this chapter to which a shareholder, partner, or
 19 member of the pass through entity is entitled.**

20 SECTION 11. IC 6-3.1-28-11 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:
 22 Sec. 11. (a) The total amount of credits allowed a taxpayer **(or, if the
 23 person producing the ethanol is a pass through entity, the
 24 shareholders, partners, or members of the pass through entity)**
 25 under this chapter may not exceed a total of five million dollars
 26 (\$5,000,000) for all taxable years.

27 (b) The total amount of credits allowed under this chapter may not
 28 exceed ~~ten~~ **twenty** million dollars ~~(\$10,000,000)~~ **(\$20,000,000)** for all
 29 taxpayers and all taxable years.

30 SECTION 12. IC 6-3.1-27-5 IS REPEALED [EFFECTIVE
 31 JANUARY 1, 2005 (RETROACTIVE)].

32 SECTION 13. [EFFECTIVE UPON PASSAGE] **The following
 33 apply only to taxable years beginning after December 31, 2004:**

34 (1) IC 4-23-5.5-17, as added by this act.

35 (2) IC 6-3.1-27-8, IC 6-3.1-27-9, IC 6-3.1-27-10,
 36 IC 6-3.1-27-13, IC 6-3.1-28-7, IC 6-3.1-28-10, and
 37 IC 6-3.1-28-11, all as amended by this act.

38 (3) The repeal of IC 6-3.1-27-5 by this act.

39 **A person who would have been eligible for a credit for the
 40 production of biodiesel, blended biodiesel, or ethanol in 2005 under
 41 IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7, as effective before
 42 their amendment by this act, is eligible for the credit in 2005 only**

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1 if the person complies with this act. However, a person that would
2 have been eligible for a credit in 2005 under IC 6-3.1-27-10, as
3 effective before its amendment by this act, continues to be eligible
4 for the credit through any taxable year beginning before the
5 effective date of this SECTION as if this act had not been enacted.
6 The amount of the credits taken by a taxpayer under
7 IC 6-3.1-28-10, as effective before the enactment of this act,
8 reduces the maximum allowable credit available under
9 IC 6-3.1-28-10, as amended by this act.
10 SECTION 14. An emergency is declared for this act.

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