



Reprinted
March 1, 2005

SENATE BILL No. 459

DIGEST OF SB 459 (Updated February 28, 2005 7:53 pm - DI 103)

Citations Affected: IC 6-3; IC 6-3.1; noncode.

Synopsis: Health benefit plan credit. Allows certain employers to take a tax credit related to making a health benefit plan available to the employers' employees.

Effective: July 1, 2005.

Dillon, Simpson

January 18, 2005, read first time and referred to Committee on Tax and Fiscal Policy.
February 24, 2005, reported favorably — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.

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SB 459—LS 7713/DI 103+



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. 459

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 6-3-1-3.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. When used in this
3 article, the term "adjusted gross income" shall mean the following:
4 (a) In the case of all individuals, "adjusted gross income" (as
5 defined in Section 62 of the Internal Revenue Code), modified as
6 follows:
7 (1) Subtract income that is exempt from taxation under this article
8 by the Constitution and statutes of the United States.
9 (2) Add an amount equal to any deduction or deductions allowed
10 or allowable pursuant to Section 62 of the Internal Revenue Code
11 for taxes based on or measured by income and levied at the state
12 level by any state of the United States.
13 (3) Subtract one thousand dollars (\$1,000), or in the case of a
14 joint return filed by a husband and wife, subtract for each spouse
15 one thousand dollars (\$1,000).
16 (4) Subtract one thousand dollars (\$1,000) for:
17 (A) each of the exemptions provided by Section 151(c) of the

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- 1 Internal Revenue Code;
- 2 (B) each additional amount allowable under Section 63(f) of
- 3 the Internal Revenue Code; and
- 4 (C) the spouse of the taxpayer if a separate return is made by
- 5 the taxpayer and if the spouse, for the calendar year in which
- 6 the taxable year of the taxpayer begins, has no gross income
- 7 and is not the dependent of another taxpayer.
- 8 (5) Subtract:
- 9 (A) one thousand five hundred dollars (\$1,500) for each of the
- 10 exemptions allowed under Section 151(c)(1)(B) of the Internal
- 11 Revenue Code for taxable years beginning after December 31,
- 12 1996; and
- 13 (B) five hundred dollars (\$500) for each additional amount
- 14 allowable under Section 63(f)(1) of the Internal Revenue Code
- 15 if the adjusted gross income of the taxpayer, or the taxpayer
- 16 and the taxpayer's spouse in the case of a joint return, is less
- 17 than forty thousand dollars (\$40,000).
- 18 This amount is in addition to the amount subtracted under
- 19 subdivision (4).
- 20 (6) Subtract an amount equal to the lesser of:
- 21 (A) that part of the individual's adjusted gross income (as
- 22 defined in Section 62 of the Internal Revenue Code) for that
- 23 taxable year that is subject to a tax that is imposed by a
- 24 political subdivision of another state and that is imposed on or
- 25 measured by income; or
- 26 (B) two thousand dollars (\$2,000).
- 27 (7) Add an amount equal to the total capital gain portion of a
- 28 lump sum distribution (as defined in Section 402(e)(4)(D) of the
- 29 Internal Revenue Code) if the lump sum distribution is received
- 30 by the individual during the taxable year and if the capital gain
- 31 portion of the distribution is taxed in the manner provided in
- 32 Section 402 of the Internal Revenue Code.
- 33 (8) Subtract any amounts included in federal adjusted gross
- 34 income under Section 111 of the Internal Revenue Code as a
- 35 recovery of items previously deducted as an itemized deduction
- 36 from adjusted gross income.
- 37 (9) Subtract any amounts included in federal adjusted gross
- 38 income under the Internal Revenue Code which amounts were
- 39 received by the individual as supplemental railroad retirement
- 40 annuities under 45 U.S.C. 231 and which are not deductible under
- 41 subdivision (1).
- 42 (10) Add an amount equal to the deduction allowed under Section

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- 1 221 of the Internal Revenue Code for married couples filing joint
 2 returns if the taxable year began before January 1, 1987.
 3 (11) Add an amount equal to the interest excluded from federal
 4 gross income by the individual for the taxable year under Section
 5 128 of the Internal Revenue Code if the taxable year began before
 6 January 1, 1985.
 7 (12) Subtract an amount equal to the amount of federal Social
 8 Security and Railroad Retirement benefits included in a taxpayer's
 9 federal gross income by Section 86 of the Internal Revenue Code.
 10 (13) In the case of a nonresident taxpayer or a resident taxpayer
 11 residing in Indiana for a period of less than the taxpayer's entire
 12 taxable year, the total amount of the deductions allowed pursuant
 13 to subdivisions (3), (4), (5), and (6) shall be reduced to an amount
 14 which bears the same ratio to the total as the taxpayer's income
 15 taxable in Indiana bears to the taxpayer's total income.
 16 (14) In the case of an individual who is a recipient of assistance
 17 under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7,
 18 subtract an amount equal to that portion of the individual's
 19 adjusted gross income with respect to which the individual is not
 20 allowed under federal law to retain an amount to pay state and
 21 local income taxes.
 22 (15) In the case of an eligible individual, subtract the amount of
 23 a Holocaust victim's settlement payment included in the
 24 individual's federal adjusted gross income.
 25 (16) For taxable years beginning after December 31, 1999,
 26 subtract an amount equal to the portion of any premiums paid
 27 during the taxable year by the taxpayer for a qualified long term
 28 care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the
 29 taxpayer's spouse, or both.
 30 (17) Subtract an amount equal to the lesser of:
 31 (A) for a taxable year:
 32 (i) including any part of 2004, the amount determined under
 33 subsection (f); and
 34 (ii) beginning after December 31, 2004, two thousand five
 35 hundred dollars (\$2,500); or
 36 (B) the amount of property taxes that are paid during the
 37 taxable year in Indiana by the individual on the individual's
 38 principal place of residence.
 39 (18) Subtract an amount equal to the amount of a September 11
 40 terrorist attack settlement payment included in the individual's
 41 federal adjusted gross income.
 42 (19) Add or subtract the amount necessary to make the adjusted

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1 gross income of any taxpayer that owns property for which bonus
2 depreciation was allowed in the current taxable year or in an
3 earlier taxable year equal to the amount of adjusted gross income
4 that would have been computed had an election not been made
5 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
6 apply bonus depreciation to the property in the year that it was
7 placed in service.

8 (20) Add an amount equal to any deduction allowed under
9 Section 172 of the Internal Revenue Code.

10 **(21) In the case of an individual who is employed by a**
11 **taxpayer that claims a credit under IC 6-3.1-25-9, add the**
12 **amount of the individual's eligible benefits as provided in**
13 **IC 6-3.1-25-15(a) or IC 6-3.1-25-15(b).**

14 (b) In the case of corporations, the same as "taxable income" (as
15 defined in Section 63 of the Internal Revenue Code) adjusted as
16 follows:

17 (1) Subtract income that is exempt from taxation under this article
18 by the Constitution and statutes of the United States.

19 (2) Add an amount equal to any deduction or deductions allowed
20 or allowable pursuant to Section 170 of the Internal Revenue
21 Code.

22 (3) Add an amount equal to any deduction or deductions allowed
23 or allowable pursuant to Section 63 of the Internal Revenue Code
24 for taxes based on or measured by income and levied at the state
25 level by any state of the United States.

26 (4) Subtract an amount equal to the amount included in the
27 corporation's taxable income under Section 78 of the Internal
28 Revenue Code.

29 (5) Add or subtract the amount necessary to make the adjusted
30 gross income of any taxpayer that owns property for which bonus
31 depreciation was allowed in the current taxable year or in an
32 earlier taxable year equal to the amount of adjusted gross income
33 that would have been computed had an election not been made
34 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
35 apply bonus depreciation to the property in the year that it was
36 placed in service.

37 (6) Add an amount equal to any deduction allowed under Section
38 172 of the Internal Revenue Code.

39 (c) In the case of life insurance companies (as defined in Section
40 816(a) of the Internal Revenue Code) that are organized under Indiana
41 law, the same as "life insurance company taxable income" (as defined
42 in Section 801 of the Internal Revenue Code), adjusted as follows:

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- 1 (1) Subtract income that is exempt from taxation under this article
- 2 by the Constitution and statutes of the United States.
- 3 (2) Add an amount equal to any deduction allowed or allowable
- 4 under Section 170 of the Internal Revenue Code.
- 5 (3) Add an amount equal to a deduction allowed or allowable
- 6 under Section 805 or Section 831(c) of the Internal Revenue Code
- 7 for taxes based on or measured by income and levied at the state
- 8 level by any state.
- 9 (4) Subtract an amount equal to the amount included in the
- 10 company's taxable income under Section 78 of the Internal
- 11 Revenue Code.
- 12 (5) Add or subtract the amount necessary to make the adjusted
- 13 gross income of any taxpayer that owns property for which bonus
- 14 depreciation was allowed in the current taxable year or in an
- 15 earlier taxable year equal to the amount of adjusted gross income
- 16 that would have been computed had an election not been made
- 17 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
- 18 apply bonus depreciation to the property in the year that it was
- 19 placed in service.
- 20 (6) Add an amount equal to any deduction allowed under Section
- 21 172 or Section 810 of the Internal Revenue Code.
- 22 (d) In the case of insurance companies subject to tax under Section
- 23 831 of the Internal Revenue Code and organized under Indiana law, the
- 24 same as "taxable income" (as defined in Section 832 of the Internal
- 25 Revenue Code), adjusted as follows:
- 26 (1) Subtract income that is exempt from taxation under this article
- 27 by the Constitution and statutes of the United States.
- 28 (2) Add an amount equal to any deduction allowed or allowable
- 29 under Section 170 of the Internal Revenue Code.
- 30 (3) Add an amount equal to a deduction allowed or allowable
- 31 under Section 805 or Section 831(c) of the Internal Revenue Code
- 32 for taxes based on or measured by income and levied at the state
- 33 level by any state.
- 34 (4) Subtract an amount equal to the amount included in the
- 35 company's taxable income under Section 78 of the Internal
- 36 Revenue Code.
- 37 (5) Add or subtract the amount necessary to make the adjusted
- 38 gross income of any taxpayer that owns property for which bonus
- 39 depreciation was allowed in the current taxable year or in an
- 40 earlier taxable year equal to the amount of adjusted gross income
- 41 that would have been computed had an election not been made
- 42 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to

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1 apply bonus depreciation to the property in the year that it was
 2 placed in service.
 3 (6) Add an amount equal to any deduction allowed under Section
 4 172 of the Internal Revenue Code.
 5 (e) In the case of trusts and estates, "taxable income" (as defined for
 6 trusts and estates in Section 641(b) of the Internal Revenue Code)
 7 adjusted as follows:
 8 (1) Subtract income that is exempt from taxation under this article
 9 by the Constitution and statutes of the United States.
 10 (2) Subtract an amount equal to the amount of a September 11
 11 terrorist attack settlement payment included in the federal
 12 adjusted gross income of the estate of a victim of the September
 13 11 terrorist attack or a trust to the extent the trust benefits a victim
 14 of the September 11 terrorist attack.
 15 (3) Add or subtract the amount necessary to make the adjusted
 16 gross income of any taxpayer that owns property for which bonus
 17 depreciation was allowed in the current taxable year or in an
 18 earlier taxable year equal to the amount of adjusted gross income
 19 that would have been computed had an election not been made
 20 under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to
 21 apply bonus depreciation to the property in the year that it was
 22 placed in service.
 23 (4) Add an amount equal to any deduction allowed under Section
 24 172 of the Internal Revenue Code.
 25 (f) This subsection applies only to the extent that an individual paid
 26 property taxes in 2004 that were imposed for the March 1, 2002,
 27 assessment date or the January 15, 2003, assessment date. The
 28 maximum amount of the deduction under subsection (a)(17) is equal
 29 to the amount determined under STEP FIVE of the following formula:
 30 STEP ONE: Determine the amount of property taxes that the
 31 taxpayer paid after December 31, 2003, in the taxable year for
 32 property taxes imposed for the March 1, 2002, assessment date
 33 and the January 15, 2003, assessment date.
 34 STEP TWO: Determine the amount of property taxes that the
 35 taxpayer paid in the taxable year for the March 1, 2003,
 36 assessment date and the January 15, 2004, assessment date.
 37 STEP THREE: Determine the result of the STEP ONE amount
 38 divided by the STEP TWO amount.
 39 STEP FOUR: Multiply the STEP THREE amount by two
 40 thousand five hundred dollars (\$2,500).
 41 STEP FIVE: Determine the sum of the STEP ~~THREE~~ **FOUR**
 42 amount and two thousand five hundred dollars (\$2,500).

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1 SECTION 2. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005]:

4 **Chapter 25. Credit for Offering Health Benefit Plans**

5 **Sec. 1. This chapter applies to an employer that:**

6 (1) employs at least ten (10) full-time employees who are
7 located in Indiana; and

8 (2) does not offer coverage for health care services under a
9 self-funded health benefit plan that complies with the federal
10 Employee Retirement Income Security Act of 1974 (29 U.S.C.
11 1001 et seq.).

12 **Sec. 2. As used in this chapter, "eligible benefits" means, with**
13 **respect to an employee of a taxpayer that claims a credit under**
14 **section 9 of this chapter, the total amount of health insurance**
15 **premiums not included in the employee's federal adjusted gross**
16 **income (as defined in Section 62 of the Internal Revenue Code)**
17 **during a taxable year under the health benefit plan offered by the**
18 **employer.**

19 **Sec. 3. As used in this chapter, "eligible taxpayer" means a**
20 **taxpayer that did not provide health insurance to the taxpayer's**
21 **employees in the taxable year immediately preceding the first**
22 **taxable year for which the taxpayer claims a credit under this**
23 **chapter.**

24 **Sec. 4. As used in this chapter, "full-time employee" means an**
25 **employee who is normally scheduled to work at least thirty (30)**
26 **hours each week.**

27 **Sec. 5. (a) As used in this chapter, "health benefit plan" means**
28 **coverage for health care services provided under:**

29 (1) an insurance policy that provides one (1) or more of the
30 types of insurance described in Class 1(b) or Class 2(a) of
31 IC 27-1-5-1; or

32 (2) a contract with a health maintenance organization for
33 coverage of basic health care services under IC 27-13;

34 that satisfies the requirements of Section 125 of the Internal
35 Revenue Code.

36 (b) The term does not include the following:

37 (1) Accident only, credit, dental, vision, Medicare supplement,
38 long term care, or disability income insurance.

39 (2) Coverage issued as a supplement to liability insurance.

40 (3) Automobile medical payment insurance.

41 (4) A specified disease policy issued as an individual policy.

42 (5) A limited benefit health insurance policy issued as an

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- individual policy.
- (6) A short term insurance plan that:
 - (A) may not be renewed; and
 - (B) has a duration of not more than six (6) months.
- (7) A policy that provides a stipulated daily, weekly, or monthly payment to an insured during hospital confinement, without regard to the actual expense of the confinement.
- (8) Worker's compensation or similar insurance.
- (9) A student health insurance policy.

Sec. 6. As used in this chapter, "pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) limited liability company; or
- (4) limited liability partnership.

Sec. 7. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);
- (2) IC 6-5.5 (financial institutions tax); and
- (3) IC 27-1-18-2 (insurance premiums tax);

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

Sec. 8. As used in this chapter, "taxpayer" means an individual or entity that:

- (1) has state tax liability; and
- (2) employs at least ten (10) full-time employees who are located in Indiana.

Sec. 9. (a) An eligible taxpayer that, after December 31, 2005, makes health insurance available to the eligible taxpayer's employees and their dependents through at least one (1) health benefit plan is entitled to a credit against the taxpayer's state tax liability for the first two (2) taxable years in which the taxpayer makes the health benefit plan available if the following requirements are met:

- (1) An employee's participation in the health benefit plan is at the employee's election.
- (2) If an employee chooses to participate in the health benefit plan, the employee may pay the employee's share of the cost of the plan using a wage assignment authorized under IC 22-2-6-2.

(b) The credit allowed under this chapter equals the lesser of:

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1 (1) two thousand five hundred dollars (\$2,500); or
 2 (2) fifty dollars (\$50) multiplied by the number of employees
 3 enrolled in the health benefit plan during the taxable year.
 4 **Sec. 10. (a)** An employer may pay or provide reimbursement for
 5 all or part of the cost of a health benefit plan made available under
 6 section 9 of this chapter.
 7 (b) An employer that pays or provides reimbursement under
 8 subsection (a) shall pay or provide reimbursement on an equal
 9 basis for all full-time employees who elect to participate in the
 10 health benefit plan.
 11 **Sec. 11. (a)** If the amount determined under section 9 of this
 12 chapter for a taxpayer in a taxable year exceeds the taxpayer's
 13 state tax liability for that taxable year, the taxpayer may carry the
 14 excess over to the following taxable years. The amount of the credit
 15 carryover from a taxable year shall be reduced to the extent that
 16 the carryover is used by the taxpayer to obtain a credit under this
 17 chapter for any subsequent taxable year. A taxpayer is not entitled
 18 to a carryback.
 19 (b) A taxpayer is not entitled to a refund of any unused credit.
 20 **Sec. 12.** If a pass through entity does not have state income tax
 21 liability against which the tax credit may be applied, a shareholder
 22 or partner of the pass through entity is entitled to a tax credit equal
 23 to:
 24 (1) the tax credit determined for the pass through entity for
 25 the taxable year; multiplied by
 26 (2) the percentage of the pass through entity's distributive
 27 income to which the shareholder or partner is entitled.
 28 **Sec. 13.** To receive the credit provided by this chapter, a
 29 taxpayer must claim the credit on the taxpayer's state tax return
 30 or returns in the manner prescribed by the department. The
 31 taxpayer must submit to the department all information that the
 32 department determines is necessary to calculate the credit
 33 provided by this chapter and to determine the taxpayer's eligibility
 34 for the credit.
 35 **Sec. 14. (a)** A taxpayer claiming a credit under this chapter shall
 36 continue to make health insurance available to the taxpayer's
 37 employees through a health benefit plan for at least twenty-four
 38 (24) consecutive months beginning on the day after the last day of
 39 the taxable year in which the taxpayer first offers the health benefit
 40 plan.
 41 (b) If the taxpayer terminates the health benefit plan before the
 42 expiration of the period required under subsection (a), the

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1 taxpayer shall repay the department the amount of the credit
2 received under section 9 of this chapter.

3 Sec. 15. (a) An employee of a taxpayer that claims a credit under
4 this chapter shall include in the employee's state adjusted gross
5 income (as defined in IC 6-3-1-3.5(a)) the employee's eligible
6 benefits for:

7 (1) the first taxable year in which the taxpayer offers the
8 health benefit plan; and

9 (2) the taxable year immediately following the first taxable
10 year in which the taxpayer offers the health benefit plan.

11 (b) For each taxable year following the taxable year described
12 in subsection (a)(2), a percentage of an employee's eligible benefits
13 are included in the employee's state adjusted gross income (as
14 defined in IC 6-3-1-3.5(a)) as follows:

15 (1) For an employee whose annual income derived from the
16 taxpayer is forty thousand dollars (\$40,000) or less, zero
17 percent (0%).

18 (2) For an employee whose annual income derived from the
19 taxpayer is greater than forty thousand dollars (\$40,000) and
20 less than eighty thousand dollars (\$80,000), fifty percent
21 (50%).

22 (3) For an employee whose annual income derived from the
23 taxpayer is eighty thousand dollars (\$80,000) or greater, one
24 hundred percent (100%).

25 (c) A taxpayer that claims a credit under this chapter shall
26 notify each of the taxpayer's employees of the amount included in
27 the employee's state adjusted gross income (as defined in
28 IC 6-3-1-3.5(a)) under subsection (a) at the same time the taxpayer
29 provides the employee with the employee's W-2 federal income tax
30 withholding statement for the taxable year.

31 SECTION 3. [EFFECTIVE JULY 1, 2005] IC 6-3-1-3.5, as
32 amended by this act, applies only to taxable years beginning after
33 December 31, 2005.

34 SECTION 4. [EFFECTIVE JULY 1, 2005] IC 6-3.1-25, as added
35 by this act, applies only to taxable years beginning after December
36 31, 2005.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 459, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 459 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Simpson be added as coauthor of Senate Bill 459.

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SENATE MOTION

Madam President: I move that Senate Bill 459 be amended to read as follows:

Page 4, line 13, delete "6-3.1-25-15(a)." and insert "**6-3.1-25-15(a) or IC 6-3.1-25-15-(b).**".

Page 10, delete lines 11 through 14, begin a new paragraph and insert:

"(b) For each taxable year following the taxable year described in subsection (a)(2), a percentage of an employee's eligible benefits are included in the employee's state adjusted gross income (as defined in IC 6-3-1-3.5(a)) as follows:

(1) For an employee whose annual income derived from the taxpayer is forty thousand dollars (\$40,000) or less, zero percent (0%).

(2) For an employee whose annual income derived from the taxpayer is greater than forty thousand dollars (\$40,000) and less than eighty thousand dollars (\$80,000), fifty percent (50%).

(3) For an employee whose annual income derived from the taxpayer is eighty thousand dollars (\$80,000) or greater, one hundred percent (100%)."

Page 10, line 15, delete (b) and insert "(c)".

(Reference is to SB 459 as printed February 25, 2005.)

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