

# HOUSE BILL No. 1381

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-31.

**Synopsis:** Kindergarten tax credit. Provides a refundable income tax credit for education expenditures for qualified dependents enrolled in kindergarten at a school of choice (a nonpublic school that is voluntarily accredited or a public school where the child is required to pay transfer tuition). Permits a taxpayer to assign the income tax credit to a school of choice in satisfaction of the taxpayer's educational expenditure obligation.

**Effective:** January 1, 2006 (retroactive).

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**Behning**

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January 12, 2006, read first time and referred to Committee on Education.

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Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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# HOUSE BILL No. 1381



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 6-3.1-31 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2006 (RETROACTIVE)]:

4 **Chapter 31. Kindergarten Tax Credit**

5 **Sec. 1. As used in this chapter, "credit" refers to a tax credit**  
6 **granted under this chapter against state tax liability.**

7 **Sec. 2. As used in this chapter, "current ADM" has the meaning**  
8 **set forth in IC 21-3-1.6-1.1.**

9 **Sec. 3. As used in this chapter, "kindergarten program" means**  
10 **a half-day or full-day kindergarten program.**

11 **Sec. 4. As used in this chapter, "legal settlement" has the**  
12 **meaning set forth in IC 20-18-2-11.**

13 **Sec. 5. As used in this chapter, "maximum permissible credit"**  
14 **refers to the maximum credit determined under section 16 of this**  
15 **chapter for a particular year.**

16 **Sec. 6. As used in this chapter, "public school" has the meaning**  
17 **set forth in IC 20-18-2-15.**



1           **Sec. 7.** As used in this chapter, "nonpublic school" has the  
2 meaning set forth in IC 20-18-2-12.

3           **Sec. 8.** As used in this chapter, "qualified dependent" means an  
4 individual who:

- 5           (1) is a dependent (as defined in Section 152 of the Internal  
6 Revenue Code) of a qualified individual;
- 7           (2) has legal settlement in a school corporation located in  
8 Indiana; and
- 9           (3) is eligible by law to be enrolled in a kindergarten program  
10 in a taxable year in which a qualified individual pays or  
11 incurs a tuition expense.

12           **Sec. 9.** As used in this chapter, "qualified individual" means an  
13 individual who has an annual household income that is not more  
14 than two hundred percent (200%) of the federal income poverty  
15 level using the poverty guidelines updated periodically by the  
16 United States Department of Health and Human Services under the  
17 authority of 42 U.S.C. 9902(2).

18           **Sec. 10.** As used in this chapter, "school corporation" has the  
19 meaning set forth in IC 20-18-2-16.

20           **Sec. 11.** As used in this chapter, "school of choice" means the  
21 following:

- 22           (1) A nonpublic school (as defined in IC 20-18-2-12) that is:
  - 23           (A) located in Indiana; and
  - 24           (B) either voluntarily accredited:
    - 25           (i) under IC 20-31-4-2; or
    - 26           (ii) by a national or regional accreditation agency that is  
27 recommended by the education roundtable and  
28 approved by the Indiana state board of education.
- 29           (2) A public school (as defined in IC 20-18-2-15) in which an  
30 eligible student is not entitled to enroll without the payment  
31 of tuition or transfer tuition under IC 20-26-11-6.

32           **Sec. 12.** As used in this chapter, "state tax liability" refers to a  
33 taxpayer's tax liability for adjusted gross income tax under IC 6-3.

34           **Sec. 13.** As used in this chapter, "tuition" means all charges  
35 imposed by a school of choice to attend or be transported to or  
36 from a kindergarten program (excluding charges covered by  
37 textbook assistance under IC 20-33-5). The term includes transfer  
38 tuition payable under IC 20-26-11-6.

39           **Sec. 14.** A qualified individual who pays or incurs in the  
40 qualified individual's taxable year a tuition expense for enrolling  
41 a qualified dependent in a kindergarten program of a school of  
42 choice is entitled to a credit against the qualified individual's tax

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1 liability.

2 **Sec. 15. The amount of the credit to which a qualified individual**  
3 **is entitled in a taxable year is the lesser of the following:**

4 (1) **The qualified individual's tuition expense.**

5 (2) **The maximum permissible credit permitted for a**  
6 **particular year.**

7 **Sec. 16. The maximum permissible credit that may be granted**  
8 **for a qualified dependent on all tax returns for all taxable years**  
9 **ending in a particular year is the amount determined under STEP**  
10 **FOUR of the following formula, rounded to the nearest dollar (\$1):**

11 **STEP ONE: Determine, for the school corporation in which**  
12 **the qualified dependent has legal settlement on the first day of**  
13 **the qualified individual's taxable year, the state distribution**  
14 **for tuition support for basic programs, as determined under**  
15 **IC 21-3-1.7-8.2 after making any reductions in the**  
16 **distribution that were required under IC 21-3-1.7-9, in the**  
17 **year immediately preceding the year in which the qualified**  
18 **individual's taxable year began.**

19 **STEP TWO: Determine the current ADM for the school**  
20 **corporation in which the qualified dependent has legal**  
21 **settlement in the year immediately preceding the year in**  
22 **which the qualified individual's taxable year began.**

23 **STEP THREE: Determine the result of:**

24 (A) **the STEP ONE amount; divided by**

25 (B) **the STEP TWO amount.**

26 **STEP FOUR: Multiply the STEP THREE result by the**  
27 **following:**

28 (A) **Five-tenths (0.5) if the kindergarten program is a**  
29 **full-day kindergarten program and the qualified individual**  
30 **pays or incurs a tuition expense for an entire school year**  
31 **in the qualified individual's taxable year.**

32 (B) **Twenty-five hundredths (0.25) if:**

33 (i) **the kindergarten program is a half-day kindergarten**  
34 **program and the qualified individual pays or incurs a**  
35 **tuition expense for an entire school year in the qualified**  
36 **individual's taxable year; or**

37 (ii) **the kindergarten program is a full-day kindergarten**  
38 **program and the qualified individual pays or incurs a**  
39 **tuition expense for less than an entire school year in the**  
40 **qualified individual's taxable year.**

41 (C) **One hundred twenty-five thousandths (0.125) if the**  
42 **kindergarten program is a half-day kindergarten program**

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1 and the qualified individual pays or incurs a tuition  
2 expense for less than an entire school year in the qualified  
3 individual's taxable year.

4 **Sec. 17. The department of education shall:**

5 (1) post the maximum permissible credit amounts applicable  
6 to a year on the Internet web site of the department of  
7 education; and

8 (2) certify the maximum permissible credit amounts  
9 applicable to a year to the department of state revenue;  
10 not later than May 1 in the year to which it applies. The  
11 department of education shall maintain the information for a  
12 particular year on the Internet web site for at least two (2) years.

13 **Sec. 18. (a) If the amount of the credit to which a qualified**  
14 **individual is entitled in a taxable year exceeds the qualified**  
15 **individual's tax liability for the taxable year, the qualified**  
16 **individual may:**

- 17 (1) carry the excess over to the following taxable years; or
- 18 (2) be granted a refund of the excess amount.

19 **The amount of the credit carryover from a taxable year shall be**  
20 **reduced to the extent that the carryover is used by the taxpayer to**  
21 **obtain a refund or a credit under this chapter for any subsequent**  
22 **taxable year.**

23 **(b) A qualified individual is not entitled to a carryback of any**  
24 **unused credit.**

25 **Sec. 19. To qualify for a credit, a qualified individual must claim**  
26 **the credit on the forms and in the manner prescribed by the**  
27 **department of state revenue. The qualified individual must provide**  
28 **the department of state revenue with the information necessary for**  
29 **the department of state revenue to determine the amount of the**  
30 **credit to which the qualified individual is entitled. The department**  
31 **may prescribe an abbreviated form for a qualified individual who**  
32 **would not otherwise file a tax return to receive a refund under this**  
33 **chapter.**

34 **Sec. 20. A credit granted under this chapter may not be**  
35 **considered in determining the eligibility of a qualified individual or**  
36 **qualified dependent for Medicaid or any other entitlement**  
37 **program.**

38 **Sec. 21. The amount of a credit granted under this chapter,**  
39 **including the amount of a credit assigned to a school of choice,**  
40 **shall be excluded from the adjusted gross income of a qualified**  
41 **individual to the same extent that the amount is excluded from**  
42 **federal gross income under Section 117 of the Internal Revenue**

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**Sec. 22. A qualified individual shall be treated as paying or incurring a tuition expense if the qualified individual assigns a credit in accordance with this chapter to a school of choice in full satisfaction of the qualified individual's obligation to pay a tuition expense. However, the amount of the credit that a qualified individual is entitled to apply against the qualified individual's tax liability or to receive as a refund is reduced by the amount of the credit that is assigned to a school of choice.**

**Sec. 23. (a) A school of choice may enter into an agreement with a qualified individual to assign a credit in accordance with this chapter to a school of choice in full satisfaction of the qualified individual's obligation to pay tuition expense.**

**(b) The assignment of a credit in full satisfaction of the qualified individual's obligation to pay tuition expense for a full school year (as defined in IC 20-18-2-17) is valid even if some of the educational services will be provided in the qualified individual's taxable year that immediately follows the taxable year in which the assignment is made.**

**(c) An agreement must be in the form prescribed by the department of state revenue.**

**Sec. 24. A school of choice that is assigned a qualified individual's credit is entitled to a credit against the school of choice's tax liability for the taxable year for which the school of choice would have recognized income if the qualified individual had paid tuition.**

**Sec. 25. The amount of the assigned credit is the least of the following:**

- (1) The tuition rate that the school of choice regularly charges for the kindergarten services provided to students in the same classification as the qualified dependent.**
- (2) The actual amount of the obligation to the school of choice that the qualified individual would have been required to pay to the school of choice if the qualified individual had not assigned the credit.**
- (3) The maximum permissible credit permitted for the year in which the school year (as defined in IC 20-18-2-17) in which the qualified dependent enrolled begins.**
- (4) If the school of choice is the school corporation in which the qualified dependent has legal settlement, the amount of excess costs incurred by the school corporation to educate the qualified dependent in a public school outside the qualified**

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dependent's attendance area, as determined under the rules of the department.

**Sec. 26. (a)** If the amount of an assigned credit exceeds the tax liability of a school of choice for a taxable year, the school of choice may:

- (1) carry the excess over to the following taxable years; or
- (2) receive a refund of the excess amount.

The amount of a credit carryover for any subsequent year is reduced to the extent that the school of choice applies the credit to tax liability in a taxable year or the school of choice receives a refund.

**(b)** A school of choice is not entitled to a carryback of an unused credit. A shareholder, partner, or member of the school of choice is not entitled to a pass through of a school of choice's assigned credit.

**Sec. 27.** To qualify to use an assigned credit, a school of choice must claim the assigned credit on the forms and in the manner prescribed by the department of state revenue. The school of choice must provide the department of state revenue with the information necessary for the department of state revenue to determine the amount of the assigned credits to which the school of choice is entitled. The department may prescribe an abbreviated form for a school of choice that would not otherwise file a tax return to receive a refund under this chapter.

**Sec. 28.** The amount of an assigned credit shall be treated as income to a school of choice to the same extent as if the qualified individual assigning the credit had paid tuition to the school of choice.

**Sec. 29.** Before August 2 in each year, the department of state revenue shall distribute to the department of education an informational report that contains at least the following information:

- (1) The number of qualified dependents for whom credits were granted in the immediately preceding year.
- (2) The number of nonpublic schools providing a kindergarten program to qualified dependents for whom credits were granted in the immediately preceding year.
- (3) The number of school corporations providing a kindergarten program to qualified dependents for whom credits were granted in the immediately preceding year.

**Sec. 30.** Acceptance by a nonpublic school of a credit does not provide any governmental entity or agency with jurisdiction,

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1 authority, or control over the nonpublic school that is not  
2 otherwise granted by law.

3 SECTION 2. [EFFECTIVE JANUARY 1, 2006 (RETROACTIVE)]  
4 IC 6-3.1-31, as added by this act, applies to school years (as defined  
5 in IC 20-18-2-17) beginning after June 30, 2006, and to taxable  
6 years beginning after December 31, 2005.

7 SECTION 3. An emergency is declared for this act.

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