

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WITHDRAWN	Noes _____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

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 500 be amended to read as follows:

- 1 Page 44, between lines 39 and 40, begin a new paragraph and insert:
- 2 "**(c) If an individual is not a citizen of the United States, the**
- 3 **individual shall include with the estimated tax the amounts**
- 4 **attributable to income that are excluded from the individual's**
- 5 **adjusted gross income:**
- 6 **(1) for a spouse under IC 6-3-1-3.5(a)(3);**
- 7 **(2) under IC 6-3-1-3.5(a)(4)(A);**
- 8 **(3) under IC 6-3-1-3.5(a)(4)(C); and**
- 9 **(4) under IC 6-3-1-3.5(a)(5)(A).**
- 10 **The individual shall indicate on the individual's estimated tax**
- 11 **returns that the individual is not a citizen of the United States."**
- 12 Page 44, line 40, strike "(c)" and insert "(d)".
- 13 Page 45, line 7, strike "(d)" and insert "(e)".
- 14 Page 45, line 25, strike "(e)" and insert "(f)".
- 15 Page 45, line 27, strike "(d) or (g)." and insert "(e) or (h)".
- 16 Page 45, line 32, delete "(d);" and insert "(e);".
- 17 Page 45, line 40, strike "(f)" and insert "(g)".
- 18 Page 45, line 40, strike "(d)" and insert "(e)".
- 19 Page 46, line 3, strike "(g)" and insert "(h)".
- 20 Page 46, line 16, strike "(h)" and insert "(i)".
- 21 Page 46, between lines 18 and 19, begin a new paragraph and insert:
- 22 "SECTION 30. IC 6-3-4-8 IS AMENDED TO READ AS
- 23 FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) Except as
- 24 provided in subsection ~~(t)~~ (e) or ~~(t)~~; (m), every employer making

1 payments of wages subject to tax under this article, regardless of the  
 2 place where such payment is made, who is required under the  
 3 provisions of the Internal Revenue Code to withhold, collect, and pay  
 4 over income tax on wages paid by such employer to such employee,  
 5 shall, at the time of payment of such wages, deduct and retain  
 6 therefrom the amount prescribed in withholding instructions issued by  
 7 the department. The department shall base its withholding instructions  
 8 on the adjusted gross income ~~tax rate for persons~~, **of the employee**, on  
 9 the total ~~rates of any income taxes tax~~ that the ~~taxpayer~~ **employee** is  
 10 subject to under IC 6-3.5, and on the total amount of exclusions the  
 11 ~~taxpayer~~ **employee** is entitled to under IC 6-3-1-3.5(a)(3) and  
 12 IC 6-3-1-3.5(a)(4). **If the employee is not a citizen of the United**  
 13 **States, the employee shall:**

- 14 (1) **request withholding as if the employee were single,**
- 15 **regardless of the employee's actual marital status;**
- 16 (2) **request withholding as if the employee did not have**
- 17 **dependents, regardless of whether the employee actually has**
- 18 **dependents; and**
- 19 (3) **write "noncitizen" on the form prescribed by the**
- 20 **department to determine the employee's exemptions.**

21 **(b) Such** An employer making payments of any wages:

- 22 (1) shall be liable to the state of Indiana for the payment of the tax
- 23 required to be deducted and withheld under this section and shall
- 24 not be liable to any ~~individual~~ **employee** for the amount deducted
- 25 from the ~~individual's~~ **employee's** wages and paid over in
- 26 compliance or intended compliance with this section; and
- 27 (2) shall make return of and payment to the department monthly
- 28 of the amount of tax which under this article and IC 6-3.5 the
- 29 employer is required to withhold.

30 ~~(b)~~ **(c)** An employer shall pay taxes withheld under subsection ~~(a)~~  
 31 **(b)** during a particular month to the department no later than thirty (30)  
 32 days after the end of that month. However, in place of monthly  
 33 reporting periods, the department may permit an employer to report and  
 34 pay the tax for:

- 35 (1) a calendar year reporting period, if the average monthly
- 36 amount of all tax required to be withheld by the employer in the
- 37 previous calendar year does not exceed ten dollars (\$10);
- 38 (2) a six (6) month reporting period, if the average monthly
- 39 amount of all tax required to be withheld by the employer in the
- 40 previous calendar year does not exceed twenty-five dollars (\$25);
- 41 or
- 42 (3) a three (3) month reporting period, if the average monthly
- 43 amount of all tax required to be withheld by the employer in the
- 44 previous calendar year does not exceed seventy-five dollars (\$75).

45 An employer using a reporting period (other than a monthly reporting  
 46 period) must file the employer's return and pay the tax for a reporting

1 period no later than the last day of the month immediately following  
 2 the close of the reporting period. If an employer files a combined sales  
 3 and withholding tax report, the reporting period for the combined  
 4 report is the shortest period required under this section, section 8.1 of  
 5 this chapter, or IC 6-2.5-6-1.

6 ~~(c)~~ **(d)** For purposes of determining whether an employee is subject  
 7 to taxation under IC 6-3.5, an employer is entitled to rely on the  
 8 statement of an employee as to the employee's county of residence as  
 9 represented by the statement of address in forms claiming exemptions  
 10 for purposes of withholding, regardless of when the employee supplied  
 11 the forms. Every employee shall notify the employee's employer within  
 12 five (5) days after any change in the employee's county of residence.

13 ~~(d)~~ **(e)** A county that makes payments of wages subject to tax under  
 14 this article:

15 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

16 (2) for the performance of the duties of the precinct election  
 17 officer imposed by IC 3 that are performed on election day;

18 is not required, at the time of payment of the wages, to deduct and  
 19 retain from the wages the amount prescribed in withholding  
 20 instructions issued by the department.

21 ~~(e)~~ **(f)** Every employer shall, at the time of each payment made by  
 22 the employer to the department, deliver to the department a return upon  
 23 the form prescribed by the department showing:

24 (1) the total amount of wages paid to the employer's employees;

25 (2) the amount deducted therefrom in accordance with the  
 26 provisions of the Internal Revenue Code;

27 (3) the amount of adjusted gross income tax deducted therefrom  
 28 in accordance with the provisions of this section;

29 (4) the amount of income tax, if any, imposed under IC 6-3.5 and  
 30 deducted therefrom in accordance with this section; and

31 (5) any other information the department may require.

32 Every employer making a declaration of withholding as provided in this  
 33 section shall furnish the employer's employees annually, but not later  
 34 than thirty (30) days after the end of the calendar year, a record of the  
 35 total amount of adjusted gross income tax and the amount of each  
 36 income tax, if any, imposed under IC 6-3.5, withheld from the  
 37 employees, on the forms prescribed by the department.

38 ~~(f)~~ **(g)** All money deducted and withheld by an employer shall  
 39 immediately upon such deduction be the money of the state, and every  
 40 employer who deducts and retains any amount of money under the  
 41 provisions of this article shall hold the same in trust for the state of  
 42 Indiana and for payment thereof to the department in the manner and  
 43 at the times provided in this article. Any employer may be required to  
 44 post a surety bond in the sum the department determines to be  
 45 appropriate to protect the state with respect to money withheld pursuant  
 46 to this section.

1           ~~(g)~~ **(h)** The provisions of IC 6-8.1 relating to additions to tax in case  
 2 of delinquency and penalties shall apply to employers subject to the  
 3 provisions of this section, and for these purposes any amount deducted  
 4 or required to be deducted and remitted to the department under this  
 5 section shall be considered to be the tax of the employer, and with  
 6 respect to such amount the employer shall be considered the taxpayer.  
 7 In the case of a corporate or partnership employer, every officer,  
 8 employee, or member of such employer, who, as such officer,  
 9 employee, or member is under a duty to deduct and remit such taxes  
 10 shall be personally liable for such taxes, penalties, and interest.

11           ~~(h)~~ **(i)** Amounts deducted from wages of an employee during any  
 12 calendar year in accordance with the provisions of this section shall be  
 13 considered to be in part payment of the tax imposed on such employee  
 14 for the employee's taxable year which begins in such calendar year, and  
 15 a return made by the employer under subsection ~~(b)~~ **(c)** shall be  
 16 accepted by the department as evidence in favor of the employee of the  
 17 amount so deducted from the employee's wages. Where the total  
 18 amount so deducted exceeds the amount of tax on the employee as  
 19 computed under this article and IC 6-3.5, the department shall, after  
 20 examining the return or returns filed by the employee in accordance  
 21 with this article and IC 6-3.5, refund the amount of the excess  
 22 deduction. However, under rules promulgated by the department, the  
 23 excess or any part thereof may be applied to any taxes or other claim  
 24 due from the taxpayer to the state of Indiana or any subdivision thereof.  
 25 No refund shall be made to an employee who fails to file the  
 26 employee's return or returns as required under this article and IC 6-3.5  
 27 within two (2) years from the due date of the return or returns. In the  
 28 event that the excess tax deducted is less than one dollar (\$1), no  
 29 refund shall be made.

30           ~~(i)~~ **(j)** This section shall in no way relieve any **taxpayer employee**  
 31 from the **taxpayer's employee's** obligation of filing a return or returns  
 32 at the time required under this article and IC 6-3.5, and, should the  
 33 amount withheld under the provisions of this section be insufficient to  
 34 pay the total tax of such **taxpayer, employee**, such unpaid tax shall be  
 35 paid at the time prescribed by section 5 of this chapter.

36           ~~(j)~~ **(k)** Notwithstanding subsection ~~(b)~~ **(c)**, an employer of a  
 37 domestic service employee that enters into an agreement with the  
 38 domestic service employee to withhold federal income tax under  
 39 Section 3402 of the Internal Revenue Code may withhold Indiana  
 40 income tax on the domestic service employee's wages on the employer's  
 41 Indiana individual income tax return in the same manner as allowed by  
 42 Section 3510 of the Internal Revenue Code.

43           ~~(k)~~ **(l)** To the extent allowed by Section 1137 of the Social Security  
 44 Act, an employer of a domestic service employee may report and remit  
 45 state unemployment insurance contributions on the employee's wages  
 46 on the employer's Indiana individual income tax return in the same

- 1 manner as allowed by Section 3510 of the Internal Revenue Code.
- 2 ~~(t)~~ **(m)** The department shall adopt rules under IC 4-22-2 to exempt
- 3 an employer from the duty to deduct and remit from the wages of an
- 4 employee adjusted gross income tax withholding that would otherwise
- 5 be required under this section whenever:
- 6 (1) an employee has at least one (1) qualifying child, as
- 7 determined under Section 32 of the Internal Revenue Code;
- 8 (2) the employee is eligible for an earned income tax credit under
- 9 IC 6-3.1-21;
- 10 (3) the employee elects to receive advance payments of the earned
- 11 income tax credit under IC 6-3.1-21 from money that would
- 12 otherwise be withheld from the employee's wages for adjusted
- 13 gross income taxes; and
- 14 (4) the amount that is not deducted and remitted is distributed to
- 15 the employee, in accordance with the procedures prescribed by
- 16 the department, as an advance payment of the earned income tax
- 17 credit for which the employee is eligible under IC 6-3.1-21.
- 18 The rules must establish the procedures and reports required to carry
- 19 out this subsection.
- 20 ~~(m)~~ **(n)** A person who knowingly fails to remit trust fund money as
- 21 set forth in this section commits a Class D felony."
- 22 Page 70, between lines 31 and 32, begin a new paragraph and insert:
- 23 "SECTION 57. [EFFECTIVE JANUARY 1, 2008] **IC 6-3-4-8, as**
- 24 **amended by this act, applies to taxable years beginning after**
- 25 **December 31, 2007.**"
- 26 Renumber all SECTIONS consecutively.  
(Reference is to ESB 500 as printed April 3, 2007.)

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Representative Leonard