

HOUSE BILL No. 1166

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-29; IC 6-2.5-6-17; IC 6-8.1-9-3.

Synopsis: Sales tax rebate for developing a tourist site. Authorizes the office of tourism development to enter into an agreement for a state sales tax rebate with the operator of a new tourism attraction. Establishes the criteria for awarding rebates. Establishes procedures for claiming rebates. Appropriates money to the department of state revenue for the payment of rebates.

Effective: July 1, 2007.

Cochran, Stemler

January 11, 2007, read first time and referred to Committee on Small Business and Economic Development.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1166



A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

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

- 1 SECTION 1. IC 5-29-1-4.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2007]: **Sec. 4.5. "Entertainment destination center" means a**
- 4 **facility containing at least one hundred thousand (100,000) square**
- 5 **feet of building space that:**
- 6 **(1) is adjacent or complementary to an existing tourism**
- 7 **attraction, a tourism attraction project being developed under**
- 8 **IC 5-29-5, or a convention facility; and**
- 9 **(2) provides its patrons a variety of leisure and entertainment**
- 10 **options, including:**
- 11 **(A) at least one (1) major themed restaurant; and**
- 12 **(B) at least three (3) additional entertainment venues,**
- 13 **including any of the following:**
- 14 **(i) Live entertainment facilities.**
- 15 **(ii) Multiplex theaters.**
- 16 **(iii) Large format theaters.**
- 17 **(iv) Motion simulators.**



- 1 (v) Family entertainment centers.
- 2 (vi) Concert halls.
- 3 (vii) Virtual reality or other interactive games.
- 4 (viii) Museums.
- 5 (ix) Exhibitions.
- 6 (x) Other cultural or leisure time activities.

7 SECTION 2. IC 5-29-1-6 IS ADDED TO THE INDIANA CODE
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 9 1, 2007]: **Sec. 6. "Person" means any association, corporation,
 10 limited liability company, fiduciary, individual, joint stock
 11 company, joint venture, partnership, sole proprietorship, or other
 12 private legal entity.**

13 SECTION 3. IC 5-29-1-7 IS ADDED TO THE INDIANA CODE
 14 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2007]: **Sec. 7. "Qualified project costs" means the following costs
 16 incurred in the development of a tourism attraction project:**

- 17 (1) The cost of acquisition and construction of the tourism
 18 attraction project or any modification, improvement, or
 19 extension of the tourism attraction project.
- 20 (2) Any cost related to the acquisition of any necessary
 21 property, easement, or right-of-way.
- 22 (3) Engineering or architectural fees, legal fees, accountants'
 23 fees, and financial advisers' fees.
- 24 (4) Any cost incurred for preliminary planning to determine
 25 the economic or engineering feasibility of a proposed tourism
 26 attraction project.
- 27 (5) The costs of:
 - 28 (A) economic investigations and studies;
 - 29 (B) surveys;
 - 30 (C) preparation of designs, plans, working drawings, and
 31 specifications; and
 - 32 (D) the inspection and supervision of the construction of
 33 the tourism attraction project.
- 34 (6) Any cost incurred in equipping or furnishing the tourism
 35 attraction project.
- 36 (7) Any cost incurred to fund any liability, other loss, or
 37 insurance reserves or the funding and contribution of such
 38 insurance reserves or other capital to a risk retention group
 39 to provide insurance coverage against liability claims or other
 40 losses.

41 SECTION 4. IC 5-29-1-8 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 2007]: **Sec. 8. (a) "Tourism attraction" means any of the**
2 **following:**

- 3 (1) **A cultural or historic site.**
- 4 (2) **A recreation or entertainment facility.**
- 5 (3) **An area of natural phenomenon or scenic beauty.**
- 6 (4) **An entertainment destination center.**
- 7 **(b) The term does not include any of the following:**
 - 8 (1) **A racetrack or satellite facility licensed under IC 4-31.**
 - 9 (2) **A riverboat licensed under IC 4-33.**
 - 10 (3) **A facility located in a professional sports development**
 - 11 **area established under IC 36-7-31 or IC 36-7-31.3.**
 - 12 (4) **A lodging or dining facility unless the facility is located in**
 - 13 **an entertainment destination center.**
 - 14 (5) **A retail facility other than a gift shop or other retail**
 - 15 **operation that is operated as a subordinate part of an**
 - 16 **entertainment destination center or other tourism attraction.**
 - 17 (6) **A recreational facility that is not operated as a visitor**
 - 18 **destination.**

19 SECTION 5. IC 5-29-1-9 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2007]: **Sec. 9. (a) "Tourism attraction project" means any work**
22 **or undertaking to develop a tourism attraction, including:**

- 23 (1) **the acquisition of buildings, land, equipment, facilities, and**
- 24 **other real or personal property for necessary, convenient, or**
- 25 **desirable appurtenances;**
- 26 (2) **the installation of utilities; and**
- 27 (3) **any other work necessary for the development or**
- 28 **redevelopment of real property for an entertainment, a**
- 29 **recreational, or a cultural purpose designed to attract**
- 30 **tourists.**

31 **(b) The term includes site preparation, the planning of the**
32 **buildings and improvements, the acquisition of property, the**
33 **demolition of existing structures, the construction, reconstruction,**
34 **alteration, and repair of the improvements, and all other connected**
35 **work. The term also includes the acquisition, reconstruction,**
36 **rehabilitation, alteration, or major repair of existing buildings or**
37 **improvements.**

38 SECTION 6. IC 5-29-5 IS ADDED TO THE INDIANA CODE AS
39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2007]:

41 **Chapter 5. Tourism Attraction Projects**
42 **Sec. 1. A person that proposes to operate a tourism attraction to**

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1 create new jobs in Indiana may apply to the office to enter into an
2 agreement for a state gross retail tax rebate under this chapter.
3 The director shall prescribe the form of the application.

4 Sec. 2. After receipt of an application, the office may enter into
5 an agreement with the applicant for a state gross retail tax rebate
6 under this chapter if the office determines that all the following
7 conditions exist:

8 (1) The applicant's tourism attraction project will create new
9 jobs that were not jobs previously performed by employees of
10 the applicant in Indiana.

11 (2) The applicant's tourism attraction project is economically
12 sound and will benefit the citizens of Indiana by increasing
13 opportunities for employment in Indiana and strengthening
14 the economy of Indiana.

15 (3) Receiving the state gross retail tax rebate is a major factor
16 in the applicant's decision to go forward with the tourism
17 attraction project, and not receiving the state gross retail tax
18 rebate will result in the applicant not creating new jobs in
19 Indiana.

20 (4) Awarding the state gross retail tax rebate will result in an
21 overall positive fiscal impact to the state, as certified by the
22 office of management and budget using the best available
23 data.

24 (5) The office determines that the applicant's total qualified
25 project costs will exceed five million dollars (\$5,000,000).

26 (6) At least twenty-five percent (25%) of the visitors to the
27 applicant's tourism attraction will be residents of other states.

28 (7) The state gross retail tax rebate is not prohibited by
29 section 3 of this chapter.

30 Sec. 3. A person may not receive a state gross retail tax rebate
31 under this chapter for any jobs that the person relocates from one
32 (1) site in Indiana to another site in Indiana. Determinations under
33 this section shall be made by the office.

34 Sec. 4. The office shall enter into an agreement with a person
35 that is awarded a state gross retail tax rebate under this chapter
36 for a tourism attraction project. The agreement must include all
37 the following:

38 (1) A detailed description of the tourism attraction project
39 that is the subject of the agreement.

40 (2) A detailed listing of each retail merchant who makes or
41 will make retail transactions at the tourism attraction.

42 (3) A requirement that the person shall maintain operations

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1 at the tourism attraction for at least two (2) years following
2 the last calendar year in which the person receives a state
3 gross retail tax rebate under this chapter. A taxpayer is
4 subject to an assessment under section 7 of this chapter for
5 noncompliance with the requirement described in this
6 subdivision.

7 (4) A requirement that the person shall provide written
8 notification to the director and the department of state
9 revenue not more than thirty (30) days after the person makes
10 or receives a proposal that would transfer the person's
11 obligations under this chapter or IC 6-2.5 to another person.

12 **Sec. 5.** The amount of a state gross retail tax rebate awarded
13 under this chapter for a particular calendar year is equal to the
14 amount determined under STEP SIX of the following formula:

15 **STEP ONE:** Determine the total amount of the person's
16 qualified project costs for the tourism attraction project that
17 is the subject of an agreement described in section 4 of this
18 chapter.

19 **STEP TWO:** Multiply the STEP ONE amount by twenty-five
20 percent (25%).

21 **STEP THREE:** Divide the STEP TWO result by ten (10).

22 **STEP FOUR:** Determine the total amount of state gross retail
23 taxes remitted by all retail merchants making retail
24 transactions at the tourism attraction in the preceding
25 calendar year.

26 **STEP FIVE:** Multiply the STEP FOUR amount by
27 twenty-five percent (25%).

28 **STEP SIX:** Determine the lesser of:

- 29 (A) the STEP THREE quotient; or
- 30 (B) the STEP FIVE result.

31 **Sec. 6. (a)** A person is first eligible to receive a state gross retail
32 tax rebate awarded under this chapter following the first full
33 calendar year of operations at the tourism attraction that is the
34 subject of an agreement entered into under section 4 of this
35 chapter.

36 (b) A person may not receive a state gross retail tax rebate
37 under this chapter for more than ten (10) calendar years.

38 (c) IC 6-2.5-6-17 applies to all state gross retail tax rebates
39 awarded under this chapter.

40 **Sec. 7.** If the department of state revenue or the office
41 determines that a person that has received a state gross retail tax
42 rebate under this chapter is not entitled to the rebate because of

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the person's:

- (1) noncompliance with the requirements of the person's state gross retail tax rebate agreement; or
 - (2) failure to comply with all the provisions of this chapter;
- the department or the office shall, after giving the person an opportunity to explain the noncompliance, impose an assessment on the person in an amount that may not exceed the sum of any previously allowed state gross retail tax rebates under this chapter together with interest and penalties required or permitted by law.

Sec. 8. (a) On or before July 1, the director shall annually submit a report to the lieutenant governor on the state gross retail tax rebate program under this chapter. The report must include:

- (1) information on the number of agreements that were entered into under this chapter during the preceding calendar year;
- (2) a description of the project that is the subject of each agreement;
- (3) an update on the status of projects under agreements entered into before the preceding calendar year;
- (4) an assessment of the effectiveness of the program in creating new jobs in Indiana;
- (5) an assessment of the effect of the program on state tax revenues; and
- (6) the sum of the state gross retail tax rebates awarded under this chapter in the preceding calendar year.

(b) A copy of the report required under subsection (a) shall be transmitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

SECTION 7. IC 6-2.5-6-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) To receive a state gross retail tax rebate awarded under IC 5-29-5 for a particular calendar year, a person must:

- (1) file a claim:
 - (A) with the department;
 - (B) on a form prescribed by the department; and
 - (C) on or before April 15 of the immediately succeeding calendar year; and
- (2) submit to the department proof of all information that the department determines is necessary for the calculation of the rebate amount under IC 5-29-5-5.

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1 (b) If the department receives a claim for a rebate under this
 2 section, the department shall consider the claim and may hold a
 3 hearing on the claim to obtain and consider additional evidence.
 4 After considering the claim and all evidence relevant to the claim,
 5 the department shall issue a decision on the claim, stating the part,
 6 if any, of the rebate allowed and containing a statement of the
 7 reasons for any part of the rebate that is denied. The department
 8 shall mail a copy of the decision to the person who filed the claim.
 9 If the department allows the full amount of the rebate claim, a
 10 warrant for the payment of the claim is sufficient notice of the
 11 decision.

12 (c) If the person disagrees with any part of the department's
 13 decision, the person may appeal the decision. The person must file
 14 the appeal with the tax court. The tax court does not have
 15 jurisdiction to hear a rebate appeal suit if:

16 (1) the appeal is filed more than three (3) years after the date
 17 the claim for a rebate is filed with the department;

18 (2) the appeal is filed more than ninety (90) days after the date
 19 the department mails the decision of denial to the person; or

20 (3) the appeal is filed both before the decision is issued and
 21 before the one hundred eighty-first day after the date the
 22 person files the claim for a rebate with the department.

23 (d) The tax court shall hear the appeal de novo and without a
 24 jury and, after the hearing, may order or deny any part of the
 25 appealed rebate. The court may assess the court costs in any
 26 manner that it feels is equitable.

27 (e) An amount sufficient to pay the state gross retail tax rebates
 28 provided under this section is annually appropriated from the state
 29 general fund to the department.

30 SECTION 8. IC 6-8.1-9-3, AS AMENDED BY P.L.111-2006,
 31 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2007]: Sec. 3. (a) This chapter does not apply to refund claims
 33 made for gasoline taxes under IC 6-6-1.1, special fuel taxes under
 34 IC 6-6-2.5, or the motor vehicle excise tax (excluding interest and
 35 penalties) under IC 6-6-5.

36 (b) This chapter does not apply to a state gross retail tax rebate
 37 awarded under IC 5-29-5.

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