

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 457, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:  
2 A BILL FOR AN ACT to amend the Indiana Code concerning  
3 taxation.  
4 Delete everything after the enacting clause and insert the  
5 following:  
6 SECTION 1. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS  
7 [EFFECTIVE JANUARY 1, 2008]: Sec. 8. (a) Except as provided in  
8 subsection (d) or (l), every employer making payments of wages  
9 subject to tax under this article, regardless of the place where such  
10 payment is made, who is required under the provisions of the Internal  
11 Revenue Code to withhold, collect, and pay over income tax on wages  
12 paid by such employer to such employee, shall, at the time of payment  
13 of such wages, deduct and retain therefrom the amount prescribed in  
14 withholding instructions issued by the department. The department  
15 shall base its withholding instructions on the adjusted gross income tax  
16 rate for persons, on the total rates of any income taxes that the taxpayer  
17 is subject to under IC 6-3.5, and on the total amount of exclusions the  
18 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).  
19 Such employer making payments of any wages:  
20 (1) shall be liable to the state of Indiana for the payment of the  
21 tax required to be deducted and withheld under this section and  
22 shall not be liable to any individual for the amount deducted  
23 from the individual's wages and paid over in compliance or  
24 intended compliance with this section; and  
25 (2) shall make return of and payment to the department monthly  
26 of the amount of tax which under this article and IC 6-3.5 the

1 employer is required to withhold.

2 (b) An employer shall pay taxes withheld under subsection (a)  
3 during a particular month to the department no later than thirty (30)  
4 days after the end of that month. However, in place of monthly  
5 reporting periods, the department may permit an employer to report and  
6 pay the tax for:

- 7 (1) a calendar year reporting period, if the average monthly  
8 amount of all tax required to be withheld by the employer in the  
9 previous calendar year does not exceed ten dollars (\$10);  
10 (2) a six (6) month reporting period, if the average monthly  
11 amount of all tax required to be withheld by the employer in the  
12 previous calendar year does not exceed twenty-five dollars  
13 (\$25); or  
14 (3) a three (3) month reporting period, if the average monthly  
15 amount of all tax required to be withheld by the employer in the  
16 previous calendar year does not exceed seventy-five dollars  
17 (\$75).

18 An employer using a reporting period (other than a monthly reporting  
19 period) must file the employer's return and pay the tax for a reporting  
20 period no later than the last day of the month immediately following  
21 the close of the reporting period. If an employer files a combined sales  
22 and withholding tax report, the reporting period for the combined  
23 report is the shortest period required under this section, section 8.1 of  
24 this chapter, or IC 6-2.5-6-1.

25 (c) For purposes of determining whether an employee is subject to  
26 taxation under IC 6-3.5, an employer is entitled to rely on the statement  
27 of an employee as to the employee's county of residence as represented  
28 by the statement of address in forms claiming exemptions for purposes  
29 of withholding, regardless of when the employee supplied the forms.  
30 Every employee shall notify the employee's employer within five (5)  
31 days after any change in the employee's county of residence.

32 (d) A county that makes payments of wages subject to tax under  
33 this article:

- 34 (1) to a precinct election officer (as defined in IC 3-5-2-40.1);  
35 and  
36 (2) for the performance of the duties of the precinct election  
37 officer imposed by IC 3 that are performed on election day;

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

41 (e) Every employer shall, at the time of each payment made by the  
42 employer to the department, deliver to the department a return upon the  
43 form prescribed by the department showing:

- 44 (1) the total amount of wages paid to the employer's employees;  
45 (2) the amount deducted therefrom in accordance with the  
46 provisions of the Internal Revenue Code;  
47 (3) the amount of adjusted gross income tax deducted therefrom  
48 in accordance with the provisions of this section;  
49 (4) the amount of income tax, if any, imposed under IC 6-3.5 and  
50 deducted therefrom in accordance with this section; and

1 (5) any other information the department may require.  
2 Every employer making a declaration of withholding as provided in this  
3 section shall furnish the employer's employees annually, but not later  
4 than thirty (30) days after the end of the calendar year, a record of the  
5 total amount of adjusted gross income tax and the amount of each  
6 income tax, if any, imposed under IC 6-3.5, withheld from the  
7 employees, on the forms prescribed by the department.

8 (f) All money deducted and withheld by an employer shall  
9 immediately upon such deduction be the money of the state, and every  
10 employer who deducts and retains any amount of money under the  
11 provisions of this article shall hold the same in trust for the state of  
12 Indiana and for payment thereof to the department in the manner and  
13 at the times provided in this article. Any employer may be required to  
14 post a surety bond in the sum the department determines to be  
15 appropriate to protect the state with respect to money withheld pursuant  
16 to this section.

17 (g) The provisions of IC 6-8.1 relating to additions to tax in case  
18 of delinquency and penalties shall apply to employers subject to the  
19 provisions of this section, and for these purposes any amount deducted  
20 or required to be deducted and remitted to the department under this  
21 section shall be considered to be the tax of the employer, and with  
22 respect to such amount the employer shall be considered the taxpayer.  
23 In the case of a corporate or partnership employer, every officer,  
24 employee, or member of such employer, who, as such officer,  
25 employee, or member is under a duty to deduct and remit such taxes,  
26 shall be personally liable for such taxes, penalties, and interest.

27 (h) Amounts deducted from wages of an employee during any  
28 calendar year in accordance with the provisions of this section shall be  
29 considered to be in part payment of the tax imposed on such employee  
30 for the employee's taxable year which begins in such calendar year, and  
31 a return made by the employer under subsection (b) shall be accepted  
32 by the department as evidence in favor of the employee of the amount  
33 so deducted from the employee's wages. Where the total amount so  
34 deducted exceeds the amount of tax on the employee as computed  
35 under this article and IC 6-3.5, the department shall, after examining  
36 the return or returns filed by the employee in accordance with this  
37 article and IC 6-3.5, refund the amount of the excess deduction.  
38 However, under rules promulgated by the department, the excess or any  
39 part thereof may be applied to any taxes or other claim due from the  
40 taxpayer to the state of Indiana or any subdivision thereof. No refund  
41 shall be made to an employee who fails to file the employee's return or  
42 returns as required under this article and IC 6-3.5 within two (2) years  
43 from the due date of the return or returns. In the event that the excess  
44 tax deducted is less than one dollar (\$1), no refund shall be made.

45 (i) This section shall in no way relieve any taxpayer from the  
46 taxpayer's obligation of filing a return or returns at the time required  
47 under this article and IC 6-3.5, and, should the amount withheld under  
48 the provisions of this section be insufficient to pay the total tax of such  
49 taxpayer, such unpaid tax shall be paid at the time prescribed by  
50 section 5 of this chapter.

1 (j) Notwithstanding subsection (b), an employer of a domestic  
 2 service employee that enters into an agreement with the domestic  
 3 service employee to withhold federal income tax under Section 3402  
 4 of the Internal Revenue Code may withhold Indiana income tax on the  
 5 domestic service employee's wages on the employer's Indiana  
 6 individual income tax return in the same manner as allowed by Section  
 7 3510 of the Internal Revenue Code.

8 (k) To the extent allowed by Section 1137 of the Social Security  
 9 Act, an employer of a domestic service employee may report and remit  
 10 state unemployment insurance contributions on the employee's wages  
 11 on the employer's Indiana individual income tax return in the same  
 12 manner as allowed by Section 3510 of the Internal Revenue Code.

13 (l) The department shall adopt rules under IC 4-22-2 to exempt an  
 14 employer from the duty to deduct and remit from the wages of an  
 15 employee adjusted gross income tax withholding that would otherwise  
 16 be required under this section whenever:

17 (1) an employee has at least one (1) qualifying child, as  
 18 determined under Section 32 of the Internal Revenue Code;

19 (2) the employee is eligible for an earned income tax credit  
 20 under IC 6-3.1-21;

21 (3) the employee elects to receive advance payments of the  
 22 earned income tax credit under IC 6-3.1-21 from money that  
 23 would otherwise be withheld from the employee's wages for  
 24 adjusted gross income taxes; and

25 (4) the amount that is not deducted and remitted is distributed to  
 26 the employee, in accordance with the procedures prescribed by  
 27 the department, as an advance payment of the earned income tax  
 28 credit for which the employee is eligible under IC 6-3.1-21.

29 The rules must establish the procedures and reports required to carry  
 30 out this subsection.

31 (m) A person who knowingly fails to remit trust fund money as set  
 32 forth in this section commits a Class D felony.

33 **(n) An employer who is required under subsection (a) to**  
 34 **withhold income tax from payments of wages shall verify that an**  
 35 **employee who claims exemptions for more than two (2) individuals**  
 36 **under IC 6-3-1-3.5(a)(3), IC 6-3-1-3.5(a)(4)(A),**  
 37 **IC 6-3-1-3.5(a)(4)(C), and the withholding instructions issued by**  
 38 **the department under subsection (a) is entitled to claim exemptions**  
 39 **for more than two (2) individuals. Unless an employer knows an**  
 40 **employee's representations are false, the requirement of this**  
 41 **subsection is satisfied if the employer obtains from the employee a**  
 42 **copy of one (1) of the following for each additional individual for**  
 43 **whom the employee claims an exemption:**

44 (1) A birth certificate.

45 (2) A Social Security card.

46 (3) A marriage license.

47 (4) A driver's license or state issued identification card.

48 (5) A federal document establishing lawful permanent  
 49 residence or naturalization.

50 (6) A passport.

- 1           **(7) A court order establishing paternity.**  
 2           **(o) An employer commits a Class A misdemeanor if the**  
 3 **employer knowingly:**  
 4           **(1) pays wages to an employee who has claimed more than**  
 5 **two (2) income tax withholding exemptions;**  
 6           **(2) either:**  
 7               **(A) fails to verify the employee's claimed withholding**  
 8               **exemptions as required by subsection (n); or**  
 9               **(B) accepts a document described in subsection (n) for**  
 10              **verification of the employee's claimed withholding**  
 11              **exemptions that is false or fictitious; and**  
 12           **(3) withholds less income tax from the payment of wages to**  
 13           **the employee than required by the withholding instructions**  
 14           **issued by the department.**  
 15           **(p) An employee commits a Class A misdemeanor if the**  
 16 **employee knowingly furnishes to an employer a document**  
 17 **described in subsection (n) that is false or fictitious for the purpose**  
 18 **of claiming more income tax withholding exemptions than the**  
 19 **employee is entitled to claim under the withholding instructions**  
 20 **issued by the department.**  
 21           **SECTION 2. [EFFECTIVE JANUARY 1, 2008] IC 6-3-4-8, as**  
 22 **amended by this act, applies to taxable years beginning after**  
 23 **December 31, 2007.**  
           (Reference is to SB 457 as introduced.)

**and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.**

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LONG, Chairperson