

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WITHDRAWN	Noes _____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

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

MR. SPEAKER:

I move that House Bill 1269 be amended to read as follows:

1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JANUARY 1, 2009]: Sec. 8. (a) Except as provided in  
5 subsection (d) or (l), every employer making payments of wages  
6 subject to tax under this article, regardless of the place where such  
7 payment is made, who is required under the provisions of the Internal  
8 Revenue Code to withhold, collect, and pay over income tax on wages  
9 paid by such employer to such employee, shall, at the time of payment  
10 of such wages, deduct and retain therefrom the amount prescribed in  
11 withholding instructions issued by the department. The department  
12 shall base its withholding instructions on the adjusted gross income tax  
13 rate for persons, on the total rates of any income taxes that the taxpayer  
14 is subject to under IC 6-3.5, and on the total amount of exclusions the  
15 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).  
16 Such employer making payments of any wages:  
17           (1) shall be liable to the state of Indiana for the payment of the tax  
18 required to be deducted and withheld under this section and shall  
19 not be liable to any individual for the amount deducted from the  
20 individual's wages and paid over in compliance or intended  
21 compliance with this section; and  
22           (2) shall make return of and payment to the department monthly  
23 of the amount of tax which under this article and IC 6-3.5 the  
24 employer is required to withhold.

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

6 (1) a calendar year reporting period, if the average monthly  
 7 amount of all tax required to be withheld by the employer in the  
 8 previous calendar year does not exceed ten dollars (\$10);

9 (2) a six (6) month reporting period, if the average monthly  
 10 amount of all tax required to be withheld by the employer in the  
 11 previous calendar year does not exceed twenty-five dollars (\$25);

12 or

13 (3) a three (3) month reporting period, if the average monthly  
 14 amount of all tax required to be withheld by the employer in the  
 15 previous calendar year does not exceed seventy-five dollars (\$75).

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

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

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

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

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

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

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

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

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

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

46 (4) the amount of income tax, if any, imposed under IC 6-3.5 and

1           deducted therefrom in accordance with this section; and  
2           (5) any other information the department may require.

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

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

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

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

46          (i) This section shall in no way relieve any taxpayer from the

1 taxpayer's obligation of filing a return or returns at the time required  
 2 under this article and IC 6-3.5, and, should the amount withheld under  
 3 the provisions of this section be insufficient to pay the total tax of such  
 4 taxpayer, such unpaid tax shall be paid at the time prescribed by  
 5 section 5 of this chapter.

6 (j) Notwithstanding subsection (b), an employer of a domestic  
 7 service employee that enters into an agreement with the domestic  
 8 service employee to withhold federal income tax under Section 3402  
 9 of the Internal Revenue Code may withhold Indiana income tax on the  
 10 domestic service employee's wages on the employer's Indiana  
 11 individual income tax return in the same manner as allowed by Section  
 12 3510 of the Internal Revenue Code.

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

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

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

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

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

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

34 The rules must establish the procedures and reports required to carry  
 35 out this subsection.

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

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

- 1       **copy of one (1) of the following for each additional individual for**  
 2       **whom the employee claims an exemption:**
- 3           **(1) A birth certificate.**  
 4           **(2) A Social Security card.**  
 5           **(3) A marriage license.**  
 6           **(4) A driver's license or state issued identification card.**  
 7           **(5) A federal document establishing lawful permanent**  
 8           **residence or naturalization.**  
 9           **(6) A passport.**  
 10          **(7) A court order establishing paternity.**
- 11       **(o) An employer commits a Class A misdemeanor if the**  
 12       **employer knowingly:**
- 13           **(1) pays wages to an employee who has claimed more than**  
 14           **two (2) income tax withholding exemptions;**  
 15           **(2) either:**
- 16               **(A) fails to verify the employee's claimed withholding**  
 17               **exemptions as required by subsection (n); or**  
 18               **(B) accepts a document described in subsection (n) for**  
 19               **verification of the employee's claimed withholding**  
 20               **exemptions that is false or fictitious; and**  
 21           **(3) withholds less income tax from the payment of wages to**  
 22           **the employee than required by the withholding instructions**  
 23           **issued by the department.**
- 24       **(p) An employee commits a Class A misdemeanor if the**  
 25       **employee knowingly furnishes to an employer a document**  
 26       **described in subsection (n) that is false or fictitious for the purpose**  
 27       **of claiming more income tax withholding exemptions than the**  
 28       **employee is entitled to claim under the withholding instructions**  
 29       **issued by the department."**
- 30       Page 15, after line 22, begin a new paragraph and insert:  
 31       "SECTION 9. [EFFECTIVE JANUARY 1, 2009] **IC 6-3-4-8, as**  
 32       **amended by this act, applies only to taxable years beginning after**  
 33       **December 31, 2008."**
- 34       Renumber all SECTIONS consecutively.  
 (Reference is to HB 1269 as printed January 22, 2008.)

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Representative Walorski