
SENATE BILL No. 236

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3; IC 6-3.1.

Synopsis: State tax matters. Amends the definition of federal "Internal Revenue Code" used in Indiana statutes and regulations to refer to the Internal Revenue Code in effect on January 1, 2010. Requires that two years be used for the net operating loss carryback period for taxpayers (instead of the five years allowed under the federal Worker, Homeownership, and Business Assistance Act of 2009). Requires that federal income tax withholding statements and annual withholding tax reports must be filed electronically with the department of state revenue if an employer or a person or entity acting on behalf of an employer files more than 25 federal income tax withholding statements with the department in the calendar year. Provides that a taxpayer may not claim the patent income exemption with respect to a particular qualified patent unless the first taxable year in which the exemption is claimed begins before January 1, 2011. Expires the teacher summer employment tax credit on January 1, 2011. Provides that an enterprise zone loan interest credit may not be awarded for interest received on a qualified loan made after December 31, 2010. Expires the neighborhood assistance credit on January 1, 2011. Specifies that maternity home tax credit may not be awarded for the providing after December 31, 2010, of a temporary residence. Provides that an enterprise zone investment cost tax credit may not be awarded for a qualified investment made after December 31, 2010. Provides that a community revitalization enhancement district tax credit may not be awarded for a qualified investment made after December 31, 2010. Provides that a tax credit may not be awarded for making available after December 31, 2010, a health benefit plan. Provides that a small employer qualified wellness program tax credit may not be awarded for costs incurred after December 31, 2010.

Effective: November 6, 2009 (retroactive); January 1, 2010 (retroactive); July 1, 2010.

Hershman

January 11, 2010, read first time and referred to Committee on Tax and Fiscal Policy.



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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 236



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 6-3-1-11, AS AMENDED BY P.L.182-2009(ss),
2 SECTION 188, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: Sec. 11. (a) The
4 term "Internal Revenue Code" means the Internal Revenue Code of
5 1986 of the United States as amended and in effect on ~~February 17,~~
6 ~~2009; January 1, 2010.~~

7 (b) Whenever the Internal Revenue Code is mentioned in this
8 article, the particular provisions that are referred to, together with all
9 the other provisions of the Internal Revenue Code in effect on ~~February~~
10 ~~17, 2009; January 1, 2010~~, that pertain to the provisions specifically
11 mentioned, shall be regarded as incorporated in this article by reference
12 and have the same force and effect as though fully set forth in this
13 article. To the extent the provisions apply to this article, regulations
14 adopted under Section 7805(a) of the Internal Revenue Code and in
15 effect on ~~February 17, 2009; January 1, 2010~~, shall be regarded as
16 rules adopted by the department under this article, unless the
17 department adopts specific rules that supersede the regulation.



1 (c) An amendment to the Internal Revenue Code made by an act
 2 passed by Congress before ~~February 17, 2009~~, **January 1, 2010**, that
 3 is effective for any taxable year that began before January 1, ~~2009~~,
 4 **2010**, and that affects:

5 (1) individual adjusted gross income (as defined in Section 62 of
 6 the Internal Revenue Code);

7 (2) corporate taxable income (as defined in Section 63 of the
 8 Internal Revenue Code);

9 (3) trust and estate taxable income (as defined in Section 641(b)
 10 of the Internal Revenue Code);

11 (4) life insurance company taxable income (as defined in Section
 12 801(b) of the Internal Revenue Code);

13 (5) mutual insurance company taxable income (as defined in
 14 Section 821(b) of the Internal Revenue Code); or

15 (6) taxable income (as defined in Section 832 of the Internal
 16 Revenue Code);

17 is also effective for that same taxable year for purposes of determining
 18 adjusted gross income under section 3.5 of this chapter.

19 SECTION 2. IC 6-3-2-2.5, AS AMENDED BY P.L.182-2009(ss),
 20 SECTION 192, IS AMENDED TO READ AS FOLLOWS
 21 [EFFECTIVE NOVEMBER 6, 2009 (RETROACTIVE)]: Sec. 2.5. (a)
 22 This section applies to a resident person.

23 (b) Resident persons are entitled to a net operating loss deduction.
 24 The amount of the deduction taken in a taxable year may not exceed
 25 the taxpayer's unused Indiana net operating losses carried back or
 26 carried over to that year.

27 (c) An Indiana net operating loss equals the taxpayer's federal net
 28 operating loss for a taxable year as calculated under Section 172 of the
 29 Internal Revenue Code, adjusted for the modifications required by
 30 IC 6-3-1-3.5.

31 (d) The following provisions apply for purposes of subsection (c):

32 (1) The modifications that are to be applied are those
 33 modifications required under IC 6-3-1-3.5 for the same taxable
 34 year in which each net operating loss was incurred.

35 (2) An Indiana net operating loss includes a net operating loss that
 36 arises when the modifications required by IC 6-3-1-3.5 exceed the
 37 taxpayer's federal adjusted gross income (as defined in Section 62
 38 of the Internal Revenue Code) for the taxable year in which the
 39 Indiana net operating loss is determined.

40 (e) Subject to the limitations contained in subsection (g), an Indiana
 41 net operating loss carryback or carryover shall be available as a
 42 deduction from the taxpayer's adjusted gross income (as defined in

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1 IC 6-3-1-3.5) in the carryback or carryover year provided in subsection
2 (f).
3 (f) Carrybacks and carryovers shall be determined under this
4 subsection as follows:
5 (1) An Indiana net operating loss shall be an Indiana net operating
6 loss carryback to each of the carryback years preceding the
7 taxable year of the loss.
8 (2) An Indiana net operating loss shall be an Indiana net operating
9 loss carryover to each of the carryover years following the taxable
10 year of the loss.
11 (3) Carryback years shall be determined by reference to the
12 number of years allowed for carrying back a net operating loss
13 under Section 172(b) of the Internal Revenue Code. However,
14 with respect to the carryback period for a net operating loss:
15 (A) for which ~~an eligible small business, as defined in Section~~
16 ~~172(b)(1)(H)(iv) of the Internal Revenue Code; a taxpayer~~
17 made an election to use five (5) years instead of two (2) years
18 under Section 172(b)(1)(H) of the Internal Revenue Code, two
19 (2) years shall be used instead of five (5) years; or
20 (B) that is a qualified disaster loss for which the taxpayer
21 elected to have the net operating loss carryback period with
22 respect to the loss year determined without regard to Section
23 172(b)(1)(J) of the Internal Revenue Code, five (5) years shall
24 be used.
25 (4) Carryover years shall be determined by reference to the
26 number of years allowed for carrying over net operating losses
27 under Section 172(b) of the Internal Revenue Code.
28 (5) A taxpayer who makes an election under Section 172(b)(3) of
29 the Internal Revenue Code to relinquish the carryback period with
30 respect to a net operating loss for any taxable year shall be
31 considered to have also relinquished the carryback of the Indiana
32 net operating loss for purposes of this section.
33 (g) The entire amount of the Indiana net operating loss for any
34 taxable year shall be carried to the earliest of the taxable years to which
35 (as determined under subsection (f)) the loss may be carried. The
36 amount of the Indiana net operating loss remaining after the deduction
37 is taken under this section in a taxable year may be carried back or
38 carried over as provided in subsection (f). The amount of the Indiana
39 net operating loss carried back or carried over from year to year shall
40 be reduced to the extent that the Indiana net operating loss carryback
41 or carryover is used by the taxpayer to obtain a deduction in a taxable
42 year until the occurrence of the earlier of the following:

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1 (1) The entire amount of the Indiana net operating loss has been
 2 used as a deduction.
 3 (2) The Indiana net operating loss has been carried over to each
 4 of the carryover years provided by subsection (f).
 5 SECTION 3. IC 6-3-2-21.7, AS ADDED BY P.L.223-2007,
 6 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2010]: Sec. 21.7. (a) This section applies to a qualified patent
 8 issued to a taxpayer after December 31, 2007.
 9 (b) As used in this section, "invention" has the meaning set forth in
 10 35 U.S.C. 100(a).
 11 (c) As used in this section, "qualified patent" means:
 12 (1) a utility patent issued under 35 U.S.C. 101; or
 13 (2) a plant patent issued under 35 U.S.C. 161;
 14 after December 31, 2007, for an invention resulting from a
 15 development process conducted in Indiana. The term does not include
 16 a design patent issued under 35 U.S.C. 171.
 17 (d) As used in this section, "qualified taxpayer" means a taxpayer
 18 that on the effective filing date of the claimed invention:
 19 (1) is either:
 20 (A) an individual or corporation, if the number of employees
 21 of the individual or corporation, including affiliates as
 22 specified in 13 CFR 121.103, does not exceed five hundred
 23 (500) persons; or
 24 (B) a nonprofit organization or nonprofit corporation as
 25 specified in:
 26 (i) 37 CFR 1.27(a)(3)(ii)(A) or 37 CFR 1.27(a)(3)(ii)(B); or
 27 (ii) IC 23-17; and
 28 (2) is domiciled in Indiana.
 29 (e) Subject to subsections (g), ~~and~~ (h), **and (i)**, in determining
 30 adjusted gross income or taxable income under IC 6-3-1-3.5 or
 31 IC 6-5.5-1-2, a qualified taxpayer is entitled to an exemption from
 32 taxation under IC 6-3-1 through IC 6-3-7 for the following:
 33 (1) Licensing fees or other income received for the use of a
 34 qualified patent.
 35 (2) Royalties received for the infringement of a qualified patent.
 36 (3) Receipts from the sale of a qualified patent.
 37 (4) Subject to subsection (f), income from the taxpayer's own use
 38 of the taxpayer's qualified patent to produce the claimed
 39 invention.
 40 (f) The exemption provided by subsection (e)(4) may not exceed the
 41 fair market value of the licensing fees or other income that would be
 42 received by allowing use of the qualified taxpayer's qualified patent by

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1 someone other than the taxpayer. The fair market value referred to in
 2 this subsection must be determined in each taxable year in which the
 3 qualified taxpayer claims an exemption under subsection (e)(4).

4 (g) The total amount of exemptions claimed under this section by a
 5 qualified taxpayer in a taxable year may not exceed five million dollars
 6 (\$5,000,000).

7 (h) A taxpayer may not claim an exemption under this section with
 8 respect to a particular qualified patent for more than ten (10) taxable
 9 years. Subject to the provisions of this section, the following amount of
 10 the income, royalties, or receipts described in subsection (e) from a
 11 particular qualified patent is exempt:

12 (1) Fifty percent (50%) for each of the first five (5) taxable years
 13 in which the exemption is claimed for the qualified patent.

14 (2) Forty percent (40%) for the sixth taxable year in which the
 15 exemption is claimed for the qualified patent.

16 (3) Thirty percent (30%) for the seventh taxable year in which the
 17 exemption is claimed for the qualified patent.

18 (4) Twenty percent (20%) for the eighth taxable year in which the
 19 exemption is claimed for the qualified patent.

20 (5) Ten percent (10%) each year for the ninth and tenth taxable
 21 year in which the exemption is claimed for the qualified patent.

22 (6) No exemption under this section for the particular qualified
 23 patent after the eleventh taxable year in which the exemption is
 24 claimed for the qualified patent.

25 **(i) A taxpayer may not claim an exemption under this section**
 26 **with respect to a particular qualified patent unless the first taxable**
 27 **year in which the exemption is claimed under this section begins**
 28 **before January 1, 2011.**

29 (†)(j) To receive the exemption provided by this section, a qualified
 30 taxpayer must claim the exemption on the qualified taxpayer's annual
 31 state tax return or returns in the manner prescribed by the department.
 32 The qualified taxpayer shall submit to the department all information
 33 that the department determines is necessary for the determination of the
 34 exemption provided by this section.

35 (†)(k) On or before December 1 of each year, the department shall
 36 provide an evaluation report to the legislative council, the budget
 37 committee, and the Indiana economic development corporation. The
 38 evaluation report must contain the following:

39 (1) The number of taxpayers claiming an exemption under this
 40 section.

41 (2) The sum of all the exemptions claimed under this section.

42 (3) The North American Industry Classification System code for

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1 each taxpayer claiming an exemption under this section.
2 (4) Any other information the department considers appropriate,
3 including the number of qualified patents for which an exemption
4 was claimed under this section.

5 The report required under this subsection must be in an electronic
6 format under IC 5-14-6.

7 SECTION 4. IC 6-3-4-16.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2010]: **Sec. 16.5. (a) This section applies to:**

- 10 (1) Form W-2 federal income tax withholding statements; and
- 11 (2) Form WH-3 annual withholding tax reports;
- 12 filed with the department after December 31, 2010.

13 (b) If an employer or any person or entity acting on behalf of an
14 employer files more than twenty-five (25) Form W-2 federal
15 income tax withholding statements with the department in a
16 calendar year, all Form W-2 federal income tax withholding
17 statements and Form WH-3 annual withholding tax reports filed
18 with the department in that calendar year by the employer or the
19 person or entity acting on behalf of the employer must be filed in
20 an electronic format specified by the department.

21 SECTION 5. IC 6-3.1-2-8 IS ADDED TO THE INDIANA CODE
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
23 1, 2010]: **Sec. 8. (a) A tax credit may not be awarded under this
24 chapter after December 31, 2010.**

25 (b) This chapter expires January 1, 2011.

26 SECTION 6. IC 6-3.1-7-8 IS ADDED TO THE INDIANA CODE
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
28 1, 2010]: **Sec. 8. A tax credit may not be awarded under this
29 chapter for interest received on a qualified loan made after
30 December 31, 2010.**

31 SECTION 7. IC 6-3.1-9-7 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2010]: **Sec. 7. (a) A tax credit may not be awarded under this
34 chapter for a taxable year ending after December 31, 2010.**

35 (b) This chapter expires January 1, 2011.

36 SECTION 8. IC 6-3.1-10-10 IS ADDED TO THE INDIANA CODE
37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2010]: **Sec. 10. A tax credit may not be awarded under this
39 chapter for a qualified investment made after December 31, 2010.**

40 SECTION 9. IC 6-3.1-14-9 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2010]: **Sec. 9. A tax credit may not be awarded under this**

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1 **chapter for the providing after December 31, 2010, of a temporary**
 2 **residence.**
 3 SECTION 10. IC 6-3.1-19-7 IS ADDED TO THE INDIANA CODE
 4 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2010]: **Sec. 7. A tax credit may not be awarded under this**
 6 **chapter for a qualified investment made after December 31, 2010.**
 7 SECTION 11. IC 6-3.1-31-14 IS ADDED TO THE INDIANA
 8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2010]: **Sec. 14. A tax credit may not be**
 10 **awarded under this chapter for making available after December**
 11 **31, 2010, a health benefit plan.**
 12 SECTION 12. IC 6-3.1-31.2-11 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2010]: **Sec. 11. A tax credit may not be**
 15 **awarded under this chapter for costs incurred after December 31,**
 16 **2010.**
 17 SECTION 13. **An emergency is declared for this act.**

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