HOUSE BILL No. 1194

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-28; IC 5-28; IC 6-3.1.

Synopsis: Tax credits. Establishes the regional development tax credit (credit). Allows a taxpayer to apply to the Indiana economic development corporation (IEDC) for the credit. Provides that a taxpayer is entitled to a credit against state tax liability if: (1) the taxpayer makes a qualified investment for the redevelopment or rehabilitation of real property that is vacant or underused; and (2) the qualified investment is approved by the IEDC. Specifies the factors that the IEDC shall consider in evaluating applications for a proposed qualified investment. Specifies that the credit is subject to an agreement entered into by the IEDC and the taxpayer. Provides that the amount of the credit is equal to: (1) the qualified investment made by the taxpayer and approved by the IEDC in the agreement; multiplied by (2) the applicable credit percentage determined by the IEDC. Specifies the maximum applicable credit percentages that apply to qualified investments. Prohibits the carryback or refund of any unused credit. Allows a taxpayer to carry forward any unused credit amounts and to assign any part of a credit to which the taxpayer is entitled. Authorizes the IEDC to negotiate with a taxpayer and include in the credit agreement a return on investment provision requiring the taxpayer to repay all or part of a credit awarded to the taxpayer if one or more conditions specified in the agreement are satisfied. Provides that a taxpayer is not entitled to receive any of the following (with certain exceptions): (1) An industrial recovery tax credit for a qualified investment made after December 31, 2019. (2) A community revitalization enhancement district tax credit for a qualified investment made after December 31, 2019.

Effective: January 1, 2020.

Lehman, Leonard, GiaQuinta

January 10, 2019, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1194

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 4-4-28-5, AS AMENDED BY P.L.50-2016, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 5. As used in this chapter, "individual development account" means an account in a financial institution administered by a community development corporation that allows a qualifying individual to deposit money:

(1) to be matched by the state, financial institutions, corporations, and other entities; and

(2) that will be used by the qualifying individual for one (1) or more of the following:

(A) To pay for costs (including tuition, laboratory costs, books, computer costs, and other costs associated with attendance) at an accredited postsecondary educational institution or a vocational school that is not a postsecondary educational institution, for the individual or for a dependent of the individual.

(B) To pay for the costs (including tuition, laboratory costs, books, computer costs, and other costs) associated with an accredited or a licensed training program that may lead to employment for the individual or for a dependent of the individual.

(C) To purchase a primary residence located in Indiana for the individual or for a dependent of the individual or to reduce the principal amount owed on a primary residence located in Indiana that was purchased by the individual or a dependent of the individual with money from an individual development account.

(D) To pay for the ~~rehabilitation (as defined in IC 6-3.1-11-11)~~ **remodeling, repair, or betterment** of the individual's primary residence located in Indiana **or any enlargement or extension of the individual's primary residence located in Indiana.**

(E) To begin or to purchase part or all of a business based in Indiana or to expand an existing small business based in Indiana.

(F) Subject to section 8(b) of this chapter, to purchase a motor vehicle.

SECTION 2. IC 4-4-28-16, AS AMENDED BY P.L.50-2016, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 16. (a) Money withdrawn from an individual's account is not subject to taxation under IC 6-3-1 through IC 6-3-7 if the money is used for at least one (1) of the following:

(1) To pay for costs (including tuition, laboratory costs, books, computer costs, and other costs) at an accredited postsecondary educational institution or a vocational school that is not a postsecondary educational institution for the individual or for a dependent of the individual.

(2) To pay for the costs (including tuition, laboratory costs, books, computer costs, and other costs) associated with an accredited or a licensed training program that may lead to employment for the individual or for a dependent of the individual.

(3) To purchase a primary residence located in Indiana for the individual or for a dependent of the individual or to reduce the principal amount owed on a primary residence located in Indiana that was purchased by the individual or a dependent of the individual with money from an individual development account.

(4) To pay for the ~~rehabilitation (as defined in IC 6-3.1-11-11)~~ **remodeling, repair, or betterment** of the individual's primary residence located in Indiana **or any enlargement or extension of the individual's primary residence located in Indiana.**

(5) To begin or to purchase part or all of a business based in Indiana or to expand an existing small business based in Indiana.

(6) Subject to section 8(b) of this chapter, to purchase a motor vehicle.

(b) At the time of requesting authorization under section 15 of this chapter to withdraw money from an individual's account under subsection (a)(5), the individual must provide the community development corporation with a business plan that:

(1) has been approved by a financial institution or is approved by the community development corporation;

(2) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(3) may require the individual to obtain the assistance of an experienced business advisor.

SECTION 3. IC 5-28-28-4, AS AMENDED BY P.L.238-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 4. As used in this chapter, "tax credit" means a state tax liability credit under any of the following:

(1) IC 6-3.1-7 (before its expiration).

(2) IC 6-3.1-13.

(3) IC 6-3.1-26.

(4) IC 6-3.1-30.

(5) IC 6-3.1-31.9.

(6) IC 6-3.1-34.

SECTION 4. IC 6-3.1-1-3, AS AMENDED BY P.L.214-2018(ss), SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 3. (a) A taxpayer (as defined in the following laws), pass through entity (as defined in the following laws), or shareholder, partner, or member of a pass through entity may not be granted more than one (1) tax credit under the following laws for the same project:

(1) IC 6-3.1-10 (enterprise zone investment cost credit) (before its expiration).

(2) IC 6-3.1-11 (industrial recovery tax credit) **(before its expiration).**

(3) IC 6-3.1-19 (community revitalization enhancement district tax credit) **(before its expiration).**

(4) IC 6-3.1-24 (venture capital investment tax credit).

(5) IC 6-3.1-26 (Hoosier business investment tax credit).

(6) IC 6-3.1-31.9 (Hoosier alternative fuel vehicle manufacturer tax credit).

If a taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity has been granted more than one (1) tax credit for the same project, the taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity must elect to apply only one (1) of the tax credits in the manner and form prescribed by the department.

(b) A taxpayer (as defined in the following laws), pass through entity (as defined in the following laws), or shareholder, partner, or member of a pass through entity that is entitled to one (1) or more tax credits under the following laws for a taxable year beginning after December 31, 2016, and ending before January 1, 2018, may elect to carry forward all or any portion of one (1) or more of those tax credits to the taxable year beginning after December 31, 2017, and ending before January 1, 2019:

(1) IC 6-3.1-10 (enterprise zone investment cost credit) (before its expiration).
(2) IC 6-3.1-11 (industrial recovery tax credit).
(3) IC 6-3.1-19 (community revitalization enhancement district tax credit).
(4) IC 6-3.1-24 (venture capital investment tax credit).
(5) IC 6-3.1-26 (Hoosier business investment tax credit).
(6) IC 6-3.1-31.9 (Hoosier alternative fuel vehicle manufacturer tax credit).

A taxpayer, pass through entity, or shareholder, partner, or member of a pass through entity that wishes to carry forward all or any portion of a tax credit under this subsection must make an election to do so in the manner and form prescribed by the department on or before the taxpayer's due date for filing a return for the taxable year ending after December 31, 2017. This subsection does not affect the limitation set forth in subsection (a) for the taxable year beginning after December 31, 2017, and ending before January 1, 2019. This subsection expires on January 1, 2023.

SECTION 5. IC 6-3.1-11-25 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: **Sec. 25. (a) Notwithstanding any other law and except as provided in subsection (b), a taxpayer is entitled to receive a credit under this chapter only for a qualified investment made before January 1, 2020.**

(b) A taxpayer is entitled to receive a credit for a qualified investment made after December 31, 2019, and before January 1, 2030, if the taxpayer is awarded a credit under:

(1) an application approved by the corporation before January 1, 2020; or

(2) an agreement entered into by the taxpayer and the corporation before January 1, 2021.

(c) This section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before January 1, 2020, or made as provided in subsection (b) forward to a taxable year beginning after December 31, 2019, and before January 1, 2030, in the manner provided by section 17 of this chapter.

(d) This chapter expires January 1, 2030.

SECTION 6. IC 6-3.1-19-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: **Sec. 7. (a) Notwithstanding any other law and except as provided in subsection (b), a taxpayer is entitled to receive a credit under this chapter only for a qualified investment made before January 1, 2020.**

(b) A taxpayer is entitled to receive a credit for a qualified investment made after December 31, 2019, and before January 1, 2030, if the qualified investment is approved by the corporation before January 1, 2020.

(c) This section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before January 1, 2020, or made as provided in subsection (b) forward to a taxable year beginning after December 31, 2019, and before January 1, 2030, in the manner provided by section 4 of this chapter.

(d) This chapter expires January 1, 2030.

SECTION 7. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]:

Chapter 34. Regional Development Tax Credit

Sec. 1. As used in this chapter, "board" means the board of the Indiana economic development corporation.

Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation established under IC 5-28-3, unless the context clearly denotes otherwise.

Sec. 3. As used in this chapter, "development authority" has the meaning set forth in IC 5-28-38-0.5.

Sec. 4. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) trust;

(4) limited liability company; or

(5) limited liability partnership.

Sec. 5. As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures that are for the redevelopment or rehabilitation of real property that is vacant or underused and are approved by the corporation in an agreement under section 14 of this chapter.

Sec. 6. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 27-1-18-2 (the insurance premiums tax); and

(3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 7. As used in this chapter, "taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has any state tax liability. The term includes the owner or developer of the unused property, a pass through entity, and a person that is assigned part or all of a credit under this chapter.

Sec. 8. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment that is certified by the corporation under an agreement with the corporation under section 14 of this chapter and subject to the requirements and limitations of this chapter.

(b) The amount of the credit to which a taxpayer is entitled is equal to:

(1) the qualified investment made by the taxpayer during the taxable year and approved by the corporation in an agreement entered into under section 14 of this chapter; multiplied by

(2) the applicable credit percentage determined by the corporation under section 14(b) of this chapter.

(c) If a pass through entity is entitled to a credit under this section but does not have state tax liability against which the credit may be applied, a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a credit equal to:

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or

member is entitled.
The credit provided under this subsection is in addition to a credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified investment.

Sec. 9. (a) A credit to which a taxpayer is entitled under this chapter shall be applied against taxes owed by the taxpayer in the following order:

(1) Against the taxpayer's adjusted gross income tax liability (IC 6-3-1 through IC 6-3-7) for the taxable year.

(2) Against the taxpayer's insurance premiums tax liability (IC 27-1-18-2) for the taxable year.

(3) Against the taxpayer's financial institutions tax liability (IC 6-5.5) for the taxable year.

(b) Whenever the tax paid by a taxpayer under any of the tax provisions listed in subsection (a) is a credit against the liability or a deduction in determining the tax base under another Indiana tax provision, the credit or deduction shall be computed without regard to the credit to which the taxpayer is entitled under this chapter.

Sec. 10. (a) If the amount of the credit determined under section 8 of this chapter for a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over for a period not to exceed the taxpayer's following nine (9) taxable years, beginning with the taxable year after the year in which the corporation certifies the taxpayer's expenditures as a qualified investment. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit.

Sec. 11. (a) A taxpayer may assign any part of a credit to which the taxpayer is entitled under this chapter. A credit that is assigned under this subsection remains subject to this chapter.

(b) If a taxpayer assigns part of a credit during a particular taxable year, the taxpayer may not make any additional assignments of any other part of the credit after the end of that taxable year. A taxpayer may make only one (1) assignment of a particular credit. Before a credit is assigned, the taxpayer must

notify the corporation of the assignment of the credit in the manner prescribed by the corporation. An assignment of a credit under this section must be in writing, and both the taxpayer and assignee shall report the assignment on their state tax returns for the year in which the assignment is made, in the manner prescribed by the department. A taxpayer may not receive from the person to which the credit is assigned an amount that is less than the standard rate for each dollar of credit as determined by the board.

Sec. 12. (a) A taxpayer that proposes to make a qualified investment may apply to the corporation to enter into an agreement for a credit under this chapter.

(b) The corporation shall prescribe the form of the application.

Sec. 13. The corporation shall consider the following factors in evaluating applications filed under this chapter for a proposed qualified investment:

(1) The economic development potential of the project for which the taxpayer proposes to make the qualified investment.

(2) The level of commitment by private or governmental entities to assist in the financing of improvements or redevelopment activities benefiting the vacant or underused property that is the subject of the qualified investment.

(3) Evidence of support by residents, businesses, and private organizations in the surrounding community for the project for which the taxpayer proposes to make the qualified investment.

(4) The level of distress in the surrounding community and whether the project for which the taxpayer proposes to make the qualified investment addresses the needs of the surrounding community.

(5) Any other factor as determined by the corporation.

Sec. 14. (a) The following apply if the corporation approves a taxpayer's application under this chapter:

(1) The corporation shall require the taxpayer to enter into an agreement with the corporation as a condition of receiving a credit under this chapter. The agreement with the corporation must prescribe the method of certifying a taxpayer's qualified investment.

(2) The corporation shall specify the taxpayer's expenditures that will be considered a qualified investment. The corporation shall certify a taxpayer's expenditures that are considered a qualified investment not later than two (2)

taxable years after the end of the calendar year in which the taxpayer's expenditures are made.

(3) The corporation shall determine the applicable credit percentage under subsection (b).

(b) The corporation shall determine the applicable credit percentage for a qualified investment certified by the corporation. However, the applicable credit percentage may not exceed the following:

(1) Fifteen percent (15%), in the case of a qualified investment on a project that is included as part of a local plan to increase economic activity.

(2) Twenty-five percent (25%), in the case of a qualified investment on a project that is included as part of a regional redevelopment plan submitted by a development authority and approved by the board under IC 5-28-37 (before its repeal) or IC 5-28-38.

(3) A percentage determined by the board, but not to exceed twenty-five percent (25%), in the case of a qualified investment made on a project that:

(A) is located within a region for which a development authority has entered into an agreement with the corporation to receive a grant or loan under IC 5-28-37 (before its repeal) or IC 5-28-38; and

(B) is not included as part of a regional redevelopment plan submitted by the development authority and approved by the board under IC 5-28-37 (before its repeal) or IC 5-28-38.

Sec. 15. (a) In the case of a proposed qualified investment made on a project that is part of a regional redevelopment plan that is the subject of an agreement to receive grants or loans from the Indiana regional cities development fund under IC 5-28-38, the proposed qualified investment is not eligible to receive a credit under this chapter during the term of the agreement or if loan or grant funds under the agreement are available for use on the project.

(b) In the case of a proposed qualified investment described in section 14(b)(3) of this chapter, the corporation may not award a credit under this chapter or enter into an agreement with the taxpayer under section 14 of this chapter unless the board has approved the award of the credit.

Sec. 16. (a) The corporation may negotiate with a taxpayer and include in an agreement entered into under section 14 of this

chapter a return on investment provision requiring the taxpayer to repay all or part of a credit awarded to the taxpayer under this chapter if one (1) or more conditions specified in the agreement concerning:

(1) the profitability of the project for which the qualified investment was made;

(2) the refinancing of debt incurred to carry out or complete the project for which the qualified investment was made; or

(3) any other factor agreed upon by the corporation and the taxpayer;

are satisfied.

(b) Money paid by a taxpayer to the corporation under a return on investment provision included in an agreement entered into under section 14 of this chapter shall be deposited into a separate fund established by the corporation. The corporation shall administer the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as public money may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Money in the fund may be used by the corporation for the following purposes:

(1) To carry out the purposes of the Indiana regional cities development fund established by IC 5-28-38-2.

(2) To supplement funding for any of the following:

(A) The industrial development grant fund under IC 5-28-25.

(B) The skills enhancement fund under IC 5-28-7-5 or other funds or programs established to support training and upgrading the skills of employees.

Sec. 17. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit the following to the department of state revenue:

(1) The certification of the corporation stating the applicable credit percentage approved by the corporation under section 14(b) of this chapter.

(2) All other information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an expenditure was for a qualified investment.

SECTION 8. [EFFECTIVE JANUARY 1, 2020] **(a) IC 6-3.1-34, as added by this act, applies only to taxable years beginning after December 31, 2019.**

(b) This SECTION expires July 1, 2023.