HOUSE BILL No. 1379

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5; IC 6-3-2-8.5; IC 6-3.1-34.

Synopsis: Enterprise zones. Provides a credit against state sales and use tax liability for certain purchases made: (1) by or on behalf of a taxpayer that owns real property in an enterprise zone; (2) from a person whose place of business is within an enterprise zone or a city in which an enterprise zone is located; and (3) for the purpose of the redevelopment or rehabilitation of a business or residence in an enterprise zone. Provides retail merchants located in an enterprise zone with an additional allowance equal to 1% of the retail merchant's sales tax liability. Provides that an individual is entitled to an adjusted gross income tax deduction equal to the amount of qualified increased enterprise zone adjusted gross income received by the individual during the taxable year (including the individual's distributive share of a pass through entity's qualified increased enterprise zone adjusted gross income). Provides a credit against state tax liability for jobs created at locations within an enterprise zone.

Effective: July 1, 2014; January 1, 2015.

GiaQuinta, Dermody, Klinker, Truitt

January 15, 2014, read first time and referred to Committee on Ways and Means.

Introduced

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1379

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 6-2.5-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 5.5. Credit for Certain Qualified Purchases

Sec. 1. As used in this chapter, "building materials" means any items that are or may be permanently affixed to real property.

Sec. 2. As used in this chapter, "enterprise zone" means a zone established under IC 5-28-15.

Sec. 3. 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) limited liability company; or

(4) limited liability partnership.

Sec. 4. As used in this chapter, "qualified purchase" means a purchase of building materials that is made:

(1) by or on behalf of a taxpayer that owns real property in an enterprise zone;
(2) from a person whose place of business is within:
(A) an enterprise zone; or
(B) a city in which an enterprise zone is located; and
(3) for the purpose of the redevelopment or rehabilitation of a business or residence in an enterprise zone.

Sec. 5. As used in this chapter, "state sales and use tax liability" means a taxpayer's total tax liability incurred under this article before the application of any credit to which the taxpayer is entitled under this chapter.

Sec. 6. As used in this chapter, "taxpayer" means an individual, a corporation, or a pass through entity that makes a qualified purchase.

Sec. 7. (a) A taxpayer that makes a qualified purchase during a calendar year is entitled to a credit against the taxpayer's state sales and use tax liability for that calendar year.

(b) The amount of the credit to which a taxpayer is entitled equals the sum of the following:
(1) One hundred percent (100%) of the state sales and use tax paid by the taxpayer during the calendar year for a qualified purchase from a person whose place of business is within an enterprise zone.
(2) Fifty percent (50%) of the state sales and use tax paid by the taxpayer during the calendar year for a qualified purchase from a person whose place of business is not within an enterprise zone but is within a city in which an enterprise zone is located.

(c) The credit under this chapter must be claimed on a quarterly basis in the form of a claim for a refund prescribed by the department.

Sec. 8. The department may adopt rules under IC 4-22-2 to carry out this chapter.

SECTION 2. IC 6-2.5-6-10, AS AMENDED BY P.L.227-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) In order to compensate retail merchants and those required to remit gasoline use tax for collecting and timely remitting the state gross retail tax, the state use tax, and the gasoline use tax, every retail merchant or person required to remit the gasoline use tax, except as provided in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under IC 6-2.5-7-5, IC 6-2.5-3.5, or under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax or the person's gasoline use tax liability accrued during a calendar year, specified as follows:

(1) Seventy-three hundredths percent (0.73%), if the retail merchant's state gross retail and use tax or gasoline use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars ($60,000).

(2) Fifty-three hundredths percent (0.53%), if the retail merchant's state gross retail and use tax or gasoline use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars ($60,000); and

(B) did not exceed six hundred thousand dollars ($600,000).

(3) Twenty-six hundredths percent (0.26%), if the retail merchant's state gross retail and use tax liability or the person's gasoline use tax accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred thousand dollars ($600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section. A retail merchant is not entitled to the allowance provided by this section with respect to gasoline use taxes imposed by IC 6-2.5-3.5.

(d) This subsection applies only to a retail merchant located in an enterprise zone (as defined in IC 6-2.5-5.5-2). In addition to the allowance provided under subsection (b), a retail merchant located in an enterprise zone is entitled to an allowance equal to one percent (1%) of the retail merchant's state gross retail and use tax liability accrued during a reporting period for the location in the enterprise zone.

SECTION 3. IC 6-3-2-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]: **Sec. 8.5. (a) For purposes of this section, the following terms have the following meanings:**

(1) "Adjusted gross income derived from sources within an enterprise zone" means:

(A) adjusted gross income from real property or tangible personal property located in an enterprise zone;

(B) adjusted gross income from doing business in an enterprise zone;

(C) adjusted gross income from a trade or profession

conducted in an enterprise zone;

(D) compensation for labor or services rendered within an enterprise zone; and

(E) adjusted gross income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property having a situs in an enterprise zone.

(2) "Base period adjusted gross income" means the adjusted gross income of a person that would have been adjusted gross income derived from sources within an enterprise zone if an enterprise zone had been in existence during the year that ends on the last day of the month that immediately precedes the month in which the enterprise zone is established. If the person did not engage in an active trade or business during that year in an area that is later designated as an enterprise zone, the person's base period adjusted gross income equals zero (0). If the person engaged in an active trade or business during only part of that year in an area that is later designated as an enterprise zone, the department shall determine the amount of base period adjusted gross income.

(3) "Enterprise zone" means an enterprise zone created under IC 5-28-15.

(4) "Monthly base period adjusted gross income" means base period adjusted gross income divided by twelve (12).

(5) "Pass through entity" means a:

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

(B) partnership;

(C) limited liability company; or

(D) limited liability partnership.

(6) "Qualified increased enterprise zone adjusted gross income" means the following:

(A) For a person's taxable year other than the person's taxable year in which the enterprise zone is established, the amount by which adjusted gross income derived by the person from sources within the enterprise zone during the taxable year exceeds the person's base period adjusted gross income.

(B) For the person's taxable year in which the enterprise zone is established, the amount by which adjusted gross income derived by the person from sources within the

enterprise zone during all the full calendar months in the person's taxable year that succeed the date on which the enterprise zone was established exceeds the person's monthly base period adjusted gross income multiplied by that same number of full calendar months.

(b) Each taxable year, an individual is entitled to an adjusted gross income tax deduction equal to the amount of qualified increased enterprise zone adjusted gross income received by the individual during the taxable year.

(c) In the case of a pass through entity that receives qualified increased enterprise zone adjusted gross income, an individual who is a shareholder, partner, or member of the pass through entity is entitled to claim the deduction under this section. The amount the individual may claim as a deduction is equal to:

(1) the amount of the qualified increased enterprise zone adjusted gross income received by the pass through entity during the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(d) In the case of nonbusiness income described in subsection (h), only the amount of the income as is allocated to an enterprise zone under subsections (i) through (l) is considered to be derived from sources within an enterprise zone. In the case of business income, only the amount of the income as is apportioned to an enterprise zone under subsection (e) is considered to be derived from sources within an enterprise zone.

(e) If the business income derived from sources within an enterprise zone cannot be separated from the business income derived from sources outside the enterprise zone, the business income derived from sources within the enterprise zone is determined by multiplying the business income derived from sources both within and outside the enterprise zone by the sales factor, described in subsection (f).

(f) The sales factor is a fraction. The numerator of the fraction is the total sales of the taxpayer in an enterprise zone during the taxable year. The denominator of the fraction is the total sales of the taxpayer everywhere during the taxable year. Sales of tangible personal property are in an enterprise zone if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within the enterprise zone, regardless of the f.o.b. point or other conditions of the

sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in the enterprise zone and either the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

(g) Sales, other than sales of tangible personal property, are in an enterprise zone if:

(1) the income producing activity is performed in the enterprise zone; or

(2) the income producing activity is performed both within and outside the enterprise zone and a greater proportion of the income producing activity is performed within the enterprise zone than outside the enterprise zone, based on costs of performance.

(h) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (i) through (l).

(i) Net rents and royalties from:

(1) real property located in an enterprise zone are allocable to the enterprise zone; and

(2) tangible personal property are allocable to an enterprise zone to the extent that the property is used in the enterprise zone.

The extent of use of tangible personal property in an enterprise zone is determined by multiplying the rents and royalties by a fraction. The numerator of the fraction is the number of days of physical location of the property in the enterprise zone during the rental or royalty period in the taxable year. The denominator of the fraction is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is used where the royalty payer obtained possession of the property.

(j) Capital gains and losses from sales of:

(1) real property located in an enterprise zone are allocable to the enterprise zone;

(2) tangible personal property are allocable to an enterprise zone if the property had a situs in the enterprise zone at the time of the sale; and

(3) intangible personal property are allocable to an enterprise zone if the taxpayer's commercial domicile is in the enterprise zone.

(k) Interest and dividends are allocable to an enterprise zone if the taxpayer's commercial domicile is in the enterprise zone.

(l) Patent and copyright royalties are allocable to an enterprise zone to the extent that the patent or copyright is used by the taxpayer in the enterprise zone. A patent is used in an enterprise zone to the extent that the patent is employed in production, fabrication, manufacturing, or other processing in the enterprise zone or to the extent that a patented product is produced in the enterprise zone. If the basis of receipts from patent royalties does not permit allocation to enterprise zones or if the accounting procedures do not reflect location of use, the patent is used at the location of the taxpayer's commercial domicile. A copyright is used in an enterprise zone to the extent that printing or other publication originates in the enterprise zone. If the basis of receipts from copyright royalties does not permit allocation to enterprise zones or if the accounting procedures do not reflect location of use, the copyright is used at the location of the taxpayer's commercial domicile.

(m) If the allocation and apportionment provisions of this section do not fairly represent the taxpayer's adjusted gross income derived from sources within an enterprise zone, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity:

(1) a separate accounting;

(2) the exclusion of any one (1) or more of the factors listed in this section;

(3) the inclusion of one (1) or more additional factors that will fairly represent the taxpayer's income derived from sources within the enterprise zone; or

(4) the employment of any other method to effect an equitable allocation and apportionment of the taxpayer's income.

(n) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within an enterprise zone among those organizations, trades, or businesses in order to reflect fairly and report the income derived from sources within the enterprise zone by various taxpayers.

(o) A taxpayer that:

(1) does not own, rent, or lease real property outside an enterprise zone that is an integral part of the taxpayer's trade or business; and

(2) is not owned or controlled directly or indirectly by a taxpayer that owns, rents, or leases real property outside an enterprise zone;

is exempt from the allocation and apportionment provisions of this section.

SECTION 4. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2015]:

Chapter 34. Enterprise Zone Job Creation Credit

Sec. 1. As used in this chapter, "base taxable year" means either:

(1) in the case of a taxpayer that has not previously claimed a tax credit under this chapter, the taxpayer's taxable year that immediately precedes the taxable year for which the taxpayer is first claiming a credit under this chapter; or

(2) in the case of a taxpayer that has previously claimed a tax credit under this chapter, the most recent taxable year for which the taxpayer claimed a credit under this chapter.

Sec. 2. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

Sec. 3. As used in this chapter, "department" refers to the department of state revenue or the department of insurance, whichever is obligated to administer the tax against which a tax credit is applied.

Sec. 4. As used in this chapter, "employer" has the meaning set forth in IC 6-3-1-5.

Sec. 5. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 5-28-15.

Sec. 6. As used in this chapter, "full-time employee" means an individual who is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 7. (a) As used in this chapter, "new employee" means a full-time employee first employed by a taxpayer at the employer's enterprise zone location and who is employed after December 31 of the employer's previous taxable year.

(b) The term "new employee" does not include:

(1) an employee of the taxpayer who performs a job that was previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee;

(2) an employee of the taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer. For purposes of this chapter, an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section.

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) treated under the agreement as a new employee; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee under the agreement.

Sec. 8. As used in this chapter, "pass through entity" means:

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

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 9. As used in this chapter, "related member" means a person that, with respect to the taxpayer during all or any part of the taxable year, is any one (1) of the following:

(1) An individual stockholder or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the member of the stockholder's family own directly, indirectly, beneficially, or constructively, in total, at least fifty percent (50%) of the value of the taxpayer's outstanding stock.

(2) A stockholder or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnership, estate, trust, or corporation own directly, indirectly, beneficially, or constructively, in total, at least fifty percent (50%) of the value of the taxpayer's outstanding

stock.

(3) A corporation or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the taxpayer owns directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock.

(4) A component member (as defined in Section 1563(b) of the Internal Revenue Code).

(5) A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code. However, for purposes of determining whether a person is a related member under this subdivision, twenty percent (20%) shall be substituted for five percent (5%) wherever five percent (5%) appears in Section 1563(e) of the Internal Revenue Code.

Sec. 10. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

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

(2) IC 6-5.5 (financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums 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. 11. As used in this chapter, "taxpayer" means an individual, a corporation, or a pass through entity whose primary operations are conducted in an enterprise zone.

Sec. 12. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the amount determined under the following STEPS:

STEP ONE: Determine the lesser of:

(A) the number of new employees employed at the taxpayer's enterprise zone location in the taxable year; or

(B) the result of:

(i) the total number of full-time employees employed by the taxpayer at the taxpayer's enterprise zone location in the taxable year; minus

(ii) the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year.

STEP TWO: Multiply the amount determined under STEP

ONE by one thousand five hundred dollars ($1,500).

(b) A taxpayer may petition the corporation to adjust the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year if the taxpayer shows that:

(1) a new investment;

(2) a new product line; or

(3) other similar circumstances;

will result in the creation of new full-time jobs at the taxpayer's enterprise zone location but would not qualify the taxpayer for a credit under this chapter because employment at the enterprise zone location would remain below the level established in the taxpayer's base taxable year.

(c) Upon receiving a written recommendation from the appropriate local urban enterprise association, the corporation shall consider a petition submitted under subsection (b). The corporation may approve a taxpayer's petition if the corporation determines that adjusting the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year is in the best interests of the enterprise zone in which the taxpayer is located. If the corporation approves the petition, the corporation shall determine the new number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year that in the corporation's discretion fairly and reasonably represents the taxpayer's employment situation under the totality of the circumstances described in the taxpayer's petition. The corporation shall certify the new number to be used for purposes of this chapter to the taxpayer and the department.

Sec. 13. (a) If the amount determined under section 12 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. 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 entitled to a carryback or a refund of any unused credit.

Sec. 14. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax 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 or partner is entitled.

Sec. 15. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return in the manner prescribed by the department. The taxpayer must submit to the department proof of payment of the payroll expenditures and all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 5. [EFFECTIVE JULY 1, 2014] **(a) IC 6-2.5-5.5, as added by this act, applies to retail transactions occurring after June 30, 2014.**

(b) IC 6-2.5-6-10, as amended by this act, applies to retail transactions occurring after June 30, 2014.

(c) Except as provided in subsection (d), a retail transaction is considered to have occurred after June 30, 2014, if the property whose transfer constitutes selling at retail is delivered to the purchaser or to the place of delivery designated by the purchaser after June 30, 2014.

(d) Notwithstanding the delivery of the property constituting selling at retail after June 30, 2014, a transaction is considered to have occurred before July 1, 2014, to the extent that:

(1) the agreement of the parties to the transaction is entered into before July 1, 2014; and

(2) payment for the property furnished in the transaction is made before July 1, 2014.

(e) This SECTION expires January 1, 2015.

SECTION 6. [EFFECTIVE JANUARY 1, 2015] **(a) IC 6-3-2-8.5, as added by this act, applies only to taxable years beginning after December 31, 2014.**

(b) This SECTION expires January 1, 2017.

SECTION 7. [EFFECTIVE JANUARY 1, 2015] **(a) IC 6-3.1-34, as added by this act, applies only to taxable years beginning after December 31, 2014.**

(b) This SECTION expires January 1, 2017.