HOUSE BILL No. 1533

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3; IC 6-3.1-35.6.

Synopsis: Individual tax deductions and credits. Increases the amount from $1,000 to $1,500 per dependent child for purposes of the unreimbursed education expenditure tax deduction. Repeals the provision providing a tax credit for contributions to an ABLE account and replaces it with a provision with retroactive language that increases the credit to: (1) $750 for an individual filing a single return; and (2) $1,500 for a married couple filing a joint return. Provides a tax credit for contributions made to a public school foundation in an amount that may not exceed: (1) $750 for an individual filing a single return; and (2) $1,500 for a married couple filing a joint return. Provides that any combination of credits claimed under the ABLE account credit and the public school foundation credit may not exceed: (1) $750 for an individual filing a single return; and (2) $1,500 for a married couple filing a joint return.

Effective: January 1, 2023 (retroactive); January 1, 2024.

Cherry, Olthoff

January 19, 2023, read first time and referred to Committee on Ways and Means.

Introduced

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE BILL No. 1533

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 6-3-2-22, AS AMENDED BY P.L.92-2020, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2024]: Sec. 22. (a) The following definitions apply throughout this section:

(1) "Dependent child" means an individual who:

(A) is eligible to receive a free elementary or high school education in an Indiana school corporation;

(B) qualifies as a dependent (as defined in Section 152 of the Internal Revenue Code) of the taxpayer; and

(C) is the natural or adopted child of the taxpayer or, if custody of the child has been awarded in a court proceeding to someone other than the mother or father, the court appointed guardian or custodian of the child.

If the parents of a child are divorced, the term refers to the parent who is eligible to take the exemption for the child under Section 151 of the Internal Revenue Code.

(2) "Education expenditure" refers to any expenditures made in

connection with enrollment, attendance, or participation of the taxpayer's dependent child in a private elementary or high school education program. The term includes tuition, fees, computer software, textbooks, workbooks, curricula, school supplies (other than personal computers), and other written materials used primarily for academic instruction or for academic tutoring, or both.

(3) "Private elementary or high school education program" means attendance at:

(A) a nonpublic school (as defined in IC 20-18-2-12); or

(B) a state accredited nonpublic school (as defined in IC 20-18-2-18.7);

in Indiana that satisfies a child's obligation under IC 20-33-2 for compulsory attendance at a school. The term does not include the delivery of instructional service in a home setting to a dependent child who is enrolled in a school corporation or a charter school.

(b) This section applies to taxable years beginning after December 31, 2010.

(c) A taxpayer who makes an unreimbursed education expenditure during the taxpayer's taxable year is entitled to a deduction against the taxpayer's adjusted gross income in the taxable year.

(d) The amount of the deduction is:

(1) ~~one thousand dollars ($1,000);~~ **one thousand five hundred dollars ($1,500);** multiplied by

(2) the number of the taxpayer's dependent children for whom the taxpayer made education expenditures in the taxable year.

A husband and wife are entitled to only one (1) deduction under this section.

(e) To receive the deduction provided by this section, a taxpayer must claim the deduction on the taxpayer's annual state tax return or returns in the manner prescribed by the department.

SECTION 2. IC 6-3-3-12.1 IS REPEALED [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]. ~~Sec. 12.1. (a) As used in this section, "ABLE account" has the meaning set forth in IC 12-11-14-1.~~

~~(b) As used in this section, "contribution" means the amount of money directly provided to an Indiana ABLE 529A savings plan account by a taxpayer. A contribution does not include any of the following:~~

~~(1) Money credited to an ABLE account as a result of bonus points or other forms of consideration earned by the taxpayer that result in a transfer of money to the ABLE account.~~

~~(2) Money transferred from any qualified ABLE program under~~

~~Section 529A of the Internal Revenue Code or from any other similar plan.~~

~~(3) Money transferred from any qualified tuition program under Section 529 of the Internal Revenue Code or from any other similar plan.~~

~~(c) As used in this section, "designated beneficiary" has the meaning set forth in IC 12-11-14-5.~~

~~(d) As used in this section, "Indiana ABLE 529A savings plan" refers to the Achieving a Better Life Experience (ABLE) 529A plan established under IC 12-11.~~

~~(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from an Indiana ABLE 529A savings plan that is not a qualified withdrawal.~~

~~(f) As used in this section, "qualified disability expense" has the meaning set forth in IC 12-11-14-8.~~

~~(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from an Indiana ABLE 529A savings plan that is made:~~

~~(1) to pay for qualified disability expenses, excluding any withdrawals or distributions used to pay for qualified disability expenses, if the withdrawals or distributions are made from an Indiana ABLE 529A savings plan that is terminated within twelve (12) months after the ABLE account is opened;~~

~~(2) as a result of the death of a designated beneficiary; or~~

~~(3) by an Indiana ABLE 529A savings plan as the result of a transfer of funds by an Indiana ABLE 529A savings plan from one (1) third party custodian to another.~~

~~A qualified withdrawal does not include a rollover distribution or transfer of assets from an Indiana ABLE 529A savings plan to any other qualified ABLE program under Section 529A of the Internal Revenue Code, or to any qualified tuition program under Section 529 of the Internal Revenue Code other than a college choice 529 saving plan established under IC 21-9, or to any other similar plan.~~

~~(h) As used in this section, "taxpayer" means:~~

~~(1) an individual filing a single return;~~

~~(2) a married couple filing a joint return; or~~

~~(3) a married individual filing a separate return.~~

~~(i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:~~

~~(1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an ABLE account or accounts of an~~

~~Indiana ABLE 529A savings plan during the taxable year.~~

~~(2) Five hundred dollars ($500).~~

~~(3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.~~

~~(j) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.~~

~~(k) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.~~

~~(l) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.~~

~~(m) An owner of an ABLE account of an Indiana ABLE 529A savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the ABLE account. The amount the taxpayer must repay is equal to the lesser of:~~

~~(1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the ABLE account; or~~

~~(2) the excess of:~~

~~(A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the ABLE account for all prior taxable years; over~~

~~(B) the cumulative amount of repayments paid by the owner of the ABLE account under this subsection for all prior taxable years.~~

~~(n) Any required repayment under subsection (m) must be reported by the owner of the ABLE account on the owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.~~

~~(o) A nonresident owner of an ABLE account who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident owner of the ABLE account does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.~~

~~(p) The executive director of the Indiana ABLE authority shall submit or cause to be submitted to the department a copy of all~~

~~information returns or statements issued to ABLE account owners, designated beneficiaries, and other taxpayers for each taxable year with respect to:~~

~~(1) nonqualified withdrawals made from ABLE accounts for the taxable year; or~~

~~(2) ABLE account closings for the taxable year.~~

SECTION 3. IC 6-3-3-12.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: **Sec. 12.2. (a) As used in this section, "ABLE account" has the meaning set forth in IC 12-11-14-1.**

(b) As used in this section, "contribution" means the amount of money directly provided to an Indiana ABLE 529A savings plan account by a taxpayer. A contribution does not include any of the following:

(1) Money credited to an ABLE account as a result of bonus points or other forms of consideration earned by the taxpayer that result in a transfer of money to the ABLE account.

(2) Money transferred from any qualified ABLE program under Section 529A of the Internal Revenue Code or from any other similar plan.

(3) Money transferred from any qualified tuition program under Section 529 of the Internal Revenue Code or from any other similar plan.

(c) As used in this section, "designated beneficiary" has the meaning set forth in IC 12-11-14-5.

(d) As used in this section, "Indiana ABLE 529A savings plan" refers to the achieving a better life experience (ABLE) 529A plan established under IC 12-11.

(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from an Indiana ABLE 529A savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified disability expense" has the meaning set forth in IC 12-11-14-8.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from an Indiana ABLE 529A savings plan that is made:

(1) to pay for qualified disability expenses, excluding any withdrawals or distributions used to pay for qualified disability expenses, if the withdrawals or distributions are made from an Indiana ABLE 529A savings plan that is terminated within twelve (12) months after the ABLE account

is opened;

(2) as a result of the death of a designated beneficiary; or

(3) by an Indiana ABLE 529A savings plan as the result of a transfer of funds by an Indiana ABLE 529A savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from an Indiana ABLE 529A savings plan to any other qualified ABLE program under Section 529A of the Internal Revenue Code, or to any qualified tuition program under Section 529 of the Internal Revenue Code other than a college choice 529 education savings plan established under IC 21-9, or to any other similar plan.

(h) As used in this section, "taxpayer" means:

(1) an individual filing a single return;

(2) a married couple filing a joint return; or

(3) a married individual filing a separate return.

(i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

(1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an ABLE account or accounts of an Indiana ABLE 529A savings plan during the taxable year.

(2) Seven hundred fifty dollars ($750) for an individual filing a single return.

(3) One thousand five hundred dollars ($1,500) for a married couple filing a joint return.

(4) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(j) Notwithstanding subsection (i), the amount claimed as a credit under this section, combined with any credit claimed under IC 6-3.1-35.6, may not exceed:

(1) seven hundred fifty dollars ($750) in the case of an individual filing a single return; or

(2) one thousand five hundred dollars ($1,500) in the case of a married couple filing a joint return.

(k) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(l) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(m) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(n) An owner of an ABLE account of an Indiana ABLE 529A savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the ABLE account. The amount the taxpayer must repay is equal to the lesser of:

(1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the ABLE account; or

(2) the excess of:

(A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the ABLE account for all prior taxable years; over

(B) the cumulative amount of repayments paid by the owner of the ABLE account under this subsection for all prior taxable years.

(o) Any required repayment under subsection (n) must be reported by the owner of the ABLE account on the owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(p) A nonresident owner of an ABLE account who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident owner of the ABLE account does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(q) The executive director of the Indiana ABLE authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to ABLE account owners, designated beneficiaries, and other taxpayers for each taxable year with respect to:

(1) nonqualified withdrawals made from ABLE accounts for the taxable year; or

(2) ABLE account closings for the taxable year.

SECTION 4. IC 6-3.1-35.6 IS ADDED TO THE INDIANA CODE

AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2024]:

Chapter 35.6. Public School Foundation Contribution Tax Credit

Sec. 1. This chapter applies only to taxable years beginning after December 31, 2023.

Sec. 2. As used in this chapter, "credit" refers to a credit granted under this chapter.

Sec. 3. As used in this chapter, "pass through entity" has the meaning set forth in IC 6-3-1-35.

Sec. 4. As used in this chapter, "public elementary school or public secondary school" means any Indiana public school or school corporation, including a charter school (as defined in IC 20-24-1-4), that offers any combination of grades from kindergarten through grade 12.

Sec. 5. As used in this chapter, "public school foundation" means a nonprofit organization that is:

(1) exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) organized and operated solely for the benefit of an Indiana public elementary school or public secondary school.

The term includes a public school foundation established under IC 20-26-5-22.5.

Sec. 6. 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 (the adjusted gross income tax);

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

(3) IC 27-1-18-2 (the 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. 7. As used in this chapter, "taxpayer" means an individual or entity that has any state tax liability.

Sec. 8. (a) At the election of the taxpayer, a credit is allowed against the taxpayer's state tax liability for the taxable year in which the taxpayer makes a contribution to a public school foundation. Subject to the limitations provided by this chapter, the amount of the credit for a taxable year is equal the total amount of the contributions made by the taxpayer.

(b) The amount allowable as a credit under this section for any taxable year may not exceed:

(1) seven hundred fifty dollars ($750) in the case of an

individual filing a single return; or

(2) one thousand five hundred dollars ($1,500) in the case of a married couple filing a joint return.

(c) Notwithstanding subsection (b), the amount claimed as a credit under this chapter, combined with any credit claimed under IC 6-3-3-12.2, may not exceed:

(1) seven hundred fifty dollars ($750) in the case of an individual filing a single return; or

(2) one thousand five hundred dollars ($1,500) in the case of a married couple filing a joint return.

Sec. 9. (a) A public school foundation receiving a contribution that will be used as the basis for a tax credit under this chapter must provide to the department by August 1 of each year the following information regarding the public school foundation's use of the contributions received under this chapter:

(1) The name of the public school foundation.

(2) The total number and total dollar amount of contributions received during the previous school year.

(3) A description of each use or purpose for which the contributions were spent.

(4) A copy of the public school foundation's annual financial audit.

In addition, the public school foundation shall make the annual financial audit available to a member of the public upon request. The information provided under this subsection is a public record.

(b) The report must be certified under penalties of perjury by the chief executive officer of the public school foundation.

Sec. 10. (a) Subject to section 11 of this chapter, if the credit provided by this chapter exceeds the taxpayer's state tax liability for the taxable year for which the credit is first claimed, the excess may be carried forward to succeeding taxable years and used as a credit against the taxpayer's state tax liability during those taxable years. Each time the credit is carried forward to a succeeding taxable year, the credit is reduced by the amount that was used as a credit during the immediately preceding taxable year.

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

Sec. 11. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member 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, partner, or member is entitled.

Sec. 12. To apply a credit against the taxpayer's state tax liability, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.

Sec. 13. The total amount of tax credits awarded under this chapter may not exceed five million dollars ($5,000,000) each state fiscal year.

Sec. 14. The department, on a website used by the department to provide information to the public, shall provide the following information:

(1) The form the department prescribes for claiming the credit provided by this chapter.

(2) A timeline for receiving the credit provided by this chapter.

(3) The total amount of credits awarded under this chapter during the current state fiscal year.

SECTION 5. [EFFECTIVE JANUARY 1, 2024] **(a) IC 6-3-2-22, as amended by this act, applies to taxable years beginning after December 31, 2023.**

(b) This SECTION expires July 1, 2026.

SECTION 6. [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)] **(a) IC 6-3-3-12.2, as added by this act, applies to taxable years beginning after December 31, 2022.**

(b) This SECTION expires July 1, 2026.

SECTION 7. **An emergency is declared for this act.**