

## SENATE BILL No. 23

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-30-8-7; IC 5-32-1-4; IC 6-3-2-2; IC 6-3.1-26; IC 6-8-11.

**Synopsis:** Technical corrections. Repeals conflicting provisions contained in HEA 1019-2015 (Common construction wage and public works) concerning applicability of the requirements in HEA 1019-2015. The provisions that would be repealed were added by HEA 1019-2015 and repealed by SEA 441-2015 during the 2015 legislative session. Clarifies that the principal amount of money contributed by an employer to a medical care savings account (MSA) for which no state or federal tax exemption for the employee applies may be withdrawn from the MSA account for any purpose without the employee incurring taxable income based on the principal contribution. Makes technical corrections and conforming changes to SEA 441-2015. (The introduced version of this bill was prepared by the code revision commission.)

**Effective:** Upon passage; July 1, 2015 (retroactive); January 1, 2016 (retroactive).

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## Hershman

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January 5, 2016, read first time and referred to Committee on Tax & Fiscal Policy.

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Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# SENATE BILL No. 23

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 IC 5-30-8-7 IS REPEALED [EFFECTIVE JULY 1,
- 2 2015 (RETROACTIVE)]. ~~Sec. 7. IC 5-16-13 and IC 5-16-14 apply to~~
- 3 ~~a contract awarded under this article.~~
- 4 SECTION 2. IC 5-32-1-4 IS REPEALED [EFFECTIVE JULY 1,
- 5 2015 (RETROACTIVE)]. ~~Sec. 4. IC 5-16-13 and IC 5-16-14 apply to~~
- 6 ~~a contract awarded under this article, regardless of which applicable~~
- 7 ~~public works statute applies to the contract.~~
- 8 SECTION 3. IC 6-3-2-2, AS AMENDED BY P.L.250-2015,
- 9 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 UPON PASSAGE]: Sec. 2. (a) With regard to corporations and
- 11 nonresident persons, "adjusted gross income derived from sources
- 12 within Indiana", for the purposes of this article, shall mean and include:
- 13 (1) income from real or tangible personal property located in this
- 14 state;
- 15 (2) income from doing business in this state;
- 16 (3) income from a trade or profession conducted in this state;
- 17 (4) compensation for labor or services rendered within this state;



1 and

2 (5) income from stocks, bonds, notes, bank deposits, patents,  
3 copyrights, secret processes and formulas, good will, trademarks,  
4 trade brands, franchises, and other intangible personal property to  
5 the extent that the income is apportioned to Indiana under this  
6 section or if the income is allocated to Indiana or considered to be  
7 derived from sources within Indiana under this section.

8 Income from a pass through entity shall be characterized in a manner  
9 consistent with the income's characterization for federal income tax  
10 purposes and shall be considered Indiana source income as if the  
11 person, corporation, or pass through entity that received the income had  
12 directly engaged in the income producing activity. Income that is  
13 derived from one (1) pass through entity and is considered to pass  
14 through to another pass through entity does not change these  
15 characteristics or attribution provisions. In the case of nonbusiness  
16 income described in subsection (g), only so much of such income as is  
17 allocated to this state under the provisions of subsections (h) through  
18 (k) shall be deemed to be derived from sources within Indiana. In the  
19 case of business income, only so much of such income as is  
20 apportioned to this state under the provision of subsection (b) shall be  
21 deemed to be derived from sources within the state of Indiana. In the  
22 case of compensation of a team member (as defined in section 2.7 of  
23 this chapter), only the portion of income determined to be Indiana  
24 income under section 2.7 of this chapter is considered derived from  
25 sources within Indiana. In the case of a corporation that is a life  
26 insurance company (as defined in Section 816(a) of the Internal  
27 Revenue Code) or an insurance company that is subject to tax under  
28 Section 831 of the Internal Revenue Code, only so much of the income  
29 as is apportioned to Indiana under subsection (r) is considered derived  
30 from sources within Indiana.

31 (b) Except as provided in subsection (l), if business income of a  
32 corporation or a nonresident person is derived from sources within the  
33 state of Indiana and from sources without the state of Indiana, the  
34 business income derived from sources within this state shall be  
35 determined by multiplying the business income derived from sources  
36 both within and without the state of Indiana by the following:

37 (1) For all taxable years that begin after December 31, 2006, and  
38 before January 1, 2008, a fraction. The:

39 (A) numerator of the fraction is the sum of the property factor  
40 plus the payroll factor plus the product of the sales factor  
41 multiplied by three (3); and

42 (B) denominator of the fraction is five (5).



- 1 (2) For all taxable years that begin after December 31, 2007, and  
 2 before January 1, 2009, a fraction. The:  
 3 (A) numerator of the fraction is the property factor plus the  
 4 payroll factor plus the product of the sales factor multiplied by  
 5 four and sixty-seven hundredths (4.67); and  
 6 (B) denominator of the fraction is six and sixty-seven  
 7 hundredths (6.67).
- 8 (3) For all taxable years beginning after December 31, 2008, and  
 9 before January 1, 2010, a fraction. The:  
 10 (A) numerator of the fraction is the property factor plus the  
 11 payroll factor plus the product of the sales factor multiplied by  
 12 eight (8); and  
 13 (B) denominator of the fraction is ten (10).
- 14 (4) For all taxable years beginning after December 31, 2009, and  
 15 before January 1, 2011, a fraction. The:  
 16 (A) numerator of the fraction is the property factor plus the  
 17 payroll factor plus the product of the sales factor multiplied by  
 18 eighteen (18); and  
 19 (B) denominator of the fraction is twenty (20).
- 20 (5) For all taxable years beginning after December 31, 2010, the  
 21 sales factor.
- 22 (c) The property factor is a fraction, the numerator of which is the  
 23 average value of the taxpayer's real and tangible personal property  
 24 owned or rented and used in this state during the taxable year and the  
 25 denominator of which is the average value of all the taxpayer's real and  
 26 tangible personal property owned or rented and used during the taxable  
 27 year. However, with respect to a foreign corporation, the denominator  
 28 does not include the average value of real or tangible personal property  
 29 owned or rented and used in a place that is outside the United States.  
 30 Property owned by the taxpayer is valued at its original cost. Property  
 31 rented by the taxpayer is valued at eight (8) times the net annual rental  
 32 rate. Net annual rental rate is the annual rental rate paid by the taxpayer  
 33 less any annual rental rate received by the taxpayer from subrentals.  
 34 The average of property shall be determined by averaging the values at  
 35 the beginning and ending of the taxable year, but the department may  
 36 require the averaging of monthly values during the taxable year if  
 37 reasonably required to reflect properly the average value of the  
 38 taxpayer's property.
- 39 (d) The payroll factor is a fraction, the numerator of which is the  
 40 total amount paid in this state during the taxable year by the taxpayer  
 41 for compensation, and the denominator of which is the total  
 42 compensation paid everywhere during the taxable year. However, with



1 respect to a foreign corporation, the denominator does not include  
 2 compensation paid in a place that is outside the United States.  
 3 Compensation is paid in this state if:

- 4 (1) the individual's service is performed entirely within the state;  
 5 (2) the individual's service is performed both within and without  
 6 this state, but the service performed without this state is incidental  
 7 to the individual's service within this state; or  
 8 (3) some of the service is performed in this state and:  
 9 (A) the base of operations or, if there is no base of operations,  
 10 the place from which the service is directed or controlled is in  
 11 this state; or  
 12 (B) the base of operations or the place from which the service  
 13 is directed or controlled is not in any state in which some part  
 14 of the service is performed, but the individual is a resident of  
 15 this state.

16 (e) The sales factor is a fraction, the numerator of which is the total  
 17 sales of the taxpayer in this state during the taxable year, and the  
 18 denominator of which is the total sales of the taxpayer everywhere  
 19 during the taxable year. Sales include receipts from intangible property  
 20 and receipts from the sale or exchange of intangible property. However,  
 21 with respect to a foreign corporation, the denominator does not include  
 22 sales made in a place that is outside the United States. Receipts from  
 23 intangible personal property are derived from sources within Indiana  
 24 if the receipts from the intangible personal property are attributable to  
 25 Indiana under section 2.2 of this chapter. Regardless of the f.o.b. point  
 26 or other conditions of the sale, sales of tangible personal property are  
 27 in this state if:

- 28 (1) the property is delivered or shipped to a purchaser that is  
 29 within Indiana, other than the United States government; or  
 30 (2) the property is shipped from an office, a store, a warehouse, a  
 31 factory, or other place of storage in this state and the purchaser is  
 32 the United States government.

33 Gross receipts derived from commercial printing as described in  
 34 IC 6-2.5-1-10 and from the sale of computer software shall be treated  
 35 as sales of tangible personal property for purposes of this chapter.

36 (f) Sales, other than receipts from intangible property covered by  
 37 subsection (e) and sales of tangible personal property, are in this state  
 38 if:

- 39 (1) the income-producing activity is performed in this state; or  
 40 (2) the income-producing activity is performed both within and  
 41 without this state and a greater proportion of the  
 42 income-producing activity is performed in this state than in any



- 1 other state, based on costs of performance.
- 2 (g) Rents and royalties from real or tangible personal property,  
3 capital gains, interest, dividends, or patent or copyright royalties, to the  
4 extent that they constitute nonbusiness income, shall be allocated as  
5 provided in subsections (h) through (k).
- 6 (h)(1) Net rents and royalties from real property located in this state  
7 are allocable to this state.
- 8 (2) Net rents and royalties from tangible personal property are  
9 allocated to this state:
- 10 (i) if and to the extent that the property is utilized in this state; or  
11 (ii) in their entirety if the taxpayer's commercial domicile is in this  
12 state and the taxpayer is not organized under the laws of or  
13 taxable in the state in which the property is utilized.
- 14 (3) The extent of utilization of tangible personal property in a state  
15 is determined by multiplying the rents and royalties by a fraction, the  
16 numerator of which is the number of days of physical location of the  
17 property in the state during the rental or royalty period in the taxable  
18 year, and the denominator of which is the number of days of physical  
19 location of the property everywhere during all rental or royalty periods  
20 in the taxable year. If the physical location of the property during the  
21 rental or royalty period is unknown or unascertainable by the taxpayer,  
22 tangible personal property is utilized in the state in which the property  
23 was located at the time the rental or royalty payer obtained possession.
- 24 (i)(1) Capital gains and losses from sales of real property located in  
25 this state are allocable to this state.
- 26 (2) Capital gains and losses from sales of tangible personal property  
27 are allocable to this state if:
- 28 (i) the property had a situs in this state at the time of the sale; or  
29 (ii) the taxpayer's commercial domicile is in this state and the  
30 taxpayer is not taxable in the state in which the property had a  
31 situs.
- 32 (3) Capital gains and losses from sales of intangible personal  
33 property are allocable to this state if the taxpayer's commercial  
34 domicile is in this state.
- 35 (j) Interest and dividends are allocable to this state if the taxpayer's  
36 commercial domicile is in this state.
- 37 (k)(1) Patent and copyright royalties are allocable to this state:
- 38 (i) if and to the extent that the patent or copyright is utilized by  
39 the taxpayer in this state; or  
40 (ii) if and to the extent that the patent or copyright is utilized by  
41 the taxpayer in a state in which the taxpayer is not taxable and the  
42 taxpayer's commercial domicile is in this state.



1 (2) A patent is utilized in a state to the extent that it is employed  
 2 in production, fabrication, manufacturing, or other processing in  
 3 the state or to the extent that a patented product is produced in the  
 4 state. If the basis of receipts from patent royalties does not permit  
 5 allocation to states or if the accounting procedures do not reflect  
 6 states of utilization, the patent is utilized in the state in which the  
 7 taxpayer's commercial domicile is located.

8 (3) A copyright is utilized in a state to the extent that printing or  
 9 other publication originates in the state. If the basis of receipts  
 10 from copyright royalties does not permit allocation to states or if  
 11 the accounting procedures do not reflect states of utilization, the  
 12 copyright is utilized in the state in which the taxpayer's  
 13 commercial domicile is located.

14 (l) If the allocation and apportionment provisions of this article do  
 15 not fairly represent the taxpayer's income derived from sources within  
 16 the state of Indiana, the taxpayer may petition for or the department  
 17 may require, in respect to all or any part of the taxpayer's business  
 18 activity, if reasonable:

19 (1) separate accounting;

20 (2) for a taxable year beginning before January 1, 2011, the  
 21 exclusion of any one (1) or more of the factors, except the sales  
 22 factor;

23 (3) the inclusion of one (1) or more additional factors which will  
 24 fairly represent the taxpayer's income derived from sources within  
 25 the state of Indiana; or

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

28 (m) In the case of two (2) or more organizations, trades, or  
 29 businesses owned or controlled directly or indirectly by the same  
 30 interests, the department shall distribute, apportion, or allocate the  
 31 income derived from sources within the state of Indiana between and  
 32 among those organizations, trades, or businesses in order to fairly  
 33 reflect and report the income derived from sources within the state of  
 34 Indiana by various taxpayers.

35 (n) For purposes of allocation and apportionment of income under  
 36 this article, a taxpayer is taxable in another state if:

37 (1) in that state the taxpayer is subject to a net income tax, a  
 38 franchise tax measured by net income, a franchise tax for the  
 39 privilege of doing business, or a corporate stock tax; or

40 (2) that state has jurisdiction to subject the taxpayer to a net  
 41 income tax regardless of whether, in fact, the state does or does  
 42 not.



1 (o) Notwithstanding subsections (l) and (m), the department may  
2 not, under any circumstances, require that income, deductions, and  
3 credits attributable to a taxpayer and another entity be reported in a  
4 combined income tax return for any taxable year, if the other entity is:

5 (1) a foreign corporation; or

6 (2) a corporation that is classified as a foreign operating  
7 corporation for the taxable year by section 2.4 of this chapter.

8 (p) Notwithstanding subsections (l) and (m), the department may not  
9 require that income, deductions, and credits attributable to a taxpayer  
10 and another entity not described in subsection (o)(1) or (o)(2) be  
11 reported in a combined income tax return for any taxable year, unless  
12 the department is unable to fairly reflect the taxpayer's adjusted gross  
13 income for the taxable year through use of other powers granted to the  
14 department by subsections (l) and (m).

15 (q) Notwithstanding subsections (o) and (p), one (1) or more  
16 taxpayers may petition the department under subsection (l) for  
17 permission to file a combined income tax return for a taxable year. The  
18 petition to file a combined income tax return must be completed and  
19 filed with the department not more than thirty (30) days after the end  
20 of the taxpayer's taxable year. A taxpayer filing a combined income tax  
21 return must petition the department within thirty (30) days after the end  
22 of the taxpayer's taxable year to discontinue filing a combined income  
23 tax return.

24 (r) This subsection applies to a corporation that is a life insurance  
25 company (as defined in Section 816(a) of the Internal Revenue Code)  
26 or an insurance company that is subject to tax under Section 831 of the  
27 Internal Revenue Code. The corporation's adjusted gross income that  
28 is derived from sources within Indiana is determined by multiplying the  
29 corporation's adjusted gross income by a fraction:

30 (1) the numerator of which is the direct premiums and annuity  
31 considerations received during the taxable year for insurance  
32 upon property or risks in the state; and

33 (2) the denominator of which is the direct premiums and annuity  
34 considerations received during the taxable year for insurance  
35 upon property or risks everywhere.

36 The term "direct premiums and annuity considerations" means the  
37 gross premiums received from direct business as reported in the  
38 corporation's annual statement filed with the department of insurance.

39 (s) This subsection applies to receipts derived from motorsports  
40 racing.

41 (1) Any purse, prize money, or other amounts earned for  
42 placement or participation in a race or portion thereof, including





1 qualification, shall be attributed to Indiana if the race is conducted  
2 in Indiana.

3 (2) Any amounts received from an individual or entity as a result  
4 of sponsorship or similar promotional consideration for one (1) or  
5 more races shall be in this state in the amount received, multiplied  
6 by the following fraction:

7 (A) The numerator of the fraction is the number of racing  
8 events for which sponsorship or similar promotional  
9 consideration has been paid in a taxable year and that occur in  
10 Indiana.

11 (B) The denominator of the fraction is the total number of  
12 racing events for which sponsorship or similar promotional  
13 consideration has been paid in a taxable year.

14 (3) Any amounts earned as an incentive for placement or  
15 participation in one (1) or more races and that are not covered  
16 under ~~subdivisions~~ **subdivision** (1) or (2) or under IC 6-3-2-3.2  
17 shall be attributed to Indiana in the proportion of the races that  
18 occurred in Indiana.

19 This subsection, as enacted in 2013, is intended to be a clarification of  
20 the law and not a substantive change in the law

21 SECTION 4. IC 6-3.1-26-15, AS AMENDED BY P.L.250-2015,  
22 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
23 UPON PASSAGE]: Sec. 15. (a) Subject to subsection (d), a taxpayer  
24 may carry forward an unused credit for the number of years determined  
25 by the corporation, not to exceed nine (9) consecutive taxable years,  
26 beginning with the taxable year after the taxable year in which the  
27 taxpayer makes the qualified investment.

28 (b) The amount that a taxpayer may carry forward to a particular  
29 taxable year under this section equals the unused part of a tax credit  
30 allowed under this chapter.

31 (c) A taxpayer may:

32 (1) claim a tax credit under this chapter for a qualified  
33 investment; and

34 (2) carry forward a remainder for one (1) or more different  
35 qualified investments;

36 in the same taxable year.

37 (d) This subsection applies only to a taxpayer that:

38 (1) is not a pass through entity;

39 (2) proposes at least five hundred million dollars (\$500,000,000)  
40 in total investment over a five (5) year period; and

41 (3) enters into a written agreement with the corporation under this  
42 subsection before January 1, 2017, and agrees to claim tax credits



1 under this chapter for not more than one hundred seventy million  
 2 dollars (\$170,000,000) of qualified investment that is made as  
 3 part of the investment proposed as described in subdivision (2).

4 If a tax credit awarded under this chapter exceeds a taxpayer's state  
 5 income tax liability for the taxable year, notwithstanding subsection  
 6 (a), the corporation may accelerate to that taxable year the excess  
 7 amount of the tax credit that could otherwise be carried forward under  
 8 subsection (a). The excess amount of the tax credit accelerated under  
 9 this subsection shall be discounted as determined under a written  
 10 agreement entered into by the taxpayer and the corporation. The  
 11 discounted amount of the excess tax credit accelerated under this  
 12 subsection as determined by the corporation may be remitted to the  
 13 taxpayer as provided in the written agreement between the corporation  
 14 and the taxpayer. Subject to subsection (f), the total amount of qualified  
 15 investments for which tax credits may be accelerated under this  
 16 subsection may not exceed one hundred seventy million dollars  
 17 (\$170,000,000). The ~~requirements~~ **requirement** for an agreement  
 18 under section 21(11) of this chapter ~~do~~ **does** not apply to this  
 19 subsection. This subsection expires December 31, 2025.

20 (e) A written agreement under subsection (d) may contain a  
 21 provision for payment of liquidated damages:

- 22 (1) to the corporation for failure to comply with the conditions set  
 23 forth in this chapter and the agreement entered into by the  
 24 corporation and taxpayer under this chapter; and
- 25 (2) that are in addition to an assessment made by the department  
 26 for noncompliance under section 23 of this chapter.

27 This subsection expires December 31, 2025.

28 (f) The total aggregated amount of tax credits that the corporation  
 29 may discount under subsection (d) and section 16(d) of this chapter in  
 30 a state fiscal year may not exceed seventeen million dollars  
 31 (\$17,000,000), as determined before the discount is applied. This  
 32 subsection expires December 31, 2025.

33 SECTION 5. IC 6-3.1-26-16, AS AMENDED BY P.L.250-2015,  
 34 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 UPON PASSAGE]: Sec. 16. (a) If a pass through entity does not have  
 36 state tax liability against which the tax credit may be applied, a  
 37 shareholder, member, or partner of the pass through entity is entitled  
 38 to a tax credit equal to:

- 39 (1) the tax credit determined for the pass through entity for the  
 40 taxable year; multiplied by
- 41 (2) the percentage of the pass through entity's distributive income  
 42 to which the shareholder, member, or partner is entitled.



1 (b) Subject to subsection (d), a shareholder, member, or partner of  
 2 a pass through entity that is entitled to a tax credit under this section  
 3 may carry forward an unused credit for the number of years determined  
 4 by the corporation, not to exceed nine (9) consecutive taxable years,  
 5 beginning with the taxable year after the taxable year in which the pass  
 6 through entity makes the qualified investment.

7 (c) The amount that a shareholder, member, or partner may carry  
 8 forward to a particular taxable year under this section equals the  
 9 unused part of a tax credit allowed under this chapter to which the  
 10 shareholder, member, or partner is entitled.

11 (d) This subsection applies only to a pass through entity that:

12 (1) proposes at least five hundred million dollars (\$500,000,000)  
 13 in total investment over a five (5) year period; and

14 (2) enters into a written agreement with the corporation under this  
 15 subsection before January 1, 2017, and the shareholders,  
 16 members, or partners of the pass through entity agree to claim tax  
 17 credits under this chapter for not more than one hundred seventy  
 18 million dollars (\$170,000,000) of qualified investment that is  
 19 made as part of the investment proposed as described in  
 20 subdivision (1).

21 Notwithstanding subsection (b), the corporation may accelerate to the  
 22 current taxable year the excess tax credit amount that could otherwise  
 23 be carried forward by all shareholders, members, or partners of a pass  
 24 through entity under subsection (b). The excess amount of the tax  
 25 credit accelerated under this subsection shall be discounted as  
 26 determined under a written agreement entered into by the pass through  
 27 entity and the corporation. Subject to subsection (f), the total amount  
 28 of qualified investments for which tax credits may be accelerated under  
 29 this subsection may not exceed one hundred seventy million dollars  
 30 (\$170,000,000). The discounted amount of the excess tax credit  
 31 accelerated under this subsection as determined by the corporation may  
 32 be remitted to the shareholders, members, or partners of the pass  
 33 through entity as provided in the written agreement between the  
 34 corporation and the pass through entity. The **requirements**  
 35 **requirement** for an agreement under section 21(11) of this chapter ~~do~~  
 36 **does** not apply to this subsection. This subsection expires December  
 37 31, 2025.

38 (e) A written agreement under subsection (d) may contain a  
 39 provision for payment of liquidated damages:

40 (1) to the corporation for failure to comply with the conditions set  
 41 forth in this chapter and the agreement entered into by the  
 42 corporation and pass through entity under this chapter;



1 (2) that are personally guaranteed by the shareholders, members,  
2 or partners of the pass through entity; and

3 (3) that are in addition to an assessment made by the department  
4 for noncompliance under section 23 of this chapter.

5 This subsection expires December 31, 2025.

6 (f) The total aggregated amount of tax credits that the corporation  
7 may discount under subsection (d) and section 15(d) of this chapter in  
8 a state fiscal year may not exceed seventeen million dollars  
9 (\$17,000,000), as determined before the discount is applied. This  
10 subsection expires December 31, 2025.

11 SECTION 6. IC 6-8-11-11.5, AS ADDED BY P.L.250-2015,  
12 SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JANUARY 1, 2016 (RETROACTIVE)]: Sec. 11.5. If an employer  
14 contributes money to an account under this chapter after December 31,  
15 2015, for which no exemption applies under IC 6-3-2-18(c) **and for**  
16 **which no exemption or exclusion applies under the Internal**  
17 **Revenue Code at the time of contribution:**

18 (1) the money may be withdrawn from the account by the  
19 employee at any time and for any purpose without a penalty; **and**

20 (2) **the withdrawal of the principal amount contributed by the**  
21 **employer is not income to the employee that is subject to**  
22 **taxation under IC 6-3-1 through IC 6-3-7.**

23 SECTION 7. IC 6-8-11-17 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]:  
25 Sec. 17. (a) An employee may, under this section, withdraw money  
26 from the employee's medical care savings account for a purpose other  
27 than the purposes set forth in section 13 of this chapter.

28 (b) Except as provided in ~~section sections~~ **11(b) and 11.5** of this  
29 chapter, if an employee withdraws money from the employee's medical  
30 care savings account on the last business day of the account  
31 administrator's business year for a purpose not set forth in section 13  
32 of this chapter:

33 (1) the money withdrawn is income to the individual that is  
34 subject to taxation under IC 6-3-2-18(e); but

35 (2) the withdrawal does not:

36 (A) subject the employee to a penalty; or

37 (B) make the interest earned on the account during the tax year  
38 taxable as income of the employee.

39 (c) Except as provided in ~~section sections~~ **11(b) and 11.5** of this  
40 chapter, if an employee withdraws money for a purpose not set forth in  
41 section 13 of this chapter at any time other than the last business day  
42 of the account administrator's business year, all of the following apply:



1 (1) The amount of the withdrawal is income to the individual that  
2 is subject to taxation under IC 6-3-2-18(e).

3 (2) The administrator shall withhold and, on behalf of the  
4 employee, pay a penalty to the department of state revenue equal  
5 to ten percent (10%) of the amount of the withdrawal.

6 (3) All interest earned on the balance in the account during the tax  
7 year in which a withdrawal under this subsection is made is  
8 income to the individual that is subject to taxation under  
9 IC 6-3-2-18(f).

10 (d) Money paid to the department of state revenue as a penalty  
11 under this section shall be deposited in the local health maintenance  
12 fund established by IC 16-46-10-1.

13 SECTION 8. IC 6-8-11-23 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]:  
15 Sec. 23. (a) This section applies when the employment of an individual  
16 by an employer that participates in a medical care savings account  
17 program is terminated.

18 (b) If the former employer is not informed, within ninety (90) days  
19 after the former employee's final day of employment, of the name and  
20 address of an account administrator to which the former employer is  
21 transferring the former employee's medical care savings account under  
22 section 21 of this chapter, the former employer shall pay the money in  
23 the former employee's medical care savings account to the former  
24 employee under subsection (d).

25 (c) If:

26 (1) the former employee, under section 22(2) of this chapter,  
27 requests in writing that the former employer's account  
28 administrator remain the administrator of the individual's medical  
29 care savings account; and

30 (2) the account administrator does not agree to retain the account;  
31 the former employer shall, within ninety (90) days after the former  
32 employee's final day of employment, pay the money in the former  
33 employee's medical care savings account to the former employee under  
34 subsection (d).

35 (d) An employer that is required under this section to pay the money  
36 in a former employee's medical care savings account to the former  
37 employee shall mail to the former employee, at the former employee's  
38 last known address, a check for the balance in the account on the  
39 ninety-first day after the employee's final day of employment.

40 (e) Except as provided in ~~section~~ **sections** 11(b) **and** 11.5 of this  
41 chapter, money that is paid to a former employee under subsection (d):

42 (1) is subject to taxation under IC 6-3-1 through IC 6-3-7 as



1 income of the individual; but  
2 (2) is not subject to the penalty referred to in section 17(c)(2) of  
3 this chapter.  
4 **SECTION 9. An emergency is declared for this act.**

