

SENATE BILL No. 141

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34.

Synopsis: Tax credit for hiring certain individuals. Provides a nonrefundable tax credit to a small business for employing an individual who is receiving unemployment benefits or returning from military service (qualified new employee). Provides that the small business must employ a greater number of full-time employees in Indiana in the taxable year than the small business employed in Indiana, on average, in the small business's base employment period (normally January 1, 2016, through June 30, 2016). Provides that the employee must be hired full time. Provides that the credit applies only to taxable years beginning in 2017 through 2019. Provides that the credit is \$3,000 per qualified new employee, not to exceed \$100,000 per small business. Provides that the small business may carry any excess credit over to not more than three subsequent taxable years. Provides that the small business forfeits 50% of the amount of the tax credits attributable to the employment of a qualified new employee, if within 18 months after the qualified new employee was initially hired: (1) the qualified new employee is terminated, laid off, or otherwise reclassified to a position that is not a full-time employment position with the small business; or (2) the position created for the qualified new employee is eliminated.

Effective: January 1, 2017 (retroactive).

Randolph Lonnie M

January 4, 2017, read first time and referred to Committee on Tax and Fiscal Policy.



First Regular Session 120th General Assembly (2017)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

SENATE BILL No. 141

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

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

1 SECTION 1. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2017 (RETROACTIVE)];
4 **Chapter 34. Small Business Job Creation Tax Credit**
5 **Sec. 1. The following definitions apply throughout this chapter:**
6 (1) "Base employment period" of a small business means the
7 period:
8 (A) beginning on the first day of the month in which the
9 small business first began conducting business in Indiana
10 and ending on the last day of the fifth immediately
11 succeeding month, if the small business first began
12 conducting business in Indiana after January 31, 2016, and
13 before July 2, 2016; or
14 (B) beginning January 1, 2016, and ending June 30, 2016,
15 if clause (A) does not apply.
16 (2) "Department" refers to:
17 (A) the department of state revenue; or



1 (B) the department of insurance;
 2 whichever is obligated to administer the tax against which a
 3 tax credit is applied.

4 (3) "Full-time employee" means an individual who:

5 (A) is employed for consideration for at least thirty-five
 6 (35) hours each week or who renders any other standard
 7 of service generally accepted by custom or specified by
 8 contract as full-time employment; and

9 (B) earns income for service described in subdivision (1)
 10 that is subject to withholding under IC 6-3 (before the
 11 application of any earned income tax credit) in an amount
 12 that is the equivalent of at least two hundred percent
 13 (200%) of the federal hourly minimum wage in effect
 14 during the week of employment.

15 (4) "Qualified new employee" refers to a full-time employee
 16 described in section 7 of this chapter.

17 (5) "Small business" has the meaning set forth in IC 5-28-2-6.

18 (6) "State tax liability" means a taxpayer's total tax liability
 19 that is incurred under:

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

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

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

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

27 (7) "Tax credit" refers to a tax credit granted by this chapter
 28 against state tax liability.

29 (8) "Taxpayer" means an individual or entity that has state
 30 tax liability.

31 Sec. 2. (a) This section applies only to taxable years beginning
 32 in 2017, 2018, and 2019.

33 (b) Subject to this chapter, a small business that employs a
 34 qualified new employee in Indiana in a taxable year to which this
 35 section applies is eligible for a tax credit against the state tax
 36 liability imposed against the small business for the taxable year if,
 37 on average, the small business employed a greater number of
 38 full-time employees in Indiana in the taxable year than the small
 39 business employed in Indiana, on average, in the small business's
 40 base employment period.

41 Sec. 3. (a) If a small business is entitled to a tax credit in a
 42 taxable year under section 2 of this chapter, the amount of the tax



1 credit is equal to the lesser of the following:

2 (1) Three thousand dollars (\$3,000) multiplied by the lesser of
3 the following:

4 (A) The average number of qualified new employees that
5 the small business employed in Indiana in the trade or
6 business of the small business during the taxable year.

7 (B) The average number of additional full-time employees
8 that the small business employed in Indiana in the trade or
9 business of the small business during the taxable year that
10 exceeds the average number of full-time employees that the
11 small business employed in Indiana in the trade or business
12 of the small business during the small business's base
13 employment period.

14 (2) One hundred thousand dollars (\$100,000).

15 (b) If the small business was not conducting business in Indiana
16 during the small business's base employment period, the average
17 number of full-time employees that the small business employed in
18 Indiana in the trade or business of the small business during the
19 small business's base employment period is zero (0).

20 (c) If the taxable year of the small business is less than twelve
21 (12) months, the amounts of three thousand dollars (\$3,000) and
22 one hundred thousand dollars (\$100,000) are reduced in
23 proportion to the amount by which the taxable year of the small
24 business is shortened.

25 Sec. 4. (a) If the amount of a tax credit to which a small business
26 is entitled in a taxable year exceeds the small business's state tax
27 liability for that taxable year, the small business may carry the
28 excess over to not more than three (3) subsequent taxable years.
29 The amount of the credit carryover from a taxable year shall be
30 reduced to the extent that the carryover is used by the small
31 business to obtain a credit under this chapter for any subsequent
32 taxable year.

33 (b) A small business is not entitled to a carryback or refund of
34 any unused credit.

35 Sec. 5. If a small business is a pass through entity that does not
36 have state tax liability against which a tax credit may be applied,
37 a shareholder, partner, fiduciary, or member of the pass through
38 entity is entitled to a tax credit equal to:

39 (1) the tax credit that the pass through entity would be
40 entitled to for the taxable year if the pass through entity were
41 a taxpayer; multiplied by

42 (2) the percentage of the pass through entity's distributive



1 income to which the shareholder, partner, fiduciary, or
2 member is entitled.

3 **Sec. 6. To receive a tax credit, a taxpayer must claim the credit**
4 **on the taxpayer's annual state tax return or returns in the manner**
5 **prescribed by the department. The taxpayer shall maintain the**
6 **records required by the department for the period specified by the**
7 **department to substantiate the taxpayer's eligibility for a tax**
8 **credit.**

9 **Sec. 7. To be a qualified new employee in a particular taxable**
10 **year, an individual must meet all the following criteria:**

11 (1) **Have been hired into a position as a full-time employee by**
12 **the small business for the first time after December 31, 2016.**

13 (2) **Be, at the time the small business initially employs the**
14 **individual after December 31, 2016:**

15 (A) **an individual who is receiving state or federal**
16 **unemployment insurance benefits or has exhausted the**
17 **individual's eligibility for state or federal unemployment**
18 **insurance benefits since last becoming unemployed;**

19 (B) **a former member of the military services of the United**
20 **States who served on active duty in any branch of the**
21 **armed forces of the United States or National Guard and**
22 **who at no time received a discharge or separation under**
23 **other than honorable conditions, except corrected**
24 **separation or discharge to read "honorable" as evidenced**
25 **by appropriate records presented from the United States**
26 **Department of Defense or appropriate branch of the**
27 **military service; or**

28 (C) **an individual described in clauses (A) and (B).**

29 (3) **Is not an individual who was employed by a related**
30 **member (as defined in IC 6-3.1-13-8) of the small business (or**
31 **another business entity that would be a related member (as**
32 **defined in IC 6-3.1-13-8) if the other entity were a**
33 **corporation) within twelve (12) months of being initially**
34 **employed by the small business.**

35 (4) **Is not a child, grandchild, parent, or spouse (other than a**
36 **spouse who is legally separated from the individual) of any**
37 **individual who is an employee of the small business or who**
38 **has a direct or an indirect ownership interest of at least five**
39 **percent (5%) in the profits, capital, or value of the small**
40 **business or a related member (as defined in IC 6-3.1-13-8) of**
41 **the small business (or another business entity that would be a**
42 **related member (as defined in IC 6-3.1-13-8) if the other**



1 entity were a corporation). An ownership interest shall be
 2 determined in accordance with Section 1563 of the Internal
 3 Revenue Code and regulations prescribed under Section 1563
 4 of the Internal Revenue Code.

5 **Sec. 8.** The tax credit to which a taxpayer would otherwise be
 6 entitled under this chapter in a taxable year is reduced by the sum
 7 of the following tax credits received for the same qualified new
 8 employee:

9 (1) The economic development for a growing economy tax
 10 credits (IC 6-3.1-13) allowable to the taxpayer in the taxable
 11 year and attributable to the same employee for which a tax
 12 credit would otherwise be granted under this chapter.

13 (2) The Hoosier business investment tax credits (IC 6-3.1-26)
 14 allowable to the taxpayer in the taxable year and attributable
 15 to the same employee for which a tax credit would otherwise
 16 be granted under this chapter.

17 (3) The amount of federal or state training grants used in the
 18 taxable year to train an employee for which a tax credit would
 19 otherwise be granted under this chapter.

20 **Sec. 9.** A small business (or if section 5 of this chapter applies,
 21 a shareholder, partner, fiduciary, or member of a small business)
 22 forfeits fifty percent (50%) of the amount of the tax credits
 23 attributable to the employment of a qualified new employee if,
 24 within eighteen (18) months after the qualified new employee was
 25 hired for the first time:

26 (1) the qualified new employee is terminated, laid off, or
 27 otherwise reclassified to a position that is not a full-time
 28 employment position with the small business; or

29 (2) the position created for the qualified new employee is
 30 eliminated.

31 For purposes of this section, the replacement, within a reasonable
 32 time as determined by the department, of a qualified new employee
 33 with another qualified new employee shall be treated as continuous
 34 employment of a qualified new employee from the date of the
 35 hiring or rehiring of the initial qualified new employee.

36 **Sec. 10.** The amount due to the department from a forfeiture
 37 under section 9 of this chapter shall be treated as due to the state
 38 on the date the taxpayer's annual return or informational return
 39 is due for the taxable year in which the reduction in employment
 40 occurred.

41 **Sec. 11.** (a) Employment levels shall be determined using the
 42 total number of employees reported by the small business on the



1 quarterly payroll report submitted by the small business to the
2 department of workforce development. The department of
3 workforce development shall give the information to the
4 department on the schedule and in the form requested by the
5 department.

6 (b) A small business shall use the method prescribed by the
7 department to determine the average number of full-time
8 employees or qualified new employees that the small business
9 employed during a period.

10 Sec. 12. The department may adopt rules under IC 4-22-2,
11 including emergency rules in the manner provided under
12 IC 4-22-2-37.1, to implement this chapter.

13 SECTION 2. An emergency is declared for this act.

