SENATE BILL No. 186

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-39.

Synopsis: Tax credit for employer provided child care. Establishes a state tax credit for a taxpayer that makes qualified child care expenditures or qualified child care resource and referral expenditures in providing child care to the taxpayer's employees. Provides that the maximum amount of the credit for each taxable year is equal to 50% of the taxpayer's qualified child care expenditures or qualified child care resource and referral expenditures for the taxable year. Provides for recapture of certain amounts due to cessation of operation of a child care facility or a change in ownership of a child care facility.

Effective: July 1, 2023; January 1, 2024.

Walker K

January 9, 2023, read first time and referred to Committee on Appropriations.

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.

SENATE BILL No. 186

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 6-3.1-39 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2024]:

Chapter 39. Employer Child Care Expenditure Credits

Sec. 1. As used in this chapter, "Indiana qualified child care facility" means a facility that is:

(1) a qualified child care facility (as defined in Section 45F of the Internal Revenue Code);

(2) located in Indiana;

(3) licensed by the division of family resources under IC 12-17.2; and

(4) operated:

(A) by a taxpayer;

(B) by a taxpayer jointly with one (1) or more other individuals or entities; or

(C) under a contract described in Section 45F(c)(1)(A)(iii) of the Internal Revenue Code with the taxpayer.

Sec. 2. 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 trust;

(4) an estate;

(5) a limited liability company; or

(6) a limited liability partnership.

Sec. 3. As used in this chapter, "qualified child care expenditure" means an expenditure that is:

(1) a qualified child care expenditure (as defined in Section 45F of the Internal Revenue Code); and

(2) an expenditure:

(A) for the acquisition, construction, rehabilitation, or expansion of property used as part of an Indiana qualified child care facility of a taxpayer that is operated for the taxpayer's employees;

(B) for the operation of an Indiana qualified child care facility of a taxpayer for the taxpayer's employees, including costs related to the training of employees, scholarship programs, or providing increased compensation to employees with higher levels of child care training; or

(C) incurred under a contract between a taxpayer and an Indiana qualified child care facility to provide child care services to employees of the taxpayer.

Sec. 4. As used in this chapter, "qualified expenditure" means the amount paid or incurred for any combination of the following:

(1) A qualified child care expenditure.

(2) A qualified Indiana child care resource and referral expenditure.

Sec. 5. As used in this chapter, "qualified Indiana child care resource and referral expenditure" means an expenditure that is:

(1) a qualified child care resource and referral expenditure (as defined in Section 45F of the Internal Revenue Code); and

(2) incurred under a contract between a taxpayer and an Indiana qualified child care facility to provide child care services to employees of the taxpayer.

Sec. 6. As used in this chapter, "recapture event" means:

(1) the cessation of the operation of the Indiana qualified child care facility as an Indiana qualified child care facility; or

(2) a change in ownership of an Indiana qualified child care

facility for which a credit was allowed under this chapter, unless the person acquiring an interest agrees to assume the recapture liability of the person disposing of an interest.

The term does not include a cessation of operation or change in ownership due to accident or casualty.

Sec. 7. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

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

(2) IC 27-1-18-2 (the insurance premiums tax) or IC 6-8-15 (the nonprofit agricultural organization health coverage tax); and

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

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

Sec. 8. As used in this chapter, "taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has any state tax liability. The term includes a pass through entity.

Sec. 9. (a) A taxpayer that makes a qualified expenditure in a taxable year is entitled to a credit against the taxpayer's state tax liability for the taxable year.

(b) The maximum amount of the credit to which a taxpayer is entitled in a particular taxable year is equal to fifty percent (50%) of the employer's qualified expenditures in the taxable year.

Sec. 10. If a pass through entity is entitled to a credit under this section but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, 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, beneficiary, or member is entitled.

The credit provided under this section is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit.

Sec. 11. (a) If the amount of the credit determined under section 9(b) 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 credit over for a period not to exceed the eligible taxpayer's following three (3) 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. A taxpayer is not entitled to a carryback or a refund of any unused credit amount.

(b) A taxpayer may not assign any part of a credit to which the taxpayer is entitled under this chapter.

Sec. 12. To obtain a credit under this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary to calculate the credit provided by this chapter.

Sec. 13. (a) If a recapture event occurs with respect to an Indiana qualified child care facility within ten (10) years after the end of the taxable year in which a credit was allowed, the taxpayer is responsible for payment to the department of a recapture amount. The recapture amount is equal to the following:

(1) One hundred percent (100%) of the credit if the use is converted not later than three (3) years after the end of the taxable year in which the credit was allowed.

(2) Eighty-five percent (85%) of the credit if the use is converted after three (3) years but not later than four (4) years after the end of the taxable year in which the credit was allowed.

(3) Seventy percent (70%) of the credit if the use is converted after four (4) years but not later than five (5) years after the end of the taxable year in which the credit was allowed.

(4) Fifty-five percent (55%) of the credit if the use is converted after five (5) years but not later than six (6) years after the end of the taxable year in which the tax credit was allowed.

(5) Forty percent (40%) of the credit if the use is converted after six (6) years but not later than seven (7) years after the end of the taxable year in which the credit was allowed.

(6) Twenty-five percent (25%) of the credit if the use is converted after seven (7) years but not later than eight (8) years after the end of the taxable year in which the credit was allowed.

(7) Ten percent (10%) of the credit if the use is converted

after eight (8) years and not later than ten (10) years after the end of the taxable year in which the credit was allowed.

(b) Any recapture tax liability must be reported by the taxpayer on the taxpayer's annual state income tax return for the taxable year during which the use was converted.

Sec. 14. A taxpayer that claims a credit under this chapter is not liable for any act or omission occurring at an Indiana qualified child care facility that contracts with the taxpayer to provide child care services to employees of the taxpayer if the Indiana qualified child care facility is not owned or operated by the taxpayer.

SECTION 2. [EFFECTIVE JULY 1, 2023] **IC 6-3.1-39, as added by this act, applies only to taxable years beginning after December 31, 2023.**