SENATE BILL No. 298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-35.

Synopsis: Small business job creation tax credit. Provides a nonrefundable tax credit to a small business for employing a qualified new employee. Defines "qualified new employee" as an individual who is receiving unemployment benefits, is a military veteran, or had been convicted of a felony. 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, during the period beginning January 1, 2018, and ending June 30, 2018. Provides that the qualified new employee must be hired full time. Provides that the credit applies only to taxable years beginning in 2019, 2020, and 2021. 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, 2019 (retroactive).

Randolph Lonnie M

January 7, 2019, read first time and referred to Committee on Tax and Fiscal Policy.

Introduced

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 298

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 6-3.1-35 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]:

Chapter 35. Small Business Job Creation Tax Credit

Sec. 1. This chapter applies only to a taxable year beginning after December 31, 2018, and before January 1, 2022.

Sec. 2. As used in this chapter, "base employment period" means the six (6) month period beginning January 1, 2018, and ending June 30, 2018.

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, "full-time employee" means an individual who:

(1) 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; and

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

Sec. 5. As used in this chapter, "qualified new employee" refers to a full-time employee who satisfies the following requirements:

(1) The individual must have been hired into a position as a full-time employee by the small business for the first time after December 31, 2018.

(2) The individual must have been at the time the individual was hired by the small business:

(A) an individual receiving state or federal unemployment insurance benefits or who had exhausted the individual's eligibility for state or federal unemployment insurance benefits since last becoming unemployed;

(B) a veteran who served on active duty in any branch of the armed forces of the United States, in a reserve component of the armed forces of the United States, or in the National Guard and who at no time received a discharge or separation under other than honorable conditions, except corrected separation or discharge to read "honorable" as evidenced by appropriate records presented from the United States Department of Defense or the appropriate branch of the military service; or

(C) an individual who had been convicted of a felony under federal or state law and hired by the small business not more than twelve (12) months after the later of:

(i) the date of the individual's most recent felony conviction; or

(ii) the individual's release from prison.

(3) The individual may not have been employed by a related member (as defined in IC 6-3.1-13-8) of the small business (or another business entity that would be a related member (as defined in IC 6-3.1-13-8) if the other entity were a corporation) within twelve (12) months of being hired by the small business.

(4) The individual may not be 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 small business or who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the small business or a related member (as defined in IC 6-3.1-13-8) of the small business (or another business entity that would be a related member (as defined in IC 6-3.1-13-8) if the other entity were a corporation). An ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under Section 1563 of the Internal Revenue Code.

Sec. 6. As used in this chapter, "small business" has the meaning set forth in IC 5-28-2-6.

Sec. 7. 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. 8. As used in this chapter, "tax credit" refers to a tax credit granted by this chapter against state tax liability.

Sec. 9. As used in this chapter, "taxpayer" means an individual or entity that has state tax liability.

Sec. 10. (a) A small business may claim a tax credit against the state tax liability imposed against the small business for the taxable year if the small business:

(1) employs a qualified new employee in Indiana in a taxable year; and

(2) employs a greater number of full-time employees in Indiana in the taxable year than the small business employed in Indiana, on average, during the base employment period.

(b) If the small business did not conduct business in Indiana during the base employment period, the average number of full-time employees whom the small business employed in Indiana in the trade or business of the small business during the base employment period is zero (0).

Sec. 11. (a) Except as provided in subsection (b) and section 15 of this chapter, the amount of the tax credit that a small business may claim under this chapter is equal to the lesser of the following:

(1) The product of:

(A) three thousand dollars ($3,000); multiplied by

(B) the number of qualified new employees whom the small business employed in Indiana in the trade or business of the small business during the taxable year.

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

(b) The following apply if a small business conducts business in Indiana for fewer than twelve (12) months in a particular taxable year:

(1) The amount used to calculate the tax credit under subsection (a)(1) must be reduced by determining the product of:

(A) three thousand dollars ($3,000); multiplied by

(B) a fraction. The numerator of the fraction is the number of months in which the small business conducted business in Indiana. The denominator of the fraction is twelve (12).

(2) The amount used to establish a maximum tax credit under subsection (a)(2) must be reduced by determining the product of:

(A) one hundred thousand dollars ($100,000); multiplied by

(B) a fraction. The numerator of the fraction is the number of months in which the small business conducted business in Indiana. The denominator of the fraction is twelve (12).

Sec. 12. To receive a tax credit, 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 maintain the records required by the department for the period specified by the department to substantiate the taxpayer's eligibility for a tax credit.

Sec. 13. (a) If the amount of a tax credit determined under section 11 of this chapter for a particular taxable year exceeds the small business's state tax liability for that taxable year, the small business may carry the excess over to not more than three (3) subsequent taxable years. The amount of the credit carryover from a taxable year must be reduced to the extent that the carryover is used by the small business to obtain a credit under this chapter for any subsequent taxable year.

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

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

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

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

Sec. 15. The tax credit to which a taxpayer would otherwise be entitled under this chapter in a taxable year is reduced by the sum of the following tax credits received for the same qualified new employee:

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

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

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

Sec. 16. A small business (or if section 14 of this chapter applies, a shareholder, partner, fiduciary, or member of a small business) forfeits fifty percent (50%) of the amount of the tax credits attributable to the employment of a qualified new employee if, within eighteen (18) months after the qualified new employee was hired for the first time:

(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.

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

Sec. 17. An amount forfeited under section 16 of this chapter must be paid to the state on or before the date the taxpayer's annual return or informational return is due for the taxable year in which the reduction in employment occurred.

Sec. 18. (a) Employment levels must be determined using the

total number of employees reported by the small business on the quarterly payroll report submitted by the small business to the department of workforce development. The department of workforce development shall give the information to the department on the schedule and in the form requested by the department.

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

Sec. 19. The department may adopt rules under IC 4-22-2, including emergency rules in the manner provided under IC 4-22-2-37.1, to implement this chapter.

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