INFORMATION BULLETIN #106

INCOME TAX

MAY 2012

(Replaces Bulletin #106 dated May 2010)

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SUBJECT: New Employer Tax Credit

DIGEST OF CHANGES: Extend expiration date of credit to Dec. 31, 2016

EFFECTIVE: Upon Publication

REFERENCE: IC 6-3.1-33

INTRODUCTION

Senate Enrolled Act 23-2010 created the new employer tax credit effective retroactively to Jan. 1, 2010, applying to taxable years beginning after Dec. 31, 2009.

DEFINITIONS

- "Department" means the department of state revenue or the department of insurance, depending on which agency is obligated to administer the tax against which the credit is applied.
- "IEDC" means the Indiana Economic Development Corporation.
- "New Indiana business" means a corporation or pass-through entity that after Dec. 31, 2009, locates or relocates the operation of a business enterprise in Indiana; incorporates or otherwise first organizes in Indiana; or expands the

entity's operation of a business enterprise in Indiana, employs at least 10 qualified employees, makes an application to the IEDC, and is issued a certificate of approval by the IEDC.

- "Qualified employee" means an individual who is a full-time employee first hired by a new Indiana business; who is a resident of Indiana; and who is not more than a 5% shareholder, partner, member, or owner of the business as determined by the IEDC. The term does not include rehired individuals, individuals employed to fill positions vacated as a result of a layoff that occurred during the previous two years, or individuals employed in the same business operation before and after a change of business ownership.
- "State tax liability" means the adjusted gross income tax, the insurance premium tax, or the financial institutions tax.
- "Taxpayer" means a person, a corporation, a partnership, or another entity that has any state tax liability.

APPLICATION PROCESS

Before Jan. 1, 2017, a taxpayer who wants to qualify for the credit can submit an application to the IEDC in the form and manner specified by the IEDC. If the IEDC determines that the applicant for the tax credit has furnished sufficient evidence that the applicant is reasonably capable of employing at least 10 qualified employees in each month of the taxable year, the IEDC may issue the applicant a certificate of approval. If a certificate of approval is issued, the IEDC shall provide the Department with a copy of the certificate.

DETERMINATION OF TAXPAYER ELIGIBILITY

To make a determination that an applicant is qualified for a credit, the IEDC may consider the following:

- The applicant's employment levels in previous years to determine whether the applicant is hiring new individuals or rehiring individuals; and
- Whether the applicant is the successor to part or all of the assets or business operations in Indiana in the same line of business to determine if the applicant is a new Indiana business.

If the IEDC determines that the applicant will not employ at least 10 qualified employees in each month during the taxable year, is not a new Indiana business, or does not or is unlikely to meet any other requirements for the tax credit, the IEDC shall notify the applicant of its determination.

The IEDC may not issue a certificate of approval after Dec. 31, 2016.

TAX CREDIT PROVISIONS

The tax credit is based on a period not to exceed 24 consecutive calendar months during which the new Indiana business meets the conditions required in the statute. The period begins on the first day of the month following the month in which the new business is approved by the IEDC. The period ends on the final day of the 24th consecutive month that the new Indiana business complies with the statute, or the month in which the new Indiana business ceases to comply with the statute.

For each taxable year, the amount of the credit is equal to 10% of the wages paid by the new Indiana business to qualified employees during the calendar months of the period that are included in the taxable year.

If a pass-through entity does not have state tax liability against which a tax credit can be applied, a shareholder, member, partner, or fiduciary of the pass-through entity is entitled to a tax credit equal to:

- The tax credit to which the pass-through entity would be entitled if the pass-through entity were a taxpayer; multiplied by
- The percentage of the pass-through entity's distributive income to which the shareholder, partner, member, or fiduciary is entitled.

If the credit provided 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 in those taxable years. The credit can be carried forward and applied to succeeding taxable years for not more than nine taxable years following the first year the credit is claimed.

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

A taxpayer must claim the credit on his annual state tax return and include a copy of the certification from the IEDC. The taxpayer shall maintain the records required by the Department to substantiate the taxpayer's eligibility for the credit for seven years following the last year that the taxpayer claims the credit.

John Eckart

John Eckart
Commissioner