January 30, 1998

SENATE BILL No. 456

DIGEST OF SB456 (Updated January 29, 1998 3:58 pm - DI 44)

Citations Affected: IC 4-4; IC 6-3.1; noncode.

Synopsis: Military base recovery tax credit. Establishes a state tax credit for rehabilitation of real property located in military base facilities designated by the state enterprise zone board.

Effective: Upon passage.

Merritt, Weatherwax

January 14, 1998, read first time and referred to Committee on Finance.
January 29, 1998, amended, reported favorably — Do Pass.

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January 30, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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SENATE BILL No. 456

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 4-4-6.1-2, AS AMENDED BY P.L.14-1997, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The board has the following powers, in addition to other powers which are contained in this chapter:

(1) To review and approve or reject all applicants for enterprise zone designation, according to the criteria for designation which this chapter provides.

(2) To waive or modify rules as provided in this chapter.

(3) To provide a procedure by which enterprise zones may be monitored and evaluated on an annual basis.

(4) To adopt rules for the disqualification of a zone business from eligibility for any or all incentives available to zone businesses, if that zone business does not do one (1) of the following:

(A) If all of its incentives, as contained in the summary required under section 2.5 of this chapter, exceed one thousand dollars ($1,000) in any year, pay a registration fee to the board in an amount equal to one percent (1%) of all of its

incentives.

(B) Use all of its incentives, except for the amount of registration fee, for its property or employees in the zone.

(C) Remain open and operating as a zone business for twelve (12) months of the assessment year for which the incentive is claimed.

(5) To disqualify a zone business from eligibility for any or all incentives available to zone businesses in accordance with the procedures set forth in the board's rules.

(6) After a recommendation from an urban enterprise association, to modify an enterprise zone boundary if the board determines that the modification:

(A) is in the best interests of the zone; and

(B) meets the threshold criteria and factors set forth in section 3 of this chapter.

(7) To employ staff and contract for services.

(8) To receive funds from any source and expend these funds for the administration and promotion of the enterprise zone program.

(9) To make determinations under IC 6-3.1-11 concerning the designation of locations as industrial recovery sites and the availability of the credit provided by IC 6-1.1-20.7 to persons owning inventory located on an industrial recovery site.

(10) To make determinations under IC 6-1.1-20.7 and IC 6-3.1-11 concerning the disqualification of persons from claiming credits provided by those chapters in appropriate cases.

(11) To make determinations under IC 6-3.1-11.5 concerning the designation of locations as military base recovery sites and the availability of the credit provided by IC 6-3.1-11.5 to persons making qualified investments in military base recovery sites.

(12) To make determinations under IC 6-3.1-11.5 concerning the disqualification of persons from claiming the credit provided by IC 6-3.1-11.5 in appropriate cases.

(b) In addition to a registration fee paid under subsection (a)(4), each zone business that receives a credit under this chapter shall assist the zone urban enterprise association created under section 4 of this chapter in an amount determined by the legislative body of the municipality in which the zone is located. If a zone business does not assist an urban enterprise association, the legislative body of the municipality in which the zone is located may pass an ordinance disqualifying a zone business from eligibility for all credits or incentives available to zone businesses. If a legislative body

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disqualifies a zone business under this subsection, the legislative body shall notify the board, the state board of tax commissioners, and the department of state revenue in writing within thirty (30) days of the passage of the ordinance disqualifying the zone business. Disqualification of a zone business under this section is effective beginning with the taxable year in which the ordinance disqualifying the zone business is passed.

SECTION 2. IC 6-3.1-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 11.5. Military Base Recovery Tax Credit

Sec. 1. As used in this chapter, "applicable percentage" means the percentage determined as follows:

(1) If a building that is located on a military base recovery site was placed in service at least twenty (20) years ago but less than thirty (30) years ago, the applicable percentage is fifteen percent (15%).

(2) If a building that is located on a military base recovery site was placed in service at least thirty (30) years ago but less than forty (40) years ago, the applicable percentage is twenty percent (20%).

(3) If a building that is located on a military base recovery site was placed in service at least forty (40) years ago, the applicable percentage is twenty-five percent (25%).

The time that has expired since a building was placed in service shall be determined as of the date that an application is filed with the board for designation of the location as a military base recovery site under this chapter.

Sec. 2. As used in this chapter, "board" refers to the enterprise zone board created under IC 4-4-6.1.

Sec. 3. As used in this chapter, "executive" has the meaning set forth in IC 36-1-2-5.

Sec. 4. As used in this chapter, "facility" means a building that:

(1) is used, or designed and constructed for use, for training, housing, supplying, military readiness or other military activities, or for the support of military activities, military personnel and their dependents, including retired or reserve military personnel; and

(2) has a minimum floor space of:

(A) twenty thousand (20,000) square feet, if the facility is located in an economic development area established under IC 36-7-14-12.5; or

C o p y

(B) one hundred thousand (100,000) square feet, if the facility is located in a military base reuse area established under IC 36-7-30.

Sec. 5. As used in this chapter, "floor space" means the usable interior floor space of a building.

Sec. 6. As used in this chapter, "legislative body" has the meaning set forth in IC 36-1-2-9.

Sec. 7. As used in this chapter, "military base recovery site" means a military base recovery site designated under this chapter.

Sec. 8. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.

Sec. 8.5. 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 limited liability company; or

(4) a limited liability partnership.

Sec. 9. As used in this chapter, "placed in service" means that property is placed in a condition or state of readiness and availability for a specifically assigned function.

Sec. 10. As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures after December 31, 1997, for rehabilitation of property located within a military base recovery site under a plan contained in an application approved by the board under section 20 of this chapter. An expenditure for purposes or by persons not covered by such a plan is not a qualified investment.

Sec. 11. As used in this chapter, "redevelopment authority" means a redevelopment authority established under IC 36-7-14.5-12.5.

Sec. 12. As used in this chapter, "rehabilitation" means the remodeling, repair, or betterment of real property in any manner or any enlargement or extension of real property.

Sec. 13. As used in this chapter, "reuse authority" refers to a military base reuse authority established under IC 36-7-30.

Sec. 14. As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

(1) IC 6-2.1 (the gross income tax);

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

(3) IC 6-3-8 (the supplemental net income tax);

(4) IC 6-5-10 (the bank tax);

(5) IC 6-5-11 (the savings and loan association tax);

C o p y

(6) IC 27-1-18-2 (the insurance premiums tax); and

(7) 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. 15. As used in this chapter, "taxpayer" means an individual, corporation, limited liability company, partnership, or other entity that has any state tax liability and that is the owner or developer of a military base recovery site. The term includes a lessee that is assigned some part of a credit under section 18(c) of this chapter.

Sec. 16. As used in this chapter, "vacant" means with respect to a building, that at least seventy-five percent (75%) of the building placed in service is not used for training, housing, supplying, military readiness, or other military activities, or for the support of military activities, military personnel, and their dependents, including retired or reserve military personnel.

Sec. 17. As used in this chapter, "vacant military base facility" means a facility that:

(1) is located in:

(A) an economic development area established under IC 36-7-14.5-12.5; or

(B) a military base reuse area established under IC 36-7-30;

(2) was placed in service at least twenty (20) years ago; and

(3) has been vacant for two (2) or more years.

However, subdivision (3) does not apply to a facility that is owned by a municipality, a county, a military base reuse authority, or a redevelopment authority.

Sec. 18. (a) Subject to section 23 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

(b) The amount of the credit to which a taxpayer is entitled is the qualified investment made by the taxpayer during the taxable year multiplied by the applicable percentage.

(c) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to a lessee of the military base recovery site. A credit that is assigned under this subsection remains subject to this chapter.

(d) An assignment under subsection (c) must be in writing and both the taxpayer and the lessee must report the assignment on

C o p y

their state tax return for the year in which the assignment is made, in the manner prescribed by the department of state revenue. The taxpayer shall not receive value in connection with the assignment under subsection (c) that exceeds the value of the part of the credit assigned.

Sec. 19. (a) If the amount determined under section 18(b) of this chapter for a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the immediately following 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.

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

Sec. 20. (a) After approval by ordinance or resolution of the legislative body, the executive of a municipality may submit an application to the board requesting that a vacant military base facility within the municipality be designated as a military base recovery site.

(b) After approval by resolution of the legislative body, the executive of a county may submit an application to the board requesting that a vacant military base facility within the county, but not within any municipality, be designated as a military base recovery site.

(c) In addition to any other information required by the board, an application submitted under this section must include:

(1) a description of the plan proposed for development and use of the vacant military base facility; and

(2) the maximum amount of qualified investment for which a credit will be available under this chapter.

(d) If the property described in the application submitted to the board meets the definition of a vacant military base facility as of the date of filing of the application, the board shall:

(1) evaluate the application;

(2) arrive at a decision based on the factors set forth in section 21 of this chapter; and

(3) either designate the property as a military base recovery site or reject the application.

(e) If the board determines that a substantial reduction or cessation of operations at a military base in Indiana after January 1, 1987, has created a vacant military base facility, the facility may be designated as a military base recovery site only if it has been

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donated or sold to a municipality, a county, a reuse authority, or a redevelopment authority. Such a facility may be designated as a military base recovery site, whether it is owned by the municipality, a county, a reuse authority, or a redevelopment authority or by a taxpayer who acquired it from the municipality, a county, a reuse authority, or a redevelopment authority after the donation or sale.

Sec. 21. The board shall consider the following factors in evaluating applications filed under this chapter:

(1) The level of distress in the surrounding community caused by the loss of jobs at the vacant military base facility.

(2) The desirability of the intended use of the vacant military base facility under the plan proposed for the development and use of the vacant military base facility and the likelihood that the implementation of the plan will improve the economic and employment conditions in the surrounding community.

(3) Evidence of support for the designation by residents, businesses, and private organizations in the surrounding community.

(4) Evidence of a commitment by private or governmental entities to provide financial assistance in implementing the plan for the development and use of the vacant military base facility, including the application of IC 36-7-12, IC 36-7-13, IC 36-7-14, IC 36-7-14.5, IC 36-7-15.1, or IC 36-7-30 to assist in the financing of improvements or redevelopment activities benefiting the vacant military base facility.

(5) Evidence of efforts to implement the proposed plan without additional financial assistance from the state.

(6) Whether the proposed military base recovery site is within an economic revitalization area designated under IC 6-1.1-12.1.

(7) Whether action has been taken by the legislative body of the municipality or county having jurisdiction over the proposed military base recovery site to establish an enterprise zone under IC 4-4-6.1-3(g).

Sec. 22. The board may provide that the military base recovery site designation is contingent on the development and use of the vacant military base facility in substantial compliance with the plan described in the application submitted under section 20 of this chapter. The board may revoke its approval of a military base recovery site designation for failure to comply with these conditions.

C o p y

Sec. 23. A taxpayer is not entitled to claim the credit provided by this chapter to the extent that it substantially reduces or ceases its operations in Indiana in order to relocate them within the military base recovery site. A determination that a taxpayer is not entitled to the credit provided by this chapter as a result of a substantial reduction or cessation of operations applies to credits that would otherwise arise in the taxable year in which the substantial reduction or cessation occurs and in all subsequent years. Determinations under this section shall be made by the board.

Sec. 24. (a) A credit to which a taxpayer is entitled under this chapter shall be applied against taxes owed by the taxpayer in the following order:

(1) Against the taxpayer's gross income tax liability (IC 6-2.1) for the taxable year.

(2) Against the taxpayer's adjusted gross income tax liability (IC 6-3-1 through IC 6-3-7) for the taxable year.

(3) Against the taxpayer's supplemental net income tax liability (IC 6-3-8) for the taxable year.

(4) Against the taxpayer's bank tax liability (IC 6-5-10) or savings and loan association tax liability (IC 6-5-11) for the taxable year.

(5) Against the taxpayer's insurance premiums tax liability (IC 27-1-18-2) for the taxable year.

(6) Against the taxpayer's financial institutions tax (IC 6-5.5) for the taxable year.

(b) Whenever the tax paid by the taxpayer under any of the tax provisions listed in subsection (a) is a credit against the liability or a deduction in determining the tax base under another Indiana tax provision, the credit or deduction shall be computed without regard to the credit to which a taxpayer is entitled under this chapter.

Sec. 25. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue the certification of the board stating the percentage of credit allowable under this chapter and all other information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an expenditure was for a qualified investment.

Sec. 26. (a) If a pass-through entity is entitled to a credit under

C o p y

this chapter but does not have state tax liability against which the credit may be applied, an individual who is a shareholder, partner, or member of the pass-through entity is entitled to a credit equal to:

(1) the credit determined for the pass-through entity for the taxable year; multiplied by

(2) the percentage of the pass-through entity's distributable income to which the individual is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass-through entity is in addition to a tax credit to which a shareholder, partner, or member of a pass-through entity is otherwise entitled under this chapter. However, a pass-through entity and an individual who is a shareholder, partner, or member of the pass-through entity may not claim more than one (1) credit for the same investment.

SECTION 3. [EFFECTIVE UPON PASSAGE] **This act applies to taxable years that begin after December 31, 1997.**

SECTION 4. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill 456, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 33, delete "or" and insert "**that:**".

Page 3, line 34, delete "complex of buildings".

Page 3, line 34, before "used" begin a new line block indented and insert:

"**(1) is**".

Page 3, line 38, delete "." and insert "**; and**".

Page 3, between lines 38 and 39, begin a new line block indented and insert:

"**(2) has a minimum floor space of:**

(A) twenty thousand (20,000) square feet, if the facility is located in an economic development area established under IC 36-7-14-12.5; or

(B) one hundred thousand (100,000) square feet, if the facility is located in a military base reuse area established under IC 36-7-30.".

Page 4, between lines 4 and 5, begin a new paragraph and insert:

"**Sec. 8.5. 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 limited liability company; or

(4) a limited liability partnership.".

Page 4, line 7, delete "In the case of a".

Page 4, delete lines 8 through 13.

Page 4, line 41, delete "any person" and insert "**an individual**".

Page 5, line 15, delete "reuse authority taxing district" and insert "**military base reuse area**".

Page 6, line 18, after "include" insert "**:**".

Page 6, line 18, before "a" begin a new line block indented and insert:

"**(1)**".

Page 6, line 20, delete "." and insert "**; and**".

Page 6, between lines 20 and 21, begin a new line block indented and insert:

"**(2) the maximum amount of qualified investment for which a credit will be available under this chapter.**".

Page 8, between lines 31 and 32, begin a new paragraph and insert:

C o p y

"**Sec. 26. (a) If a pass-through entity is entitled to a credit under this chapter but does not have state tax liability against which the credit may be applied, an individual who is a shareholder, partner, or member of the pass-through entity is entitled to a credit equal to:**

(1) the credit determined for the pass-through entity for the taxable year; multiplied by

(2) the percentage of the pass-through entity's distributable income to which the individual is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass-through entity is in addition to a tax credit to which a shareholder, partner, or member of a pass-through entity is otherwise entitled under this chapter. However, a pass-through entity and an individual who is a shareholder, partner, or member of the pass-through entity may not claim more than one (1) credit for the same investment.".

and when so amended that said bill do pass.

(Reference is to Senate Bill 456 as introduced.)

BORST, Chairperson

Committee Vote: Yeas 11, Nays 0.

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