SENATE BILL No. 284

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-3-11; IC 21-9-7-1.

Synopsis: Family college savings plan tax credit. Provides an income tax credit for family college savings deposits in 1999 and for deposits made in the year that the taxpayer opens an individual trust account for taxable years beginning after December 31, 1999. Provides that the credit is equal to the lesser of: (1) 10% of the aggregate of the family college savings deposited by the taxpayer for the taxpayer's dependent; or (2) $100 per dependent. Provides that the credit is deposited into the taxpayer's family college savings account. Provides that the amount of the credit may only be used for the allowable purposes of the account at a higher education institution.

Effective: January 1, 1999 (retroactive).

Washington

January 7, 1999, read first time and referred to Committee on Finance.

Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

SENATE BILL No. 284

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 6-3-3-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 11. (a) As used in this section, "dependent" means a person who the taxpayer is eligible to claim as a dependent on the taxpayer's federal income tax return for the taxable year under Section 151 of the Internal Revenue Code.**

(b) As used in this section, "family college savings" means deposits made to an individual trust account in the Indiana family college savings trust fund under IC 21-9.

(c) As used in this section, "higher education institution" has the meaning set forth in IC 21-9-2-16.

(d) As used in this section, "individual trust account" has the meaning set forth in IC 21-9-2-17.

(e) As used in this section, "taxpayer" means an individual filing a separate return or a husband and wife filing a joint return.

(f) A taxpayer is entitled to the credit specified in subsection (h)

for deposits of family college savings in an individual trust account for the taxpayer's dependent in a taxable year beginning after December 31, 1998, and ending before January 1, 2000.

(g) This subsection applies to individual trust accounts opened in taxable years beginning after December 31, 1999. A taxpayer is entitled to the credit specified in subsection (h) for deposits of family college savings in an individual trust account for the taxpayer's dependent in the taxable year in which the individual trust account is opened.

(h) The amount of the credit under this section is equal to the lesser of:

(1) ten percent (10%) of the aggregate of the family college savings deposited by the taxpayer for the taxpayer's dependent; or

(2) one hundred dollars ($100) per dependent.

(i) A credit under this section must be claimed in conformity with the procedures established by the department of state revenue.

(j) The department of state revenue shall deposit the lesser of:

(1) the amount determined under subsection (h) plus any amount carried over under subsection (k); or

(2) the taxpayer's adjusted gross income liability for the taxable year;

in the individual trust account in which the taxpayer made a deposit of family college savings for a dependent. Money deposited under this subsection may be used only for a purpose for which other money in the individual trust account may be used. The deposit under this subsection is exempt from taxation under this title.

(k) Except as provided in subsection (l), in any year that the amount determined under subsection (h) exceeds the amount of the taxpayer's adjusted gross income tax liability, the taxpayer may carry the excess over to the immediately 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 section for any subsequent year.

(l) If the amount determined under subsection (h) exceeds the amount of the taxpayer's adjusted gross income tax liability, the taxpayer may elect to receive the amount of the excess as a refund instead of carrying over the excess under subsection (k).

(m) If:

(1) a credit was taken under this section for family college

savings; and

(2) the amount deposited is withdrawn from the Indiana family college savings trust fund and not used in conformity with the purposes of the Indiana family college savings trust fund, as determined under the policies and procedures specified by the board of directors of the Indiana education savings authority under IC 21-9-7-1;

the taxpayer receiving the credit is subject to a penalty in the year of the withdrawal. The amount of the penalty is the amount of credits given under this section on the amount withdrawn, excluding any earnings on the amount deposited. The amount of the penalty shall be treated as other penalties imposed under IC 6-8.1. However, the board of directors of the Indiana education savings authority may provide for the withholding of a penalty imposed under this subsection from amounts withdrawn from the Indiana family college savings trust fund and the direct payment of the amount of the penalty to the department of state revenue. The department of state revenue may provide by rule adopted under IC 4-22-2 for the waiving of a penalty imposed under this subsection in the case of hardships or special circumstances affecting the account owner (as defined in IC 21-9-2-4) or account beneficiary (as defined in IC 21-9-2-3).

SECTION 2. IC 21-9-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: Sec. 1. In addition to any other powers granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this chapter, IC 21-9-8, and IC 21-9-9, the purposes and objectives of the family college savings programs that may be established under this article, and the powers delegated by other laws or executive orders, including the following:

(1) To establish policies and procedures, including penalties, to govern withdrawals from accounts in the event of:

(A) the death or disability of an account beneficiary;

(B) the denial of admission or acceptance by a higher education institution of an account beneficiary; ~~and~~

(C) other hardships or special circumstances affecting account owners and account beneficiaries; ~~However,~~ **and**

(D) the use of withdrawn money for a purpose other than an allowable purpose at a higher education institution.

The authority must establish penalties for ~~early~~ **the** withdrawal **or use** of money from accounts in circumstances other than hardships ~~described in this subdivision.~~ **affecting account**

owners or account beneficiaries.

(2) To establish policies and procedures regarding the transfer of individual accounts and the designation of substitute account beneficiaries.

(3) To establish policies and procedures for withdrawal of money from accounts for, or in reimbursement of, allowable expenditures.

(4) To establish policies and procedures regarding recapture of all or a part of prior or current benefits or incentives allocated or allocable to accounts, including **the penalty under IC 6-3-3-11. The board may**, in appropriate circumstances in the board's judgment, recapture as a precondition to withdrawal.

(5) To enter into agreements with account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner, who must be an adult or emancipated minor; and

(B) the account beneficiary, who may also be the account owner, if qualified.

(6) To establish accounts for account beneficiaries. However:

(A) the authority shall establish a separate account for each account beneficiary; and

(B) an individual may be the beneficiary of more than one (1) account.

(7) To enter into agreements with financial institutions relating to accounts as well as deposits, withdrawals, penalties, recaptures of benefits or incentives, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

(8) To conform the trust program and the account program to federal tax advantages or incentives, as the advantages or incentives may exist periodically, to the extent consistent with the purposes and objectives of this article.

(9) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly considering the purposes and objectives of this article.

SECTION 3. [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)] **IC 6-3-3-11, as added by this act, applies only to taxable years beginning after December 31, 1998.**

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