

HOUSE BILL No. 1169

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-4-8; IC 6-3.1-21.

Synopsis: Earned income tax credit. Exempts an employer from the state income tax withholding requirements for an employee if the employer certifies to the employer that the employee's wages from the employer will comprise more than 80% of the employee's wages for the calendar year and will not exceed \$15,000. Increases the qualifying income amount from \$12,000 to \$18,000 under the earned income tax credit. Makes the credit permanent.

Effective: January 1, 2001.

Murphy

January 10, 2000, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE BILL No. 1169

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JANUARY 1, 2001]: Sec. 8. (a) Except as provided in
3 subsection (d) **or (l)**, every employer making payments of wages
4 subject to tax under IC 6-3, regardless of the place where such payment
5 is made, who is required under the provisions of the Internal Revenue
6 Code to withhold, collect, and pay over income tax on wages paid by
7 such employer to such employee, shall, at the time of payment of such
8 wages, deduct and retain therefrom the amount prescribed in
9 withholding instructions issued by the department. The department
10 shall base its withholding instructions on the adjusted gross income tax
11 rate for persons, on the total rates of any income taxes that the taxpayer
12 is subject to under IC 6-3.5, and on the total amount of exclusions the
13 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).
14 Such employer making payments of any wages:
15 (1) shall be liable to the state of Indiana for the payment of the tax
16 required to be deducted and withheld under this section and shall
17 not be liable to any individual for the amount deducted from ~~his~~



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1 **the individual's** wages and paid over in compliance or intended
2 compliance with this section; and

3 (2) shall make return of and payment to the department monthly
4 of the amount of tax which under IC 6-3 and IC 6-3.5 ~~he the~~
5 **employer** is required to withhold.

6 (b) An employer shall pay taxes withheld under subsection (a)
7 during a particular month to the department no later than thirty (30)
8 days after the end of that month. However, in place of monthly
9 reporting periods, the department may permit an employer to report and
10 pay the tax for:

11 (1) a calendar year reporting period, if the average monthly
12 amount of all tax required to be withheld by the employer in the
13 previous calendar year does not exceed ten dollars (\$10);

14 (2) a six (6) month reporting period, if the average monthly
15 amount of all tax required to be withheld by the employer in the
16 previous calendar year does not exceed twenty-five dollars (\$25);

17 or

18 (3) a three (3) month reporting period, if the average monthly
19 amount of all tax required to be withheld by the employer in the
20 previous calendar year does not exceed seventy-five dollars (\$75).

21 An employer using a reporting period (other than a monthly reporting
22 period) must file the employer's return and pay the tax for a reporting
23 period no later than the last day of the month immediately following
24 the close of the reporting period. If an employer files a combined sales
25 and withholding tax report, the reporting period for the combined
26 report is the shortest period required under this section, section 8.1 of
27 this chapter, or IC 6-2.5-6-1.

28 (c) For purposes of determining whether an employee is subject to
29 taxation under IC 6-3.5, an employer is entitled to rely on the statement
30 of ~~his an~~ employee as to ~~his the employee's~~ county of residence as
31 represented by the statement of address in forms claiming exemptions
32 for purposes of withholding, regardless of when the employee supplied
33 the forms. Every employee shall notify ~~his the employee's~~ employer
34 within five (5) days after any change in ~~his the employee's~~ county of
35 residence.

36 (d) A county that makes payments of wages subject to tax under
37 IC 6-3:

38 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

39 (2) for the performance of the duties of the precinct election
40 officer imposed by IC 3 that are performed on election day;

41 is not required, at the time of payment of the wages, to deduct and
42 retain from the wages the amount prescribed in withholding

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1 instructions issued by the department.

2 (e) Every employer shall, at the time of each payment made by ~~him~~
 3 **the employer** to the department, deliver to the department a return
 4 upon the form prescribed by the department showing:

5 (1) the total amount of wages paid to ~~his~~ **the employer's**
 6 employees;

7 (2) the amount deducted therefrom in accordance with the
 8 provisions of the Internal Revenue Code;

9 (3) the amount of adjusted gross income tax deducted therefrom
 10 in accordance with the provisions of this section;

11 (4) the amount of income tax, if any, imposed under IC 6-3.5 and
 12 deducted therefrom in accordance with this section; and

13 (5) any other information the department may require.

14 Every employer making a declaration of withholding as provided in this
 15 section shall furnish ~~his~~ **the employer's** employees annually, but not
 16 later than thirty (30) days after the end of the calendar year, a record of
 17 the total amount of adjusted gross income tax and the amount of each
 18 income tax, if any, imposed under IC 6-3.5, withheld from the
 19 employees, on the forms prescribed by the department.

20 (f) All money deducted and withheld by an employer shall
 21 immediately upon such deduction be the money of the state, and every
 22 employer who deducts and retains any amount of money under the
 23 provisions of IC 6-3 shall hold the same in trust for the state of Indiana
 24 and for payment thereof to the department in the manner and at the
 25 times provided in IC 6-3. Any employer may be required to post a
 26 surety bond in the sum the department determines to be appropriate to
 27 protect the state with respect to money withheld pursuant to this
 28 section.

29 (g) The provisions of IC 6-8.1 relating to additions to tax in case of
 30 delinquency and penalties shall apply to employers subject to the
 31 provisions of this section, and for these purposes any amount deducted
 32 or required to be deducted and remitted to the department under this
 33 section shall be considered to be the tax of the employer, and with
 34 respect to such amount the employer shall be considered the taxpayer.
 35 In the case of a corporate or partnership employer, every officer,
 36 employee, or member of such employer, who, as such officer,
 37 employee, or member is under a duty to deduct and remit such taxes
 38 shall be personally liable for such taxes, penalties, and interest.

39 (h) Amounts deducted from wages of an employee during any
 40 calendar year in accordance with the provisions of this section shall be
 41 considered to be in part payment of the tax imposed on such employee
 42 for ~~his~~ **the employee's** taxable year which begins in such calendar year,

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1 and a return made by the employer under subsection (b) shall be
 2 accepted by the department as evidence in favor of the employee of the
 3 amount so deducted from **his the employee's** wages. Where the total
 4 amount so deducted exceeds the amount of tax on the employee as
 5 computed under IC 6-3 and IC 6-3.5, the department shall, after
 6 examining the return or returns filed by the employee in accordance
 7 with IC 6-3 and IC 6-3.5, refund the amount of the excess deduction.
 8 However, under rules promulgated by the department, the excess or any
 9 part thereof may be applied to any taxes or other claim due from the
 10 taxpayer to the state of Indiana or any subdivision thereof. No refund
 11 shall be made to an employee who fails to file **his the employee's**
 12 return or returns as required under IC 6-3 and IC 6-3.5 within two (2)
 13 years from the due date of the return or returns. In the event that the
 14 excess tax deducted is less than one dollar (\$1), no refund shall be
 15 made.

16 (i) This section shall in no way relieve any taxpayer from **his the**
 17 **taxpayer's** obligation of filing a return or returns at the time required
 18 under IC 6-3 and IC 6-3.5, and, should the amount withheld under the
 19 provisions of this section be insufficient to pay the total tax of such
 20 taxpayer, such unpaid tax shall be paid at the time prescribed by
 21 section 5 of this chapter.

22 (j) Notwithstanding subsection (b), an employer of a domestic
 23 service employee that enters into an agreement with the domestic
 24 service employee to withhold federal income tax under Section 3402
 25 of the Internal Revenue Code may withhold Indiana income tax on the
 26 domestic service employee's wages on the employer's Indiana
 27 individual income tax return in the same manner as allowed by Section
 28 3510 of the Internal Revenue Code.

29 (k) To the extent allowed by Section 1137 of the Social Security
 30 Act, an employer of a domestic service employee may report and remit
 31 state unemployment insurance contributions on the employee's wages
 32 on the employer's Indiana individual income tax return in the same
 33 manner as allowed by Section 3510 of the Internal Revenue Code.

34 (l) **An employer is exempt from the withholding requirements**
 35 **of this section for an individual if the individual certifies to the**
 36 **employer, on forms prescribed by the department, that the**
 37 **individual's wages for the calendar year from the employer will:**

38 (1) **comprise more than eighty percent (80%) of the**
 39 **individual's Indiana total income (as defined in IC 6-3.1-21-3);**
 40 **and**

41 (2) **not exceed fifteen thousand dollars (\$15,000).**

42 (m) A person who knowingly fails to remit trust fund money as set



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1 forth in this section commits a Class D felony.

2 SECTION 2. IC 6-3.1-21-5, AS ADDED BY P.L.273-1999,
3 SECTION 227, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JANUARY 1, 2001]: Sec. 5. An individual who, in a
5 year, has:

- 6 (1) at least one (1) qualifying child;
7 (2) Indiana total income from all sources of not more than ~~twelve~~
8 **eighteen** thousand dollars (~~\$12,000~~); **(\$18,000)**; and
9 (3) Indiana total income from earned income that is at least eighty
10 percent (80%) of the individual's Indiana total income;

11 is entitled to a credit against the taxpayer's adjusted gross income tax
12 liability for the taxable year in the amount determined in section 6 of
13 this chapter.

14 SECTION 3. IC 6-3.1-21-6, AS ADDED BY P.L.273-1999,
15 SECTION 227, IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JANUARY 1, 2001]: Sec. 6. The credit authorized under
17 section 5 of this chapter is equal to three and four-tenths percent (3.4%)
18 of:

- 19 (1) ~~twelve~~ **eighteen** thousand dollars (~~\$12,000~~); **(\$18,000)**; minus
20 (2) the amount of the individual's Indiana total income.

21 If the credit amount exceeds the taxpayer's adjusted gross income tax
22 liability for the taxable year, the excess shall be refunded to the
23 taxpayer.

24 SECTION 4. IC 6-3.1-21-10 IS REPEALED [EFFECTIVE
25 JANUARY 1, 2001].

26 SECTION 5. [EFFECTIVE JANUARY 1, 2001] **IC 6-3.1-21, as**
27 **amended by this act, applies to taxable years beginning after**
28 **December 31, 2000.**

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