

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 2004 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 414

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AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 6-3.1-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec 2.5. (a) The general assembly makes the following findings pertaining to this section:**

- (1) The aerospace industry is adversely affected by the calculation of qualified research expense credits under this chapter, based on the Internal Revenue Code's treatment of federal defense spending trends in the 1980s.**
- (2) This adverse impact creates a disincentive for making qualified research expenditures in Indiana.**
- (3) Manufacturers of aerospace and jet propulsion equipment have been a major in-state employer of science and engineering graduates from Indiana universities.**
- (4) The presence of a strong aerospace manufacturing base furthers the state's interest in maintaining the viability of a United States government military installation that is used for the design, construction, maintenance, and testing of electronic devices and ordnance.**
- (5) The creation of an alternative qualified research expense credit promotes vital state interests.**

**(b) This section applies only to a taxpayer that:**

- (1) is primarily engaged in the production of civil and military**



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jet propulsion systems;

(2) is certified by the Indiana economic development corporation as an aerospace advanced manufacturer;

(3) is a United States Department of Defense contractor; and

(4) maintains one (1) or more manufacturing facilities in Indiana employing at least three thousand (3,000) employees in full-time employment positions that pay on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(c) A taxpayer that incurs Indiana qualified research expense in a particular taxable year may elect to calculate the research expense tax credit under this section instead of under section 2 of this chapter.

(d) An election under this section applies to the taxable year for which the election is made and all succeeding taxable years unless the election is revoked with the consent of the department. An election must be made in the manner and on the form prescribed by the department.

(e) A credit may be authorized by the Indiana economic development corporation and, if authorized, shall be equal to a percentage determined by the Indiana economic development corporation, not to exceed ten percent (10%), multiplied by:

(1) the taxpayer's Indiana qualified research expenses for the taxable year; minus

(2) fifty percent (50%) of the taxpayer's average Indiana qualified research expenses for the three (3) taxable years preceding the taxable year for which the credit is being determined.

(f) The credit amount determined in subsection (e) applies to the taxable year for which the determination is made and all succeeding taxable years unless the determination is changed by the Indiana economic development corporation. The duration of a determination made by the Indiana economic development corporation under subsection (e) shall be specified by the Indiana economic development corporation at the time of the determination.

SECTION 2. IC 6-3.1-13-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.3. As used in this chapter, "NAICS" refers to the North American Industry Classification System.**

SECTION 3. IC 6-3.1-13-5.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.5. As used in this chapter, "NAICS industry sector" refers to industries that share the same first two (2) digits of the six (6) digit NAICS code assigned to industries in the NAICS Manual of the United States Office of Management and Budget.**

SECTION 4. IC 6-3.1-13-15, AS AMENDED BY P.L.4-2005, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 15.** This section applies to an application proposing a project to create new jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all of the following conditions exist:

- (1) The applicant's project will create new jobs that were not jobs previously performed by employees of the applicant in Indiana.
- (2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment in Indiana and strengthening the economy of Indiana.
- (3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not creating new jobs in Indiana.
- (4) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.
- (5) The credit is not prohibited by section 16 of this chapter.
- (6) If the business is located in a community revitalization enhancement district established under IC 36-7-13 or a certified technology park established under IC 36-7-32, the legislative body of the political subdivision establishing the district or park has adopted an ordinance recommending the granting of a credit amount that is at least equal to the credit amount provided in the agreement.**

SECTION 5. IC 6-3.1-13-15.5, AS AMENDED BY P.L.4-2005, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 15.5.** This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the corporation may enter into an agreement with the applicant for a credit under this chapter if the corporation determines that all the following conditions exist:

- (1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.
- ~~(2) The applicant provides evidence that there is at least one (1)~~

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other competing site outside Indiana that is being considered for the project or for the relocation of jobs:

~~(3)~~ A disparity is identified, using the best available data, in the projected costs for the applicant's project in Indiana compared with the costs for the project in the competing site:

~~(4)~~ **(2)** The applicant is engaged in research and development, manufacturing, or business services, ~~(as defined in~~ **according to** the ~~Standard Industrial Classification~~ **NAICS** Manual of the United States Office of Management and Budget.

~~(5)~~ **(3)** The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds:

**(A) for an application submitted before January 1, 2006,** the average compensation paid during that same period to all employees in the county in which the applicant's business is located by at least five percent (5%); or

**(B) for an application submitted after December 31, 2005, the amount specified by the calculation associated with one (1) of the following descriptions that characterizes the number of businesses in the NAICS industry sector to which the applicant's business belongs:**

**(i) If there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located, determine the average compensation paid during that same period to all employees working in the same NAICS industry sector in the county in which the applicant's business is located multiplied by one hundred five percent (105%).**

**(ii) If the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana, determine the average compensation paid during that same period to all employees working in the NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).**

**(iii) If the applicant's business is the only business in the same NAICS industry sector in Indiana, determine the compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).**

~~(6)~~ **(4)** The applicant employs at least ~~two hundred~~ **(200)**

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**seventy-five (75) employees in Indiana.**

~~(7)~~ **(5)** The applicant has prepared a plan for the use of the credits under this chapter for:

- (A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or
- (B) other direct business related investments, including but not limited to training.

~~(8)~~ **(6)** Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

~~(9)~~ **(7)** Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

~~(+0)~~ **(8)** The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

~~(+1)~~ **(9)** The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed ~~at least one dollar and fifty cents (\$1.50)~~ of local incentives with respect to the retention of jobs ~~for every three dollars (\$3)~~ in credits provided under this chapter. **in an amount determined by the corporation.** For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

~~(+2)~~ **(10)** The credit is not prohibited by section 16 of this chapter. **(11) If the business is located in a community revitalization enhancement district established under IC 36-7-13 or a certified technology park established under IC 36-7-32, the legislative body of the political subdivision establishing the district or park has adopted an ordinance recommending the granting of a credit amount that is at least equal to the credit amount provided in the agreement.**

SECTION 6. IC 6-3.1-13-17, AS AMENDED BY P.L.4-2005, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. In determining the credit amount that should be awarded to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana, the corporation ~~shall~~ **may** take into consideration the following factors:

- (1) The economy of the county where the projected investment is

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to occur.

- (2) The potential impact on the economy of Indiana.
- (3) The incremental payroll attributable to the project.
- (4) The capital investment attributable to the project.
- (5) The amount the average wage paid by the applicant exceeds the average wage paid:

- (A) within the county in which the project will be located, **in the case of an application submitted before January 1, 2006; or**

- (B) **in the case of an application submitted after December 31, 2005:**

- (i) **to all employees working in the same NAICS industry sector to which the applicant's business belongs in the county in which the applicant's business is located, if there is more than one (1) business in that NAICS industry sector in the county in which the applicant's business is located;**

- (ii) **to all employees working in the same NAICS industry sector to which the applicant's business belongs in Indiana, if the applicant's business is the only business in that NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in that NAICS industry sector in Indiana; or**

- (iii) **to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector to which the applicant's business belongs.**

- (6) The costs to Indiana and the affected political subdivisions with respect to the project.

- (7) The financial assistance and incentives that are otherwise provided by Indiana and the affected political subdivisions.

- (8) **The extent to which the incremental income tax withholdings attributable to the applicant's project are needed for the purposes of an incremental tax financing fund or industrial development fund under IC 36-7-13 or a certified technology park fund under IC 36-7-32.**

As appropriate, the corporation shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. ~~In the case of an applicant under section 15.5 of this chapter, the corporation shall consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside~~

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Indiana and the projected costs for the applicant's project in Indiana.

SECTION 7. IC 6-3.1-13-18, AS AMENDED BY P.L.4-2005, SECTION 75, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. (a) The corporation shall determine the amount and duration of a tax credit awarded under this chapter. The duration of the credit may not exceed ten (10) taxable years. The credit may be stated as a percentage of the incremental income tax withholdings attributable to the applicant's project and may include a fixed dollar limitation. In the case of a credit awarded for a project to create new jobs in Indiana, the credit amount may not exceed the incremental income tax withholdings. However, the credit amount claimed for a taxable year may exceed the taxpayer's state tax liability for the taxable year, in which case the excess may, at the discretion of the corporation, be refunded to the taxpayer.

(b) For state fiscal years 2004, ~~and~~ 2005, **2006, and 2007**, the aggregate amount of credits awarded under this chapter for projects to retain existing jobs in Indiana may not exceed five million dollars (\$5,000,000) per year.

SECTION 8. IC 6-3.1-13-19, AS AMENDED BY P.L.4-2005, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. In the case of a credit awarded for a project to create new jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The duration of the tax credit and the first taxable year for which the credit may be claimed.
- (3) The credit amount that will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least two (2) ~~times the number of~~ years **as the term of following the last taxable year in which the applicant claims the tax credit or carries over an unused part of the tax credit under section 18 of this chapter.** A taxpayer is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.
- (5) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.
- (6) A requirement that the taxpayer shall annually report to the corporation the number of new employees who are performing

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jobs not previously performed by an employee, the new income tax revenue withheld in connection with the new employees, and any other information the director needs to perform the director's duties under this chapter.

(7) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (6), and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(8) A requirement that the taxpayer shall provide written notification to the director and the corporation not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(9) Any other performance conditions that the corporation determines are appropriate.

SECTION 9. IC 6-3.1-13-19.5, AS AMENDED BY P.L.4-2005, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19.5. (a) In the case of a credit awarded for a project to retain existing jobs in Indiana, the corporation shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

(1) A detailed description of the business that is the subject of the agreement.

(2) The duration of the tax credit and the first taxable year for which the credit may be claimed.

(3) The credit amount that will be allowed for each taxable year.

(4) A requirement that the applicant shall maintain operations at the project location for at least two (2) ~~times the number of years as the term of~~ **following the last taxable year in which the applicant claims the tax credit or carries over an unused part of the tax credit under section 18 of this chapter.** An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.

(5) A requirement that the applicant shall annually report the following to the corporation:

(A) The number of employees who are employed in Indiana by the applicant.

(B) The compensation (including benefits) paid to the applicant's employees in Indiana.

(C) The amount of the:

(i) facility improvements;

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- (ii) equipment and machinery upgrades, repairs, or retrofits;  
or
- (iii) other direct business related investments, including training.

(6) A requirement that the applicant shall provide written notification to the director and the corporation not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.

~~(7) A requirement that the chief executive officer of the company applying for a credit under this chapter must verify under penalty of perjury that the disparity between projected costs of the applicant's project in Indiana compared with the costs for the project in a competing site is real and actual.~~

~~(8) (7) Any other performance conditions that the corporation determines are appropriate.~~

(b) An agreement between an applicant and the corporation must be submitted to the budget committee for review and must be approved by the budget agency before an applicant is awarded a credit under this chapter for a project to retain existing jobs in Indiana.

SECTION 10. IC 6-3.1-13-21, AS AMENDED BY P.L.4-2005, SECTION 79, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

(c) ~~This~~ Subsection (d) applies:

- (1) only to a pass through entity that is a limited liability company or a limited liability partnership owned wholly or in part by an electric cooperative incorporated under IC 8-1-13; **and**
- (2) **if**, at the request of ~~a~~ **the** pass through entity, ~~if~~ the corporation finds that the amount of the average wage to be paid by the pass

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through entity will be at least double the average wage paid: ~~within~~

**(A) in the county in which the project will be located, in the case of an application submitted before January 1, 2006; or**

**(B) in the case of an application submitted after December 31, 2005:**

**(i) to all employees working in the same NAICS industry sector to which the applicant's business belongs in the county in which the applicant's business is located, if there is more than one (1) business in that NAICS industry sector in the county in which the applicant's business is located;**

**(ii) to all employees working in the same NAICS industry sector to which the applicant's business belongs in Indiana, if the applicant's business is the only business in that NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in that NAICS industry sector in Indiana; or**

**(iii) to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector to which the applicant's business belongs.**

**(d) The corporation may determine that:**

**(1) ~~the~~ a credit shall be claimed by the pass through entity described in subsection (c); and**

**(2) if the credit exceeds the pass through entity's state income tax liability for the taxable year, the excess shall be refunded to the pass through entity.**

If the corporation grants a refund directly to a pass through entity under this subsection, the pass through entity shall claim the refund on forms prescribed by the department of state revenue.

**SECTION 11. [EFFECTIVE JANUARY 1, 2006] IC 6-3.1-4-2.5, as added by this act, applies to taxable years beginning after December 31, 2005.**

**SECTION 12. [EFFECTIVE JULY 1, 2005] IC 6-3.1-13-15, IC 6-3.1-13-15.5, IC 6-3.1-13-17, IC 6-3.1-13-18, IC 6-3.1-13-19, IC 6-3.1-13-19.5, and IC 6-3.1-13-21, all as amended by this act, apply only to credits awarded by the Indiana economic development corporation under IC 6-3.1-13 after June 30, 2005. Credits awarded under IC 6-3.1-13 before July 1, 2005, remain subject to the provisions of IC 6-3.1-13 as in effect on June 30,**

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**2005. However, an ordinance that is described in IC 6-3.1-13-15(6) or IC 6-3.1-13-15.5(11), both as amended by this act, and that is adopted before July 1, 2005, is valid to the extent that it applies to credits awarded after June 30, 2005.**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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