
HOUSE BILL No. 1327

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.

Synopsis: Income tax holiday. Provides an adjusted gross income tax withholding holiday for individuals for one week each year for pay periods beginning on or after December 1 each year. Provides an associated adjusted gross income tax credit for individuals each taxable year in the amount of 1/52 of the individual's adjusted gross income tax liability for the taxable year.

Effective: July 1, 2011.

Steuerwald

January 13, 2011, read first time and referred to Committee on Ways and Means.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1327



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 6-3-3-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 13. (a) This section applies only to taxable years**
4 **beginning after December 31, 2011.**

5 **(b) Each taxable year, an individual is entitled to an income tax**
6 **holiday credit against the individual's adjusted gross income tax**
7 **liability for the taxable year in the amount of:**

8 **(1) the individual's adjusted gross income tax liability for the**
9 **taxable year computed without regard to this section; divided**
10 **by**

11 **(2) fifty-two (52).**

12 SECTION 2. IC 6-3-4-8, AS AMENDED BY P.L.131-2008,
13 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2011]: **Sec. 8. (a) Except as provided in subsection (d), or (l),**
15 **or (n), every employer making payments of wages subject to tax under**
16 **this article, regardless of the place where such payment is made, who**
17 **is required under the provisions of the Internal Revenue Code to**



1 withhold, collect, and pay over income tax on wages paid by such
 2 employer to such employee, shall, at the time of payment of such
 3 wages, deduct and retain therefrom the amount prescribed in
 4 withholding instructions issued by the department. The department
 5 shall base its withholding instructions on the adjusted gross income tax
 6 rate for persons, on the total rates of any income taxes that the taxpayer
 7 is subject to under IC 6-3.5, and on the total amount of exclusions the
 8 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).
 9 However, the withholding instructions on the adjusted gross income of
 10 a nonresident alien (as defined in Section 7701 of the Internal Revenue
 11 Code) are to be based on applying not more than one (1) withholding
 12 exclusion, regardless of the total number of exclusions that
 13 IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply
 14 on the taxpayer's final return for the taxable year. Such employer
 15 making payments of any wages:

16 (1) shall be liable to the state of Indiana for the payment of the tax
 17 required to be deducted and withheld under this section and shall
 18 not be liable to any individual for the amount deducted from the
 19 individual's wages and paid over in compliance or intended
 20 compliance with this section; and

21 (2) shall make return of and payment to the department monthly
 22 of the amount of tax which under this article and IC 6-3.5 the
 23 employer is required to withhold.

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

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

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

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

39 An employer using a reporting period (other than a monthly reporting
 40 period) must file the employer's return and pay the tax for a reporting
 41 period no later than the last day of the month immediately following
 42 the close of the reporting period. If an employer files a combined sales

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1 and withholding tax report, the reporting period for the combined
2 report is the shortest period required under this section, section 8.1 of
3 this chapter, or IC 6-2.5-6-1.

4 (c) For purposes of determining whether an employee is subject to
5 taxation under IC 6-3.5, an employer is entitled to rely on the statement
6 of an employee as to the employee's county of residence as represented
7 by the statement of address in forms claiming exemptions for purposes
8 of withholding, regardless of when the employee supplied the forms.
9 Every employee shall notify the employee's employer within five (5)
10 days after any change in the employee's county of residence.

11 (d) A county that makes payments of wages subject to tax under this
12 article:

- 13 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and
 - 14 (2) for the performance of the duties of the precinct election
15 officer imposed by IC 3 that are performed on election day;
- 16 is not required, at the time of payment of the wages, to deduct and
17 retain from the wages the amount prescribed in withholding
18 instructions issued by the department.

19 (e) Every employer shall, at the time of each payment made by the
20 employer to the department, deliver to the department a return upon the
21 form prescribed by the department showing:

- 22 (1) the total amount of wages paid to the employer's employees;
- 23 (2) the amount deducted therefrom in accordance with the
24 provisions of the Internal Revenue Code;
- 25 (3) the amount of adjusted gross income tax deducted therefrom
26 in accordance with the provisions of this section;
- 27 (4) the amount of income tax, if any, imposed under IC 6-3.5 and
28 deducted therefrom in accordance with this section; and
- 29 (5) any other information the department may require.

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

36 (f) All money deducted and withheld by an employer shall
37 immediately upon such deduction be the money of the state, and every
38 employer who deducts and retains any amount of money under the
39 provisions of this article shall hold the same in trust for the state of
40 Indiana and for payment thereof to the department in the manner and
41 at the times provided in this article. Any employer may be required to
42 post a surety bond in the sum the department determines to be

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1 appropriate to protect the state with respect to money withheld pursuant
2 to this section.

3 (g) The provisions of IC 6-8.1 relating to additions to tax in case of
4 delinquency and penalties shall apply to employers subject to the
5 provisions of this section, and for these purposes any amount deducted
6 or required to be deducted and remitted to the department under this
7 section shall be considered to be the tax of the employer, and with
8 respect to such amount the employer shall be considered the taxpayer.
9 In the case of a corporate or partnership employer, every officer,
10 employee, or member of such employer, who, as such officer,
11 employee, or member is under a duty to deduct and remit such taxes
12 shall be personally liable for such taxes, penalties, and interest.

13 (h) Amounts deducted from wages of an employee during any
14 calendar year in accordance with the provisions of this section shall be
15 considered to be in part payment of the tax imposed on such employee
16 for the employee's taxable year which begins in such calendar year, and
17 a return made by the employer under subsection (b) shall be accepted
18 by the department as evidence in favor of the employee of the amount
19 so deducted from the employee's wages. Where the total amount so
20 deducted exceeds the amount of tax on the employee as computed
21 under this article and IC 6-3.5, the department shall, after examining
22 the return or returns filed by the employee in accordance with this
23 article and IC 6-3.5, refund the amount of the excess deduction.
24 However, under rules promulgated by the department, the excess or any
25 part thereof may be applied to any taxes or other claim due from the
26 taxpayer to the state of Indiana or any subdivision thereof. No refund
27 shall be made to an employee who fails to file the employee's return or
28 returns as required under this article and IC 6-3.5 within two (2) years
29 from the due date of the return or returns. In the event that the excess
30 tax deducted is less than one dollar (\$1), no refund shall be made.

31 (i) This section shall in no way relieve any taxpayer from the
32 taxpayer's obligation of filing a return or returns at the time required
33 under this article and IC 6-3.5, and, should the amount withheld under
34 the provisions of this section be insufficient to pay the total tax of such
35 taxpayer, such unpaid tax shall be paid at the time prescribed by
36 section 5 of this chapter.

37 (j) Notwithstanding subsection (b), an employer of a domestic
38 service employee that enters into an agreement with the domestic
39 service employee to withhold federal income tax under Section 3402
40 of the Internal Revenue Code may withhold Indiana income tax on the
41 domestic service employee's wages on the employer's Indiana
42 individual income tax return in the same manner as allowed by Section

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3510 of the Internal Revenue Code.

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

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

- (1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;
- (2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;
- (3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and
- (4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

(n) For taxable years beginning after December 31, 2011, an employer shall not withhold adjusted gross income tax from an employee's wages for one (1) week each year beginning with the first day of the employer's first pay period occurring on or after December 1, except that:

- (1) if an employer's schedule of pay periods is such that the first pay period occurring on or after December 1 begins on or after December 26, the employer shall not withhold adjusted gross income tax from an employee's wages for the week beginning on the first day of the pay period including December 1; or**
- (2) if an employer's pay period has fewer than seven (7) days, the employer shall not withhold adjusted gross income tax from an employee's wages for the week beginning on December 1.**

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