
HOUSE BILL No. 1441

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-16.

Synopsis: Assignability of historic preservation tax credit. Provides that the historic rehabilitation income tax credit may be assigned. Provides that the credit may be recaptured from the person who receives the certification or from an assignee to whom the property is transferred. Repeals and replaces the current definition of "taxpayer" for purposes of the historic rehabilitation credit. Provides that the transfer of the property as a condominium does not cause the credit to be recaptured. (Current law provides that the credit is recaptured if the property is transferred within five years of the completion of the rehabilitation or preservation.) Provides that the adjusted basis of the property is not reduced by the amount of credit if a person is entitled to a federal low income housing credit for the historic property.

Effective: Upon passage; July 1, 2011.

Dvorak

January 18, 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. 1441



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 6-3.1-16-2.8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 2.8. As used in this chapter,**
4 **"person" means:**

- 5 (1) **an individual;**
- 6 (2) **a corporation;**
- 7 (3) **an S corporation;**
- 8 (4) **a partnership;**
- 9 (5) **a limited liability company;**
- 10 (6) **a limited liability partnership;**
- 11 (7) **a nonprofit organization; or**
- 12 (8) **a joint venture.**

13 SECTION 2. IC 6-3.1-16-6.2 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2011]: **Sec. 6.2. As used in this chapter,**
16 **"taxpayer" means:**

- 17 (1) **a person that:**



- 1 (A) is the holder of a credit that is awarded or assigned
- 2 under this chapter; and
- 3 (B) has a state tax liability against which any part of the
- 4 credit may be applied; or
- 5 (2) a shareholder, partner, or member of a pass through
- 6 entity that:
- 7 (A) is the holder of a credit that is awarded or assigned
- 8 under this chapter; and
- 9 (B) does not have any state tax liability against which any
- 10 part of the credit may be applied.

11 SECTION 3. IC 6-3.1-16-8 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. A ~~taxpayer~~ **person**
 13 qualifies for a credit under section 7 of this chapter if all of the
 14 following conditions are met:

- 15 (1) The historic property is:
- 16 (A) located in Indiana;
- 17 (B) at least fifty (50) years old; and
- 18 (C) except as provided in section 7(c) of this chapter, owned
- 19 by the ~~taxpayer~~ **person**.
- 20 (2) The division certifies that the historic property is listed in the
- 21 register of Indiana historic sites and historic structures.
- 22 (3) The division certifies that the ~~taxpayer~~ **person** submitted a
- 23 proposed preservation or rehabilitation plan to the division that
- 24 complies with the standards of the division.
- 25 (4) The division certifies that the preservation or rehabilitation
- 26 work that is the subject of the credit substantially complies with
- 27 the proposed plan referred to in subdivision (3).
- 28 (5) The preservation or rehabilitation work is completed in not
- 29 more than:
- 30 (A) two (2) years; or
- 31 (B) five (5) years if the preservation or rehabilitation plan
- 32 indicates that the preservation or rehabilitation is initially
- 33 planned for completion in phases.
- 34 The time in which work must be completed begins when the
- 35 physical work of construction or destruction in preparation for
- 36 construction begins.
- 37 (6) The historic property is:
- 38 (A) actively used in a trade or business;
- 39 (B) held for the production of income; or
- 40 (C) held for the rental or other use in the ordinary course of the
- 41 ~~taxpayer's~~ **person's** trade or business.
- 42 (7) The qualified expenditures for preservation or rehabilitation

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1 of the historic property exceed ten thousand dollars (\$10,000).
 2 SECTION 4. IC 6-3.1-16-9 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. (a) The division shall
 4 provide the certifications referred to in section 8(3) and 8(4) of this
 5 chapter if a ~~taxpayer's person's~~ proposed preservation or rehabilitation
 6 plan complies with the standards of the division and the ~~taxpayer's~~
 7 **person's** preservation or rehabilitation work complies with the plan.

8 (b) The ~~taxpayer person~~ may appeal a decision by the division
 9 under this chapter to the review board.

10 SECTION 5. IC 6-3.1-16-11 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. **(a) This section**
 12 **does not apply to a person if the person is entitled to a credit under**
 13 **Section 42 of the Internal Revenue Code.**

14 **(b)** For purposes of IC 6-3, the adjusted basis of:
 15 (1) the structure, if the historic property is a structure; or
 16 (2) the entire property, if the historic property is not a structure;
 17 shall be reduced by the amount of a credit granted under this chapter.

18 SECTION 6. IC 6-3.1-16-12 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) A credit claimed
 20 under this chapter shall be recaptured from the ~~taxpayer person who~~
 21 **receives the certifications referred to in section 8(3) and 8(4) of this**
 22 **chapter or, if applicable, from an assignee to which the property is**
 23 **transferred, if:**

24 (1) the property is transferred, **other than:**
 25 **(A) to an assignee; or**
 26 **(B) as a condominium (as defined in IC 32-25-2-7);**
 27 less than five (5) years after completion of the certified
 28 preservation or rehabilitation work; or
 29 (2) less than five (5) years after completion of the certified
 30 preservation or rehabilitation, additional modifications to the
 31 property are undertaken that do not meet the standards of the
 32 division.

33 (b) If the recapture of a credit is required under this section, an
 34 amount equal to the credit recaptured shall be added to the tax liability
 35 of the ~~taxpayer person who receives the certifications under section~~
 36 **8 of this chapter or, if applicable, an assignee to which the property**
 37 **is transferred, for the taxable year during which the credit is**
 38 **recaptured.**

39 SECTION 7. IC 6-3.1-16-13.5 IS ADDED TO THE INDIANA
 40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2011]: **Sec. 13.5. (a) The holder of a credit**
 42 **may assign any part of the credit to which the holder is entitled**

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1 under this chapter to another person if the holder complies with
2 this section.

3 (b) The assignor must provide the assignee with a copy of the
4 certifications by the division required under sections 8 and 9 of this
5 chapter.

6 (c) The assignor must provide written notification of the
7 assignment to the:

- 8 (1) division; and
- 9 (2) department;

10 not later than thirty (30) days after the assignment.

11 (d) The notification provided under subsection (c) must contain:

- 12 (1) the name of the assignor;
- 13 (2) the name of the assignee;
- 14 (3) the date of assignment;
- 15 (4) the terms of the assignment; and
- 16 (5) any information requested by the division or the
17 department.

18 (e) The assignor may assign a credit under this chapter to an
19 assignee other than a holder of a credit under Section 47 of the
20 Internal Revenue Code for the same property.

21 (f) If any part of a credit is assigned under this section, the
22 assignor and the assignee shall report the assignment on their state
23 tax returns for the year in which the assignment is made, in the
24 manner prescribed by the department.

25 SECTION 8. IC 6-3.1-16-13.7 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2011]: Sec. 13.7. The holder of a credit that
28 is assigned in conformity with this chapter is entitled to a credit
29 against the holder's state tax liability to the same extent as if the
30 holder were the person to which the credit was awarded.

31 SECTION 9. IC 6-3.1-16-6.1 IS REPEALED [EFFECTIVE JULY
32 1, 2011].

33 SECTION 10. [EFFECTIVE UPON PASSAGE] (a) The
34 department of state revenue or the department of natural
35 resources may adopt temporary rules in the manner provided for
36 the adoption of emergency rules under IC 4-22-2-37.1 to implement
37 this act. A temporary rule adopted under this SECTION expires on
38 the earliest of the following:

- 39 (1) The date the department of state revenue or the
40 department of natural resources adopts another temporary
41 rule under this SECTION that repeals, amends, or supersedes
42 the previously adopted temporary rule.

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1 (2) The date the department of state revenue or the
2 department of natural resources adopts a permanent rule
3 under IC 4-22-2 that repeals, amends, or supersedes the
4 previously adopted temporary rule.
5 (3) The date specified in the temporary rule.
6 (4) December 31, 2012.
7 (b) This SECTION expires December 31, 2013.
8 SECTION 11. An emergency is declared for this act.

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