



February 1, 2011

SENATE BILL No. 222

DIGEST OF SB 222 (Updated January 25, 2011 12:16 pm - DI 103)

Citations Affected: IC 4-22; IC 6-3.1; noncode.

Synopsis: Transportation and logistics income tax credit. Provides an income tax credit for expenditures made by a taxpayer for one or more of the following purposes: (1) Implementing homeland security measures to comply with federal homeland security requirements. (2) Making improvements to real property located in Indiana that are related to constructing a new or modernizing an existing transportation or logistical distribution facility. (3) Improving the transportation of goods by highway, rail, water, or air. (4) Making warehouse upgrades or improving logistical distribution. Provides that the credit is 50% of the expenditures made by the taxpayer during the taxable year. Limits the credit that may be claimed for a taxable year to the taxpayer's state tax liability for that taxable year. Allows the taxpayer to carryover any unused credit for nine years. Provides that the credit may not be refunded, carried back, or transferred to another taxpayer.

Effective: Upon passage; January 1, 2012.

Wyss, Hershman, Banks

January 5, 2011, read first time and referred to Committee on Tax and Fiscal Policy.
January 10, 2011, pursuant to Senate Rule 68(b); reassigned to Homeland Security, Transportation & Veterans Affairs.
January 31, 2011, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

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SB 222—LS 6819/DI 58+



February 1, 2011

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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SENATE BILL No. 222

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

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

1 SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.1-2010,
2 SECTION 8, AS AMENDED BY P.L.35-2010, SECTION 2, AND AS
3 AMENDED BY P.L.113-2010, SECTION 9, IS CORRECTED AND
4 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
5 PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking action
6 resulting in any of the following rules:

7 (1) An order adopted by the commissioner of the Indiana
8 department of transportation under IC 9-20-1-3(d) or
9 IC 9-21-4-7(a) and designated by the commissioner as an
10 emergency rule.

11 (2) An action taken by the director of the department of natural
12 resources under IC 14-22-2-6(d) or IC 14-22-6-13.

13 (3) An emergency temporary standard adopted by the
14 occupational safety standards commission under
15 IC 22-8-1.1-16.1.

16 (4) An emergency rule adopted by the solid waste management
17 board under IC 13-22-2-3 and classifying a waste as hazardous.

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- 1 (5) A rule, other than a rule described in subdivision (6), adopted
- 2 by the department of financial institutions under IC 24-4.5-6-107
- 3 and declared necessary to meet an emergency.
- 4 (6) A rule required under IC 24-4.5-1-106 that is adopted by the
- 5 department of financial institutions and declared necessary to
- 6 meet an emergency under IC 24-4.5-6-107.
- 7 (7) A rule adopted by the Indiana utility regulatory commission to
- 8 address an emergency under IC 8-1-2-113.
- 9 (8) An emergency rule adopted by the state lottery commission
- 10 under IC 4-30-3-9.
- 11 (9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the
- 12 executive board of the state department of health declares is
- 13 necessary to meet an emergency.
- 14 (10) An emergency rule adopted by the Indiana finance authority
- 15 under IC 8-21-12.
- 16 (11) An emergency rule adopted by the insurance commissioner
- 17 under IC 27-1-23-7.
- 18 (12) An emergency rule adopted by the Indiana horse racing
- 19 commission under IC 4-31-3-9.
- 20 (13) An emergency rule adopted by the air pollution control
- 21 board, the solid waste management board, or the water pollution
- 22 control board under IC 13-15-4-10(4) or to comply with a
- 23 deadline required by or other date provided by federal law,
- 24 provided:
- 25 (A) the variance procedures are included in the rules; and
- 26 (B) permits or licenses granted during the period the
- 27 emergency rule is in effect are reviewed after the emergency
- 28 rule expires.
- 29 (14) An emergency rule adopted by the Indiana election
- 30 commission under IC 3-6-4.1-14.
- 31 (15) An emergency rule adopted by the department of natural
- 32 resources under IC 14-10-2-5.
- 33 (16) An emergency rule adopted by the Indiana gaming
- 34 commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3,
- 35 IC 4-33-4-14, IC 4-33-22-12, or IC 4-35-4-2.
- 36 (17) An emergency rule adopted by the alcohol and tobacco
- 37 commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or
- 38 IC 7.1-3-20-24.4.
- 39 (18) An emergency rule adopted by the department of financial
- 40 institutions under IC 28-15-11.
- 41 (19) An emergency rule adopted by the office of the secretary of
- 42 family and social services under IC 12-8-1-12.

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- 1 (20) An emergency rule adopted by the office of the children's
- 2 health insurance program under IC 12-17.6-2-11.
- 3 (21) An emergency rule adopted by the office of Medicaid policy
- 4 and planning under IC 12-15-41-15.
- 5 (22) An emergency rule adopted by the Indiana state board of
- 6 animal health under IC 15-17-10-9.
- 7 (23) An emergency rule adopted by the board of directors of the
- 8 Indiana education savings authority under IC 21-9-4-7.
- 9 (24) An emergency rule adopted by the Indiana board of tax
- 10 review under IC 6-1.1-4-34 (repealed).
- 11 (25) An emergency rule adopted by the department of local
- 12 government finance under IC 6-1.1-4-33 (repealed).
- 13 (26) An emergency rule adopted by the boiler and pressure vessel
- 14 rules board under IC 22-13-2-8(c).
- 15 (27) An emergency rule adopted by the Indiana board of tax
- 16 review under IC 6-1.1-4-37(l) (repealed) or an emergency rule
- 17 adopted by the department of local government finance under
- 18 IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.
- 19 (28) An emergency rule adopted by the board of the Indiana
- 20 economic development corporation under IC 5-28-5-8.
- 21 (29) A rule adopted by the department of financial institutions
- 22 under IC 34-55-10-2.5.
- 23 (30) A rule adopted by the Indiana finance authority:
- 24 (A) under IC 8-15.5-7 approving user fees (as defined in
- 25 IC 8-15.5-2-10) provided for in a public-private agreement
- 26 under IC 8-15.5;
- 27 (B) under IC 8-15-2-17.2(a)(10):
- 28 (i) establishing enforcement procedures; and
- 29 (ii) making assessments for failure to pay required tolls;
- 30 (C) under IC 8-15-2-14(a)(3) authorizing the use of and
- 31 establishing procedures for the implementation of the
- 32 collection of user fees by electronic or other nonmanual
- 33 means; or
- 34 (D) to make other changes to existing rules related to a toll
- 35 road project to accommodate the provisions of a public-private
- 36 agreement under IC 8-15.5.
- 37 (31) An emergency rule adopted by the board of the Indiana
- 38 health informatics corporation under IC 5-31-5-8.
- 39 ~~(32) An emergency rule adopted by the state athletic commission~~
- 40 ~~under IC 25-9-1-4.5.~~
- 41 (32) ~~(33)~~ An emergency rule adopted by the department of child
- 42 services under IC 31-25-2-21, IC 31-27-2-4, IC 31-27-4-2, or

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1 IC 31-27-4-3.
 2 ~~(34)~~ (33) An emergency rule adopted by the Indiana real estate
 3 commission under IC 25-34.1-2-5(15).
 4 ~~(35)~~ (34) *A rule adopted by the department of financial*
 5 *institutions under IC 24-4.4-1-101 and determined necessary to*
 6 *meet an emergency.*
 7 **(35) An emergency rule adopted by the department of**
 8 **homeland security to implement IC 6-3.1-34.**
 9 (b) The following do not apply to rules described in subsection (a):
 10 (1) Sections 24 through 36 of this chapter.
 11 (2) IC 13-14-9.
 12 (c) After a rule described in subsection (a) has been adopted by the
 13 agency, the agency shall submit the rule to the publisher for the
 14 assignment of a document control number. The agency shall submit the
 15 rule in the form required by section 20 of this chapter and with the
 16 documents required by section 21 of this chapter. The publisher shall
 17 determine the format of the rule and other documents to be submitted
 18 under this subsection.
 19 (d) After the document control number has been assigned, the
 20 agency shall submit the rule to the publisher for filing. The agency
 21 shall submit the rule in the form required by section 20 of this chapter
 22 and with the documents required by section 21 of this chapter. The
 23 publisher shall determine the format of the rule and other documents
 24 to be submitted under this subsection.
 25 (e) Subject to section 39 of this chapter, the publisher shall:
 26 (1) accept the rule for filing; and
 27 (2) electronically record the date and time that the rule is
 28 accepted.
 29 (f) A rule described in subsection (a) takes effect on the latest of the
 30 following dates:
 31 (1) The effective date of the statute delegating authority to the
 32 agency to adopt the rule.
 33 (2) The date and time that the rule is accepted for filing under
 34 subsection (e).
 35 (3) The effective date stated by the adopting agency in the rule.
 36 (4) The date of compliance with every requirement established by
 37 law as a prerequisite to the adoption or effectiveness of the rule.
 38 (g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6,
 39 IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in
 40 subsections (j), (k), and (l), a rule adopted under this section expires
 41 not later than ninety (90) days after the rule is accepted for filing under
 42 subsection (e). Except for a rule adopted under subsection (a)(13),

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1 (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting
2 another rule under this section, but only for one (1) extension period.
3 The extension period for a rule adopted under subsection (a)(28) may
4 not exceed the period for which the original rule was in effect. A rule
5 adopted under subsection (a)(13) may be extended for two (2)
6 extension periods. Subject to subsection (j), a rule adopted under
7 subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited
8 number of extension periods. Except for a rule adopted under
9 subsection (a)(13), for a rule adopted under this section to be effective
10 after one (1) extension period, the rule must be adopted under:

- 11 (1) sections 24 through 36 of this chapter; or
- 12 (2) IC 13-14-9;
- 13 as applicable.

14 (h) A rule described in subsection (a)(8), (a)(12), or (a)(29) expires
15 on the earlier of the following dates:

- 16 (1) The expiration date stated by the adopting agency in the rule.
- 17 (2) The date that the rule is amended or repealed by a later rule
18 adopted under sections 24 through 36 of this chapter or this
19 section.

20 (i) This section may not be used to readopt a rule under IC 4-22-2.5.

21 (j) A rule described in subsection (a)(24) or (a)(25) expires not later
22 than January 1, 2006.

23 (k) A rule described in subsection (a)(28) expires on the expiration
24 date stated by the board of the Indiana economic development
25 corporation in the rule.

26 (l) A rule described in subsection (a)(30) expires on the expiration
27 date stated by the Indiana finance authority in the rule.

28 (m) A rule described in subsection (a)(5) or (a)(6) expires on the
29 date the department is next required to issue a rule under the statute
30 authorizing or requiring the rule.

31 SECTION 2. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
33 JANUARY 1, 2012]:

34 **Chapter 34. Transportation and Logistics Tax Credit**

35 **Sec. 1. As used in this chapter, "pass through entity" means a:**

- 36 (1) corporation that is exempt from the adjusted gross income
37 tax under IC 6-3-2-2.8(2);
- 38 (2) partnership;
- 39 (3) trust;
- 40 (4) limited liability company; or
- 41 (5) limited liability partnership.

42 **Sec. 2. As used in this chapter, "qualified expenditure" means**

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1 an expenditure described in section 6 of this chapter.

2 Sec. 3. As used in this chapter, "state tax liability" means a
3 taxpayer's total tax liability that is incurred under:

- 4 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 5 (2) IC 27-1-18-2 (the insurance premiums tax); and
- 6 (3) IC 6-5.5 (the financial institutions tax);

7 as computed after the application of the credits that under
8 IC 6-3.1-1-2 are to be applied before the credit provided by this
9 chapter.

10 Sec. 4. As used in this chapter, "taxpayer" means an individual,
11 a corporation, a pass through entity, or other entity that has state
12 tax liability.

13 Sec. 5. (a) A taxpayer is entitled to a credit against the
14 taxpayer's state tax liability in a taxable year for making a
15 qualified expenditure. An expenditure that:

- 16 (1) is used by the taxpayer for a special tax benefit or tax
17 credit or other economic development incentive under any
18 other law; or
- 19 (2) pertains to property owned by the taxpayer that:
 - 20 (A) receives any other special tax benefit or economic
21 development incentive under any other law, including a
22 property tax abatement, deduction, or credit; or
 - 23 (B) will be located in an allocation area;

24 is not a qualified expenditure and may not be used as the basis for
25 the credit under this chapter.

26 (b) The amount of a taxpayer's credit under this chapter for a
27 taxable year equals fifty percent (50%) of the qualified expenditure
28 made by the taxpayer during that taxable year.

29 Sec. 6. For purposes of this chapter, a qualified expenditure is
30 an expenditure for one (1) or more of the following purposes:

- 31 (1) Implementing a homeland security measure to comply
32 with federal homeland security recommendations or
33 requirements, limited to the following:
 - 34 (A) Gates, fencing, and checkpoints.
 - 35 (B) Tank and grain elevator access restrictions.
 - 36 (C) Tunnel emergency access restrictions.
 - 37 (D) Security alarms.
 - 38 (E) Lighting and motion sensors.
 - 39 (F) Heavy duty locks.
 - 40 (G) Valve locks for anhydrous ammonia nurse tanks.
 - 41 (H) Employee security training.

42 A taxpayer must submit to the department written

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1 documentation identifying the federal homeland security
 2 recommendation or requirement pertaining to each qualifying
 3 expenditure, together with a written explanation of how the
 4 qualifying expenditure implements a homeland security
 5 measure that complies with the federal homeland security
 6 recommendation or requirement.

7 (2) Making an improvement to real property located in
 8 Indiana that is related to constructing a new, or modernizing
 9 an existing, transportation or logistical distribution facility.

10 (3) Improving the transportation of goods on Indiana
 11 highways, limited to the following:

12 (A) Upgrading to terminal facilities that serve tractors (as
 13 defined in IC 9-13-2-180) and semitrailers (as defined in
 14 IC 9-13-2-164).

15 (B) Improving paved access to terminal facilities.

16 (C) Adding maintenance areas.

17 (D) Purchasing new shop equipment having a useful life of
 18 at least five (5) years, such as diagnostic equipment, oil
 19 delivery systems, air compressors, and truck lifts.

20 (4) Improving the transportation of goods by rail, limited to
 21 the following:

22 (A) Upgrading or building mainline, secondary, yard, and
 23 spur trackage.

24 (B) Upgrading or replacing bridges to obtain higher load
 25 bearing capability.

26 (C) Upgrading or replacing grade crossings to increase
 27 visibility for motorists, including improvements to
 28 roadway surfaces, signage and traffic signals, and signal
 29 system upgrades and replacements to meet Federal
 30 Railroad Administration Positive Train Control
 31 regulations.

32 (D) Upgrading fueling facilities, including upgrading
 33 fueling and sanding locomotives or tanks, pumps, piping,
 34 containment areas, track pans, lighting, and security.

35 (E) Upgrading team track facilities, including railroad
 36 owned warehouses, loading docks, and transfer stations for
 37 loading and unloading freight.

38 (F) Upgrading shop facilities, including upgrading
 39 structures, inspection pits, drop pits, cranes, employee fall
 40 protection, lighting, climate control, and break rooms.

41 (5) Improving the transportation of goods by water, limited to
 42 the following:

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- 1 (A) Upgrading or replacing a permanent waterside dock.
- 2 (B) Upgrading or building a new terminal facility that
- 3 serves waterborne transportation.
- 4 (C) Improving paved access to a waterborne terminal
- 5 facility.
- 6 (D) Purchasing new equipment having a useful life of at
- 7 least five (5) years, including diagnostic equipment, an oil
- 8 delivery system, an air compressor, or a barge lift.
- 9 (6) Improving the transportation of goods by air, limited to
- 10 the following:
- 11 (A) Upgrading or building a new cargo building, hangar,
- 12 warehouse facility, freight forwarding facility, cross-dock
- 13 distribution facility, or aircraft maintenance facility.
- 14 (B) Improving paved access to a terminal or cargo facility.
- 15 (C) Upgrading a fueling facility.
- 16 (7) Improving warehousing and logistical capabilities, limited
- 17 to the following:
- 18 (A) Upgrading warehousing facilities, including upgrading
- 19 loading dock doors and loading dock plates, fueling
- 20 equipment, fueling installations, or dolly drop pads for
- 21 trailers.
- 22 (B) Improving logistical distribution by purchasing new
- 23 equipment, limited to the following:
- 24 (i) Picking modules (systems of racks, conveyor, and
- 25 controllers).
- 26 (ii) Racking equipment.
- 27 (iii) Warehouse management systems, including scanning
- 28 or coding equipment.
- 29 (iv) Security equipment.
- 30 (v) Temperature control and monitoring equipment.
- 31 (vi) Dock levelers and pallet levelers and inverters.
- 32 (vii) Conveyors and related controllers, scales, and like
- 33 equipment.
- 34 (viii) Packaging equipment.
- 35 (ix) Moving, separating, sorting, and picking equipment.
- 36 Sec. 7. (a) If the amount the credit under this chapter for a
- 37 taxpayer in a taxable year exceeds the taxpayer's state tax liability
- 38 for that taxable year, the taxpayer may carry the excess over to the
- 39 following taxable years. However, the carryover period may not
- 40 exceed nine (9) consecutive taxable years, beginning with the
- 41 taxable year after the taxable year in which the taxpayer makes the
- 42 qualified expenditure. The amount of the credit carryover from a

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1 taxable year shall be reduced to the extent that the carryover is
2 used by the taxpayer to obtain a credit under this chapter for any
3 subsequent taxable year.

4 (b) A taxpayer is not entitled to a refund or carryback of any
5 unused credit.

6 (c) A taxpayer may not assign, convey, sell, or otherwise
7 transfer the credit to any other taxpayer.

8 **Sec. 8. If a pass through entity does not have state tax liability**
9 **against which the tax credit may be applied, a shareholder or**
10 **partner of the pass through entity is entitled to a tax credit equal**
11 **to:**

12 (1) the tax credit determined for the pass through entity for
13 the taxable year; multiplied by

14 (2) the percentage of the pass through entity's distributive
15 income to which the shareholder or partner is entitled.

16 **Sec. 9. To receive the credit provided by this chapter, a taxpayer**
17 **must claim the credit in the manner prescribed by the department.**
18 **The taxpayer shall submit to the department all information that**
19 **the department determines is necessary for the calculation of the**
20 **credit and for the determination of whether an expenditure is a**
21 **qualified expenditure.**

22 SECTION 3. [EFFECTIVE JANUARY 1, 2012] (a) IC 6-3.1-34, as
23 added by this act, applies to taxable years beginning after
24 December 31, 2011.

25 (b) This SECTION expires January 1, 2014.

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

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COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 222, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 6, line 32, after "security" insert "**recommendations or**".

Page 6, delete line 42, begin a new line block indented and insert:

"A taxpayer must submit to the department written documentation identifying the federal homeland security recommendation or requirement pertaining to each qualifying expenditure, together with a written explanation of how the qualifying expenditure implements a homeland security measure that complies with the federal homeland security recommendation or requirement."

Page 7, delete lines 1 through 7.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 222 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 9, Nays 0.

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