January 26, 2012

SENATE BILL No. 321

DIGEST OF SB 321 (Updated January 24, 2012 1:06 pm - DI 58)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Transportation and logistics income tax credit. Provides an income tax credit for new expenditures made before January 1, 2019, by a taxpayer for new expenditures made by a taxpayer for making an improvement to real property that is related to constructing a new, or modernizing an existing, multimodal transportation facility. Provides that the amount of the credit for a taxable year is equal to: (1) 25%; multiplied by (2) the amount of the qualified expenditures made by the taxpayer during the taxable year minus the average annual qualified expenditures made by the taxpayer during the immediately preceding two years. 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 carry over any unused credit for nine years. Provides that the credit may not be refunded, carried back, or transferred to another taxpayer. Limits the credit to $10,000,000 for each state fiscal year. Requires the department of state revenue to annually report to the state budget committee concerning the use of the credit, including summary information and the name and address of each taxpayer claiming the credit and the credit amount claimed by each taxpayer.

Effective: January 1, 2013.

Wyss, Lawson C, Hershman

January 5, 2012, read first time and referred to Committee on Tax and Fiscal Policy.
January 25, 2012, amended, reported favorably — Do Pass.

January 26, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

SENATE BILL No. 321

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

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

SECTION 1. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Chapter 34. Transportation and Logistics Tax Credit

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

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a trust;

(4) a limited liability company; or

(5) a limited liability partnership.

Sec. 2. As used in this chapter, "qualified expenditure" means an expenditure described in section 6 of this chapter.

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

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (the insurance premiums tax);

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

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

Sec. 5. (a) Subject to the limit on the annual amount of credits granted under section 9 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability in a taxable year for making new qualified expenditures before January 1, 2019.

(b) The amount of new qualified expenditures made by a taxpayer during the taxable year is the difference of:

(1) the qualified expenditures made by the taxpayer during the taxable year; minus

(2) the average annual qualified expenditures made by the taxpayer during the two (2) taxable years immediately preceding the taxable year for which the credit is being claimed.

However, if the qualified expenditures for the earlier year of the two (2) year average is zero (0) and the taxpayer has not claimed the credit for a year that precedes that year, the taxpayer shall, for purposes of subdivision (2), subtract only the amount of the qualified expenditures made during the taxable year immediately preceding the taxable year for which the credit is being claimed.

(c) The amount of a taxpayer's credit under this chapter for a taxable year equals twenty-five percent (25%) of the new qualified expenditures made by the taxpayer during the taxable year.

Sec. 6. For purposes of this chapter, a qualified expenditure is an expenditure for making an improvement to real property located in Indiana that is related to constructing a new, or modernizing an existing, multimodal transportation facility that increases efficiency in the intermodal transportation of goods.

Sec. 7. (a) If the amount of the credit under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. However, the carryover period may not exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer is first granted the credit. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any

subsequent taxable year.

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

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

Sec. 8. If a pass through entity does not have state 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.

Sec. 9. (a) The total amount of credits allowed under this chapter may not exceed in the aggregate ten million dollars ($10,000,000) for all taxpayers per state fiscal year.

(b) Any person that desires to claim a tax credit provided in this chapter shall file with the department, in the form that the department may prescribe, an application:

(1) stating the amount of the new qualified expenditures that the person proposes to make that would qualify for a tax credit;

(2) stating the amount sought to be claimed as a credit; and

(3) identifying whether the credit will be claimed during the state fiscal year in which the application is filed or the immediately succeeding state fiscal year.

(c) The department shall record the time of filing of each application for a credit under this chapter and shall, except as provided in subsection (d), grant the credit to the taxpayer in the chronological order in which the application is filed in the state fiscal year, if the taxpayer's proposed new qualified expenditures and the taxpayer otherwise qualify for a credit under this chapter. The department shall promptly notify an applicant whether, or the extent to which, the tax credit is allowable in the state fiscal year proposed by the taxpayer.

(d) If the total credits approved under this section, including carryover credits approved for a previous state fiscal year, equal the maximum amount allowable in the state fiscal year, an application for the credit that is filed later for that same state fiscal year may not be approved. However, if an applicant for which a credit has been approved fails to claim the credit applied for, an amount equal to the credit previously applied for but not claimed

may be allowed to the next eligible applicant or applicants until the total amount has been allowed.

(e) To receive the credit provided by this chapter, a taxpayer must have an approved application and claim the credit in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit, for the determination of whether an expenditure is a new qualified expenditure, and for the department to fulfill the reporting requirements of this chapter.

Sec. 10. The department shall report, not later than December 15 each year, to the budget committee concerning the use of the credit under this chapter. The report must include the following with regard to the previous state fiscal year:

(1) Summary information regarding the taxpayers and the use of the credit, including the amount of credits approved, the number of taxpayers applying for the credit and claiming the credit, the number of employees who are employed in Indiana by the taxpayers claiming the credit, the amount and type of new qualified expenditures for which the credit was granted, the total dollar amount of new credits claimed and the average amount of the credit claimed per taxpayer, the amount of credits to be carried forward to a subsequent taxable year, and the percentage of the total credits claimed as compared to the total adjusted gross income of all the taxpayers claiming the credit.

(2) The name and address of each taxpayer claiming the credit and the amount of the credit applied for by and granted to each taxpayer.

SECTION 2. [EFFECTIVE JANUARY 1, 2013] **(a) IC 6-3.1-34, as added by this act, applies to taxable years beginning after December 31, 2012.**

(b) This SECTION expires January 1, 2015.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 321, 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 2, delete lines 30 through 42 and insert:
"**an expenditure for making an improvement to real property located in Indiana that is related to constructing a new, or modernizing an existing, multimodal transportation facility that increases efficiency in the intermodal transportation of goods.**".

Delete page 3.

Page 4, delete lines 1 through 37.

Page 5, line 19, delete "twenty-five million dollars" and insert "**ten million dollars ($10,000,000)**".

Page 5, line 20, delete "($25,000,000)".

Page 5, line 20, delete "However, the".

Page 5, delete lines 21 through 25.

and when so amended that said bill do pass.

(Reference is to SB 321 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 1.