HOUSE BILL No. 1412

DIGEST OF HB 1412 (Updated February 13, 2013 4:37 pm - DI 51)

Citations Affected: IC 6-3.1.

Synopsis: Economic development. Permits the Indiana economic development corporation to award an EDGE+ bonus to taxpayers who are subject to the federal medical device excise tax and create or retain jobs in Indiana. Makes technical corrections.

Effective: Upon passage.

Heuer, Heaton, Truitt, Hale

January 22, 2013, read first time and referred to Committee on Commerce, Small Business and Economic Development.
February 14, 2013, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

February 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

HOUSE BILL No. 1412

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 6-3.1-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) As used in this chapter, "new employee" means a full-time employee first employed by a taxpayer in the project that is the subject of a tax credit agreement and who is employed after the taxpayer enters into the tax credit agreement.

(b) The term "new employee" does not include:

(1) an employee of the taxpayer who performs a job that was previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee;

(2) an employee of the taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect

ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer (an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section).

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) treated under the agreement as a new employee; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee under the agreement.

(d) Notwithstanding subsection (a), the ~~board~~ **corporation** may credit awards to an applicant that met the conditions of this chapter at the time of the applicant's location or expansion decision, if:

(1) the applicant is in receipt of a letter from the department of commerce stating an intent to enter into a credit agreement; and

(2) the letter described in subdivision (1) is issued by the department of commerce not later than March 15, 1994.

SECTION 2. IC 6-3.1-13-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. Subject to the conditions set forth in this chapter, a taxpayer is entitled to a credit against any state tax liability that may be imposed on the taxpayer for a taxable year after December 31, 1993, if the taxpayer is awarded a credit by the ~~board~~ **corporation** under this chapter for that taxable year.

SECTION 3. IC 6-3.1-13-15.5, AS AMENDED BY P.L.110-2010, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. **(a) Except as provided in subsection (b),** 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 is engaged in research and development, manufacturing, or business services, according to the NAICS Manual of the United States Office of Management and Budget.

(3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:

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

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

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) For taxable years beginning before January 1, 2010, the applicant employs at least thirty-five (35) employees in Indiana.

(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.

(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.

(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.

(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.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs 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.

(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.

(b) The corporation shall evaluate an application submitted by a qualified taxpayer (as defined in IC 6-3.1-13.1-5) who proposes to retain existing jobs in Indiana under IC 6-3.1-13.1-8. The corporation shall determine under IC 6-3.1-13.1-8 whether to enter into a credit agreement with the qualified taxpayer.

SECTION 4. IC 6-3.1-13-18, AS AMENDED BY P.L.171-2011, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: 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:

(1) include any EDGE+ bonus applied to the credit under IC 6-3.1-13.1; and

(2) 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 year 2006 and each state fiscal year thereafter, the aggregate amount of credits awarded under this chapter for projects to retain existing jobs in Indiana may not exceed ten million dollars ($10,000,000) per year.

(c) This subsection does not apply to a business that was enrolled and participated in the E-Verify program (as defined in IC 22-5-1.7-3) during the time the taxpayer conducted business in Indiana in the taxable year. A credit under this chapter may not be computed on any amount withheld from an individual or paid to an individual for services provided in Indiana as an employee, if the individual was, during the period of service, prohibited from being hired as an employee under 8 U.S.C. 1324a.

SECTION 5. IC 6-3.1-13.1 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13.1. EDGE+ Bonus

Sec. 1. This chapter applies to jobs created or retained after

May 15, 2013, and before May 15, 2018.

Sec. 2. The purpose of this chapter is to mitigate the affect that the federal medical device excise tax under 26 I.R.C. 4191 may have on the Indiana medical device industry.

Sec. 3. The definitions set forth in IC 6-3.1-13 apply throughout this chapter.

Sec. 4. As used in this chapter, "EDGE+ bonus" refers to any amount added to a taxpayer's credit amount under section 9 of this chapter.

Sec. 5. As used in this chapter, "federal excise tax liability" refers to a taxpayer's liability for the federal medical device excise tax under 26 I.R.C 4191.

Sec. 6. As used in this chapter, "qualified taxpayer"refers to a taxpayer who has federal excise tax liability.

Sec. 7. (a) Subject to subsections (b) and (c), a qualified taxpayer may apply to the corporation for an EDGE+ bonus for creating or retaining jobs in Indiana in a taxable year described in section 1 of this chapter. The corporation shall prescribe the form for the application and require any information necessary to verify that the jobs have been created or retained by the qualified taxpayer.

(b) A qualified taxpayer may not apply to the corporation for an EDGE+ bonus after the date on which the federal medical device excise tax is repealed or expires under the Internal Revenue Code.

(c) The corporation may not:

(1) accept an application; or

(2) take any action on an application;

submitted after the date on which the federal medical device excise tax expires under the Internal Revenue Code or is repealed.

Sec. 8. This section applies to an application submitted by a qualified taxpayer who proposes 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 IC 6-3.1-13 and an EDGE+ bonus under this chapter if the corporation determines that one (1) or more of 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 is engaged in research and development or manufacturing, according to the NAICS Manual of the United States Office of Management and Budget.

(3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:

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

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

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) The applicant employs at least thirty-five (35) employees in Indiana.

(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.

(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.

(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.

(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.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs 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.

(10) The credit is not prohibited by IC 6-3.1-13-16.

(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.

Sec. 9. (a) If the corporation determines that a qualified taxpayer has created or retained jobs in Indiana in a taxable year, the corporation shall apply an EDGE+ bonus to the credit amount awarded under IC 6-3.1-13.

(b) The amount of the EDGE+ bonus for creating jobs is equal to the product of:

(1) the number of jobs created in the taxable year by the qualified taxpayer; multiplied by

(2) five thousand dollars ($5,000).

(c) The amount of the EDGE+ bonus for retaining jobs is equal to the product of:

(1) the number of jobs retained in the taxable year by the qualified taxpayer; multiplied by

(2) two thousand five hundred dollars ($2,500).

Sec. 10. The following apply to a qualified taxpayer who applies for an EDGE+ bonus under this chapter:

(1) Any procedural requirement for obtaining a credit amount under IC 6-3.1-13.

(2) Any condition imposed upon a credit amount under IC 6-3.1-13.

(3) Any limit on a credit amount set forth in IC 6-3.1-13-18.

(4) Any compliance requirement imposed upon a recipient of a credit under IC 6-3.1-13.

Sec. 9. This chapter expires January 1, 2020.

SECTION 6. **An emergency is declared for this act.**

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Small Business and Economic Development, to which was referred House Bill 1412, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 4 with "[EFFECTIVE UPON PASSAGE]".

Page 2, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 3. IC 6-3.1-13-15.5, AS AMENDED BY P.L.110-2010, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. **(a) Except as provided in subsection (b),** 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 is engaged in research and development, manufacturing, or business services, according to the NAICS Manual of the United States Office of Management and Budget.

(3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:

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

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

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) For taxable years beginning before January 1, 2010, the applicant employs at least thirty-five (35) employees in Indiana.

(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.

(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.

(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.

(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.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs 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.

(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.

(b) The corporation shall evaluate an application submitted by a qualified taxpayer (as defined in IC 6-3.1-13.1-5) who proposes to retain existing jobs in Indiana under IC 6-3.1-13.1-8. The corporation shall determine under IC 6-3.1-13.1-8 whether to enter into a credit agreement with the qualified taxpayer.".

Page 3, line 15, delete "in a".

Page 3, line 16, delete "taxable year beginning".

Page 3, line 16, delete "December 31, 2012, and ending" and insert "**May 15, 2013, and**".

Page 3, line 17, delete "January 1, 2017." and insert "**May 15,**

2018.".

Page 3, between lines 17 and 18, begin a new paragraph and insert:

"**Sec. 2. The purpose of this chapter is to mitigate the affect that the federal medical device excise tax under 26 I.R.C. 4191 may have on the Indiana medical device industry.**".

Page 3, line 18, delete "2." and insert "**3.**".

Page 3, line 20, delete "3." and insert "**4.**".

Page 3, line 21, delete "7" and insert "**9**".

Page 3, line 23, delete "4." and insert "**5.**".

Page 3, line 26, delete "5." and insert "**6.**".

Page 3, line 28, delete "6. A" and insert "**7. (a) Subject to subsections (b) and (c), a**".

Page 3, between lines 33 and 34, begin a new paragraph and insert:

"**(b) A qualified taxpayer may not apply to the corporation for an EDGE+ bonus after the date on which the federal medical device excise tax is repealed or expires under the Internal Revenue Code.**

(c) The corporation may not:

(1) accept an application; or

(2) take any action on an application;

submitted after the date on which the federal medical device excise tax expires under the Internal Revenue Code or is repealed.

Sec. 8. This section applies to an application submitted by a qualified taxpayer who proposes 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 IC 6-3.1-13 and an EDGE+ bonus under this chapter if the corporation determines that one (1) or more of 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 is engaged in research and development or manufacturing, according to the NAICS Manual of the United States Office of Management and Budget.

(3) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds the greater of the following:

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

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

(C) The compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).

(4) The applicant employs at least thirty-five (35) employees in Indiana.

(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.

(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.

(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.

(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.

(9) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed local incentives with respect to the retention of jobs 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.

(10) The credit is not prohibited by IC 6-3.1-13-16.

(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.".

Page 3, line 34, delete "7." and insert "**9.**".

Page 3, delete lines 38 through 42, begin a new paragraph and insert:

"**(b) The amount of the EDGE+ bonus for creating jobs is equal to the product of:**

(1) the number of jobs created in the taxable year by the qualified taxpayer; multiplied by

(2) five thousand dollars ($5,000).

(c) The amount of the EDGE+ bonus for retaining jobs is equal to the product of:

(1) the number of jobs retained in the taxable year by the qualified taxpayer; multiplied by

(2) two thousand five hundred dollars ($2,500).".

Page 4, delete lines 1 through 15.

Page 4, line 16, delete "8." and insert "**10.**".

Page 4, line 16, after "to" insert "**a qualified taxpayer who applies for**".

Page 4, line 16, delete "applied".

Page 4, delete lines 22 through 23, begin a new line block indented and insert:

"**(3) Any limit on a credit amount set forth in IC 6-3.1-13-18.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1412 as introduced.)

MESSMER, Chair

Committee Vote: yeas 9, nays 0.