SENATE BILL No. 488

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34.

Synopsis: Tax credit for hiring certain individuals. Provides a nonrefundable tax credit to a small business for employing an individual who is receiving unemployment benefits or returning from military service (qualified new employee). Provides that the small business must employ a greater number of full-time employees in Indiana in the taxable year than the small business employed in Indiana, on average, in the small business's base employment period (generally January 1, 2012, through June 30, 2012). Provides that the employee must be hired full time. Provides that the credit applies only to taxable years beginning in 2013 through 2015. Provides that the credit is $3,000 per qualified new employee limited to $100,000 per small business. Provides that the small business may carry any excess credit over to not more than three subsequent taxable years. Provides that the small business forfeits 50% of the amount of the tax credits attributable to the employment of a qualified new employee, if within 18 months after the qualified new employee was initially hired: (1) the qualified new employee is terminated, laid off, or otherwise reclassified to a position that is not a full-time employment position with the small business; or (2) the position created for the qualified new employee is eliminated.

Effective: January 1, 2013 (retroactive).

Randolph

January 14, 2013, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

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.

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SENATE BILL No. 488

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 (RETROACTIVE)]:

Chapter 34. Small Business Job Creation Tax Credit

Sec. 1. As used in this chapter, "base employment period" of a small business refers to a six (6) month period beginning January 1, 2012. However, if a small business began doing business in Indiana after January 1, 2012, the term refers to the initial period before January 1, 2013, in which the small business employed full-time employees in Indiana in the trade or business of the small business, not to exceed six (6) months.

Sec. 2. As used in this chapter, "department" refers to the department of state revenue or the department of insurance, whichever is obligated to administer the tax against which a tax credit is applied.

Sec. 3. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment; and

(2) earns income for service described in subdivision (1) that is subject to withholding under IC 6-3 (before the application of any earned income tax credit) in an amount that is the equivalent of at least two hundred percent (200%) of the federal hourly minimum wage in effect during the week of employment.

Sec. 4. As used in this chapter, "qualified new employee" refers to a full-time employee described in section 14 of this chapter.

Sec. 5. As used in this chapter, "small business" refers to a small business (as defined in IC 5-28-2-6) that was in existence and employed full-time employees in Indiana in the trade or business of the small business before January 1, 2013.

Sec. 6. 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. 7. As used in this chapter, "tax credit" refers to a tax credit granted by this chapter against state tax liability.

Sec. 8. As used in this chapter, "taxpayer" means an individual or entity that has state tax liability.

Sec. 9. (a) This section applies only to taxable years beginning in 2013, 2014, and 2015.

(b) Subject to this chapter, a small business that employs a qualified new employee in Indiana in a taxable year is eligible for a tax credit against the state tax liability imposed against the small business for the taxable year if, on average, the small business employed a greater number of full-time employees in Indiana in the taxable year than the small business employed in Indiana, on average, in the small business's base employment period.

Sec. 10. If a small business is entitled to a tax credit in a taxable year under section 9 of this chapter, the amount of the tax credit is equal to the lesser of the following:

(1) Three thousand dollars ($3,000) multiplied by the lesser of the following:

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(A) The average number of qualified new employees that the small business employed in Indiana during the taxable year in the trade or business of the small business.

(B) The average number of additional full-time employees that the small business employed in Indiana in the trade or business of the small business during the taxable year that exceeds the average number of full-time employees that the small business employed in Indiana in the trade or business of the small business during the small business's base employment period.

(2) One hundred thousand dollars ($100,000).

However, if the taxable year of the small business is less than twelve (12) months, the amounts of three thousand dollars ($3,000) and one hundred thousand dollars ($100,000) are reduced in proportion to the amount by which the taxable year of the small business is shortened.

Sec. 11. (a) If the amount of a tax credit to which a small business is entitled in a taxable year exceeds the small business's state tax liability for that taxable year, the small business may carry the excess over to not more than three (3) subsequent taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the small business to obtain a credit under this chapter for any subsequent taxable year.

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

Sec. 12. If a small business is a pass through entity that does not have state tax liability against which a tax credit may be applied, a shareholder, partner, fiduciary, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit that the pass through entity would be entitled to for the taxable year if the pass through entity were a taxpayer; multiplied by

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

Sec. 13. To receive a tax credit, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall maintain the records required by the department for the period specified by the department to substantiate the taxpayer's eligibility for a tax credit.

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Sec. 14. To be a qualified new employee in a particular taxable year, an individual must meet all the following criteria:

(1) Have been initially hired into a position as a full-time employee by the small business for the first time after December 31, 2012.

(2) Be, at the time the small business initially employs the individual after December 31, 2012:

(A) an individual who is receiving state or federal unemployment insurance benefits or has exhausted the individual's eligibility for state or federal unemployment insurance benefits since last becoming unemployed;

(B) a former member of the military services of the United States who served on active duty in any branch of the armed forces of the United States or National Guard and who at no time received a discharge or separation under other than honorable conditions, except corrected separation or discharge to read "honorable" as evidenced by appropriate records presented from the United States Department of Defense or appropriate branch of the military service; or

(C) an individual described in both clauses (A) and (B).

(3) Is not an individual who was employed by a related member (as defined in IC 6-3.1-13-8) of the small business (or another business entity that would be a related member (as defined in IC 6-3.1-13-8) if the other entity were a corporation) within twelve (12) months of being initially employed by the small business.

(4) Is not 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 small business or who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the small business or a related member (as defined in IC 6-3.1-13-8) of the small business (or another business entity that would be a related member (as defined in IC 6-3.1-13-8) if the other entity were a corporation). An ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under Section 1563 of the Internal Revenue Code.

Sec. 15. The tax credit to which a taxpayer would otherwise be entitled under this chapter in a taxable year is reduced by the sum of the following tax credits received for the same qualified new

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employee:

(1) The economic development for a growing economy tax credits (IC 6-3.1-13) allowable to the taxpayer in the taxable year and attributable to the same employee for which a tax credit would otherwise be granted under this chapter.

(2) The Hoosier business investment tax credits (IC 6-3.1-26) allowable to the taxpayer in the taxable year and attributable to the same employee for which a tax credit would otherwise be granted under this chapter.

(3) The amount of federal or state training grants used in the taxable year to train an employee for which a tax credit would otherwise be granted under this chapter.

Sec. 16. A small business (or if section 12 of this chapter applies, a shareholder, partner, or member of a small business) forfeits fifty percent (50%) of the amount of the tax credits attributable to the employment of a qualified new employee if, within eighteen (18) months after the qualified new employee was initially hired:

(1) the qualified new employee is terminated, laid off, or otherwise reclassified to a position that is not a full-time employment position with the small business; or

(2) the position created for the qualified new employee is eliminated.

For purposes of this section, the replacement, within a reasonable time as determined by the department, of a qualified new employee with another qualified new employee shall be treated as continuous employment of a qualified new employee from the date of the hiring or rehiring of the initial qualified new employee.

Sec. 17. The amount due to the department from a forfeiture under section 16 of this chapter shall be treated as due to the state on the date the taxpayer's annual return or informational return is due for the taxable year in which the reduction in employment occurred.

Sec. 18. (a) Employment levels shall be determined using the total number of employees reported by the small business on the quarterly payroll report submitted by the small business to the department of workforce development. The department of workforce development shall give the information to the department on the schedule and in the form requested by the department.

(b) A small business shall use the method prescribed by the department to determine the average number of full-time employees or qualified new employees that the small business

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employed during a period.

Sec. 19. The department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.

Sec. 20. This chapter expires January 1, 2021.

SECTION 2. **An emergency is declared for this act.**

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