HOUSE BILL No. 1020

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34.

Synopsis: New markets job growth income tax credit. Establishes a new markets job growth credit against state tax liability for investments made by a taxpayer in a qualified community development entity that then uses the proceeds of the investment to make investments in certain qualified low income community businesses located in Indiana. Specifies that the tax credit is equal to an applicable percentage multiplied by the purchase price of the qualified investment. Provides that the applicable percentage is 0% for the first and second credit allowance dates, 7% for the third credit allowance date, and 8% for the fourth, fifth, sixth, and seventh credit allowance dates. Provides that a taxpayer is not entitled to a carryback or refund of an unused tax credit, but the taxpayer may carry over excess credit amounts for not more than five subsequent taxable years. Requires the Indiana economic development corporation to limit the monetary amount of qualified equity investments to an amount necessary to limit the claiming of the tax credit to not more than $20,000,000 in any state fiscal year (based on the anticipated use of the tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years). (The introduced version of this bill was prepared by the interim study committee on economic development.)

Effective: January 1, 2014.

Messmer

January 7, 2013, read first time and referred to Committee on Commerce, Small Business and Economic Development.

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.

HOUSE BILL No. 1020

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, 2014]:

Chapter 34. New Markets Job Growth Credit

Sec. 1. As used in this chapter, "applicable percentage" means the following:

(1) Zero percent (0%) for the first and second credit allowance dates.

(2) Seven percent (7%) for the third credit allowance date.

(3) Eight percent (8%) for the fourth, fifth, sixth, and seventh credit allowance dates.

Sec. 2. As used in this chapter, "credit allowance date", with respect to any qualified equity investment, means:

(1) the date on which the qualified equity investment is initially made; and

(2) each of the following six (6) anniversary dates of the date described in subdivision (1).

Sec. 3. As used in this chapter, "IEDC" refers to the Indiana economic development corporation.

Sec. 4. As used in this chapter, "long term debt security" means any debt instrument that satisfies the following conditions:

(1) The debt instrument is issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years after the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date.

(2) The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income (as defined by federal regulations adopted under Section 45D of the Internal Revenue Code) of the qualified community development entity for that period, before giving effect to the expense of the cash interest payments.

However, the conditions of this section do not limit in any way the ability of the holder of the debt instrument to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this chapter or Section 45D of the Internal Revenue Code.

Sec. 5. As used in this chapter, "purchase price" means the amount paid to the issuer of a qualified equity investment for the qualified equity investment.

Sec. 6. (a) As used in this chapter, "qualified active low income community business" has the meaning set forth in Section 45D of the Internal Revenue Code and 26 CFR 1.45D-1.

(b) A business is considered a qualified active low income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the qualified community development entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low income community business throughout the entire period of the investment or loan.

(c) The term does not include a business that derives or projects that it will derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate. However, this exclusion does not apply to a business that is controlled by, or

under common control with, a second business if the second business:

(1) does not derive or project that it will derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate; and

(2) is the primary tenant of the real estate leased from the first business.

(d) The term does not include a charter school.

Sec. 7. (a) As used in this chapter, "qualified community development entity" means an entity that:

(1) is a qualified community development entity for purposes of Section 45D of the Internal Revenue Code; and

(2) has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code that includes Indiana within the service area set forth in the allocation agreement.

(b) The term includes affiliated entities and subordinate community development entities of any entity described in subsection (a).

Sec. 8. (a) As used in this chapter, "qualified equity investment" means any equity investment in, or long term debt security issued by, a qualified community development entity that:

(1) is acquired after December 31, 2013, at its original issuance solely in exchange for cash;

(2) has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low income community investments in qualified active low income community businesses located in Indiana by the first anniversary of the initial credit allowance date; and

(3) is designated by the issuer as a qualified equity investment under this chapter and is certified by the IEDC as not exceeding the limitation under section 17 of this chapter.

(b) The term includes an otherwise qualified equity investment that does not meet the requirements of subsection (a)(2) if the investment was a qualified equity investment in the hands of a prior holder.

Sec. 9. As used in this chapter, "qualified low income community investment" means any capital or equity investment in, or loan to, any qualified active low income community business. With respect to any one (1) qualified active low income community

business, the maximum amount of qualified low income community investments made in the business, on a collective basis with all its affiliates, is ten million dollars ($10,000,000), whether issued to one (1) or several qualified community development entities.

Sec. 10. As used in this chapter, "state tax liability" means a person'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. 11. As used in this chapter, "tax credit" refers to a credit granted under this chapter against state tax liability.

Sec. 12. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another person or entity that has state tax liability.

Sec. 13. A taxpayer that makes a qualified equity investment earns a vested right to tax credits as follows:

(1) On each credit allowance date of the qualified equity investment, the taxpayer, or the subsequent holder of the qualified equity investment, is entitled to a tax credit for the taxable year that includes the credit allowance date.

(2) Subject to subdivision (3), the tax credit amount is equal to:

(A) the applicable percentage; multiplied by

(B) the purchase price paid to the issuer of the qualified equity investment.

(3) The amount of the tax credit claimed may not exceed the amount of the taxpayer's state tax liability for the taxable year for which the tax credit is claimed.

Sec. 14. A tax credit claimed under this chapter is not refundable or saleable on the open market.

Sec. 15. (a) If:

(1) a pass through entity does not have state tax liability against which a tax credit may be applied; and

(2) the pass through entity would be eligible for a tax credit if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a tax credit under this chapter.

(b) Tax credits earned by a pass through entity may be allocated to the partners, members, or shareholders of the pass through

entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.

Sec. 16. (a) If the amount of a tax credit 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 not more than five (5) subsequent taxable years. The amount of the tax credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a tax credit under this chapter for any subsequent taxable year.

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

Sec. 17. (a) The IEDC shall limit the monetary amount of qualified equity investments permitted under this chapter to an amount necessary to limit the claiming of the tax credit to not more than twenty million dollars ($20,000,000) in any state fiscal year. This limitation on qualified equity investments must be based on the anticipated use of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(b) When the total tax credits approved under this chapter equal the maximum amount allowable in any state fiscal year, no application filed thereafter for that same state fiscal year may be approved.

Sec. 18. The issuer of a qualified equity investment shall certify to the IEDC the anticipated dollar amount of the investments to be made in Indiana during the first twelve (12) month period following the initial credit allowance date. Subject to section 22 of this chapter, if on the second credit allowance date the actual dollar amount of the investments is different than the amount certified, the IEDC shall adjust the credits arising on the second allowance date to account for the difference.

Sec. 19. (a) If the proceeds of a qualified equity investment are invested completely in qualified low income community investments in Indiana, the purchase price, for the purpose of calculating the tax credit under this chapter, equals one hundred percent (100%) of the qualified equity investment, regardless of the location of investments made with the proceeds of other qualified equity investments issued by the same qualified community development entity.

(b) To the extent a part of a qualified equity investment is not invested in Indiana, the purchase price, for the purpose of calculating the tax credit under this chapter, must be reduced by the same ratio that the part of the qualified equity investment that

is not invested in Indiana bears to the total amount of the qualified equity investment, independently of the location of investments made with proceeds of other qualified equity investments issued by the same qualified community development entity. In this case, the burden is on the qualified community development entity to establish the extent to which the qualified equity investments are fully invested in Indiana, either by:

(1) establishing that the qualified community development entity itself invests exclusively in Indiana; or

(2) otherwise establishing, through direct tracing, the part of a qualified equity investment invested solely in Indiana.

Sec. 20. Subject to section 22 of this chapter, the IEDC shall recapture the tax credit allowed under this chapter from a taxpayer that claimed the credit on a tax return, if:

(1) any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under Section 45D of the Internal Revenue Code; or

(2) subject to section 21 of this chapter, the issuer redeems or makes a principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment.

If subdivision (1) applies, the IEDC's recapture is proportionate to the federal recapture with respect to the qualified equity investment. If subdivision (2) applies, the IEDC's recapture is proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

Sec. 21. For purposes of section 20(2) of this chapter, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low income community investment within twelve (12) months after receipt of the capital. An issuer may not be required to reinvest capital returned from qualified low income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low income community investment. The qualified low income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance.

Sec. 22. The IEDC may not make an adjustment in a tax credit

under section 18 of this chapter or recapture a tax credit under section 20 of this chapter unless:

(1) the IEDC has given the qualified community development entity notice of the proposed adjustment or recapture; and

(2) the IEDC allowed the qualified community development entity six (6) months after the date of the notice to cure the cause of the proposed adjustment or recapture.

Sec. 23. The IEDC shall adopt rules to implement this chapter and to administer the certification of qualified equity investments and the allocation of tax credits under this chapter.

Sec. 24. To apply a tax credit under this chapter against the taxpayer's state tax liability, a taxpayer must claim the tax credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. In addition, the taxpayer must submit to the department any additional information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the tax credit.