

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1106

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 5-28-2-1.5, AS ADDED BY P.L.135-2022, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]: Sec. 1.5. "Applicable tax credit" means a tax credit available under any of the following:

- (1) IC 6-3.1-13.
- (2) IC 6-3.1-19.
- (3) IC 6-3.1-26.
- (4) IC 6-3.1-30.
- (5) IC 6-3.1-34.
- (6) IC 6-3.1-36.
- (7) IC 6-3.1-37.2.**

SECTION 2. IC 6-3.1-37.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]:

Chapter 37.2. Mine Reclamation Tax Credit

Sec. 1. As used in this chapter, "corporation" refers to the **Indiana economic development corporation established by IC 5-28-3 unless the context clearly denotes otherwise.**

Sec. 2. As used in this chapter, "mine reclamation site" means **land that has been mined using surface mining methods or underground mining methods, specifically and primarily for the removal of coal, and land contiguous to such previously mined**

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land.

Sec. 3. As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for development of property located within a mine reclamation site.

Sec. 4. As used in this chapter, "state tax liability" means the 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 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions 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. 5. As used in this chapter, "taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has any state tax liability and that is the owner or developer of a mine reclamation site. The term includes a lessee that is assigned some part of a credit under section 6(c) of this chapter.

Sec. 6. (a) Subject to entering into an agreement with the corporation under section 8 of this chapter and subject to section 11 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

(b) Subject to section 15 of this chapter, the amount of the credit to which a taxpayer is entitled may not exceed the lesser of:

- (1) the qualified investment made by the taxpayer during the taxable year multiplied by thirty percent (30%); or
- (2) five million dollars (\$5,000,000).

(c) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to a lessee of the mine reclamation site. A credit that is assigned under this subsection remains subject to this chapter.

(d) An assignment under subsection (c) must be in writing and both the taxpayer and the lessee must report the assignment on their state tax returns for the year in which the assignment is made in the manner prescribed by the department of state revenue. The taxpayer may not receive value in connection with the assignment under subsection (c) that exceeds the value of the part of the credit assigned.

Sec. 7. (a) If the amount determined under section 6(b) of this chapter for a taxable year exceeds the taxpayer's state tax liability



for that taxable year, the taxpayer may carry the excess over to the immediately following taxable years. The amount of the credit carryover from a taxable year is reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A credit may not be carried forward for more than ten (10) taxable years following the taxable year in which the taxpayer is first entitled to claim the credit.

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

Sec. 8. (a) A taxpayer that proposes to make qualified investments on a mine reclamation site as provided under this chapter may apply to the corporation to enter into an agreement for a tax credit under this chapter.

(b) The corporation shall prescribe the form of the application.

Sec. 9. The corporation shall consider the following factors in evaluating applications filed under this chapter:

- (1) The impact in the surrounding community caused by the lack of development at the mine reclamation site.
- (2) Evidence of support for the designation by residents, businesses, and private organizations in the surrounding community.
- (3) Evidence of a commitment by private or governmental entities to assist in the financing of improvements or redevelopment activities benefiting the mine reclamation site.
- (4) Whether the mine reclamation site is within an economic revitalization area designated under IC 6-1.1-12.1.

Sec. 10. If the corporation approves an application under this chapter, the corporation shall require the applicant to enter into an agreement with the corporation as a condition of receiving a tax credit under this chapter.

Sec. 11. A taxpayer is not entitled to claim the credit provided by this chapter if the corporation determines that the taxpayer has substantially reduced or ceased its operations in Indiana in order to relocate them within the mine reclamation site. A determination that a taxpayer is not entitled to the credit provided by this chapter as a result of a substantial reduction or cessation of operations applies to credits that would otherwise arise in the taxable year in which the substantial reduction or cessation occurs and in all subsequent years.

Sec. 12. (a) A credit to which a taxpayer is entitled under this chapter shall be applied against taxes owed by the taxpayer in the



following order:

- (1) Against the taxpayer's adjusted gross income tax liability (IC 6-3-1 through IC 6-3-7) for the taxable year.
- (2) Against the taxpayer's insurance premiums tax liability (IC 27-1-18-2) for the taxable year.
- (3) Against the taxpayer's financial institutions tax (IC 6-5.5) for the taxable year.

(b) Whenever the tax paid by the taxpayer under any of the tax provisions listed in subsection (a) is a credit against the liability or a deduction in determining the tax base under another Indiana tax provision, the credit or deduction shall be computed without regard to the credit to which a taxpayer is entitled under this chapter.

Sec. 13. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue the certification of the corporation stating the percentage of credit allowable under this chapter and all other information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an expenditure is for a qualified investment.

Sec. 14. (a) If a pass through entity does not have state income tax liability against which the tax credit provided by this chapter may be applied, a shareholder, partner, or member 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, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter.

(c) Notwithstanding subsections (a) and (b), a pass through entity (other than an entity described in IC 6-3-1-35(1)) and its partners, beneficiaries, or members may allocate the credit among its partners, beneficiaries, or members of the pass through entity as provided by written agreement without regard to their sharing of other tax or economic attributes. Such agreements shall be filed with the corporation not later than fifteen (15) days after execution. The pass through entity shall also provide a copy of such



agreements, a list of partners, beneficiaries, or members of the pass through entity, and their respective shares of the credit resulting from such agreements in the manner prescribed by the department of state revenue.

Sec. 15. The aggregate amount of tax credits allowed under this chapter may not exceed twenty-five million dollars (\$25,000,000) during the period beginning January 1, 2023, and ending December 31, 2027.

Sec. 16. A tax credit awarded under this chapter is subject to the limitations set forth in IC 5-28-6-9.

Sec. 17. This chapter expires December 31, 2027. The expiration of this chapter on December 31, 2027, does not affect a taxpayer's ability to carry forward the amount of any unused credit awarded before the expiration of this chapter.

SECTION 3. [EFFECTIVE JANUARY 1, 2023 (RETROACTIVE)]
(a) IC 6-3.1-37.2, as added by this act, applies to taxable years beginning after December 31, 2022.

(b) This SECTION expires July 1, 2025.

SECTION 4. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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