SENATE BILL No. 307

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-26.

Synopsis: Tax credits for logistics investments. Provides that the Indiana department of transportation (rather than the Indiana economic development corporation): (1) is responsible for approving tax credits for qualified logistics investments under the Hoosier business investment tax credit; and (2) is the entity that enters into agreements with taxpayers who wish to claim tax credits for qualified logistics investments under the Hoosier business investment tax credit.

Effective: July 1, 2014.

Wyss

January 14, 2014, read first time and referred to Committee on Tax and Fiscal Policy.

Introduced

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 307

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 6-3.1-26-8, AS AMENDED BY P.L.288-2013, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures in Indiana for:

(1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution equipment;

(2) the purchase of new computers and related equipment;

(3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution facilities;

(4) onsite infrastructure improvements;

(5) the construction of new telecommunications, production,

manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution facilities;

(6) costs associated with retooling existing machinery and equipment;

(7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry;

(8) costs associated with the purchase of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions; and

(9) a logistics investment, as described in section 8.5 of this chapter;

that are certified by the corporation under this chapter **(in the case of an investment that is not a logistics investment described in section 8.5 of this chapter) or that are certified by the Indiana department of transportation under this chapter (in the case of an investment that is a logistics investment described in section 8.5 of this chapter)** as being eligible for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 2. IC 6-3.1-26-12, AS AMENDED BY P.L.4-2005, SECTION 104, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. **(a)** The corporation may make credit awards under this chapter to foster job creation and higher wages in Indiana, **in the case of qualified investments that are not logistics investments described in section 8.5 of this chapter.**

(b) The Indiana department of transportation may make credit awards under this chapter to substantially enhance the logistics industry in Indiana, in the case of qualified investments that are logistics investments described in section 8.5 of this chapter.

SECTION 3. IC 6-3.1-26-13, AS AMENDED BY P.L.4-2005, SECTION 105, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. A taxpayer that:

(1) is awarded a tax credit under this chapter by the corporation **or by the Indiana department of transportation;** and

(2) complies with the conditions set forth in this chapter and the agreement entered into **under this chapter** by:

(A) the corporation and the taxpayer, ~~under this chapter;~~ **in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter; or**

(B) the Indiana department of transportation and the

taxpayer, in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

SECTION 4. IC 6-3.1-26-14, AS AMENDED BY P.L.288-2013, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. The total amount of a tax credit claimed for a taxable year under this chapter is a percentage determined by the corporation **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or a percentage determined by the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter),** not to exceed:

(1) ten percent (10%), of the amount of a qualified investment made by the taxpayer in Indiana during that taxable year, if the qualified investment is not a logistics investment; and

(2) twenty-five percent (25%) of the amount of a qualified investment made by the taxpayer in Indiana during that taxable year, if the qualified investment is a logistics investment. For purposes of this subdivision, the amount of a qualified investment that is used to determine the credit is limited to the difference of:

(A) the qualified investments made by the taxpayer during the taxable year; minus

(B) one hundred five percent (105%) of the average annual qualified investments 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 total of the qualified investments 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 subtract only one hundred five percent (105%) of the amount of the qualified investments made during the taxable year immediately preceding the taxable year for which the credit is being claimed.

The taxpayer may carry forward any unused credit as provided in section 15 of this chapter.

SECTION 5. IC 6-3.1-26-15, AS AMENDED BY P.L.288-2013, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) A taxpayer may carry forward an unused credit for the number of years determined by the corporation **(in the case of a qualified investment that is not a logistics investment**

described in section 8.5 of this chapter) or the number of years determined by the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter), not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment.

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified investment; and

(2) carry forward a remainder for one (1) or more different qualified investments;

in the same taxable year.

SECTION 6. IC 6-3.1-26-17, AS AMENDED BY P.L.288-2013, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. **(a)** A person that proposes a project to

~~(1)~~ create new jobs or increase wage levels in Indiana, ~~or~~

~~(2) substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy, in the case of a logistics investment being claimed by the applicant;~~

in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter, may apply to the corporation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The director shall prescribe the form of the application **under this subsection.**

(b) A person that proposes a project to substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy, in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter, may apply to the Indiana department of transportation before the taxpayer makes the qualified investment to enter into an agreement for a tax credit under this chapter. The Indiana department of transportation shall prescribe the form of the application under this subsection.

SECTION 7. IC 6-3.1-26-18, AS AMENDED BY P.L.288-2013, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. After receipt of an application, the corporation

(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter) may enter into an agreement with the applicant for a credit under this chapter if the corporation **or the Indiana department of transportation (as appropriate)** determines that all the following conditions exist:

(1) The applicant's project will

(A) raise the total earnings of employees of the applicant in Indiana, **in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter;** or

(B) substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy, in the case of a **qualified investment that is a** logistics investment ~~being claimed by the applicant.~~ **described in section 8.5 of this chapter.**

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana.

(3) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and, **in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter,** not receiving the tax credit will result in the applicant not raising the total earnings of the applicant's employees in Indiana. ~~or other employees in Indiana in the case of a logistics investment being claimed by the applicant.~~

(4) 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.

(5) The credit is not prohibited by section 19 of this chapter.

(6) In the case of a qualified investment that is not ~~being claimed as a logistics investment by the applicant,~~ **a logistics investment described in section 8.5 of this chapter,** the average wage that will be paid by the taxpayer to its employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

SECTION 8. IC 6-3.1-26-20, AS AMENDED BY P.L.288-2013,

SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 20. (a) The corporation **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter)** shall certify the amount of the qualified investment that is eligible for a credit under this chapter. In determining the credit amount that should be awarded, the corporation **or the Indiana department of transportation (as appropriate)** shall grant a credit only for the amount of the qualified investment that is directly related to:

(1) expanding the workforce in Indiana, **in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter;** or

(2) substantially enhancing the logistics industry and improving the overall Indiana economy, **in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter.**

(b) **The total amount of credits that may be awarded in a state fiscal year is limited as follows:**

(1) The total amount of credits that the corporation may approve under this chapter for a state fiscal year for all taxpayers for all qualified investments is ~~(1)~~ fifty million dollars ($50,000,000) for credits based on a qualified investment that is not ~~being claimed as~~ a logistics investment ~~and~~ **described in section 8.5 of this chapter.**

(2) The total amount of credits that the Indiana department of transportation may approve under this chapter for a state fiscal year for all taxpayers for all qualified investments is ~~(2)~~ ten million dollars ($10,000,000) for credits based on a qualified investment that is ~~being claimed as~~ a logistics investment **described in section 8.5 of this chapter.**

(c) A person that desires to claim a tax credit for a qualified investment shall file with the department, in the form that the department may prescribe, an application:

(1) stating separately the amount of the credit awards for qualified investments that have been granted to the taxpayer by the corporation **or the Indiana department of transportation (as appropriate)** that will be claimed as a credit that is covered by:

(A) subsection (b)(1); and

(B) subsection (b)(2);

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

that is covered by:

(A) subsection (b)(1); and

(B) subsection (b)(2); 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.

(d) The department shall separately record the time of filing of each application for a credit award for a qualified investment covered by subsection (b)(1) and for a qualified investment covered by subsection (b)(2) and shall, except as provided in subsection (e), approve the credit to the taxpayer in the chronological order in which the application is filed in the state fiscal year. 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.

(e) If the total credit awards for qualified investments that are covered by:

(1) subsection (b)(1); and

(2) subsection (b)(2);

including carryover credit awards covered by each subsection for a previous state fiscal year, equal the maximum amount allowable in the state fiscal year, an application for such a credit award that is filed later for that same state fiscal year may not be granted by the department. However, if an applicant for which a credit has been awarded and applied for with the department fails to claim the credit, 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.

SECTION 9. IC 6-3.1-26-21, AS AMENDED BY P.L.288-2013, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 21. The corporation **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter)** shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

(1) A detailed description of the project that is the subject of the agreement.

(2) The first taxable year for which the credit may be claimed.

(3) The amount of the taxpayer's state tax liability for each tax in the taxable year of the taxpayer that immediately preceded the first taxable year in which the credit may be claimed.

(4) The maximum tax credit amount that will be allowed for each taxable year.

(5) A requirement that the taxpayer shall maintain operations at the project location for at least ten (10) years during the term that the tax credit is available.

(6) **In the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter,** a specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.

(7) **In the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter,** a requirement that the taxpayer shall annually report to the corporation:

(A) the number of new employees who are performing jobs not previously performed by an employee;

(B) the average wage of the new employees;

(C) the average wage of all employees at the location where the qualified investment is made; ~~if the qualified investment is not being claimed as a logistics investment by the applicant,~~ and

(D) any other information the director needs to perform the director's duties under this chapter.

(8) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (7), and that after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(9) This subdivision applies only to a qualified investment that is not ~~being claimed as~~ a logistics investment ~~by the applicant.~~ **described in section 8.5 of this chapter.** A requirement that the taxpayer shall pay an average wage to all its employees other than highly compensated employees in each taxable year that a tax credit is available that equals at least one hundred fifty percent (150%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

(10) A requirement that the taxpayer will keep the qualified investment property that is the basis for the tax credit in Indiana for at least the lesser of its useful life for federal income tax purposes or ten (10) years.

(11) This subdivision applies only to a qualified investment that is not ~~being claimed as~~ a logistics investment **(as described in section 8.5 of this chapter)** by the applicant. A requirement that

the taxpayer will maintain at the location where the qualified investment is made during the term of the tax credit a total payroll that is at least equal to the payroll level that existed before the qualified investment was made.

(12) A requirement that the taxpayer shall provide written notification to:

(A) the director and the corporation **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter); or**

(B) the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter);

not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.

(13) Any other performance conditions that the corporation **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter)** determines are appropriate.

SECTION 10. IC 6-3.1-26-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 22. A taxpayer claiming a credit under this chapter shall submit to the department of state revenue a copy of the director's certificate of verification under this chapter **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or a copy of the Indiana department of transportation's certificate of verification under this chapter (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter)** for the taxable year. However, failure to submit a copy of the certificate does not invalidate a claim for a credit.

SECTION 11. IC 6-3.1-26-23, AS AMENDED BY P.L.4-2005, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 23. **(a)** If the director **(in the case of a qualified investment that is not a logistics investment described in section 8.5 of this chapter) or the Indiana department of transportation (in the case of a qualified investment that is a logistics investment described in section 8.5 of this chapter)** determines that a taxpayer who has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director **or the Indiana**

department of transportation (as appropriate) shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the Indiana economic development corporation and the department of state revenue of the noncompliance and request an assessment.

(b) The department of state revenue, with the assistance of the director **or the Indiana department of transportation (as appropriate),** shall state the amount of the assessment, which may not exceed the sum of any previously allowed credits under this chapter. After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

SECTION 12. IC 6-3.1-26-25, AS AMENDED BY P.L.288-2013, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 25. (a) On a biennial basis, the corporation **and the Indiana department of transportation** shall **jointly** provide for an evaluation of the tax credit program. The evaluation must include an assessment of the effectiveness of the program in creating new jobs and increasing wages in Indiana and of the revenue impact of the program and may include a review of the practices and experiences of other states with similar programs. The ~~director~~ **corporation and the Indiana department of transportation** shall submit a report on the evaluation to the governor, the president pro tempore of the senate, and the speaker of the house of representatives after June 30 and before November 1 in each odd-numbered year. The report provided to the president pro tempore of the senate and the speaker of the house of representatives must be in an electronic format under IC 5-14-6.

(b) The department **and the Indiana department of transportation** shall report, not later than December 15 each year, to the budget committee concerning the use of the credit for logistics investments under this chapter. The report must include the following with regard to the previous state fiscal year for logistics investments:

(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 13. IC 6-3.1-26-26, AS AMENDED BY P.L.137-2012, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 26. (a) This chapter applies to taxable years beginning after December 31, 2003.

(b) Notwithstanding the other provisions of this chapter:

(1) the corporation may not approve a credit for a qualified investment made after December 31, 2016; **and**

(2) the Indiana department of transportation may not approve a credit for a qualified investment made after December 31, 2016.

However, this section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before January 1, 2017, forward to a taxable year beginning after December 31, 2016, in the manner provided by section 15 of this chapter.