



February 25, 2005

HOUSE BILL No. 1571

DIGEST OF HB 1571 (Updated February 24, 2005 12:07 pm - DI 92)

Citations Affected: IC 6-3.1; noncode.

Synopsis: New markets tax credit. Establishes the state new markets tax credit for a taxpayer that qualifies for a federal new markets tax credit.

Effective: January 1, 2005 (retroactive).

Crawford, Buell

January 18, 2005, read first time and referred to Committee on Ways and Means.
February 24, 2005, amended, reported — Do Pass.

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HB 1571—LS 7376/DI 51+



February 25, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1571

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

1 SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2005 (RETROACTIVE)]:

4 **Chapter 29. State New Markets Tax Credit**

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

7 (1) **One percent (1%) for the first three (3) credit allowance**
8 **dates.**

9 (2) **Two percent (2%) for the remainder of the credit**
10 **allowance dates.**

11 **Sec. 2. As used in this chapter, "certified equity investment"**
12 **refers to a qualified equity investment certified under this chapter**
13 **for a tax credit.**

14 **Sec. 3. As used in this chapter, "credit" refers to a state new**
15 **markets tax credit granted under this chapter against state tax**
16 **liability.**

17 **Sec. 4. As used in this chapter, "credit allowance date" means**

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1 the following with respect to any certified equity investment:
 2 (1) The date on which the certified equity investment is
 3 initially made.
 4 (2) Each of the six (6) annual anniversary dates immediately
 5 following the date described in subdivision (1).
 6 Sec. 5. As used in this chapter, "holder", with respect to a credit
 7 allowance date, refers to one (1) of the following:
 8 (1) The taxpayer or pass through entity that makes the
 9 original qualified equity investment, if the taxpayer or pass
 10 through entity owns the qualified equity investment on a
 11 credit allowance date.
 12 (2) A subsequent taxpayer or pass through entity that owns
 13 the qualified equity investment on a credit allowance date.
 14 Sec. 6. As used in this chapter, "pass through entity" means a:
 15 (1) corporation that is exempt from the adjusted gross income
 16 tax under IC 6-3-2-2.8(2);
 17 (2) partnership;
 18 (3) trust;
 19 (4) limited liability company; or
 20 (5) limited liability partnership.
 21 Sec. 7. As used in this chapter, "qualified equity investment" has
 22 the meaning set forth in Section 45D of the Internal Revenue Code.
 23 Sec. 8 As used in this chapter, "qualified low-income community
 24 investments" has the meaning set forth in Section 45D of the
 25 Internal Revenue Code.
 26 Sec. 9. As used in this chapter, "state tax liability" means a
 27 taxpayer's total tax liability that is incurred under:
 28 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
 29 (2) IC 27-1-18-2 (the insurance premiums tax); and
 30 (3) IC 6-5.5 (the financial institutions tax);
 31 as computed after the application of the credits that under
 32 IC 6-3.1-1-2 are to be applied before the credit provided by this
 33 chapter.
 34 Sec. 10. As used in this chapter, "taxpayer" means an
 35 individual, a corporation, a partnership, or another entity that has
 36 any state tax liability.
 37 Sec. 11. Subject to this chapter, a taxpayer that:
 38 (1) holds a certified equity investment on a credit allowance
 39 date; and
 40 (2) does not receive another credit under this article for the
 41 same certified equity investment;
 42 is entitled to a state new markets tax credit in the taxable year in

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1 which the credit allowance date occurs against the taxpayer's state
2 tax liability for the taxable year.

3 Sec. 12. The amount of the credit in a taxable year is equal to
4 the amount determined under STEP THREE of the following
5 formula:

6 STEP ONE: Determine the amount of the qualified equity
7 investment that is:

8 (A) held by the taxpayer on the credit allowance date in the
9 taxable year; and

10 (B) certified under this chapter as a certified equity
11 investment.

12 STEP TWO: Multiply the STEP ONE amount by the
13 applicable percentage for the credit allowance date.

14 STEP THREE: Multiply the STEP TWO amount by:

15 (A) the tax credit adjustment factor approved by the
16 department of tourism and community development
17 established by P.L.224-2003 under this chapter; or

18 (B) eighty-five hundredths (0.85), if clause (A) does not
19 apply.

20 Sec. 13. (a) If:

21 (1) a pass through entity does not have state income tax
22 liability against which the tax credit provided by this chapter
23 may be applied; and

24 (2) the pass through entity would be eligible for a tax credit
25 under this chapter if the pass through entity were a taxpayer;
26 a shareholder, partner, or member of the pass through entity is
27 entitled to a tax credit under this chapter.

28 (b) Subject to this chapter, the amount of the tax credit to which
29 a shareholder, partner, or member of a pass through entity is
30 entitled is equal to:

31 (1) the tax credit determined for the pass through entity for
32 the taxable year as if the pass through entity were a taxpayer
33 with state tax liability in the amount of the tax credit;
34 multiplied by

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

38 Sec. 14. (a) If the amount of the tax credit provided under this
39 chapter for a taxpayer in a taxable year exceeds the taxpayer's
40 state tax liability for that taxable year, the taxpayer may carry the
41 excess over to not more than three (3) subsequent taxable years.
42 The amount of the tax credit carryover from a taxable year shall

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1 be reduced to the extent that the carryover is used by the taxpayer
2 to obtain a tax credit under this chapter for any subsequent taxable
3 year.

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

6 Sec. 15. (a) To receive the tax credit for a qualified investment
7 under this chapter, a taxpayer or a pass through entity must:

- 8 (1) make a qualified equity investment; and
- 9 (2) be certified by the department of tourism and community
10 development to receive a tax credit for the qualified equity
11 investment.

12 (b) The department of tourism and community development
13 shall establish a program to certify qualified equity investments as
14 eligible for a tax credit.

15 (c) The amount of tax credits allowed under this chapter may
16 not exceed one million dollars (\$1,000,000) in a state fiscal year.
17 Applicants for a tax credit that:

- 18 (1) make a qualified equity investment;
- 19 (2) are eligible to receive a federal tax credit under Section
20 45D of the Internal Revenue Code for the qualified equity
21 investment; and
- 22 (3) apply to the department of tourism and community
23 development in the manner and on the form prescribed by the
24 department of tourism and community development;

25 shall be certified for a tax credit in the amount of each applicant's
26 qualified equity investment in the order in which the applicants
27 apply to the department of tourism and community development
28 for tax credits until the maximum amount of tax credits allowed
29 under this section for a state fiscal year has been allocated among
30 qualifying applicants. However, the department of tourism and
31 community development may provide a procedure for an applicant
32 denied a tax credit solely as a result of the cap imposed by this
33 subsection to be given priority in the award of a tax credit in a
34 subsequent state fiscal year.

35 (d) The certification of a tax credit under this section applies
36 only to credit allowance dates that occur after the certification is
37 made.

38 (e) If the state new markets tax credits allocated to the taxpayer
39 or pass through entity is disallowed or recaptured under this
40 chapter, the department of tourism and community development
41 may reallocate the unused tax credits to another qualified
42 applicant in the order in which qualifying applications are filed

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with the department of tourism and community development.

Sec. 16. (a) A taxpayer or pass through entity that holds a certified equity investment may apply to the department of tourism and community development to establish the tax credit adjustment factor that applies to the taxpayer or pass through entity.

(b) The department of tourism and community development shall establish a program to approve tax credit adjustment factors under this section for qualifying applicants. The department of tourism and community development may provide a procedure for combining an application for a tax credit for a qualified investment under section 15 of this chapter with an application for a tax credit adjustment factor under this section.

(c) If the applicant applies for the tax credit adjustment factor in the manner and on the form prescribed by the department of tourism and community development, the department of tourism and community development shall approve a tax credit adjustment factor for the applicant that is equal to the percentage of the aggregate gross assets of the entity in which the certified equity investment was made that the department of tourism and community development determines are invested by the entity in qualified low income community investments.

(d) An approval granted under this section applies to the taxable years specified by the department of tourism and community development.

Sec. 17. To receive the tax credit under 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. A taxpayer claiming a credit under this chapter shall submit to the department a copy of the certification letter issued by the department of tourism and community development under section 15 of this chapter and any state new markets tax credit adjustment approval letter provided under this chapter. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the tax credit.

Sec. 18. (a) The holder of a certified equity investment shall notify the department and the department of tourism and community development if the federal tax credit granted for the certified equity investment under Section 45D of the Internal Revenue Code is disallowed or otherwise recaptured under Section 45D of the Internal Revenue Code.

(b) If the federal tax credit is disallowed or otherwise

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1 recaptured, the department or the department of tourism and
2 community development may:

- 3 (1) disallow the use of a part of the unused tax credits;
- 4 (2) recapture a part of the tax credit that has been applied to
- 5 the state tax liability of a taxpayer; or
- 6 (3) both disallow under subdivision (1) and recapture under
- 7 subdivision (2).

8 The percentage of the tax credit that may be disallowed and
9 recaptured under this subsection is equal to the percentage of the
10 total federal credit that is disallowed or otherwise recaptured
11 under Section 45D of the Internal Revenue Code.

12 Sec. 19. The department or the department of tourism and
13 community development, or both, may adopt under IC 4-22-2 any
14 rules that may be necessary to carry out the purposes of this
15 chapter, including rules to facilitate the transfer of credits earned
16 under this chapter.

17 SECTION 2. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]
18 The definitions in IC 6-3.1-29, as added by this act, apply
19 throughout this SECTION. IC 6-3.1-29, as added by this act,
20 applies only to:

- 21 (1) qualified equity investments made; and
- 22 (2) taxable years beginning;

23 after December 31, 2004.

24 SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1571, 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:

Page 4, line 15, delete "Not more than five million dollars (\$5,000,000) of qualified" and insert "**The amount of tax credits allowed under this chapter may not exceed one million dollars (\$1,000,000) in a state fiscal year.**".

Page 4, delete line 16.

Page 4, line 17, delete "year."

Page 4, run in lines 15 through 17.

and when so amended that said bill do pass.

(Reference is to HB 1571 as introduced.)

ESPICH, Chair

Committee Vote: yeas 20, nays 0.

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