
HOUSE BILL No. 1248

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34.

Synopsis: New markets job growth 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).

Effective: January 1, 2013.

Crouch, Welch

January 9, 2012, read first time and referred to Committee on Ways and Means.

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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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1248



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 6-3.1-34 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2013]:

4 **Chapter 34. New Markets Job Growth Credit**

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

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

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

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

12 **Sec. 2. As used in this chapter, "corporation" means the Indiana**
13 **economic development corporation.**

14 **Sec. 3. As used in this chapter, "credit allowance date", with**
15 **respect to any qualified equity investment, means:**

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



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

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 Sec. 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

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1 under common control with, a second business if that second
2 business:

- 3 (1) does not derive or project that it will derive at least fifteen
4 percent (15%) of its annual revenue from the rental or sale of
5 real estate; and
6 (2) is the primary tenant of the real estate leased from the first
7 business.

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

- 10 (1) is a qualified community development entity for purposes
11 of Section 45D of the Internal Revenue Code; and
12 (2) has entered into an allocation agreement with the
13 Community Development Financial Institutions Fund of the
14 United States Treasury Department with respect to credits
15 authorized by Section 45D of the Internal Revenue Code that
16 includes Indiana within the service area set forth in the
17 allocation agreement.

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

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

- 24 (1) is acquired after December 31, 2012, at its original
25 issuance solely in exchange for cash;
26 (2) has at least eighty-five percent (85%) of its cash purchase
27 price used by the issuer to make qualified low income
28 community investments in qualified active low income
29 community businesses located in Indiana by the first
30 anniversary of the initial credit allowance date; and
31 (3) is designated by the issuer as a qualified equity investment
32 under this chapter and is certified by the corporation as not
33 exceeding the limitation contained in section 17 of this
34 chapter.

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

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

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

5 Sec. 10. As used in this chapter, "state tax liability" means a
 6 person's total tax liability that is incurred under:

- 7 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 8 (2) IC 6-5.5 (the financial institutions tax); and
- 9 (3) IC 27-1-18-2 (the insurance premiums tax);

10 as computed after the application of the credits that under
 11 IC 6-3.1-1-2 are to be applied before the credit provided by this
 12 chapter.

13 Sec. 11. As used in this chapter, "tax credit" refers to a credit
 14 granted under this chapter against state tax liability.

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

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

- 20 (1) On each credit allowance date of the qualified equity
 21 investment, the taxpayer, or the subsequent holder of the
 22 qualified equity investment, is entitled to a tax credit during
 23 the taxable year that includes the credit allowance date.
- 24 (2) Subject to subdivision (3), the tax credit amount is equal
 25 to the applicable percentage multiplied by the purchase price
 26 paid to the issuer of the qualified equity investment.
- 27 (3) The amount of the tax credit claimed may not exceed the
 28 amount of the taxpayer's state tax liability for the tax year for
 29 which the tax credit is claimed.

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

32 Sec. 15. (a) If:

- 33 (1) a pass through entity does not have state tax liability
 34 against which a tax credit may be applied; and
- 35 (2) the pass through entity would be eligible for a tax credit if
 36 the pass through entity were a taxpayer;

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

39 (b) Tax credits earned by a pass through entity may be allocated
 40 to the partners, members, or shareholders of the pass through
 41 entity for their direct use in accordance with the provisions of any
 42 agreement among the partners, members, or shareholders.

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1 **Sec. 16. (a) If the amount of a tax credit for a taxpayer in a**
2 **taxable year exceeds the taxpayer's state tax liability for that**
3 **taxable year, the taxpayer may carry the excess over to not more**
4 **than five (5) subsequent taxable years. The amount of the tax credit**
5 **carryover from a taxable year shall be reduced to the extent that**
6 **the carryover is used by the taxpayer to obtain a tax credit under**
7 **this chapter for any subsequent taxable year.**

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

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

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

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

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

37 **(b) To the extent a part of a qualified equity investment is not**
38 **invested in Indiana, the purchase price, for the purpose of**
39 **calculating the tax credit under this chapter, must be reduced by**
40 **the same ratio that the part of the qualified equity investment that**
41 **is not invested in Indiana bears to the total amount of the qualified**
42 **equity investment, independently of the location of investments**

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1 made with proceeds of other qualified equity investments issued by
 2 the same qualified community development entity. In this case, the
 3 burden is on the qualified community development entity to
 4 establish the extent to which the qualified equity investments are
 5 fully invested in Indiana, either by:

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

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

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

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

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

21 If subdivision (1) applies, the corporation's recapture is
 22 proportionate to the federal recapture with respect to the qualified
 23 equity investment. If subdivision (2) applies, the corporation's
 24 recapture is proportionate to the amount of the redemption or
 25 repayment with respect to the qualified equity investment.

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

40 **Sec. 22.** The corporation may not make an adjustment in a tax
 41 credit under section 18 of this chapter or recapture a tax credit
 42 under section 20 of this chapter unless:

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1 (1) the corporation has given the qualified community
2 development entity notice of the proposed adjustment or
3 recapture; and
4 (2) the corporation allowed the qualified community
5 development entity six (6) months after the date of the notice
6 to cure the cause of the proposed adjustment or recapture.
7 **Sec. 23.** The corporation shall adopt rules to implement this
8 chapter and to administer the certification of qualified equity
9 investments and the allocation of tax credits under this chapter.
10 **Sec. 24.** To apply a tax credit under this chapter against the
11 taxpayer's state tax liability, a taxpayer must claim the tax credit
12 on the taxpayer's annual state tax return or returns in the manner
13 prescribed by the department. In addition, the taxpayer must
14 submit to the department any additional information that the
15 department determines is necessary for the department to
16 determine whether the taxpayer is eligible for the tax credit.

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