



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5002

by Rep. Keith R. Wheeler

SYNOPSIS AS INTRODUCED:

35 ILCS 5/227 new
35 ILCS 735/3-3

from Ch. 120, par. 2603-3

Amends the Illinois Income Tax Act. Creates an income tax credit in an amount equal to 1% of the expenses claimed by the taxpayer as a federal income tax deduction pursuant to Section 179 of the Internal Revenue Code for the tax year. Provides that the taxpayer may sell, assign, or transfer the credit. Provides that the maximum aggregate amount of credits awarded for those purposes may not exceed \$45,000,000 in any calendar year. Amends the Uniform Penalty and Interest Act to provide that, if the amount of the credit is reduced because the claims for credit exceed the maximum aggregate amount of the credit, then no underpayment penalty or interest shall accrue on the additional tax so long as the additional tax is paid within 60 days after the notice of reduction. Effective immediately.

LRB100 16532 HLH 31664 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by adding
5 Section 227 as follows:

6 (35 ILCS 5/227 new)

7 Sec. 227. Small business bonus investment credit.

8 (a) For tax years beginning on or after January 1, 2018,
9 subject to the limitations of subsection (e), a taxpayer is
10 entitled to a credit against the taxes imposed under
11 subsections (a) and (b) of Section 201 of this Act in an amount
12 equal to 1% of the expenses claimed by the taxpayer as a
13 federal income tax deduction pursuant to Section 179 of the
14 Internal Revenue Code for the tax year.

15 (b) If the taxpayer is a partnership or Subchapter S
16 corporation, the credit is allowed to the partners or
17 shareholders in accordance with the determination of income and
18 distributive share of income under Sections 702 and 704 and
19 Subchapter S of the Internal Revenue Code.

20 (c) If the amount of the credit exceeds the tax liability
21 for the year, then the excess credit may be carried forward and
22 applied to the tax liability of the 5 taxable years following
23 the excess credit year. The credit shall be applied to the

1 earliest year for which there is a tax liability. If there are
2 credits from more than one tax year that are available to
3 offset a liability, the earlier credit shall be applied first.
4 In no event shall a credit under this Section reduce the
5 taxpayer's liability to less than zero.

6 (d) A sale, assignment, or transfer of this credit may be
7 made by the taxpayer in accordance with rules adopted by the
8 Department. In the event the Department audits the taxpayer and
9 establishes a final liability that reduces the amount of a
10 credit that has been sold, assigned, or transferred, the
11 taxpayer remains liable to the Department and the Department
12 may not attempt to recoup the credit from a purchaser,
13 assignee, or transferee.

14 (e) The maximum aggregate amount of credits awarded under
15 this Section may not exceed \$45,000,000 in any calendar year.
16 No credit may be awarded if claimed on a return that is filed
17 after the original due date plus any automatic extension. The
18 Department shall determine the total amount of credits claimed
19 for a calendar year by March 1 of the next calendar year. If
20 the timely claims for the credit exceed \$45,000,000 in any
21 calendar year, the Department shall reduce the amount of the
22 credit pro rata and provide written notice of the reduction to
23 each taxpayer. The notice of reduction is a Notice and Demand
24 under Section 902 of this Act and shall not be a protestable
25 notice under Section 903 of this Act. In no event shall any
26 purchaser, assignee, or transferee be responsible for such

1 additional tax. Each taxpayer shall report and repay additional
2 taxes required by the reduction of the credit within 60 days
3 after the notice of the reduction. No underpayment penalty or
4 interest shall accrue pursuant to the Uniform Penalty and
5 Interest Act on such additional tax so long as the additional
6 tax is paid within 60 days after the notice of reduction.
7 Nothing in this subsection shall preclude the Department from
8 reducing the amount of credit granted to any taxpayer as a
9 result of an audit.

10 (f) The Department shall adopt rules to enforce and
11 administer provisions of this Section on or before January 1,
12 2019.

13 (g) This Section is exempt from the provisions of Section
14 250.

15 Section 10. The Uniform Penalty and Interest Act is amended
16 by changing Section 3-3 as follows:

17 (35 ILCS 735/3-3) (from Ch. 120, par. 2603-3)

18 Sec. 3-3. Penalty for failure to file or pay.

19 (a) This subsection (a) is applicable before January 1,
20 1996. A penalty of 5% of the tax required to be shown due on a
21 return shall be imposed for failure to file the tax return on
22 or before the due date prescribed for filing determined with
23 regard for any extension of time for filing (penalty for late
24 filing or nonfiling). If any unprocessable return is corrected

1 and filed within 21 days after notice by the Department, the
2 late filing or nonfiling penalty shall not apply. If a penalty
3 for late filing or nonfiling is imposed in addition to a
4 penalty for late payment, the total penalty due shall be the
5 sum of the late filing penalty and the applicable late payment
6 penalty. Beginning on the effective date of this amendatory Act
7 of 1995, in the case of any type of tax return required to be
8 filed more frequently than annually, when the failure to file
9 the tax return on or before the date prescribed for filing
10 (including any extensions) is shown to be nonfraudulent and has
11 not occurred in the 2 years immediately preceding the failure
12 to file on the prescribed due date, the penalty imposed by
13 Section 3-3(a) shall be abated.

14 (a-5) This subsection (a-5) is applicable to returns due on
15 and after January 1, 1996 and on or before December 31, 2000. A
16 penalty equal to 2% of the tax required to be shown due on a
17 return, up to a maximum amount of \$250, determined without
18 regard to any part of the tax that is paid on time or by any
19 credit that was properly allowable on the date the return was
20 required to be filed, shall be imposed for failure to file the
21 tax return on or before the due date prescribed for filing
22 determined with regard for any extension of time for filing.
23 However, if any return is not filed within 30 days after notice
24 of nonfiling mailed by the Department to the last known address
25 of the taxpayer contained in Department records, an additional
26 penalty amount shall be imposed equal to the greater of \$250 or

1 2% of the tax shown on the return. However, the additional
2 penalty amount may not exceed \$5,000 and is determined without
3 regard to any part of the tax that is paid on time or by any
4 credit that was properly allowable on the date the return was
5 required to be filed (penalty for late filing or nonfiling). If
6 any unprocessable return is corrected and filed within 30 days
7 after notice by the Department, the late filing or nonfiling
8 penalty shall not apply. If a penalty for late filing or
9 nonfiling is imposed in addition to a penalty for late payment,
10 the total penalty due shall be the sum of the late filing
11 penalty and the applicable late payment penalty. In the case of
12 any type of tax return required to be filed more frequently
13 than annually, when the failure to file the tax return on or
14 before the date prescribed for filing (including any
15 extensions) is shown to be nonfraudulent and has not occurred
16 in the 2 years immediately preceding the failure to file on the
17 prescribed due date, the penalty imposed by Section 3-3(a-5)
18 shall be abated.

19 (a-10) This subsection (a-10) is applicable to returns due
20 on and after January 1, 2001. A penalty equal to 2% of the tax
21 required to be shown due on a return, up to a maximum amount of
22 \$250, reduced by any tax that is paid on time or by any credit
23 that was properly allowable on the date the return was required
24 to be filed, shall be imposed for failure to file the tax
25 return on or before the due date prescribed for filing
26 determined with regard for any extension of time for filing.

1 However, if any return is not filed within 30 days after notice
2 of nonfiling mailed by the Department to the last known address
3 of the taxpayer contained in Department records, an additional
4 penalty amount shall be imposed equal to the greater of \$250 or
5 2% of the tax shown on the return. However, the additional
6 penalty amount may not exceed \$5,000 and is determined without
7 regard to any part of the tax that is paid on time or by any
8 credit that was properly allowable on the date the return was
9 required to be filed (penalty for late filing or nonfiling). If
10 any unprocessable return is corrected and filed within 30 days
11 after notice by the Department, the late filing or nonfiling
12 penalty shall not apply. If a penalty for late filing or
13 nonfiling is imposed in addition to a penalty for late payment,
14 the total penalty due shall be the sum of the late filing
15 penalty and the applicable late payment penalty. In the case of
16 any type of tax return required to be filed more frequently
17 than annually, when the failure to file the tax return on or
18 before the date prescribed for filing (including any
19 extensions) is shown to be nonfraudulent and has not occurred
20 in the 2 years immediately preceding the failure to file on the
21 prescribed due date, the penalty imposed by this subsection
22 (a-10) shall be abated. This subsection (a-10) does not apply
23 to transaction reporting returns required by Section 3 of the
24 Retailers' Occupation Tax Act and Section 9 of the Use Tax Act
25 that would not, when properly prepared and filed, result in the
26 imposition of a tax; however, those returns are subject to the

1 penalty set forth in subsection (a-15).

2 (a-15) A penalty of \$100 shall be imposed for failure to
3 file a transaction reporting return required by Section 3 of
4 the Retailers' Occupation Tax Act and Section 9 of the Use Tax
5 Act on or before the date a return is required to be filed;
6 provided, however, that this penalty shall be imposed only if
7 the return when properly prepared and filed would not result in
8 the imposition of a tax. If such a transaction reporting return
9 would result in the imposition of a tax when properly prepared
10 and filed, then that return is subject to the provisions of
11 subsection (a-10).

12 (b) This subsection is applicable before January 1, 1998. A
13 penalty of 15% of the tax shown on the return or the tax
14 required to be shown due on the return shall be imposed for
15 failure to pay:

16 (1) the tax shown due on the return on or before the
17 due date prescribed for payment of that tax, an amount of
18 underpayment of estimated tax, or an amount that is
19 reported in an amended return other than an amended return
20 timely filed as required by subsection (b) of Section 506
21 of the Illinois Income Tax Act (penalty for late payment or
22 nonpayment of admitted liability); or

23 (2) the full amount of any tax required to be shown due
24 on a return and which is not shown (penalty for late
25 payment or nonpayment of additional liability), within 30
26 days after a notice of arithmetic error, notice and demand,

1 or a final assessment is issued by the Department. In the
2 case of a final assessment arising following a protest and
3 hearing, the 30-day period shall not begin until all
4 proceedings in court for review of the final assessment
5 have terminated or the period for obtaining a review has
6 expired without proceedings for a review having been
7 instituted. In the case of a notice of tax liability that
8 becomes a final assessment without a protest and hearing,
9 the penalty provided in this paragraph (2) shall be imposed
10 at the expiration of the period provided for the filing of
11 a protest.

12 (b-5) This subsection is applicable to returns due on and
13 after January 1, 1998 and on or before December 31, 2000. A
14 penalty of 20% of the tax shown on the return or the tax
15 required to be shown due on the return shall be imposed for
16 failure to pay:

17 (1) the tax shown due on the return on or before the
18 due date prescribed for payment of that tax, an amount of
19 underpayment of estimated tax, or an amount that is
20 reported in an amended return other than an amended return
21 timely filed as required by subsection (b) of Section 506
22 of the Illinois Income Tax Act (penalty for late payment or
23 nonpayment of admitted liability); or

24 (2) the full amount of any tax required to be shown due
25 on a return and which is not shown (penalty for late
26 payment or nonpayment of additional liability), within 30

1 days after a notice of arithmetic error, notice and demand,
2 or a final assessment is issued by the Department. In the
3 case of a final assessment arising following a protest and
4 hearing, the 30-day period shall not begin until all
5 proceedings in court for review of the final assessment
6 have terminated or the period for obtaining a review has
7 expired without proceedings for a review having been
8 instituted. In the case of a notice of tax liability that
9 becomes a final assessment without a protest and hearing,
10 the penalty provided in this paragraph (2) shall be imposed
11 at the expiration of the period provided for the filing of
12 a protest.

13 (b-10) This subsection (b-10) is applicable to returns due
14 on and after January 1, 2001 and on or before December 31,
15 2003. A penalty shall be imposed for failure to pay:

16 (1) the tax shown due on a return on or before the due
17 date prescribed for payment of that tax, an amount of
18 underpayment of estimated tax, or an amount that is
19 reported in an amended return other than an amended return
20 timely filed as required by subsection (b) of Section 506
21 of the Illinois Income Tax Act (penalty for late payment or
22 nonpayment of admitted liability). The amount of penalty
23 imposed under this subsection (b-10) (1) shall be 2% of any
24 amount that is paid no later than 30 days after the due
25 date, 5% of any amount that is paid later than 30 days
26 after the due date and not later than 90 days after the due

1 date, 10% of any amount that is paid later than 90 days
2 after the due date and not later than 180 days after the
3 due date, and 15% of any amount that is paid later than 180
4 days after the due date. If notice and demand is made for
5 the payment of any amount of tax due and if the amount due
6 is paid within 30 days after the date of the notice and
7 demand, then the penalty for late payment or nonpayment of
8 admitted liability under this subsection (b-10)(1) on the
9 amount so paid shall not accrue for the period after the
10 date of the notice and demand.

11 (2) the full amount of any tax required to be shown due
12 on a return and that is not shown (penalty for late payment
13 or nonpayment of additional liability), within 30 days
14 after a notice of arithmetic error, notice and demand, or a
15 final assessment is issued by the Department. In the case
16 of a final assessment arising following a protest and
17 hearing, the 30-day period shall not begin until all
18 proceedings in court for review of the final assessment
19 have terminated or the period for obtaining a review has
20 expired without proceedings for a review having been
21 instituted. The amount of penalty imposed under this
22 subsection (b-10)(2) shall be 20% of any amount that is not
23 paid within the 30-day period. In the case of a notice of
24 tax liability that becomes a final assessment without a
25 protest and hearing, the penalty provided in this
26 subsection (b-10)(2) shall be imposed at the expiration of

1 the period provided for the filing of a protest.

2 (b-15) This subsection (b-15) is applicable to returns due
3 on and after January 1, 2004 and on or before December 31,
4 2004. A penalty shall be imposed for failure to pay the tax
5 shown due or required to be shown due on a return on or before
6 the due date prescribed for payment of that tax, an amount of
7 underpayment of estimated tax, or an amount that is reported in
8 an amended return other than an amended return timely filed as
9 required by subsection (b) of Section 506 of the Illinois
10 Income Tax Act (penalty for late payment or nonpayment of
11 admitted liability). The amount of penalty imposed under this
12 subsection (b-15) (1) shall be 2% of any amount that is paid no
13 later than 30 days after the due date, 10% of any amount that
14 is paid later than 30 days after the due date and not later
15 than 90 days after the due date, 15% of any amount that is paid
16 later than 90 days after the due date and not later than 180
17 days after the due date, and 20% of any amount that is paid
18 later than 180 days after the due date. If notice and demand is
19 made for the payment of any amount of tax due and if the amount
20 due is paid within 30 days after the date of this notice and
21 demand, then the penalty for late payment or nonpayment of
22 admitted liability under this subsection (b-15) (1) on the
23 amount so paid shall not accrue for the period after the date
24 of the notice and demand.

25 (b-20) This subsection (b-20) is applicable to returns due
26 on and after January 1, 2005.

1 (1) A penalty shall be imposed for failure to pay,
2 prior to the due date for payment, any amount of tax the
3 payment of which is required to be made prior to the filing
4 of a return or without a return (penalty for late payment
5 or nonpayment of estimated or accelerated tax). The amount
6 of penalty imposed under this paragraph (1) shall be 2% of
7 any amount that is paid no later than 30 days after the due
8 date and 10% of any amount that is paid later than 30 days
9 after the due date.

10 (2) A penalty shall be imposed for failure to pay the
11 tax shown due or required to be shown due on a return on or
12 before the due date prescribed for payment of that tax or
13 an amount that is reported in an amended return other than
14 an amended return timely filed as required by subsection
15 (b) of Section 506 of the Illinois Income Tax Act (penalty
16 for late payment or nonpayment of tax). The amount of
17 penalty imposed under this paragraph (2) shall be 2% of any
18 amount that is paid no later than 30 days after the due
19 date, 10% of any amount that is paid later than 30 days
20 after the due date and prior to the date the Department has
21 initiated an audit or investigation of the taxpayer, and
22 20% of any amount that is paid after the date the
23 Department has initiated an audit or investigation of the
24 taxpayer; provided that the penalty shall be reduced to 15%
25 if the entire amount due is paid not later than 30 days
26 after the Department has provided the taxpayer with an

1 amended return (following completion of an occupation,
2 use, or excise tax audit) or a form for waiver of
3 restrictions on assessment (following completion of an
4 income tax audit); provided further that the reduction to
5 15% shall be rescinded if the taxpayer makes any claim for
6 refund or credit of the tax, penalties, or interest
7 determined to be due upon audit, except in the case of a
8 claim filed pursuant to subsection (b) of Section 506 of
9 the Illinois Income Tax Act or to claim a carryover of a
10 loss or credit, the availability of which was not
11 determined in the audit. For purposes of this paragraph
12 (2), any overpayment reported on an original return that
13 has been allowed as a refund or credit to the taxpayer
14 shall be deemed to have not been paid on or before the due
15 date for payment and any amount paid under protest pursuant
16 to the provisions of the State Officers and Employees Money
17 Disposition Act shall be deemed to have been paid after the
18 Department has initiated an audit and more than 30 days
19 after the Department has provided the taxpayer with an
20 amended return (following completion of an occupation,
21 use, or excise tax audit) or a form for waiver of
22 restrictions on assessment (following completion of an
23 income tax audit).

24 (3) The penalty imposed under this subsection (b-20)
25 shall be deemed assessed at the time the tax upon which the
26 penalty is computed is assessed, except that, if the

1 reduction of the penalty imposed under paragraph (2) of
2 this subsection (b-20) to 15% is rescinded because a claim
3 for refund or credit has been filed, the increase in
4 penalty shall be deemed assessed at the time the claim for
5 refund or credit is filed.

6 (b-25) If the amount of the credit awarded to a taxpayer
7 under Section 227 of the Illinois Income Tax Act is reduced
8 because the claims for credit exceed the maximum aggregate
9 amount of the credit set forth in that Section, then no
10 underpayment penalty or interest shall accrue pursuant to this
11 Act on the additional tax so long as the additional tax is paid
12 within 60 days after the notice of reduction.

13 (c) For purposes of the late payment penalties, the basis
14 of the penalty shall be the tax shown or required to be shown
15 on a return, whichever is applicable, reduced by any part of
16 the tax which is paid on time and by any credit which was
17 properly allowable on the date the return was required to be
18 filed.

19 (d) A penalty shall be applied to the tax required to be
20 shown even if that amount is less than the tax shown on the
21 return.

22 (e) This subsection (e) is applicable to returns due before
23 January 1, 2001. If both a subsection (b)(1) or (b-5)(1)
24 penalty and a subsection (b)(2) or (b-5)(2) penalty are
25 assessed against the same return, the subsection (b)(2) or
26 (b-5)(2) penalty shall be assessed against only the additional

1 tax found to be due.

2 (e-5) This subsection (e-5) is applicable to returns due on
3 and after January 1, 2001. If both a subsection (b-10)(1)
4 penalty and a subsection (b-10)(2) penalty are assessed against
5 the same return, the subsection (b-10)(2) penalty shall be
6 assessed against only the additional tax found to be due.

7 (f) If the taxpayer has failed to file the return, the
8 Department shall determine the correct tax according to its
9 best judgment and information, which amount shall be prima
10 facie evidence of the correctness of the tax due.

11 (g) The time within which to file a return or pay an amount
12 of tax due without imposition of a penalty does not extend the
13 time within which to file a protest to a notice of tax
14 liability or a notice of deficiency.

15 (h) No return shall be determined to be unprocessable
16 because of the omission of any information requested on the
17 return pursuant to Section 2505-575 of the Department of
18 Revenue Law (20 ILCS 2505/2505-575).

19 (i) If a taxpayer has a tax liability for the taxable
20 period ending after June 30, 1983 and prior to July 1, 2002
21 that is eligible for amnesty under the Tax Delinquency Amnesty
22 Act and the taxpayer fails to satisfy the tax liability during
23 the amnesty period provided for in that Act for that taxable
24 period, then the penalty imposed by the Department under this
25 Section shall be imposed in an amount that is 200% of the
26 amount that would otherwise be imposed under this Section.

1 (j) If a taxpayer has a tax liability for the taxable
2 period ending after June 30, 2002 and prior to July 1, 2009
3 that is eligible for amnesty under the Tax Delinquency Amnesty
4 Act, except for any tax liability reported pursuant to Section
5 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that
6 is not final, and the taxpayer fails to satisfy the tax
7 liability during the amnesty period provided for in that Act
8 for that taxable period, then the penalty imposed by the
9 Department under this Section shall be imposed in an amount
10 that is 200% of the amount that would otherwise be imposed
11 under this Section.

12 (Source: P.A. 98-425, eff. 8-16-13; 99-335, eff. 8-10-15.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.