



Rep. Natalie A. Manley

Filed: 3/9/2017

10000HB3812ham001

LRB100 08037 HLH 23216 a

1 AMENDMENT TO HOUSE BILL 3812

2 AMENDMENT NO. _____. Amend House Bill 3812 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Sections 224, 302, 601, and 701 as follows:

6 (35 ILCS 5/224 new)

7 Sec. 224. Credit for tracking and reporting expenses.

8 (a) For taxable years ending on and after December 31, 2017
9 and prior to January 1, 2021, a taxpayer shall be allowed a
10 credit against the tax imposed by subsections (a) and (b) of
11 Section 201 equal to the amount of the investment made by the
12 taxpayer during the taxable year in qualified property and
13 qualified expenses that are used for tracking and reporting the
14 location of resident and nonresident employees for purposes of
15 compliance with the tracking, reporting, and income tax
16 withholding requirements of this amendatory Act of the 100th

1 General Assembly.

2 (b) In no event shall a credit under this Section reduce a
3 taxpayer's liability to less than zero. The credit shall be
4 allowed for the taxable year in which the qualified property is
5 placed in service or qualified expenses are incurred, or, if
6 the amount of the credit exceeds the tax liability for that
7 year, whether it exceeds the original liability or the
8 liability as later amended, the excess may be carried forward
9 and applied to the tax liability of the 5 taxable years
10 following the excess credit years. The credit shall be applied
11 to the earliest year for which there is a liability. If there
12 is credit from more than one taxable year that is available to
13 offset a liability, the earlier credit shall be applied first.

14 (c) As used in this Section:

15 "Qualified property" means tangible and intangible
16 personal property, including custom or canned computer
17 software that is licensed, acquired by purchase, or
18 developed internally by a taxpayer.

19 "Qualified expenses" includes, but is not limited to,
20 salary expenses and expenses of non-employee contractors.

21 (35 ILCS 5/302) (from Ch. 120, par. 3-302)

22 Sec. 302. Compensation paid to nonresidents.

23 (a) In general. For taxable years beginning prior to
24 January 1, 2018, all ~~All~~ items of compensation paid in this
25 State (as determined under Section 304(a)(2)(B)) to an

1 individual who is a nonresident at the time of such payment and
2 all items of deduction directly allocable thereto, shall be
3 allocated to this State.

4 For taxable years beginning on or after January 1, 2018,
5 the amount of all items of compensation of nonresident
6 individual employees, and all items of deduction directly
7 allocable thereto, allocated to this State shall be the portion
8 of the individual's total compensation for services performed
9 for his or her employer during the taxable year which the
10 number of working days spent in this State during the taxable
11 year in excess of 30 working days bears to the total number of
12 working days in the taxable year regardless of location. For
13 purposes of this subsection:

14 (1) A "working day" is any day during which the
15 employee performs duties on behalf of the employer.
16 Weekends, vacation days, sick days, and holidays (whether
17 or not paid) are not working days unless the employee is
18 required by the employer to perform some duties on that
19 day.

20 (2) A working day is spent in this State if:

21 (A) a greater amount of time is spent by the
22 employee in this State during that day performing
23 duties on behalf of the employer (other than traveling)
24 than is spent performing duties in any other State; or

25 (B) the only work performed by the employee on
26 behalf of the employer on that day is traveling to a

1 destination within this State, and the employee
2 arrives in this State on that day.

3 (3) A working day is not spent in this State if the
4 only activity engaged in by the employee on behalf of the
5 employer in this State on that day is traveling from or
6 through this State to a destination outside of this State.

7 (4) Working days spent in this State do not include any
8 day in which the employee is performing services in this
9 State during a disaster period solely in response to a
10 request made to his or her employer by the government of
11 this State or of any political subdivision of this State,
12 or by a person conducting business in this State, to
13 perform disaster or emergency-related services in this
14 State. For purposes of this paragraph (4):

15 (A) "Declared State disaster or emergency" means a
16 disaster or emergency event (i) for which a Governor's
17 proclamation of a state of emergency has been issued or
18 (ii) for which a Presidential declaration of a federal
19 major disaster or emergency has been issued.

20 (B) "Disaster period" means a period that begins 10
21 days prior to the date of the Governor's proclamation
22 or the President's declaration (whichever is earlier)
23 and extends for a period of 60 calendar days after the
24 end of the declared disaster or emergency period.

25 "Disaster or emergency-related services" means
26 repairing, renovating, installing, building, or

1 rendering services or conducting other business
2 activities that relate to infrastructure that has been
3 damaged, impaired, or destroyed by the declared State
4 disaster or emergency.

5 "Infrastructure" means property and equipment
6 owned or used by a public utility, communications
7 network, broadband and internet service provider,
8 cable and video service provider, electric or gas
9 distribution system, or water pipeline that provides
10 service to more than one customer or person, including
11 related support facilities. Infrastructure includes
12 real and personal property such as buildings, offices,
13 power lines, cable lines, poles, communications lines,
14 pipes, structures, and equipment.

15 Notwithstanding the provisions of this subsection,
16 compensation of a nonresident individual who is a member of a
17 professional athletic team, and all items of deduction directly
18 allocable thereto, shall be allocated to this State as
19 determined under item (iv) of subparagraph (B) of paragraph (2)
20 of subsection (a) of Section 304.

21 (b) Reciprocal exemption. The Director may enter into an
22 agreement with the taxing authorities of any state which
23 imposes a tax on or measured by income to provide that
24 compensation paid in such state to residents of this State
25 shall be exempt from such tax; in such case, any compensation
26 paid in this State to residents of such state shall not be

1 allocated to this State. All reciprocal agreements shall be
2 subject to the requirements of Section 2505-575 of the
3 Department of Revenue Law (20 ILCS 2505/2505-575).

4 (c) Cross references.

5 (1) For allocation of amounts received by nonresidents
6 from certain employee trusts, see Section 301(b)(2).

7 (2) For allocation of compensation by residents, see
8 Section 301(a).

9 (Source: P.A. 90-491, eff. 1-1-98; 91-239, eff. 1-1-00.)

10 (35 ILCS 5/601) (from Ch. 120, par. 6-601)

11 Sec. 601. Payment on Due Date of Return.

12 (a) In general. Every taxpayer required to file a return
13 under this Act shall, without assessment, notice or demand, pay
14 any tax due thereon to the Department, at the place fixed for
15 filing, on or before the date fixed for filing such return
16 (determined without regard to any extension of time for filing
17 the return) pursuant to regulations prescribed by the
18 Department. If, however, the due date for payment of a
19 taxpayer's federal income tax liability for a tax year (as
20 provided in the Internal Revenue Code or by Treasury
21 regulation, or as extended by the Internal Revenue Service) is
22 later than the date fixed for filing the taxpayer's Illinois
23 income tax return for that tax year, the Department may, by
24 rule, prescribe a due date for payment that is not later than
25 the due date for payment of the taxpayer's federal income tax

1 liability. For purposes of the Illinois Administrative
2 Procedure Act, the adoption of rules to prescribe a later due
3 date for payment shall be deemed an emergency and necessary for
4 the public interest, safety, and welfare.

5 (b) Amount payable. In making payment as provided in this
6 section there shall remain payable only the balance of such tax
7 remaining due after giving effect to the following:

8 (1) Withheld tax. Any amount withheld during any
9 calendar year pursuant to Article 7 from compensation paid
10 to a taxpayer shall be deemed to have been paid on account
11 of any tax imposed by subsections 201(a) and (b) of this
12 Act on such taxpayer for his taxable year beginning in such
13 calendar year. If more than one taxable year begins in a
14 calendar year, such amount shall be deemed to have been
15 paid on account of such tax for the last taxable year so
16 beginning.

17 (2) Estimated and tentative tax payments. Any amount of
18 estimated tax paid by a taxpayer pursuant to Article 8 for
19 a taxable year shall be deemed to have been paid on account
20 of the tax imposed by this Act for such taxable year.

21 (3) Foreign tax. The aggregate amount of tax which is
22 imposed upon or measured by income and which is paid by a
23 resident for a taxable year to another state or states on
24 income which is also subject to the tax imposed by
25 subsections 201(a) and (b) of this Act shall be credited
26 against the tax imposed by subsections 201(a) and (b)

1 otherwise due under this Act for such taxable year. For
2 taxable years ending prior to December 31, 2009, the
3 aggregate credit provided under this paragraph shall not
4 exceed that amount which bears the same ratio to the tax
5 imposed by subsections 201(a) and (b) otherwise due under
6 this Act as the amount of the taxpayer's base income
7 subject to tax both by such other state or states and by
8 this State bears to his total base income subject to tax by
9 this State for the taxable year. For taxable years ending
10 on or after December 31, 2009, the credit provided under
11 this paragraph for tax paid to other states shall not
12 exceed that amount which bears the same ratio to the tax
13 imposed by subsections 201(a) and (b) otherwise due under
14 this Act as the amount of the taxpayer's base income that
15 would be allocated or apportioned to other states if all
16 other states had adopted the provisions in Article 3 of
17 this Act (other than the provisions of paragraph (4) of
18 subsection (a) of Section 302 and the 30-day threshold set
19 forth in subsection (a) of Section 302) bears to the
20 taxpayer's total base income subject to tax by this State
21 for the taxable year. The credit provided by this paragraph
22 shall not be allowed if any creditable tax was deducted in
23 determining base income for the taxable year. Any person
24 claiming such credit shall attach a statement in support
25 thereof and shall notify the Director of any refund or
26 reductions in the amount of tax claimed as a credit

1 hereunder all in such manner and at such time as the
2 Department shall by regulations prescribe.

3 (4) Accumulation and capital gain distributions. If
4 the net income of a taxpayer includes amounts included in
5 his base income by reason of Section 667 of the Internal
6 Revenue Code (relating to accumulation and capital gain
7 distributions by a trust, respectively), the tax imposed on
8 such taxpayer by this Act shall be credited with his pro
9 rata portion of the taxes imposed by this Act on such trust
10 for preceding taxable years which would not have been
11 payable for such preceding years if the trust had in fact
12 made distributions to its beneficiaries at the times and in
13 the amounts specified in Sections 666 and 669 of the
14 Internal Revenue Code. The credit provided by this
15 paragraph shall not reduce the tax otherwise due from the
16 taxpayer to an amount less than that which would be due if
17 the amounts included by reason of Section 667 of the
18 Internal Revenue Code were excluded from his or her base
19 income.

20 (c) Cross reference. For application against tax due of
21 overpayments of tax for a prior year, see Section 909.

22 (Source: P.A. 96-468, eff. 8-14-09; 97-507, eff. 8-23-11.)

23 (35 ILCS 5/701) (from Ch. 120, par. 7-701)

24 Sec. 701. Requirement and Amount of Withholding.

25 (a) In General. Every employer maintaining an office or

1 transacting business within this State and required under the
2 provisions of the Internal Revenue Code to withhold a tax on:

3 (1) for taxable years beginning prior to January 1,
4 2018, compensation paid in this State (as determined under
5 Section 304(a)(2)(B) to an individual; ~~or~~

6 (1.1) for taxable years beginning on or after January
7 1, 2018, compensation allocated to this State under Section
8 302 of this Code; or

9 (2) for all taxable years, payments described in
10 subsection (b) shall deduct and withhold from such
11 compensation for each payroll period (as defined in Section
12 3401 of the Internal Revenue Code) an amount equal to the
13 amount by which such individual's compensation exceeds the
14 proportionate part of this withholding exemption (computed
15 as provided in Section 702) attributable to the payroll
16 period for which such compensation is payable multiplied by
17 a percentage equal to the percentage tax rate for
18 individuals provided in subsection (b) of Section 201.

19 (a-5) Withholding for nonresident employees. For taxable
20 years beginning on or after January 1, 2018, for the purposes
21 of determining compensation allocated to this State under
22 subsection (a) of Section 302 of this Code:

23 (1) an employer may rely on an employee's annual
24 determination of the time expected to be spent by such
25 employee in the states in which the employee will perform
26 duties absent:

1 (A) the employer's actual knowledge of fraud by the
2 employee in making the determination; or

3 (B) collusion between the employer and the
4 employee to evade tax;

5 (2) except as provided in paragraph (3), if records are
6 maintained by an employer in the regular course of business
7 that record the location of an employee, those records
8 shall not preclude an employer's ability to rely on an
9 employee's determination under paragraph (1); and

10 (3) notwithstanding paragraph (2), if an employer, in
11 its sole discretion, maintains a time and attendance system
12 that tracks where the employee performs duties on a daily
13 basis, data from the time and attendance system shall be
14 used instead of the employee's determination under
15 paragraph (1). For purposes of this paragraph, the term
16 "time and attendance system" means a system in which:

17 (A) the employee is required on a contemporaneous
18 basis to record his or her work location for every day
19 worked outside of the State in which the employee's
20 employment duties are primarily performed; and

21 (B) the system is designed to allow the employer to
22 allocate the employee's wages for income tax purposes
23 among all states in which the employee performs
24 employment duties for such employer.

25 (b) Payment to Residents. Any payment (including
26 compensation, but not including a payment from which

1 withholding is required under Section 710 of this Act) to a
2 resident by a payor maintaining an office or transacting
3 business within this State (including any agency, officer, or
4 employee of this State or of any political subdivision of this
5 State) and on which withholding of tax is required under the
6 provisions of the Internal Revenue Code shall be deemed to be
7 compensation paid in this State by an employer to an employee
8 for the purposes of Article 7 and Section 601(b)(1) to the
9 extent such payment is included in the recipient's base income
10 and not subjected to withholding by another state.
11 Notwithstanding any other provision to the contrary, no amount
12 shall be withheld from unemployment insurance benefit payments
13 made to an individual pursuant to the Unemployment Insurance
14 Act unless the individual has voluntarily elected the
15 withholding pursuant to rules promulgated by the Director of
16 Employment Security.

17 (c) Special Definitions. Withholding shall be considered
18 required under the provisions of the Internal Revenue Code to
19 the extent the Internal Revenue Code either requires
20 withholding or allows for voluntary withholding the payor and
21 recipient have entered into such a voluntary withholding
22 agreement. For the purposes of Article 7 and Section 1002(c)
23 the term "employer" includes any payor who is required to
24 withhold tax pursuant to this Section.

25 (d) Reciprocal Exemption. The Director may enter into an
26 agreement with the taxing authorities of any state which

1 imposes a tax on or measured by income to provide that
2 compensation paid in such state to residents of this State
3 shall be exempt from withholding of such tax; in such case, any
4 compensation paid in this State to residents of such state
5 shall be exempt from withholding. All reciprocal agreements
6 shall be subject to the requirements of Section 2505-575 of the
7 Department of Revenue Law (20 ILCS 2505/2505-575).

8 (e) Notwithstanding subsection (a)(2) of this Section, no
9 withholding is required on payments for which withholding is
10 required under Section 3405 or 3406 of the Internal Revenue
11 Code.

12 (Source: P.A. 97-507, eff. 8-23-11; 98-496, eff. 1-1-14.)".