



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB1918

Introduced 2/26/2021, by Sen. Julie A. Morrison

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Provides for a credit against withholding taxes in an amount equal to the wages or salary paid by a private employer to an Illinois employee while the employee is on organ donation leave if the employer grants all of its employees the option of taking a paid leave of absence of at least 30 days for the purpose of serving as an organ donor or bone marrow donor. Provides that the credit may not exceed \$1,000 for each employee who takes organ donation leave. Provides that such a leave of absence must be taken without loss of pay, vacation time, compensatory time, personal days, or sick time for at least the first 30 days of the leave of absence. Provides that the credit applies for reporting periods beginning on or after January 1, 2021. Effective immediately.

LRB102 11511 HLH 16845 b

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  
5 changing Section 704A as follows:

6 (35 ILCS 5/704A)

7 Sec. 704A. Employer's return and payment of tax withheld.

8 (a) In general, every employer who deducts and withholds  
9 or is required to deduct and withhold tax under this Act on or  
10 after January 1, 2008 shall make those payments and returns as  
11 provided in this Section.

12 (b) Returns. Every employer shall, in the form and manner  
13 required by the Department, make returns with respect to taxes  
14 withheld or required to be withheld under this Article 7 for  
15 each quarter beginning on or after January 1, 2008, on or  
16 before the last day of the first month following the close of  
17 that quarter.

18 (c) Payments. With respect to amounts withheld or required  
19 to be withheld on or after January 1, 2008:

20 (1) Semi-weekly payments. For each calendar year, each  
21 employer who withheld or was required to withhold more  
22 than \$12,000 during the one-year period ending on June 30  
23 of the immediately preceding calendar year, payment must

1 be made:

2 (A) on or before each Friday of the calendar year,  
3 for taxes withheld or required to be withheld on the  
4 immediately preceding Saturday, Sunday, Monday, or  
5 Tuesday;

6 (B) on or before each Wednesday of the calendar  
7 year, for taxes withheld or required to be withheld on  
8 the immediately preceding Wednesday, Thursday, or  
9 Friday.

10 Beginning with calendar year 2011, payments made under  
11 this paragraph (1) of subsection (c) must be made by  
12 electronic funds transfer.

13 (2) Semi-weekly payments. Any employer who withholds  
14 or is required to withhold more than \$12,000 in any  
15 quarter of a calendar year is required to make payments on  
16 the dates set forth under item (1) of this subsection (c)  
17 for each remaining quarter of that calendar year and for  
18 the subsequent calendar year.

19 (3) Monthly payments. Each employer, other than an  
20 employer described in items (1) or (2) of this subsection,  
21 shall pay to the Department, on or before the 15th day of  
22 each month the taxes withheld or required to be withheld  
23 during the immediately preceding month.

24 (4) Payments with returns. Each employer shall pay to  
25 the Department, on or before the due date for each return  
26 required to be filed under this Section, any tax withheld

1 or required to be withheld during the period for which the  
2 return is due and not previously paid to the Department.

3 (d) Regulatory authority. The Department may, by rule:

4 (1) Permit employers, in lieu of the requirements of  
5 subsections (b) and (c), to file annual returns due on or  
6 before January 31 of the year for taxes withheld or  
7 required to be withheld during the previous calendar year  
8 and, if the aggregate amounts required to be withheld by  
9 the employer under this Article 7 (other than amounts  
10 required to be withheld under Section 709.5) do not exceed  
11 \$1,000 for the previous calendar year, to pay the taxes  
12 required to be shown on each such return no later than the  
13 due date for such return.

14 (2) Provide that any payment required to be made under  
15 subsection (c)(1) or (c)(2) is deemed to be timely to the  
16 extent paid by electronic funds transfer on or before the  
17 due date for deposit of federal income taxes withheld  
18 from, or federal employment taxes due with respect to, the  
19 wages from which the Illinois taxes were withheld.

20 (3) Designate one or more depositories to which  
21 payment of taxes required to be withheld under this  
22 Article 7 must be paid by some or all employers.

23 (4) Increase the threshold dollar amounts at which  
24 employers are required to make semi-weekly payments under  
25 subsection (c)(1) or (c)(2).

26 (e) Annual return and payment. Every employer who deducts

1 and withholds or is required to deduct and withhold tax from a  
2 person engaged in domestic service employment, as that term is  
3 defined in Section 3510 of the Internal Revenue Code, may  
4 comply with the requirements of this Section with respect to  
5 such employees by filing an annual return and paying the taxes  
6 required to be deducted and withheld on or before the 15th day  
7 of the fourth month following the close of the employer's  
8 taxable year. The Department may allow the employer's return  
9 to be submitted with the employer's individual income tax  
10 return or to be submitted with a return due from the employer  
11 under Section 1400.2 of the Unemployment Insurance Act.

12 (f) Magnetic media and electronic filing. With respect to  
13 taxes withheld in calendar years prior to 2017, any W-2 Form  
14 that, under the Internal Revenue Code and regulations  
15 promulgated thereunder, is required to be submitted to the  
16 Internal Revenue Service on magnetic media or electronically  
17 must also be submitted to the Department on magnetic media or  
18 electronically for Illinois purposes, if required by the  
19 Department.

20 With respect to taxes withheld in 2017 and subsequent  
21 calendar years, the Department may, by rule, require that any  
22 return (including any amended return) under this Section and  
23 any W-2 Form that is required to be submitted to the Department  
24 must be submitted on magnetic media or electronically.

25 The due date for submitting W-2 Forms shall be as  
26 prescribed by the Department by rule.

1 (g) For amounts deducted or withheld after December 31,  
2 2009, a taxpayer who makes an election under subsection (f) of  
3 Section 5-15 of the Economic Development for a Growing Economy  
4 Tax Credit Act for a taxable year shall be allowed a credit  
5 against payments due under this Section for amounts withheld  
6 during the first calendar year beginning after the end of that  
7 taxable year equal to the amount of the credit for the  
8 incremental income tax attributable to full-time employees of  
9 the taxpayer awarded to the taxpayer by the Department of  
10 Commerce and Economic Opportunity under the Economic  
11 Development for a Growing Economy Tax Credit Act for the  
12 taxable year and credits not previously claimed and allowed to  
13 be carried forward under Section 211(4) of this Act as  
14 provided in subsection (f) of Section 5-15 of the Economic  
15 Development for a Growing Economy Tax Credit Act. The credit  
16 or credits may not reduce the taxpayer's obligation for any  
17 payment due under this Section to less than zero. If the amount  
18 of the credit or credits exceeds the total payments due under  
19 this Section with respect to amounts withheld during the  
20 calendar year, the excess may be carried forward and applied  
21 against the taxpayer's liability under this Section in the  
22 succeeding calendar years as allowed to be carried forward  
23 under paragraph (4) of Section 211 of this Act. The credit or  
24 credits shall be applied to the earliest year for which there  
25 is a tax liability. If there are credits from more than one  
26 taxable year that are available to offset a liability, the

1 earlier credit shall be applied first. Each employer who  
2 deducts and withholds or is required to deduct and withhold  
3 tax under this Act and who retains income tax withholdings  
4 under subsection (f) of Section 5-15 of the Economic  
5 Development for a Growing Economy Tax Credit Act must make a  
6 return with respect to such taxes and retained amounts in the  
7 form and manner that the Department, by rule, requires and pay  
8 to the Department or to a depository designated by the  
9 Department those withheld taxes not retained by the taxpayer.  
10 For purposes of this subsection (g), the term taxpayer shall  
11 include taxpayer and members of the taxpayer's unitary  
12 business group as defined under paragraph (27) of subsection  
13 (a) of Section 1501 of this Act. This Section is exempt from  
14 the provisions of Section 250 of this Act. No credit awarded  
15 under the Economic Development for a Growing Economy Tax  
16 Credit Act for agreements entered into on or after January 1,  
17 2015 may be credited against payments due under this Section.

18 (h) An employer may claim a credit against payments due  
19 under this Section for amounts withheld during the first  
20 calendar year ending after the date on which a tax credit  
21 certificate was issued under Section 35 of the Small Business  
22 Job Creation Tax Credit Act. The credit shall be equal to the  
23 amount shown on the certificate, but may not reduce the  
24 taxpayer's obligation for any payment due under this Section  
25 to less than zero. If the amount of the credit exceeds the  
26 total payments due under this Section with respect to amounts

1 withheld during the calendar year, the excess may be carried  
2 forward and applied against the taxpayer's liability under  
3 this Section in the 5 succeeding calendar years. The credit  
4 shall be applied to the earliest year for which there is a tax  
5 liability. If there are credits from more than one calendar  
6 year that are available to offset a liability, the earlier  
7 credit shall be applied first. This Section is exempt from the  
8 provisions of Section 250 of this Act.

9 (i) Each employer with 50 or fewer full-time equivalent  
10 employees during the reporting period may claim a credit  
11 against the payments due under this Section for each qualified  
12 employee in an amount equal to the maximum credit allowable.  
13 The credit may be taken against payments due for reporting  
14 periods that begin on or after January 1, 2020, and end on or  
15 before December 31, 2027. An employer may not claim a credit  
16 for an employee who has worked fewer than 90 consecutive days  
17 immediately preceding the reporting period; however, such  
18 credits may accrue during that 90-day period and be claimed  
19 against payments under this Section for future reporting  
20 periods after the employee has worked for the employer at  
21 least 90 consecutive days. In no event may the credit exceed  
22 the employer's liability for the reporting period. Each  
23 employer who deducts and withholds or is required to deduct  
24 and withhold tax under this Act and who retains income tax  
25 withholdings under this subsection must make a return with  
26 respect to such taxes and retained amounts in the form and



1 manner that the Department, by rule, requires and pay to the  
2 Department or to a depository designated by the Department  
3 those withheld taxes not retained by the employer.

4 For each reporting period, the employer may not claim a  
5 credit or credits for more employees than the number of  
6 employees making less than the minimum or reduced wage for the  
7 current calendar year during the last reporting period of the  
8 preceding calendar year. Notwithstanding any other provision  
9 of this subsection, an employer shall not be eligible for  
10 credits for a reporting period unless the average wage paid by  
11 the employer per employee for all employees making less than  
12 \$55,000 during the reporting period is greater than the  
13 average wage paid by the employer per employee for all  
14 employees making less than \$55,000 during the same reporting  
15 period of the prior calendar year.

16 For purposes of this subsection (i):

17 "Compensation paid in Illinois" has the meaning ascribed  
18 to that term under Section 304(a)(2)(B) of this Act.

19 "Employer" and "employee" have the meaning ascribed to  
20 those terms in the Minimum Wage Law, except that "employee"  
21 also includes employees who work for an employer with fewer  
22 than 4 employees. Employers that operate more than one  
23 establishment pursuant to a franchise agreement or that  
24 constitute members of a unitary business group shall aggregate  
25 their employees for purposes of determining eligibility for  
26 the credit.

1 "Full-time equivalent employees" means the ratio of the  
2 number of paid hours during the reporting period and the  
3 number of working hours in that period.

4 "Maximum credit" means the percentage listed below of the  
5 difference between the amount of compensation paid in Illinois  
6 to employees who are paid not more than the required minimum  
7 wage reduced by the amount of compensation paid in Illinois to  
8 employees who were paid less than the current required minimum  
9 wage during the reporting period prior to each increase in the  
10 required minimum wage on January 1. If an employer pays an  
11 employee more than the required minimum wage and that employee  
12 previously earned less than the required minimum wage, the  
13 employer may include the portion that does not exceed the  
14 required minimum wage as compensation paid in Illinois to  
15 employees who are paid not more than the required minimum  
16 wage.

17 (1) 25% for reporting periods beginning on or after  
18 January 1, 2020 and ending on or before December 31, 2020;

19 (2) 21% for reporting periods beginning on or after  
20 January 1, 2021 and ending on or before December 31, 2021;

21 (3) 17% for reporting periods beginning on or after  
22 January 1, 2022 and ending on or before December 31, 2022;

23 (4) 13% for reporting periods beginning on or after  
24 January 1, 2023 and ending on or before December 31, 2023;

25 (5) 9% for reporting periods beginning on or after  
26 January 1, 2024 and ending on or before December 31, 2024;

1           (6) 5% for reporting periods beginning on or after  
2           January 1, 2025 and ending on or before December 31, 2025.

3           The amount computed under this subsection may continue to  
4           be claimed for reporting periods beginning on or after January  
5           1, 2026 and:

6           (A) ending on or before December 31, 2026 for  
7           employers with more than 5 employees; or

8           (B) ending on or before December 31, 2027 for  
9           employers with no more than 5 employees.

10          "Qualified employee" means an employee who is paid not  
11          more than the required minimum wage and has an average wage  
12          paid per hour by the employer during the reporting period  
13          equal to or greater than his or her average wage paid per hour  
14          by the employer during each reporting period for the  
15          immediately preceding 12 months. A new qualified employee is  
16          deemed to have earned the required minimum wage in the  
17          preceding reporting period.

18          "Reporting period" means the quarter for which a return is  
19          required to be filed under subsection (b) of this Section.

20          (j) For reporting periods beginning on or after January 1,  
21          2021, if a private employer grants all of its employees the  
22          option of taking a paid leave of absence of at least 30 days  
23          for the purpose of serving as an organ donor or bone marrow  
24          donor, then the private employer may take a credit against the  
25          payments due under this Section in an amount equal to the  
26          amount withheld under this Section with respect to wages paid

1 while the employee is on organ donation leave, not to exceed  
2 \$1,000 in withholdings for each employee who takes organ  
3 donation leave. To be eligible for the credit, such a leave of  
4 absence must be taken without loss of pay, vacation time,  
5 compensatory time, personal days, or sick time for at least  
6 the first 30 days of the leave of absence. The private employer  
7 shall adopt rules governing organ donation leave, including  
8 rules that (i) establish conditions and procedures for  
9 requesting and approving leave and (ii) require medical  
10 documentation of the proposed organ or bone marrow donation  
11 before leave is approved by the private employer. A private  
12 employer must provide, in the manner required by the  
13 Department, documentation from the employee's medical  
14 provider, which the private employer receives from the  
15 employee, that verifies the employee's organ donation. The  
16 private employer must also provide, in the manner required by  
17 the Department, documentation that shows that a qualifying  
18 organ donor leave policy was in place and offered to all  
19 qualifying employees at the time the leave was taken. For the  
20 private employer to receive the tax credit, the employee  
21 taking organ donor leave must allow for the applicable medical  
22 records to be disclosed to the Department. If the private  
23 employer cannot provide the required documentation to the  
24 Department, then the private employer is ineligible for the  
25 credit under this Section. A private employer must also  
26 provide, in the form required by the Department, any

1 additional documentation or information required by the  
2 Department to administer the credit under this Section. The  
3 credit under this subsection (j) shall be taken within one  
4 year after the date upon which the organ donation leave  
5 begins. If the leave taken spans into a second tax year, the  
6 employer qualifies for the allowable credit in the later of  
7 the 2 years. If the amount of credit exceeds the tax liability  
8 for the year, the excess may be carried and applied to the tax  
9 liability for the 3 taxable years following the excess credit  
10 year. The tax credit shall be applied to the earliest year for  
11 which there is a tax liability. If there are credits for more  
12 than one year that are available to offset liability, the  
13 earlier credit shall be applied first.

14 Nothing in this subsection (j) prohibits a private  
15 employer from providing an unpaid leave of absence to its  
16 employees for the purpose of serving as an organ donor or bone  
17 marrow donor; however, if the employer's policy provides for  
18 fewer than 30 days of paid leave for organ or bone marrow  
19 donation, then the employer shall not be eligible for the  
20 credit under this Section.

21 As used in this subsection (j):

22 "Organ" means any biological tissue of the human body  
23 that may be donated by a living donor, including, but not  
24 limited to, the kidney, liver, lung, pancreas, intestine,  
25 bone, skin, or any subpart of those organs.

26 "Organ donor" means a person from whose body an organ

1 is taken to be transferred to the body of another person.

2 "Private employer" means a sole proprietorship,  
3 corporation, partnership, limited liability company, or  
4 other entity with one or more employees. "Private  
5 employer" does not include a municipality, county, State  
6 agency, or other public employer.

7 This subsection (j) is exempt from the provisions of  
8 Section 250 of this Act.

9 (Source: P.A. 100-303, eff. 8-24-17; 100-511, eff. 9-18-17;  
10 100-863, eff. 8-14-18; 101-1, eff. 2-19-19.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.