

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 Corporate Accountability for Tax
5 Expenditures Act is amended by changing Section 25 as follows:

6 (20 ILCS 715/25)

7 Sec. 25. Recapture.

8 (a) All development assistance agreements shall contain,
9 at a minimum, the following recapture provisions:

10 (1) The recipient must (i) make the level of capital
11 investment in the economic development project specified
12 in the development assistance agreement; (ii) create or
13 retain, or both, the requisite number of jobs, paying not
14 less than specified wages for the created and retained
15 jobs, within and for the duration of the time period
16 specified in the legislation authorizing, or the
17 administrative rules implementing, the development
18 assistance programs and the development assistance
19 agreement.

20 (2) If the recipient fails to create or retain the
21 requisite number of jobs within and for the time period
22 specified, in the legislation authorizing, or the
23 administrative rules implementing, the development

1 assistance programs and the development assistance
2 agreement, the recipient shall be deemed to no longer
3 qualify for the State economic assistance and the
4 applicable recapture provisions shall take effect.

5 (3) If the recipient receives State economic
6 assistance in the form of a High Impact Business
7 designation pursuant to Section 5.5 of the Illinois
8 Enterprise Zone Act and the business receives the benefit
9 of the exemption authorized under Section 51 of the
10 Retailers' Occupation Tax Act (for the sale of building
11 materials incorporated into a High Impact Business
12 location) or the utility tax exemption authorized under
13 Section 9-222.1A of the Public Utilities Act and the
14 recipient fails to create or retain the requisite number
15 of jobs, as determined by the legislation authorizing the
16 development assistance programs or the administrative
17 rules implementing such legislation, or both, within the
18 requisite period of time, the recipient shall be required
19 to pay to the State the full amount of both the State tax
20 exemption and the utility tax exemption that it received
21 as a result of the High Impact Business designation.

22 (4) If the recipient receives a grant or loan pursuant
23 to the Large Business Development Program, the Business
24 Development Public Infrastructure Program, or the
25 Industrial Training Program and the recipient fails to
26 create or retain the requisite number of jobs for the

1 requisite time period, as provided in the legislation
2 authorizing the development assistance programs or the
3 administrative rules implementing such legislation, or
4 both, or in the development assistance agreement, the
5 recipient shall be required to repay to the State a pro
6 rata amount of the grant; that amount shall reflect the
7 percentage of the deficiency between the requisite number
8 of jobs to be created or retained by the recipient and the
9 actual number of such jobs in existence as of the date the
10 Department determines the recipient is in breach of the
11 job creation or retention covenants contained in the
12 development assistance agreement. If the recipient of
13 development assistance under the Large Business
14 Development Program, the Business Development Public
15 Infrastructure Program, or the Industrial Training Program
16 ceases operations at the specific project site, during the
17 5-year period commencing on the date of assistance, the
18 recipient shall be required to repay the entire amount of
19 the grant or to accelerate repayment of the loan back to
20 the State.

21 (5) Except as provided in paragraph (5.1), if ~~if~~ the
22 recipient receives a tax credit under the Economic
23 Development for a Growing Economy tax credit program, the
24 development assistance agreement must provide that (i) if
25 the number of new or retained employees falls below the
26 requisite number set forth in the development assistance

1 agreement, the allowance of the credit shall be
2 automatically suspended until the number of new and
3 retained employees equals or exceeds the requisite number
4 in the development assistance agreement; (ii) if the
5 recipient discontinues operations at the specific project
6 site during the 5-year period after the beginning of the
7 first tax year for which the Department issues a tax
8 credit certificate, the recipient shall forfeit all
9 credits taken by the recipient during such 5-year period;
10 and (iii) in the event of a revocation or suspension of the
11 credit, the Department shall contact the Director of
12 Revenue to initiate proceedings against the recipient to
13 recover wrongfully exempted Illinois State income taxes
14 and the recipient shall promptly repay to the Department
15 of Revenue any wrongfully exempted Illinois State income
16 taxes. The forfeited amount of credits shall be deemed
17 assessed on the date the Department contacts the
18 Department of Revenue and the recipient shall promptly
19 repay to the Department of Revenue any wrongfully exempted
20 Illinois State income taxes.

21 (5.1) For taxable years that begin on or after January
22 1, 2020 and begin prior to January 1, 2022, credits
23 awarded under the Economic Development for a Growing
24 Economy tax credit program shall not be revoked or
25 suspended as a result of the recipient's failure to meet
26 the requirements for new or retained employees if that

1 failure is due to a direct and substantial hardship caused
2 by the COVID-19 pandemic and the Taxpayer maintains job
3 creation and retention at the level of 85% of the
4 Agreement requirements. For the Department to grant relief
5 under this paragraph (5.1), proof of a direct and
6 substantial hardship caused by the COVID-19 pandemic must
7 be submitted to the Department during the annual
8 certificate of verification issuance process.

9 (b) The Director may elect to waive enforcement of any
10 contractual provision arising out of the development
11 assistance agreement required by this Act based on a finding
12 that the waiver is necessary to avert an imminent and
13 demonstrable hardship to the recipient that may result in such
14 recipient's insolvency or discharge of workers. If a waiver is
15 granted, the recipient must agree to a contractual
16 modification, including recapture provisions, to the
17 development assistance agreement. The existence of any waiver
18 granted pursuant to this subsection (b), the date of the
19 granting of such waiver, and a brief summary of the reasons
20 supporting the granting of such waiver shall be disclosed
21 consistent with the provisions of Section 25 of this Act.

22 (b-5) The Department shall post, on its website, (i) the
23 identity of each recipient from whom amounts were recaptured
24 under this Section on or after the effective date of this
25 amendatory Act of the 97th General Assembly, (ii) the date of
26 the recapture, (iii) a summary of the reasons supporting the

1 recapture, and (iv) the amount recaptured from those
2 recipients.

3 (c) Beginning June 1, 2004, the Department shall annually
4 compile a report on the outcomes and effectiveness of
5 recapture provisions by program, including but not limited to:
6 (i) the total number of companies that receive development
7 assistance as defined in this Act; (ii) the total number of
8 recipients in violation of development agreements with the
9 Department; (iii) the total number of completed recapture
10 efforts; (iv) the total number of recapture efforts initiated;
11 and (v) the number of waivers granted. This report shall be
12 disclosed consistent with the provisions of Section 20 of this
13 Act.

14 (d) For the purposes of this Act, recapture provisions do
15 not include the Illinois Department of Transportation Economic
16 Development Program, any grants under the Industrial Training
17 Program that are not given as an incentive to a recipient
18 business organization, or any successor programs as described
19 in the term "development assistance" in Section 5 of this Act.

20 (Source: P.A. 97-2, eff. 5-6-11; 97-721, eff. 6-29-12; 98-109,
21 eff. 7-25-13; 98-463, eff. 8-16-13.)

22 Section 10. The Economic Development for a Growing Economy
23 Tax Credit Act is amended by changing Section 5-55 as follows:

24 (35 ILCS 10/5-55)

1 Sec. 5-55. Certificate of verification; submission to the
2 Department of Revenue. A Taxpayer claiming a Credit under this
3 Act shall submit to the Department of Revenue a copy of the
4 Director's certificate of verification under this Act for the
5 taxable year. However, failure to submit a copy of the
6 certificate with the Taxpayer's tax return shall not
7 invalidate a claim for a Credit.

8 For a Taxpayer to be eligible for a certificate of
9 verification, the Taxpayer shall provide proof as required by
10 the Department prior to the end of each calendar year,
11 including, but not limited to, attestation by the Taxpayer
12 that:

13 (1) The project has substantially achieved the level
14 of new full-time jobs specified in its Agreement.

15 (2) The project has substantially achieved the level
16 of annual payroll in Illinois specified in its Agreement.

17 (3) The project has substantially achieved the level
18 of capital investment in Illinois specified in its
19 Agreement.

20 (4) For taxable years that begin on or after January
21 1, 2020 and begin prior to January 1, 2022, the Department
22 shall not find a Taxpayer out of compliance with an
23 Agreement on the basis of a failure to maintain the job
24 creation or retention requirements of an Agreement so long
25 as the level of job creation or retention is maintained at
26 85% of the Agreement requirements during the modification

1 period and the Taxpayer demonstrates to the Department, to
2 the Department's satisfaction, that the failure to
3 maintain the contractually required job creation and
4 retention levels is due to a direct and substantial
5 hardship caused by the COVID-19 pandemic. The Department
6 shall require proof of a direct and substantial hardship
7 caused by the COVID-19 pandemic; that determination shall
8 be left to the sole and absolute discretion of the
9 Department.

10 (Source: P.A. 91-476, eff. 8-11-99.)

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