

SB3457



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3457

Introduced 1/18/2022, by Sen. Brian W. Stewart

SYNOPSIS AS INTRODUCED:

35 ILCS 5/232 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.

LRB102 22410 HLH 31550 b

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
5 adding Section 232 as follows:

6 (35 ILCS 5/232 new)

7 Sec. 232. Small business bonus investment credit.

8 (a) For tax years beginning on or after January 1, 2023,
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
18 and distributive share of income under Sections 702 and 704
19 and 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
9 and 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
2 additional taxes required by the reduction of the credit
3 within 60 days after the notice of the reduction. No
4 underpayment penalty or interest shall accrue pursuant to the
5 Uniform Penalty and Interest Act on such additional tax so
6 long as the additional tax is paid within 60 days after the
7 notice of reduction. Nothing in this subsection shall preclude
8 the Department from reducing the amount of credit granted to
9 any taxpayer as a 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 2023.

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

15 Section 10. The Uniform Penalty and Interest Act is
16 amended 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
7 Act of 1995, in the case of any type of tax return required to
8 be filed more frequently than annually, when the failure to
9 file the tax return on or before the date prescribed for filing
10 (including any extensions) is shown to be nonfraudulent and
11 has not occurred in the 2 years immediately preceding the
12 failure to file on the prescribed due date, the penalty
13 imposed by Section 3-3(a) shall be abated.

14 (a-5) This subsection (a-5) is applicable to returns due
15 on and after January 1, 1996 and on or before December 31,
16 2000. A penalty equal to 2% of the tax required to be shown due
17 on a 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
25 address of the taxpayer contained in Department records, an
26 additional penalty amount shall be imposed equal to the

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

1 tax; however, those returns are subject to the penalty set
2 forth in subsection (a-15).

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

13 (b) This subsection is applicable before January 1, 1998.
14 A penalty of 15% 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
23 or 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
2 demand, or a final assessment is issued by the Department.
3 In the case of a final assessment arising following a
4 protest and hearing, the 30-day period shall not begin
5 until all proceedings in court for review of the final
6 assessment have terminated or the period for obtaining a
7 review has expired without proceedings for a review having
8 been instituted. In the case of a notice of tax liability
9 that becomes a final assessment without a protest and
10 hearing, the penalty provided in this paragraph (2) shall
11 be imposed at the expiration of the period provided for
12 the filing of a protest.

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

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

25 (2) the full amount of any tax required to be shown due
26 on a return and which is not shown (penalty for late

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

14 (b-10) This subsection (b-10) is applicable to returns due
15 on and after January 1, 2001 and on or before December 31,
16 2003. A penalty shall be imposed for failure to pay:

17 (1) the tax shown due on a return on or before the due
18 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
23 or nonpayment of admitted liability). The amount of
24 penalty imposed under this subsection (b-10)(1) shall be
25 2% of any amount that is paid no later than 30 days after
26 the due date, 5% of any amount that is paid later than 30

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

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

1 subsection (b-10) (2) shall be imposed at the expiration of
2 the period provided for the filing of a protest.

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

26 (b-20) This subsection (b-20) is applicable to returns due

1 on and after January 1, 2005.

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

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

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

25 (3) The penalty imposed under this subsection (b-20)
26 shall be deemed assessed at the time the tax upon which the

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

7 (b-25) If the amount of the credit awarded to a taxpayer
8 under Section 232 of the Illinois Income Tax Act is reduced
9 because the claims for credit exceed the maximum aggregate
10 amount of the credit set forth in that Section, then no
11 underpayment penalty or interest shall accrue pursuant to this
12 Act on the additional tax so long as the additional tax is paid
13 within 60 days after the notice of reduction.

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

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

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

1 (b-5) (2) penalty shall be assessed against only the additional
2 tax found to be due.

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

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

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

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

21 (i) If a taxpayer has a tax liability for the taxable
22 period ending after June 30, 1983 and prior to July 1, 2002
23 that is eligible for amnesty under the Tax Delinquency Amnesty
24 Act and the taxpayer fails to satisfy the tax liability during
25 the amnesty period provided for in that Act for that taxable
26 period, then the penalty imposed by the Department under this

1 Section shall be imposed in an amount that is 200% of the
2 amount that would otherwise be imposed under this Section.

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

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

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.