

# SB1809



## 103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1809

Introduced 2/9/2023, by Sen. Sally J. Turner

### SYNOPSIS AS INTRODUCED:

35 ILCS 5/211  
35 ILCS 10/5-45

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that the recipient of a credit under the Act may apply for a certificate of transferability of credit from the Department of Commerce and Economic Opportunity for the amount of the credit not previously claimed. Provides that the transferability certificate may be transferred or sold by the recipient to another Illinois taxpayer. Provides that unused Economic Development for a Growing Economy tax credits may be carried forward for a period of 10 years (currently, 5 years). Makes other changes.

LRB103 28009 HLH 54388 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 changing Section 211 as follows:

6 (35 ILCS 5/211)

7 Sec. 211. Economic Development for a Growing Economy Tax  
8 Credit. For tax years beginning on or after January 1, 1999, a  
9 Taxpayer who has entered into an Agreement (including a New  
10 Construction EDGE Agreement) under the Economic Development  
11 for a Growing Economy Tax Credit Act is entitled to a credit  
12 against the taxes imposed under subsections (a) and (b) of  
13 Section 201 of this Act in an amount to be determined in the  
14 Agreement. If the Taxpayer is a partnership or Subchapter S  
15 corporation, the credit shall be allowed to the partners or  
16 shareholders in accordance with the determination of income  
17 and distributive share of income under Sections 702 and 704  
18 and subchapter S of the Internal Revenue Code. The Department,  
19 in cooperation with the Department of Commerce and Economic  
20 Opportunity, shall prescribe rules to enforce and administer  
21 the provisions of this Section. This Section is exempt from  
22 the provisions of Section 250 of this Act.

23 The credit shall be subject to the conditions set forth in

1 the Agreement and the following limitations:

2 (1) The tax credit shall not exceed the Incremental  
3 Income Tax (as defined in Section 5-5 of the Economic  
4 Development for a Growing Economy Tax Credit Act) with  
5 respect to the project; additionally, the New Construction  
6 EDGE Credit shall not exceed the New Construction EDGE  
7 Incremental Income Tax (as defined in Section 5-5 of the  
8 Economic Development for a Growing Economy Tax Credit  
9 Act).

10 (2) The amount of the credit allowed during the tax  
11 year plus the sum of all amounts allowed in prior years  
12 shall not exceed 100% of the aggregate amount expended by  
13 the Taxpayer during all prior tax years on approved costs  
14 defined by Agreement.

15 (3) The amount of the credit shall be determined on an  
16 annual basis. Except as applied in a carryover year  
17 pursuant to Section 211(4) of this Act, the credit may not  
18 be applied against any State income tax liability in more  
19 than 10 taxable years; provided, however, that (i) an  
20 eligible business certified by the Department of Commerce  
21 and Economic Opportunity under the Corporate Headquarters  
22 Relocation Act may not apply the credit against any of its  
23 State income tax liability in more than 15 taxable years  
24 and (ii) credits allowed to that eligible business are  
25 subject to the conditions and requirements set forth in  
26 Sections 5-35 and 5-45 of the Economic Development for a

1 Growing Economy Tax Credit Act and Section 5-51 as  
2 applicable to New Construction EDGE Credits.

3 (4) The credit may not exceed the amount of taxes  
4 imposed pursuant to subsections (a) and (b) of Section 201  
5 of this Act. Any credit that is unused in the year the  
6 credit is computed may be carried forward and applied to  
7 the tax liability of the 10 ~~5~~ taxable years following the  
8 excess credit year, except as otherwise provided under  
9 paragraph (4.5) of this Section. It is the intent of the  
10 General Assembly that the carry forward period for all  
11 credits that have not expired as of the effective date of  
12 this amendatory Act of the 103rd General Assembly shall be  
13 extended to 10 years. The credit shall be applied to the  
14 earliest year for which there is a tax liability. If there  
15 are credits from more than one tax year that are available  
16 to offset a liability, the earlier credit shall be applied  
17 first.

18 (4.5) The Department of Commerce and Economic  
19 Opportunity, in consultation with the Department of  
20 Revenue, shall adopt rules to extend the sunset of any  
21 earned, existing, or unused credit as provided for in  
22 Section 605-1055 of the Department of Commerce and  
23 Economic Opportunity Law of the Civil Administrative Code  
24 of Illinois.

25 (5) No credit shall be allowed with respect to any  
26 Agreement for any taxable year ending after the

1 Noncompliance Date. Upon receiving notification by the  
2 Department of Commerce and Economic Opportunity of the  
3 noncompliance of a Taxpayer with an Agreement, the  
4 Department shall notify the Taxpayer that no credit is  
5 allowed with respect to that Agreement for any taxable  
6 year ending after the Noncompliance Date, as stated in  
7 such notification. If any credit has been allowed with  
8 respect to an Agreement for a taxable year ending after  
9 the Noncompliance Date for that Agreement, any refund paid  
10 to the Taxpayer for that taxable year shall, to the extent  
11 of that credit allowed, be an erroneous refund within the  
12 meaning of Section 912 of this Act.

13 If, during any taxable year, a taxpayer ceases  
14 operations at a project location that is the subject of  
15 that Agreement with the intent to terminate operations in  
16 the State, the tax imposed under subsections (a) and (b)  
17 of Section 201 of this Act for such taxable year shall be  
18 increased by the amount of any credit allowed under the  
19 Agreement for that project location prior to the date the  
20 taxpayer ceases operations.

21 (6) For purposes of this Section, the terms  
22 "Agreement", "Incremental Income Tax", "New Construction  
23 EDGE Agreement", "New Construction EDGE Credit", "New  
24 Construction EDGE Incremental Income Tax", and  
25 "Noncompliance Date" have the same meaning as when used in  
26 the Economic Development for a Growing Economy Tax Credit

1 Act.

2 (Source: P.A. 101-9, eff. 6-5-19; 102-16, eff. 6-17-21;  
3 102-40, eff. 6-25-21; 102-687, eff. 12-17-21.)

4 Section 10. The Economic Development for a Growing Economy  
5 Tax Credit Act is amended by changing Section 5-45 as follows:

6 (35 ILCS 10/5-45)

7 Sec. 5-45. Amount and duration of the credit.

8 (a) The Department shall determine the amount and duration  
9 of the credit awarded under this Act. The duration of the  
10 credit may not exceed 10 taxable years. The credit may be  
11 stated as a percentage of the Incremental Income Tax  
12 attributable to the applicant's project and may include a  
13 fixed dollar limitation.

14 (b) Notwithstanding subsection (a), and except as the  
15 credit may be applied in a carryover year pursuant to Section  
16 211(4) of the Illinois Income Tax Act, the credit may be  
17 applied against the State income tax liability in more than 10  
18 taxable years but not in more than 15 taxable years for an  
19 eligible business that (i) qualifies under this Act and the  
20 Corporate Headquarters Relocation Act and has in fact  
21 undertaken a qualifying project within the time frame  
22 specified by the Department of Commerce and Economic  
23 Opportunity under that Act, and (ii) applies against its State  
24 income tax liability, during the entire 15-year period, no

1 more than 60% of the maximum credit per year that would  
2 otherwise be available under this Act.

3 (b-5) Notwithstanding subsection (a) or (b), a recipient  
4 of a credit may request a certificate of transferability of  
5 credit from the Department for the amount of credit not  
6 previously claimed. A transferability certificate so issued  
7 may be transferred or sold by the recipient to another  
8 Illinois taxpayer. Transferors and sellers shall submit to the  
9 Department of Revenue a notification of any transfer or sale  
10 of tax credits within 30 days after the transfer or sale of  
11 those tax credits. The notification, which shall be in the  
12 form prescribed by the Department, shall include the  
13 transferor's tax credit balance prior to transfer, the credit  
14 certificate number, the identifying number of the EDGE  
15 agreement, the transferor's remaining tax credit balance after  
16 transfer, all tax identification numbers for both transferor  
17 and transferee, the date of transfer, the amount transferred,  
18 a copy of the credit certificate, and any other information  
19 required by the Department of Revenue. The transfer or sale of  
20 the credit does not extend the time in which the credit can be  
21 used. The carry forward period for a credit that is  
22 transferred or sold begins on the date on which the credit was  
23 originally granted by the Department. To the extent the  
24 transferor did not have rights to claim or use the credit at  
25 the time of the transfer or sale, the Department of Revenue  
26 shall either disallow the credit claimed by the transferee or

1 recapture the credit from the transferee through any  
2 collection method authorized by statute. In such case, the  
3 transferee's recourse is against the transferor.

4 (c) Nothing in this Section shall prevent the Department,  
5 in consultation with the Department of Revenue, from adopting  
6 rules to extend the sunset of any earned, existing, and unused  
7 tax credit or credits a taxpayer may be in possession of, as  
8 provided for in Section 605-1070 of the Department of Commerce  
9 and Economic Opportunity Law of the Civil Administrative Code  
10 of Illinois, notwithstanding the carry-forward provisions  
11 pursuant to paragraph (4) of Section 211 of the Illinois  
12 Income Tax Act.

13 (Source: P.A. 102-16, eff. 6-17-21; 102-813, eff. 5-13-22.)