



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5570

Introduced 2/3/2006, by Rep. Kurt M. Granberg

SYNOPSIS AS INTRODUCED:

20 ILCS 715/25
35 ILCS 5/216 new
35 ILCS 10/5-5
35 ILCS 10/5-55
35 ILCS 10/5-60
35 ILCS 10/5-65
35 ILCS 10/5-95 new

Amends the Economic Development for a Growing Economy Tax Credit Act. Creates an alternate credit under the Act for taxpayers who agree to create new full-time employment positions by: (i) locating or expanding operations in a depressed area of the State; or (ii) relocating operations into the State from another state or country. Sets forth requirements for the application and award of the alternate credit. Provides that a taxpayer who has been awarded the alternate credit may sell the credit in the secondary financial markets with 100% of the proceeds of the sale by the applicant to be used to offset the costs of the project. Amends the Corporate Accountability for Tax Expenditures Act and the Illinois Income Tax Act to make corresponding changes. Effective immediately.

LRB094 15719 BDD 54747 b

FISCAL NOTE ACT
MAY APPLY

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
24 assistance programs and the development assistance
25 agreement, the recipient shall be deemed to no longer
26 qualify for the State economic assistance and the
27 applicable recapture provisions shall take effect.

28 (3) If the recipient receives State economic
29 assistance in the form of a High Impact Business
30 designation pursuant to Section 5.5 of the Illinois
31 Enterprise Zone Act and the business receives the benefit
32 of the exemption authorized under Section 51 of the

1 Retailers' Occupation Tax Act (for the sale of building
2 materials incorporated into a High Impact Business
3 location) and the recipient fails to create or retain the
4 requisite number of jobs, as determined by the legislation
5 authorizing the development assistance programs or the
6 administrative rules implementing such legislation, or
7 both, within the requisite period of time, the recipient
8 shall be required to pay to the State the full amount of
9 the State tax exemption that it received as a result of the
10 High Impact Business designation.

11 (4) If the recipient receives a grant or loan pursuant
12 to the Large Business Development Program, the Business
13 Development Public Infrastructure Program, or the
14 Industrial Training Program and the recipient fails to
15 create or retain the requisite number of jobs for the
16 requisite time period, as provided in the legislation
17 authorizing the development assistance programs or the
18 administrative rules implementing such legislation, or
19 both, or in the development assistance agreement, the
20 recipient shall be required to repay to the State a pro
21 rata amount of the grant; that amount shall reflect the
22 percentage of the deficiency between the requisite number
23 of jobs to be created or retained by the recipient and the
24 actual number of such jobs in existence as of the date the
25 Department determines the recipient is in breach of the job
26 creation or retention covenants contained in the
27 development assistance agreement. If the recipient of
28 development assistance under the Large Business
29 Development Program, the Business Development Public
30 Infrastructure Program, or the Industrial Training Program
31 ceases operations at the specific project site, during the
32 5-year period commencing on the date of assistance, the
33 recipient shall be required to repay the entire amount of
34 the grant or to accelerate repayment of the loan back to
35 the State.

36 (5) If the recipient receives a tax credit under the

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

24 (6) If the recipient receives an alternate tax credit
25 under Section 5-95 of the Economic Development for a
26 Growing Economy Tax Credit Act, then the development
27 assistance agreement must provide, in addition to the
28 requirements set forth under item (5), that if the
29 recipient has sold the credit in the secondary financial
30 markets and the recipient defaults on its obligations under
31 the agreement, then the credit shall remain valid in the
32 hands of the purchaser, but the Department shall contact
33 the Director of Revenue to initiate proceedings against the
34 recipient to recover the entire amount of the alternate
35 credit, and the recipient must promptly pay to the
36 Department of Revenue the entire amount of the alternate

1 credit.

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

15 (c) Beginning June 1, 2004, the Department shall annually
16 compile a report on the outcomes and effectiveness of recapture
17 provisions by program, including but not limited to: (i) the
18 total number of companies that receive development assistance
19 as defined in this Act; (ii) the total number of recipients in
20 violation of development agreements with the Department; (iii)
21 the total number of completed recapture efforts; (iv) the total
22 number of recapture efforts initiated; and (v) the number of
23 waivers granted. This report shall be disclosed consistent with
24 the provisions of Section 20 of this Act.

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

31 (Source: P.A. 93-552, eff. 8-20-03.)

32 Section 10. The Illinois Income Tax Act is amended by
33 adding Section 216 as follows:

34 (35 ILCS 5/216 new)

1 Sec. 216. Economic Development for a Growing Economy
2 Alternate Tax Credit.

3 (a) For tax years ending on or after December 31, 2006, a
4 taxpayer who has entered into an agreement under Section 5-95
5 the Economic Development for a Growing Economy Tax Credit Act
6 is entitled to a credit against the taxes imposed under
7 subsections (a) and (b) of Section 201 of this Act in an amount
8 to be determined in the agreement.

9 (b) The credit is subject to the conditions set forth in
10 the agreement and the following limitations:

11 (1) the tax credit may not exceed the Incremental
12 Income Tax (as defined in Section 5-5 of the Economic
13 Development for a Growing Economy Tax Credit Act) with
14 respect to the project;

15 (2) the amount of the credit allowed during the tax
16 year plus the sum of all amounts allowed in prior years may
17 not exceed 100% of the aggregate amount expended by the
18 taxpayer during all prior tax years on approved costs
19 defined by agreement; and

20 (3) the amount of the credit must be determined on an
21 annual basis. Except as applied in a carryover year under
22 subsection (c), the credit may not be applied against any
23 State income tax liability in more than 10 taxable years.

24 (c) The credit may not exceed the amount of taxes imposed
25 pursuant to subsections (a) and (b) of Section 201 of this Act.
26 Any credit that is unused in the year the credit is computed
27 may be carried forward and applied to the tax liability of the
28 5 taxable years following the excess credit year. The credit
29 shall be applied to the earliest year for which there is a tax
30 liability. If there are credits from more than one tax year
31 that are available to offset a liability, the earlier credit
32 must be applied first.

33 (d) Unless the credit has been sold under subsection (g) of
34 Section 5-95 of the Economic Development for a Growing Economy
35 Tax Credit Act, no credit is allowed with respect to any
36 agreement for any taxable year ending after the Noncompliance

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

12 (e) If the taxpayer is a partnership or Subchapter S
13 corporation, the credit shall be allowed to the partners or
14 shareholders in accordance with the determination of income and
15 distributive share of income under Sections 702 and 704 and
16 subchapter S of the Internal Revenue Code.

17 (f) The Department, in cooperation with the Department of
18 Commerce and Economic Opportunity, shall prescribe rules to
19 enforce and administer the provisions of this Section. The
20 rules must include, without limitation, procedures to allow a
21 taxpayer who has been awarded the credit to sell the credit in
22 the secondary financial markets with 100% of the proceeds of
23 the sale by the applicant to be used to offset the costs of the
24 project under the agreement.

25 (g) This Section is exempt from the provisions of Section
26 250 of this Act.

27 Section 15. The Economic Development for a Growing Economy
28 Tax Credit Act is amended by changing Section 5-5, 5-55, 5-60,
29 and 5-65 and by adding Section 5-95 as follows:

30 (35 ILCS 10/5-5)

31 Sec. 5-5. Definitions. As used in this Act:

32 "Agreement" means the Agreement between a Taxpayer and the
33 Department under the provisions of Section 5-50 of this Act.

34 "Applicant" means a Taxpayer that is operating a business

1 located or that the Taxpayer plans to locate within the State
2 of Illinois and that is engaged in interstate or intrastate
3 commerce for the purpose of manufacturing, processing,
4 assembling, warehousing, or distributing products, conducting
5 research and development, providing tourism services, or
6 providing services in interstate commerce, office industries,
7 or agricultural processing, but excluding retail, retail food,
8 health, or professional services. "Applicant" does not include
9 a Taxpayer who closes or substantially reduces an operation at
10 one location in the State and relocates substantially the same
11 operation to another location in the State. This does not
12 prohibit a Taxpayer from expanding its operations at another
13 location in the State, provided that existing operations of a
14 similar nature located within the State are not closed or
15 substantially reduced. This also does not prohibit a Taxpayer
16 from moving its operations from one location in the State to
17 another location in the State for the purpose of expanding the
18 operation provided that the Department determines that
19 expansion cannot reasonably be accommodated within the
20 municipality in which the business is located, or in the case
21 of a business located in an incorporated area of the county,
22 within the county in which the business is located, after
23 conferring with the chief elected official of the municipality
24 or county and taking into consideration any evidence offered by
25 the municipality or county regarding the ability to accommodate
26 expansion within the municipality or county.

27 "Committee" means the Illinois Business Investment
28 Committee created under Section 5-25 of this Act within the
29 Illinois Economic Development Board.

30 "Credit" means the amount agreed to between the Department
31 and Applicant under this Act, but not to exceed the Incremental
32 Income Tax attributable to the Applicant's project. "Credit"
33 does not include the alternate credit set forth under Section
34 5-95.

35 "Department" means the Department of Commerce and Economic
36 Opportunity ~~Community Affairs~~.

1 "Director" means the Director of Commerce and Economic
2 Opportunity ~~Community Affairs~~.

3 "Full-time Employee" means an individual who is employed
4 for consideration for at least 35 hours each week or who
5 renders any other standard of service generally accepted by
6 industry custom or practice as full-time employment.

7 "Incremental Income Tax" means the total amount withheld
8 during the taxable year from the compensation of New Employees
9 under Article 7 of the Illinois Income Tax Act arising from
10 employment at a project that is the subject of an Agreement.

11 "New Employee" means:

12 (a) A Full-time Employee first employed by a Taxpayer
13 in the project that is the subject of an Agreement and who
14 is hired after the Taxpayer enters into the tax credit
15 Agreement.

16 (b) The term "New Employee" does not include:

17 (1) an employee of the Taxpayer who performs a job
18 that was previously performed by another employee, if
19 that job existed for at least 6 months before hiring
20 the employee;

21 (2) an employee of the Taxpayer who was previously
22 employed in Illinois by a Related Member of the
23 Taxpayer and whose employment was shifted to the
24 Taxpayer after the Taxpayer entered into the tax credit
25 Agreement; or

26 (3) a child, grandchild, parent, or spouse, other
27 than a spouse who is legally separated from the
28 individual, of any individual who has a direct or an
29 indirect ownership interest of at least 5% in the
30 profits, capital, or value of the Taxpayer.

31 (c) Notwithstanding paragraph (1) of subsection (b),
32 an employee may be considered a New Employee under the
33 Agreement if the employee performs a job that was
34 previously performed by an employee who was:

35 (1) treated under the Agreement as a New Employee;

36 and

1 (2) promoted by the Taxpayer to another job.

2 (d) Notwithstanding subsection (a), the Department may
3 award Credit to an Applicant with respect to an employee
4 hired prior to the date of the Agreement if:

5 (1) the Applicant is in receipt of a letter from
6 the Department stating an intent to enter into a credit
7 Agreement;

8 (2) the letter described in paragraph (1) is issued
9 by the Department not later than 15 days after the
10 effective date of this Act; and

11 (3) the employee was hired after the date the
12 letter described in paragraph (1) was issued.

13 "Noncompliance Date" means, in the case of a Taxpayer that
14 is not complying with the requirements of the Agreement or the
15 provisions of this Act, the day following the last date upon
16 which the Taxpayer was in compliance with the requirements of
17 the Agreement and the provisions of this Act, as determined by
18 the Director, pursuant to Section 5-65.

19 "Pass Through Entity" means an entity that is exempt from
20 the tax under subsection (b) or (c) of Section 205 of the
21 Illinois Income Tax Act.

22 "Related Member" means a person that, with respect to the
23 Taxpayer during any portion of the taxable year, is any one of
24 the following:

25 (1) An individual stockholder, if the stockholder and
26 the members of the stockholder's family (as defined in
27 Section 318 of the Internal Revenue Code) own directly,
28 indirectly, beneficially, or constructively, in the
29 aggregate, at least 50% of the value of the Taxpayer's
30 outstanding stock.

31 (2) A partnership, estate, or trust and any partner or
32 beneficiary, if the partnership, estate, or trust, and its
33 partners or beneficiaries own directly, indirectly,
34 beneficially, or constructively, in the aggregate, at
35 least 50% of the profits, capital, stock, or value of the
36 Taxpayer.

1 (3) A corporation, and any party related to the
2 corporation in a manner that would require an attribution
3 of stock from the corporation to the party or from the
4 party to the corporation under the attribution rules of
5 Section 318 of the Internal Revenue Code, if the Taxpayer
6 owns directly, indirectly, beneficially, or constructively
7 at least 50% of the value of the corporation's outstanding
8 stock.

9 (4) A corporation and any party related to that
10 corporation in a manner that would require an attribution
11 of stock from the corporation to the party or from the
12 party to the corporation under the attribution rules of
13 Section 318 of the Internal Revenue Code, if the
14 corporation and all such related parties own in the
15 aggregate at least 50% of the profits, capital, stock, or
16 value of the Taxpayer.

17 (5) A person to or from whom there is attribution of
18 stock ownership in accordance with Section 1563(e) of the
19 Internal Revenue Code, except, for purposes of determining
20 whether a person is a Related Member under this paragraph,
21 20% shall be substituted for 5% wherever 5% appears in
22 Section 1563(e) of the Internal Revenue Code.

23 "Taxpayer" means an individual, corporation, partnership,
24 or other entity that has any Illinois Income Tax liability.

25 (Source: P.A. 91-476, eff. 8-11-99; 92-651, eff. 7-11-02;
26 revised 12-6-03.)

27 (35 ILCS 10/5-55)

28 Sec. 5-55. Certificate of verification; submission to the
29 Department of Revenue. A Taxpayer claiming a Credit or
30 alternate credit under this Act shall submit to the Department
31 of Revenue a copy of the Director's certificate of verification
32 under this Act for the taxable year. However, failure to submit
33 a copy of the certificate with the Taxpayer's tax return shall
34 not invalidate a claim for a Credit or alternate credit.

35 For a Taxpayer to be eligible for a certificate of

1 verification, the Taxpayer shall provide proof as required by
2 the Department prior to the end of each calendar year,
3 including, but not limited to, attestation by the Taxpayer
4 that:

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

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

9 (3) The project has substantially achieved the level of
10 capital investment in Illinois specified in its Agreement.

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

12 (35 ILCS 10/5-60)

13 Sec. 5-60. Pass through entity.

14 (a) The shareholders or partners of a Taxpayer that is a
15 Pass Through Entity shall be entitled to the Credit or
16 alternate credit allowed under the Agreement.

17 (b) The Credit or alternate credit provided under
18 subsection (a) is in addition to any Credit or alternate credit
19 to which a shareholder or partner is otherwise entitled under a
20 separate Agreement under this Act. A Pass Through Entity and a
21 shareholder or partner of the Pass Through Entity may not claim
22 more than one Credit or alternate credit under the same
23 Agreement.

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

25 (35 ILCS 10/5-65)

26 Sec. 5-65. Noncompliance; notice; assessment. If the
27 Director determines that a Taxpayer who has received a Credit
28 or alternate credit under this Act is not complying with the
29 requirements of the Agreement or all of the provisions of this
30 Act, the Director shall provide notice to the Taxpayer of the
31 alleged noncompliance, and allow the Taxpayer a hearing under
32 the provisions of the Illinois Administrative Procedure Act.
33 If, after such notice and any hearing, the Director determines
34 that a noncompliance exists, the Director shall issue to the

1 Department of Revenue notice to that effect, stating the
2 Noncompliance Date.

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

4 (35 ILCS 10/5-95 new)

5 Sec. 5-95. Alternate credit.

6 (a) For taxable years ending on or after December 31, 2006,
7 each taxpayer who has entered into an agreement with the
8 Department under this Section is entitled to a credit against
9 the tax imposed under subsections (a) and (b) of Section 201 of
10 the Illinois Income Tax Act in the amount set forth under the
11 terms of the agreement.

12 (b) To be eligible for a credit under this Section, a
13 taxpayer must agree to create new full-time employment
14 positions by: (i) locating or expanding operations in a
15 depressed area of the State; or (ii) relocating operations into
16 the State from another state or country.

17 To be eligible for a credit under this Section for locating
18 or expanding operations in a depressed area of the State, the
19 taxpayer must:

20 (1) relocate to or expand its operations in a
21 geographic area within the State where the average
22 unemployment rate over the last 5 years is 105% or more
23 above the national average; and

24 (2) the project must involve an investment of at least
25 \$500,000 in capital improvements to be placed in service
26 within the depressed area and result in the employment of
27 at least 25 new full-time employees.

28 To be eligible for a credit under this Section for
29 relocating operations into the State from another state or
30 country, the project must involve an investment of at least
31 \$5,000,000 in capital improvements to be placed in service
32 within the State and result in the employment of at least 100
33 new full-time employees.

34 (c) To receive the credit under this Section, the taxpayer
35 must apply to the Department in the form and manner required by

1 the Department. The Department must review the applications
2 under this Section using substantially the same procedures set
3 forth under Section 5-25.

4 (d) The credit under this Section is subject to the
5 limitations set forth under Sections 5-30 and 5-35.

6 (e) The Department shall determine the amount and duration
7 of the alternate credit awarded under this Section. In
8 determining the amount of the alternate credit under this
9 Section, the Department must consider the factors set forth
10 under Section 5-40. The duration of the credit may not exceed
11 10 taxable years. The credit may be stated as a percentage of
12 the Incremental Income Tax attributable to the applicant's
13 project and may include a fixed dollar limitation.

14 (f) The Department shall enter into an agreement with an
15 applicant that is awarded an alternate credit under this
16 Section. The contents of the agreement must be substantially
17 similar to the requirements set forth under Section 5-50.

18 (g) The Department, in cooperation with the Department of
19 Revenue, must adopt rules to allow a taxpayer who has been
20 awarded a credit under this Section to sell the credit in the
21 secondary financial markets with 100% of the proceeds of the
22 sale by the applicant to be used to offset the costs of the
23 project. The rulemaking for any rule required under this
24 subsection (g) must be initiated under Section 5-40 of the
25 Illinois Administrative Procedures Act within 120 days after
26 the effective date of this amendatory Act of the 94th General
27 Assembly.

28 Section 99. Effective date. This Act takes effect upon
29 becoming law.