



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4491

Introduced 1/31/2012, by Rep. Jim Sacia

SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-15

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that certain taxpayers that are primarily engaged in the transportation of motor freight are eligible to claim the Credit against their obligation to pay over withholding taxes. Effective immediately.

LRB097 19429 HLH 64682 b

FISCAL NOTE ACT
MAY APPLY

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 Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Section 5-15 as follows:

6 (35 ILCS 10/5-15)

7 (Text of Section before amendment by P.A. 97-636)

8 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
9 forth in this Act, a Taxpayer is entitled to a Credit against
10 or, as described in subsection (g) of this Section, a payment
11 towards taxes imposed pursuant to subsections (a) and (b) of
12 Section 201 of the Illinois Income Tax Act that may be imposed
13 on the Taxpayer for a taxable year beginning on or after
14 January 1, 1999, if the Taxpayer is awarded a Credit by the
15 Department under this Act for that taxable year.

16 (a) The Department shall make Credit awards under this Act
17 to foster job creation and retention in Illinois.

18 (b) A person that proposes a project to create new jobs in
19 Illinois must enter into an Agreement with the Department for
20 the Credit under this Act.

21 (c) The Credit shall be claimed for the taxable years
22 specified in the Agreement.

23 (d) The Credit shall not exceed the Incremental Income Tax

1 attributable to the project that is the subject of the
2 Agreement.

3 (e) Nothing herein shall prohibit a Tax Credit Award to an
4 Applicant that uses a PEO if all other award criteria are
5 satisfied.

6 (f) In lieu of the Credit allowed under this Act against
7 the taxes imposed pursuant to subsections (a) and (b) of
8 Section 201 of the Illinois Income Tax Act for any taxable year
9 ending on or after December 31, 2009, the Taxpayer may elect to
10 claim the Credit against its obligation to pay over withholding
11 under Section 704A of the Illinois Income Tax Act.

12 (1) The election under this subsection (f) may be made
13 only by a Taxpayer that (i) is primarily engaged in one of
14 the following business activities: water purification and
15 treatment, motor vehicle metal stamping, automobile
16 manufacturing, automobile and light duty motor vehicle
17 manufacturing, motor vehicle manufacturing, light truck
18 and utility vehicle manufacturing, heavy duty truck
19 manufacturing, motor vehicle body manufacturing, cable
20 television infrastructure design or manufacturing, or
21 wireless telecommunication or computing terminal device
22 design or manufacturing for use on public networks and (ii)
23 meets the following criteria:

24 (A) the Taxpayer (i) had an Illinois net loss or an
25 Illinois net loss deduction under Section 207 of the
26 Illinois Income Tax Act for the taxable year in which

1 the Credit is awarded, (ii) employed a minimum of 1,000
2 full-time employees in this State during the taxable
3 year in which the Credit is awarded, (iii) has an
4 Agreement under this Act on December 14, 2009 (the
5 effective date of Public Act 96-834), and (iv) is in
6 compliance with all provisions of that Agreement;

7 (B) the Taxpayer (i) had an Illinois net loss or an
8 Illinois net loss deduction under Section 207 of the
9 Illinois Income Tax Act for the taxable year in which
10 the Credit is awarded, (ii) employed a minimum of 1,000
11 full-time employees in this State during the taxable
12 year in which the Credit is awarded, and (iii) has
13 applied for an Agreement within 365 days after December
14 14, 2009 (the effective date of Public Act 96-834);

15 (C) the Taxpayer (i) had an Illinois net operating
16 loss carryforward under Section 207 of the Illinois
17 Income Tax Act in a taxable year ending during calendar
18 year 2008, (ii) has applied for an Agreement within 150
19 days after the effective date of this amendatory Act of
20 the 96th General Assembly, (iii) creates at least 400
21 new jobs in Illinois, (iv) retains at least 2,000 jobs
22 in Illinois that would have been at risk of relocation
23 out of Illinois over a 10-year period, and (v) makes a
24 capital investment of at least \$75,000,000;

25 (D) the Taxpayer (i) had an Illinois net operating
26 loss carryforward under Section 207 of the Illinois

1 Income Tax Act in a taxable year ending during calendar
2 year 2009, (ii) has applied for an Agreement within 150
3 days after the effective date of this amendatory Act of
4 the 96th General Assembly, (iii) creates at least 150
5 new jobs, (iv) retains at least 1,000 jobs in Illinois
6 that would have been at risk of relocation out of
7 Illinois over a 10-year period, and (v) makes a capital
8 investment of at least \$57,000,000; or

9 (E) the Taxpayer (i) employed at least 2,500
10 full-time employees in the State during the year in
11 which the Credit is awarded, (ii) commits to make at
12 least \$500,000,000 in combined capital improvements
13 and project costs under the Agreement, (iii) applies
14 for an Agreement between January 1, 2011 and June 30,
15 2011, (iv) executes an Agreement for the Credit during
16 calendar year 2011, and (v) was incorporated no more
17 than 5 years before the filing of an application for an
18 Agreement.

19 (1.5) The election under this subsection (f) may also
20 be made by a Taxpayer for any Credit awarded pursuant to an
21 agreement that was executed between January 1, 2011 and
22 June 30, 2011, if the Taxpayer (i) is primarily engaged in
23 the manufacture of inner tubes or tires, or both, from
24 natural and synthetic rubber, (ii) employs a minimum of
25 2,400 full-time employees in Illinois at the time of
26 application, (iii) creates at least 350 full-time jobs and

1 retains at least 250 full-time jobs in Illinois that would
2 have been at risk of being created or retained outside of
3 Illinois, and (iv) makes a capital investment of at least
4 \$200,000,000 at the project location.

5 (1.8) The election under this subsection (f) may also
6 be made by a Taxpayer that is primarily engaged in the
7 transportation of motor freight if (i) the Taxpayer employs
8 a minimum of 50 full-time employees in Illinois at the time
9 of application, (ii) the Taxpayer intends to create at
10 least 40 additional jobs in Illinois subsequent to the
11 approval of the Taxpayer's application, (iii) the Taxpayer
12 pledges to make a capital investment of at least \$2,000,000
13 comprising both moneys invested at the project location and
14 moneys invested in motor vehicles that use the project
15 location, and (iv) the Taxpayer's project location is
16 physically located within 5 miles of at least 2 other
17 states that could also physically house the project
18 location. The election under this item (1.8) must be made
19 between September 1, 2012 and December 31, 2012.

20 (2) An election under this subsection shall allow the
21 credit to be taken against payments otherwise due under
22 Section 704A of the Illinois Income Tax Act during the
23 first calendar year beginning after the end of the taxable
24 year in which the credit is awarded under this Act.

25 (3) The election shall be made in the form and manner
26 required by the Illinois Department of Revenue and, once

1 made, shall be irrevocable.

2 (4) If a Taxpayer who meets the requirements of
3 subparagraph (A) of paragraph (1) of this subsection (f)
4 elects to claim the Credit against its withholdings as
5 provided in this subsection (f), then, on and after the
6 date of the election, the terms of the Agreement between
7 the Taxpayer and the Department may not be further amended
8 during the term of the Agreement.

9 (g) A pass-through entity that has been awarded a credit
10 under this Act, its shareholders, or its partners may treat
11 some or all of the credit awarded pursuant to this Act as a tax
12 payment for purposes of the Illinois Income Tax Act. The term
13 "tax payment" means a payment as described in Article 6 or
14 Article 8 of the Illinois Income Tax Act or a composite payment
15 made by a pass-through entity on behalf of any of its
16 shareholders or partners to satisfy such shareholders' or
17 partners' taxes imposed pursuant to subsections (a) and (b) of
18 Section 201 of the Illinois Income Tax Act. In no event shall
19 the amount of the award credited pursuant to this Act exceed
20 the Illinois income tax liability of the pass-through entity or
21 its shareholders or partners for the taxable year.

22 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
23 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
24 3-4-11; 97-2, eff. 5-6-11.)

25 (Text of Section after amendment by P.A. 97-636)

1 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
2 forth in this Act, a Taxpayer is entitled to a Credit against
3 or, as described in subsection (g) of this Section, a payment
4 towards taxes imposed pursuant to subsections (a) and (b) of
5 Section 201 of the Illinois Income Tax Act that may be imposed
6 on the Taxpayer for a taxable year beginning on or after
7 January 1, 1999, if the Taxpayer is awarded a Credit by the
8 Department under this Act for that taxable year.

9 (a) The Department shall make Credit awards under this Act
10 to foster job creation and retention in Illinois.

11 (b) A person that proposes a project to create new jobs in
12 Illinois must enter into an Agreement with the Department for
13 the Credit under this Act.

14 (c) The Credit shall be claimed for the taxable years
15 specified in the Agreement.

16 (d) The Credit shall not exceed the Incremental Income Tax
17 attributable to the project that is the subject of the
18 Agreement.

19 (e) Nothing herein shall prohibit a Tax Credit Award to an
20 Applicant that uses a PEO if all other award criteria are
21 satisfied.

22 (f) In lieu of the Credit allowed under this Act against
23 the taxes imposed pursuant to subsections (a) and (b) of
24 Section 201 of the Illinois Income Tax Act for any taxable year
25 ending on or after December 31, 2009, the Taxpayer may elect to
26 claim the Credit against its obligation to pay over withholding

1 under Section 704A of the Illinois Income Tax Act.

2 (1) The election under this subsection (f) may be made
3 only by a Taxpayer that (i) is primarily engaged in one of
4 the following business activities: water purification and
5 treatment, motor vehicle metal stamping, automobile
6 manufacturing, automobile and light duty motor vehicle
7 manufacturing, motor vehicle manufacturing, light truck
8 and utility vehicle manufacturing, heavy duty truck
9 manufacturing, motor vehicle body manufacturing, cable
10 television infrastructure design or manufacturing, or
11 wireless telecommunication or computing terminal device
12 design or manufacturing for use on public networks and (ii)
13 meets the following criteria:

14 (A) the Taxpayer (i) had an Illinois net loss or an
15 Illinois net loss deduction under Section 207 of the
16 Illinois Income Tax Act for the taxable year in which
17 the Credit is awarded, (ii) employed a minimum of 1,000
18 full-time employees in this State during the taxable
19 year in which the Credit is awarded, (iii) has an
20 Agreement under this Act on December 14, 2009 (the
21 effective date of Public Act 96-834), and (iv) is in
22 compliance with all provisions of that Agreement;

23 (B) the Taxpayer (i) had an Illinois net loss or an
24 Illinois net loss deduction under Section 207 of the
25 Illinois Income Tax Act for the taxable year in which
26 the Credit is awarded, (ii) employed a minimum of 1,000

1 full-time employees in this State during the taxable
2 year in which the Credit is awarded, and (iii) has
3 applied for an Agreement within 365 days after December
4 14, 2009 (the effective date of Public Act 96-834);

5 (C) the Taxpayer (i) had an Illinois net operating
6 loss carryforward under Section 207 of the Illinois
7 Income Tax Act in a taxable year ending during calendar
8 year 2008, (ii) has applied for an Agreement within 150
9 days after the effective date of this amendatory Act of
10 the 96th General Assembly, (iii) creates at least 400
11 new jobs in Illinois, (iv) retains at least 2,000 jobs
12 in Illinois that would have been at risk of relocation
13 out of Illinois over a 10-year period, and (v) makes a
14 capital investment of at least \$75,000,000;

15 (D) the Taxpayer (i) had an Illinois net operating
16 loss carryforward under Section 207 of the Illinois
17 Income Tax Act in a taxable year ending during calendar
18 year 2009, (ii) has applied for an Agreement within 150
19 days after the effective date of this amendatory Act of
20 the 96th General Assembly, (iii) creates at least 150
21 new jobs, (iv) retains at least 1,000 jobs in Illinois
22 that would have been at risk of relocation out of
23 Illinois over a 10-year period, and (v) makes a capital
24 investment of at least \$57,000,000; or

25 (E) the Taxpayer (i) employed at least 2,500
26 full-time employees in the State during the year in

1 which the Credit is awarded, (ii) commits to make at
2 least \$500,000,000 in combined capital improvements
3 and project costs under the Agreement, (iii) applies
4 for an Agreement between January 1, 2011 and June 30,
5 2011, (iv) executes an Agreement for the Credit during
6 calendar year 2011, and (v) was incorporated no more
7 than 5 years before the filing of an application for an
8 Agreement.

9 (1.5) The election under this subsection (f) may also
10 be made by a Taxpayer for any Credit awarded pursuant to an
11 agreement that was executed between January 1, 2011 and
12 June 30, 2011, if the Taxpayer (i) is primarily engaged in
13 the manufacture of inner tubes or tires, or both, from
14 natural and synthetic rubber, (ii) employs a minimum of
15 2,400 full-time employees in Illinois at the time of
16 application, (iii) creates at least 350 full-time jobs and
17 retains at least 250 full-time jobs in Illinois that would
18 have been at risk of being created or retained outside of
19 Illinois, and (iv) makes a capital investment of at least
20 \$200,000,000 at the project location.

21 (1.6) The election under this subsection (f) may also
22 be made by a Taxpayer for any Credit awarded pursuant to an
23 agreement that was executed within 150 days after the
24 effective date of this amendatory Act of the 97th General
25 Assembly, if the Taxpayer (i) is primarily engaged in the
26 operation of a discount department store, (ii) maintains

1 its corporate headquarters in Illinois, (iii) employs a
2 minimum of 4,250 full-time employees at its corporate
3 headquarters in Illinois at the time of application, (iv)
4 retains at least 4,250 full-time jobs in Illinois that
5 would have been at risk of being relocated outside of
6 Illinois, (v) had a minimum of \$40,000,000,000 in total
7 revenue in 2010, and (vi) makes a capital investment of at
8 least \$300,000,000 at the project location.

9 (1.7) Notwithstanding any other provision of law, the
10 election under this subsection (f) may also be made by a
11 Taxpayer for any Credit awarded pursuant to an agreement
12 that was executed or applied for on or after July 1, 2011
13 and on or before March 31, 2012, if the Taxpayer is
14 primarily engaged in the manufacture of original and
15 aftermarket filtration parts and products for automobiles,
16 motor vehicles, light duty motor vehicles, light trucks and
17 utility vehicles, and heavy duty trucks, (ii) employs a
18 minimum of 1,000 full-time employees in Illinois at the
19 time of application, (iii) creates at least 250 full-time
20 jobs in Illinois, (iv) relocates its corporate
21 headquarters to Illinois from another state, and (v) makes
22 a capital investment of at least \$4,000,000 at the project
23 location.

24 (1.8) The election under this subsection (f) may also
25 be made by a Taxpayer that is primarily engaged in the
26 transportation of motor freight if (i) the Taxpayer employs

1 a minimum of 50 full-time employees in Illinois at the time
2 of application, (ii) the Taxpayer intends to create at
3 least 40 additional jobs in Illinois subsequent to the
4 approval of the Taxpayer's application, (iii) the Taxpayer
5 pledges to make a capital investment of at least \$2,000,000
6 comprising both moneys invested at the project location and
7 moneys invested in motor vehicles that use the project
8 location, and (iv) the Taxpayer's project location is
9 physically located within 5 miles of at least 2 other
10 states that could also physically house the project
11 location. The election under this item (1.8) must be made
12 between September 1, 2012 and December 31, 2012.

13 (2) An election under this subsection shall allow the
14 credit to be taken against payments otherwise due under
15 Section 704A of the Illinois Income Tax Act during the
16 first calendar year beginning after the end of the taxable
17 year in which the credit is awarded under this Act.

18 (3) The election shall be made in the form and manner
19 required by the Illinois Department of Revenue and, once
20 made, shall be irrevocable.

21 (4) If a Taxpayer who meets the requirements of
22 subparagraph (A) of paragraph (1) of this subsection (f)
23 elects to claim the Credit against its withholdings as
24 provided in this subsection (f), then, on and after the
25 date of the election, the terms of the Agreement between
26 the Taxpayer and the Department may not be further amended

1 during the term of the Agreement.

2 (g) A pass-through entity that has been awarded a credit
3 under this Act, its shareholders, or its partners may treat
4 some or all of the credit awarded pursuant to this Act as a tax
5 payment for purposes of the Illinois Income Tax Act. The term
6 "tax payment" means a payment as described in Article 6 or
7 Article 8 of the Illinois Income Tax Act or a composite payment
8 made by a pass-through entity on behalf of any of its
9 shareholders or partners to satisfy such shareholders' or
10 partners' taxes imposed pursuant to subsections (a) and (b) of
11 Section 201 of the Illinois Income Tax Act. In no event shall
12 the amount of the award credited pursuant to this Act exceed
13 the Illinois income tax liability of the pass-through entity or
14 its shareholders or partners for the taxable year.

15 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
16 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
17 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

18 Section 95. No acceleration or delay. Where this Act makes
19 changes in a statute that is represented in this Act by text
20 that is not yet or no longer in effect (for example, a Section
21 represented by multiple versions), the use of that text does
22 not accelerate or delay the taking effect of (i) the changes
23 made by this Act or (ii) provisions derived from any other
24 Public Act.

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.