



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5111

Introduced 2/8/2012, by Rep. Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

35 ILCS 25/10  
35 ILCS 25/25

Amends the Small Business Job Creation Tax Credit Act. Provides that an employee who is employed in the service of the applicant for a basic wage for at least 35 hours each week or who renders a standard of service to the applicant that is generally accepted as full-time employment is considered a full-time employee of the applicant regardless of whether a W-2 is issued for the employee by a professional employer organization. Requires the Department of Commerce and Economic Opportunity to make rules concerning applicants for which a professional employer organization has been contracted to issue W-2s and make payment of withholding taxes.

LRB097 16508 HLH 61676 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 Small Business Job Creation Tax Credit Act  
5 is amended by changing Sections 10 and 25 as follows:

6 (35 ILCS 25/10)

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

8 Sec. 10. Definitions. In this Act:

9 "Applicant" means a person that is operating a business  
10 located within the State of Illinois that is engaged in  
11 interstate or intrastate commerce and either:

12 (1) has no more than 50 full-time employees, without  
13 regard to the location of employment of such employees at  
14 the beginning of the incentive period; or

15 (2) hired within the incentive period an employee who  
16 had participated as worker-trainee in the Put Illinois to  
17 Work Program during 2010.

18 In the case of any person that is a member of a unitary  
19 business group within the meaning of subdivision (a)(27) of  
20 Section 1501 of the Illinois Income Tax Act, "applicant" refers  
21 to the unitary business group.

22 "Certificate" means the tax credit certificate issued by  
23 the Department under Section 35 of this Act.

1 "Certificate of eligibility" means the certificate issued  
2 by the Department under Section 20 of this Act.

3 "Credit" means the amount awarded by the Department to an  
4 applicant by issuance of a certificate under Section 35 of this  
5 Act for each new full-time equivalent employee hired or job  
6 created.

7 "Department" means the Department of Commerce and Economic  
8 Opportunity.

9 "Director" means the Director of the Department.

10 "Full-time employee" means an individual who is employed  
11 for a basic wage for at least 35 hours each week or who renders  
12 any other standard of service generally accepted by industry  
13 custom or practice as full-time employment. An individual for  
14 whom a W-2 is issued by a Professional Employer Organization is  
15 a full-time employee if he or she is employed in the service of  
16 the applicant for a basic wage for at least 35 hours each week  
17 or renders any other standard of service generally accepted by  
18 industry custom or practice as full-time employment. For the  
19 purposes of this Act, such an individual shall be considered a  
20 full-time employee of the applicant.

21 "Professional Employer Organization" (PEO) shall have the  
22 same meaning as defined in Section 5-5 of the Economic  
23 Development for a Growing Economy Tax Credit Act.

24 "Incentive period" means the period beginning July 1, 2010  
25 and ending on June 30, 2011.

26 "Basic wage" means compensation for employment that is no

1 less than \$10 per hour or the equivalent salary for a new  
2 employee.

3 "New employee" means a full-time employee:

4 (1) who first became employed by an applicant with less  
5 than 50 full-time employees within the incentive period  
6 whose hire results in a net increase in the applicant's  
7 full-time Illinois employees and who is receiving a basic  
8 wage as compensation; or

9 (2) who participated as a worker-trainee in the Put  
10 Illinois to Work Program during 2010 and who is  
11 subsequently hired during the incentive period by an  
12 applicant and who is receiving a basic wage as  
13 compensation.

14 The term "new employee" does not include:

15 (1) a person who was previously employed in Illinois by  
16 the applicant or a related member prior to the onset of the  
17 incentive period; or

18 (2) any individual who has a direct or indirect  
19 ownership interest of at least 5% in the profits, capital,  
20 or value of the applicant or a related member.

21 "Noncompliance date" means, in the case of an applicant  
22 that is not complying with the requirements of the provisions  
23 of this Act, the day following the last date upon which the  
24 taxpayer was in compliance with the requirements of the  
25 provisions of this Act, as determined by the Director, pursuant  
26 to Section 45 of this Act.

1 "Put Illinois to Work Program" means a worker training and  
2 employment program that was established by the State of  
3 Illinois with funding from the United States Department of  
4 Health and Human Services of Emergency Temporary Assistance to  
5 Needy Families funds authorized by the American Recovery and  
6 Reinvestment Act of 2009 (ARRA TANF Funds). These ARRA TANF  
7 funds were in turn used by the State of Illinois to fund the  
8 Put Illinois to Work Program.

9 "Related member" means a person that, with respect to the  
10 applicant during any portion of the incentive period, is any  
11 one of the following,

12 (1) An individual, if the individual and the members of  
13 the individual's family (as defined in Section 318 of the  
14 Internal Revenue Code) own directly, indirectly,  
15 beneficially, or constructively, in the aggregate, at  
16 least 50% of the value of the outstanding profits, capital,  
17 stock, or other ownership interest in the applicant.

18 (2) A partnership, estate, or trust and any partner or  
19 beneficiary, if the partnership, estate, or trust and its  
20 partners or beneficiaries own directly, indirectly,  
21 beneficially, or constructively, in the aggregate, at  
22 least 50% of the profits, capital, stock, or other  
23 ownership interest in the applicant.

24 (3) A corporation, and any party related to the  
25 corporation in a manner that would require an attribution  
26 of stock from the corporation under the attribution rules

1 of Section 318 of the Internal Revenue Code, if the  
2 applicant and any other related member own, in the  
3 aggregate, directly, indirectly, beneficially, or  
4 constructively, at least 50% of the value of the  
5 corporation's outstanding stock.

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

14 (5) A person to or from whom there is attribution of  
15 stock ownership in accordance with Section 1563(e) of the  
16 Internal Revenue Code, except that for purposes of  
17 determining whether a person is a related member under this  
18 paragraph, "20%" shall be substituted for "5%" whenever  
19 "5%" appears in Section 1563(e) of the Internal Revenue  
20 Code.

21 (Source: P.A. 96-888, eff. 4-13-10; 96-1498, eff. 1-18-11.)

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

23 Sec. 10. Definitions. In this Act:

24 "Applicant" means a person that is operating a business  
25 located within the State of Illinois that is engaged in

1 interstate or intrastate commerce and either:

2 (1) has no more than 50 full-time employees, without  
3 regard to the location of employment of such employees at  
4 the beginning of the incentive period; or

5 (2) hired within the incentive period an employee who  
6 had participated as worker-trainee in the Put Illinois to  
7 Work Program during 2010.

8 In the case of any person that is a member of a unitary  
9 business group within the meaning of subdivision (a)(27) of  
10 Section 1501 of the Illinois Income Tax Act, "applicant" refers  
11 to the unitary business group.

12 "Certificate" means the tax credit certificate issued by  
13 the Department under Section 35 of this Act.

14 "Certificate of eligibility" means the certificate issued  
15 by the Department under Section 20 of this Act.

16 "Credit" means the amount awarded by the Department to an  
17 applicant by issuance of a certificate under Section 35 of this  
18 Act for each new full-time equivalent employee hired or job  
19 created.

20 "Department" means the Department of Commerce and Economic  
21 Opportunity.

22 "Director" means the Director of the Department.

23 "Full-time employee" means an individual who is employed  
24 for a basic wage for at least 35 hours each week or who renders  
25 any other standard of service generally accepted by industry  
26 custom or practice as full-time employment. An individual for

1 whom a W-2 is issued by a Professional Employer Organization is  
2 a full-time employee if he or she is employed in the service of  
3 the applicant for a basic wage for at least 35 hours each week  
4 or renders any other standard of service generally accepted by  
5 industry custom or practice as full-time employment. For the  
6 purposes of this Act, such an individual shall be considered a  
7 full-time employee of the applicant.

8 "Professional Employer Organization" (PEO) shall have the  
9 same meaning as defined in Section 5-5 of the Economic  
10 Development for a Growing Economy Tax Credit Act.

11 "Incentive period" means the period beginning on July 1 and  
12 ending on June 30 of the following year. The first incentive  
13 period shall begin on July 1, 2010 and the last incentive  
14 period shall end on June 30, 2016.

15 "Basic wage" means compensation for employment that is no  
16 less than \$10 per hour or the equivalent salary for a new  
17 employee.

18 "New employee" means a full-time employee:

19 (1) who first became employed by an applicant with less  
20 than 50 full-time employees within the incentive period  
21 whose hire results in a net increase in the applicant's  
22 full-time Illinois employees and who is receiving a basic  
23 wage as compensation; or

24 (2) who participated as a worker-trainee in the Put  
25 Illinois to Work Program during 2010 and who is  
26 subsequently hired during the incentive period by an



1 applicant and who is receiving a basic wage as  
2 compensation.

3 The term "new employee" does not include:

4 (1) a person who was previously employed in Illinois by  
5 the applicant or a related member prior to the onset of the  
6 incentive period; or

7 (2) any individual who has a direct or indirect  
8 ownership interest of at least 5% in the profits, capital,  
9 or value of the applicant or a related member.

10 "Noncompliance date" means, in the case of an applicant  
11 that is not complying with the requirements of the provisions  
12 of this Act, the day following the last date upon which the  
13 taxpayer was in compliance with the requirements of the  
14 provisions of this Act, as determined by the Director, pursuant  
15 to Section 45 of this Act.

16 "Put Illinois to Work Program" means a worker training and  
17 employment program that was established by the State of  
18 Illinois with funding from the United States Department of  
19 Health and Human Services of Emergency Temporary Assistance to  
20 Needy Families funds authorized by the American Recovery and  
21 Reinvestment Act of 2009 (ARRA TANF Funds). These ARRA TANF  
22 funds were in turn used by the State of Illinois to fund the  
23 Put Illinois to Work Program.

24 "Related member" means a person that, with respect to the  
25 applicant during any portion of the incentive period, is any  
26 one of the following,

1           (1) An individual, if the individual and the members of  
2           the individual's family (as defined in Section 318 of the  
3           Internal Revenue Code) own directly, indirectly,  
4           beneficially, or constructively, in the aggregate, at  
5           least 50% of the value of the outstanding profits, capital,  
6           stock, or other ownership interest in the applicant.

7           (2) A partnership, estate, or trust and any partner or  
8           beneficiary, if the partnership, estate, or trust and its  
9           partners or beneficiaries own directly, indirectly,  
10          beneficially, or constructively, in the aggregate, at  
11          least 50% of the profits, capital, stock, or other  
12          ownership interest in the applicant.

13          (3) A corporation, and any party related to the  
14          corporation in a manner that would require an attribution  
15          of stock from the corporation under the attribution rules  
16          of Section 318 of the Internal Revenue Code, if the  
17          applicant and any other related member own, in the  
18          aggregate, directly, indirectly, beneficially, or  
19          constructively, at least 50% of the value of the  
20          corporation's outstanding stock.

21          (4) A corporation and any party related to that  
22          corporation in a manner that would require an attribution  
23          of stock from the corporation to the party or from the  
24          party to the corporation under the attribution rules of  
25          Section 318 of the Internal Revenue Code, if the  
26          corporation and all such related parties own, in the

1 aggregate, at least 50% of the profits, capital, stock, or  
2 other ownership interest in the applicant.

3 (5) A person to or from whom there is attribution of  
4 stock ownership in accordance with Section 1563(e) of the  
5 Internal Revenue Code, except that for purposes of  
6 determining whether a person is a related member under this  
7 paragraph, "20%" shall be substituted for "5%" whenever  
8 "5%" appears in Section 1563(e) of the Internal Revenue  
9 Code.

10 (Source: P.A. 96-888, eff. 4-13-10; 96-1498, eff. 1-18-11;  
11 97-636, eff. 6-1-12.)

12 (35 ILCS 25/25)

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

14 Sec. 25. Tax credit.

15 (a) Subject to the conditions set forth in this Act, an  
16 applicant is entitled to a credit against payment of taxes  
17 withheld under Section 704A of the Illinois Income Tax Act:

18 (1) for new employees who participated as  
19 worker-trainees in the Put Illinois to Work Program during  
20 2010:

21 (A) in the first calendar year ending on or after  
22 the date that is 6 months after December 31, 2010, or  
23 the date of hire, whichever is later. Under this  
24 subparagraph, the applicant is entitled to one-half of  
25 the credit allowable for each new employee who is

1 employed for at least 6 months after the date of hire;  
2 and

3 (B) in the first calendar year ending on or after  
4 the date that is 12 months after December 31, 2010, or  
5 the date of hire, whichever is later. Under this  
6 subparagraph, the applicant is entitled to one-half of  
7 the credit allowable for each new employee who is  
8 employed for at least 12 months after the date of hire;

9 (2) for all other new employees, in the first calendar  
10 year ending on or after the date that is 12 months after  
11 the date of hire of a new employee. The credit shall be  
12 allowed as a credit to an applicant for each full-time  
13 employee hired during the incentive period that results in  
14 a net increase in full-time Illinois employees, where the  
15 net increase in the employer's full-time Illinois  
16 employees is maintained for at least 12 months.

17 (b) The Department shall make credit awards under this Act  
18 to further job creation.

19 (c) The credit shall be claimed for the first calendar year  
20 ending on or after the date on which the certificate is issued  
21 by the Department.

22 (d) The credit shall not exceed \$2,500 per new employee  
23 hired.

24 (e) The net increase in full-time Illinois employees,  
25 measured on an annual full-time equivalent basis, shall be the  
26 total number of full-time Illinois employees of the applicant

1 on June 30, 2011, minus the number of full-time Illinois  
2 employees employed by the employer on July 1, 2010. For  
3 purposes of the calculation, an employer that begins doing  
4 business in this State during the incentive period, as  
5 determined by the Director, shall be treated as having zero  
6 Illinois employees on July 1, 2010.

7 (f) The net increase in the number of full-time Illinois  
8 employees of the applicant under subsection (e) must be  
9 sustained continuously for at least 12 months, starting with  
10 the date of hire of a new employee during the incentive period.  
11 Eligibility for the credit does not depend on the continuous  
12 employment of any particular individual. For purposes of this  
13 subsection (f), if a new employee ceases to be employed before  
14 the completion of the 12-month period for any reason, the net  
15 increase in the number of full-time Illinois employees shall be  
16 treated as continuous if a different new employee is hired as a  
17 replacement within a reasonable time for the same position.

18 (g) The Department shall promulgate rules to enable an  
19 applicant for which a PEO has been contracted to issue W-2s and  
20 make payment of taxes withheld under Section 704A of the  
21 Illinois Income Tax Act for new employees to retain the benefit  
22 of tax credits to which the applicant is otherwise entitled  
23 under this Act.

24 (Source: P.A. 96-888, eff. 4-13-10; 96-1498, eff. 1-18-11.)

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

1           Sec. 25. Tax credit.

2           (a) Subject to the conditions set forth in this Act, an  
3 applicant is entitled to a credit against payment of taxes  
4 withheld under Section 704A of the Illinois Income Tax Act:

5           (1) for new employees who participated as  
6 worker-trainees in the Put Illinois to Work Program during  
7 2010:

8           (A) in the first calendar year ending on or after  
9 the date that is 6 months after December 31, 2010, or  
10 the date of hire, whichever is later. Under this  
11 subparagraph, the applicant is entitled to one-half of  
12 the credit allowable for each new employee who is  
13 employed for at least 6 months after the date of hire;  
14 and

15           (B) in the first calendar year ending on or after  
16 the date that is 12 months after December 31, 2010, or  
17 the date of hire, whichever is later. Under this  
18 subparagraph, the applicant is entitled to one-half of  
19 the credit allowable for each new employee who is  
20 employed for at least 12 months after the date of hire;

21           (2) for all other new employees, in the first calendar  
22 year ending on or after the date that is 12 months after  
23 the date of hire of a new employee. The credit shall be  
24 allowed as a credit to an applicant for each full-time  
25 employee hired during the incentive period that results in  
26 a net increase in full-time Illinois employees, where the

1 net increase in the employer's full-time Illinois  
2 employees is maintained for at least 12 months.

3 (b) The Department shall make credit awards under this Act  
4 to further job creation.

5 (c) The credit shall be claimed for the first calendar year  
6 ending on or after the date on which the certificate is issued  
7 by the Department.

8 (d) The credit shall not exceed \$2,500 per new employee  
9 hired.

10 (e) The net increase in full-time Illinois employees,  
11 measured on an annual full-time equivalent basis, shall be the  
12 total number of full-time Illinois employees of the applicant  
13 on the final day of the incentive period, minus the number of  
14 full-time Illinois employees employed by the employer on the  
15 first day of that same incentive period. For purposes of the  
16 calculation, an employer that begins doing business in this  
17 State during the incentive period, as determined by the  
18 Director, shall be treated as having zero Illinois employees on  
19 the first day of the incentive period.

20 (f) The net increase in the number of full-time Illinois  
21 employees of the applicant under subsection (e) must be  
22 sustained continuously for at least 12 months, starting with  
23 the date of hire of a new employee during the incentive period.  
24 Eligibility for the credit does not depend on the continuous  
25 employment of any particular individual. For purposes of this  
26 subsection (f), if a new employee ceases to be employed before

1 the completion of the 12-month period for any reason, the net  
2 increase in the number of full-time Illinois employees shall be  
3 treated as continuous if a different new employee is hired as a  
4 replacement within a reasonable time for the same position.

5 (g) The Department shall promulgate rules to enable an  
6 applicant for which a PEO has been contracted to issue W-2s and  
7 make payment of taxes withheld under Section 704A of the  
8 Illinois Income Tax Act for new employees to retain the benefit  
9 of tax credits to which the applicant is otherwise entitled  
10 under this Act.

11 (Source: P.A. 96-888, eff. 4-13-10; 96-1498, eff. 1-18-11;  
12 97-636, eff. 6-1-12.)

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