

SB0097



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0097

Introduced 1/27/2011, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

35 ILCS 25/10
35 ILCS 25/25

Amends the Small Business Job Creation Tax Credit Act. Provides that a person who operates an Illinois business having 75 or fewer full-time employees (instead of 50 or fewer full-time employees) may apply for the Small Business Job Creation Tax Credit. Extends the incentive period from June 30, 2011 to June 30, 2012, if the seasonally adjusted unemployment rate of the State of Illinois for the month of May 2011 is 7.0% or higher, as reported by the Illinois Department of Employment Security. Raises the cap on the credit from \$2,500 to \$3,500 for each new employee hired. Changes the manner in which the net increase in full-time Illinois employees is calculated in the event that the incentive period is extended. Contains provisions concerning the applicability of the credit to employers that contract with a Professional Employer Organization. Effective immediately.

LRB097 05510 HLH 45570 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 Sec. 10. Definitions. In this Act:

8 "Applicant" means a person that is operating a business
9 located within the State of Illinois that is engaged in
10 interstate or intrastate commerce and has no more than 75 ~~50~~
11 full-time employees, without regard to the location of
12 employment of such employees at the beginning of the incentive
13 period. In the case of any person that is a member of a unitary
14 business group within the meaning of subdivision (a)(27) of
15 Section 1501 of the Illinois Income Tax Act, "applicant" refers
16 to the unitary business group.

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

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

21 "Credit" means the amount awarded by the Department to an
22 applicant by issuance of a certificate under Section 35 of this
23 Act for each new full-time equivalent employee hired or job

1 created.

2 "Department" means the Department of Commerce and Economic
3 Opportunity.

4 "Director" means the Director of the Department.

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

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

19 "Incentive period" means the period beginning July 1, 2010
20 and ending on June 30, 2011. However, if the seasonally
21 adjusted unemployment rate for the State of Illinois for the
22 month of May 2011 is 7.0% or higher, as reported by the
23 Illinois Department of Employment Security, then the incentive
24 period shall be extended until June 30, 2012.

25 "Basic wage" means compensation for employment that is no
26 less than \$13.75 per hour or the equivalent salary for a new

1 employee.

2 "New employee" means a full-time employee first employed by
3 an applicant within the incentive period whose hire results in
4 a net increase in the applicant's full-time Illinois employees
5 and who is receiving a basic wage as compensation. The term
6 "new employee" does not include:

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

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

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

19 "Related member" means a person that, with respect to the
20 applicant during any portion of the incentive period, is any
21 one of the following,

22 (1) An individual, if the individual and the members of
23 the individual's family (as defined in Section 318 of the
24 Internal Revenue Code) own directly, indirectly,
25 beneficially, or constructively, in the aggregate, at
26 least 50% of the value of the outstanding profits, capital,

1 stock, or other ownership interest in the applicant.

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

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

16 (4) A corporation and any party related to that
17 corporation in a manner that would require an attribution
18 of stock from the corporation to the party or from the
19 party to the corporation under the attribution rules of
20 Section 318 of the Internal Revenue Code, if the
21 corporation and all such related parties own, in the
22 aggregate, at least 50% of the profits, capital, stock, or
23 other ownership interest in the applicant.

24 (5) A person to or from whom there is attribution of
25 stock ownership in accordance with Section 1563(e) of the
26 Internal Revenue Code, except that for purposes of

1 determining whether a person is a related member under this
2 paragraph, "20%" shall be substituted for "5%" whenever
3 "5%" appears in Section 1563(e) of the Internal Revenue
4 Code.

5 (Source: P.A. 96-888, eff. 4-13-10.)

6 (35 ILCS 25/25)

7 Sec. 25. Tax credit.

8 (a) Subject to the conditions set forth in this Act, an
9 applicant is entitled to a credit against payment of taxes
10 withheld under Section 704A of the Illinois Income Tax Act for
11 calendar years ending on or after the date that is 12 months
12 after the date of hire of a new employee. The credit shall be
13 allowed as a credit to an applicant for each full-time employee
14 hired during the incentive period that results in a net
15 increase in full-time Illinois employees, where the net
16 increase in the employer's full-time Illinois employees is
17 maintained for at least 12 months.

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

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

23 (d) The credit shall not exceed \$3,500 ~~\$2,500~~ per new
24 employee hired.

25 (e) The net increase in full-time Illinois employees,

1 measured on an annual full-time equivalent basis, shall be the
2 total number of full-time Illinois employees of the applicant
3 on June 30, 2011, minus the number of full-time Illinois
4 employees employed by the employer on July 1, 2010. However, if
5 the incentive period is extended until June 30, 2012, then the
6 net increase in full-time Illinois employees, measured on an
7 annual full-time equivalent basis, shall be the maximum total
8 number of full-time Illinois employees employed by the
9 applicant for at least 12 consecutive months during any portion
10 of the period running from July 1, 2010 to July 1, 2012, minus
11 the number of full-time Illinois employees employed by the
12 employer on July 1, 2010. For purposes of these calculations
13 ~~the calculation~~, an employer that begins doing business in this
14 State during the incentive period, as determined by the
15 Director, shall be treated as having zero Illinois employees on
16 July 1, 2010.

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

1 replacement within a reasonable time for the same position.

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

8 (Source: P.A. 96-888, eff. 4-13-10.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.