

SB3401



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3401

Introduced 2/7/2012, by Sen. Carole Pankau

SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-15

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that, on and after the effective date of the amendatory Act, any Taxpayer that is awarded a credit under the Act may elect to claim the Credit against its withholding tax obligations (now, only certain taxpayers that are engaged in motor vehicle metal stamping, automobile manufacturing, automobile and light duty motor vehicle manufacturing, motor vehicle manufacturing, light truck and utility vehicle manufacturing, heavy duty truck manufacturing, or motor vehicle body manufacturing may claim the credit against withholdings). Effective immediately.

LRB097 19857 HLH 65138 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) Prior to the effective date of this amendatory Act
13 of the 97th General Assembly, the ~~The~~ election under this
14 subsection (f) may be made only by a Taxpayer that (i) is
15 primarily engaged in one of the following business
16 activities: water purification and treatment, motor
17 vehicle metal stamping, automobile manufacturing,
18 automobile and light duty motor vehicle manufacturing,
19 motor vehicle manufacturing, light truck and utility
20 vehicle manufacturing, heavy duty truck manufacturing,
21 motor vehicle body manufacturing, cable television
22 infrastructure design or manufacturing, or wireless
23 telecommunication or computing terminal device design or
24 manufacturing for use on public networks and (ii) meets the
25 following criteria:

26 (A) the Taxpayer (i) had an Illinois net loss or an

1 Illinois net loss deduction under Section 207 of the
2 Illinois Income Tax Act for the taxable year in which
3 the Credit is awarded, (ii) employed a minimum of 1,000
4 full-time employees in this State during the taxable
5 year in which the Credit is awarded, (iii) has an
6 Agreement under this Act on December 14, 2009 (the
7 effective date of Public Act 96-834), and (iv) is in
8 compliance with all provisions of that Agreement;

9 (B) the Taxpayer (i) had an Illinois net loss or an
10 Illinois net loss deduction under Section 207 of the
11 Illinois Income Tax Act for the taxable year in which
12 the Credit is awarded, (ii) employed a minimum of 1,000
13 full-time employees in this State during the taxable
14 year in which the Credit is awarded, and (iii) has
15 applied for an Agreement within 365 days after December
16 14, 2009 (the effective date of Public Act 96-834);

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

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

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

21 (1.5) 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 between January 1, 2011 and
24 June 30, 2011, if the Taxpayer (i) is primarily engaged in
25 the manufacture of inner tubes or tires, or both, from
26 natural and synthetic rubber, (ii) employs a minimum of

1 2,400 full-time employees in Illinois at the time of
2 application, (iii) creates at least 350 full-time jobs and
3 retains at least 250 full-time jobs in Illinois that would
4 have been at risk of being created or retained outside of
5 Illinois, and (iv) makes a capital investment of at least
6 \$200,000,000 at the project location.

7 (1.8) On and after the effective date of this
8 amendatory Act of the 97th General Assembly, any Taxpayer
9 that is awarded a Credit under this Act may elect to claim
10 the Credit against its obligation to pay over withholding
11 under Section 704A of the Illinois Income Tax Act.

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

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

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

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

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

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

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

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

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

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

8 (d) The Credit shall not exceed the Incremental Income Tax
9 attributable to the project that is the subject of the
10 Agreement.

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

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

20 (1) Prior to the effective date of this amendatory Act
21 of the 97th General Assembly, the ~~The~~ election under this
22 subsection (f) may be made only by a Taxpayer that (i) is
23 primarily engaged in one of the following business
24 activities: water purification and treatment, motor
25 vehicle metal stamping, automobile manufacturing,
26 automobile and light duty motor vehicle manufacturing,

1 motor vehicle manufacturing, light truck and utility
2 vehicle manufacturing, heavy duty truck manufacturing,
3 motor vehicle body manufacturing, cable television
4 infrastructure design or manufacturing, or wireless
5 telecommunication or computing terminal device design or
6 manufacturing for use on public networks and (ii) meets the
7 following criteria:

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

17 (B) the Taxpayer (i) had an Illinois net loss or an
18 Illinois net loss deduction under Section 207 of the
19 Illinois Income Tax Act for the taxable year in which
20 the Credit is awarded, (ii) employed a minimum of 1,000
21 full-time employees in this State during the taxable
22 year in which the Credit is awarded, and (iii) has
23 applied for an Agreement within 365 days after December
24 14, 2009 (the effective date of Public Act 96-834);

25 (C) 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 2008, (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 400
5 new jobs in Illinois, (iv) retains at least 2,000 jobs
6 in Illinois that would have been at risk of relocation
7 out of Illinois over a 10-year period, and (v) makes a
8 capital investment of at least \$75,000,000;

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

19 (E) the Taxpayer (i) employed at least 2,500
20 full-time employees in the State during the year in
21 which the Credit is awarded, (ii) commits to make at
22 least \$500,000,000 in combined capital improvements
23 and project costs under the Agreement, (iii) applies
24 for an Agreement between January 1, 2011 and June 30,
25 2011, (iv) executes an Agreement for the Credit during
26 calendar year 2011, and (v) was incorporated no more

1 than 5 years before the filing of an application for an
2 Agreement.

3 (1.5) The election under this subsection (f) may also
4 be made by a Taxpayer for any Credit awarded pursuant to an
5 agreement that was executed between January 1, 2011 and
6 June 30, 2011, if the Taxpayer (i) is primarily engaged in
7 the manufacture of inner tubes or tires, or both, from
8 natural and synthetic rubber, (ii) employs a minimum of
9 2,400 full-time employees in Illinois at the time of
10 application, (iii) creates at least 350 full-time jobs and
11 retains at least 250 full-time jobs in Illinois that would
12 have been at risk of being created or retained outside of
13 Illinois, and (iv) makes a capital investment of at least
14 \$200,000,000 at the project location.

15 (1.6) The election under this subsection (f) may also
16 be made by a Taxpayer for any Credit awarded pursuant to an
17 agreement that was executed within 150 days after the
18 effective date of this amendatory Act of the 97th General
19 Assembly, if the Taxpayer (i) is primarily engaged in the
20 operation of a discount department store, (ii) maintains
21 its corporate headquarters in Illinois, (iii) employs a
22 minimum of 4,250 full-time employees at its corporate
23 headquarters in Illinois at the time of application, (iv)
24 retains at least 4,250 full-time jobs in Illinois that
25 would have been at risk of being relocated outside of
26 Illinois, (v) had a minimum of \$40,000,000,000 in total

1 revenue in 2010, and (vi) makes a capital investment of at
2 least \$300,000,000 at the project location.

3 (1.7) Notwithstanding any other provision of law, the
4 election under this subsection (f) may also be made by a
5 Taxpayer for any Credit awarded pursuant to an agreement
6 that was executed or applied for on or after July 1, 2011
7 and on or before March 31, 2012, if the Taxpayer is
8 primarily engaged in the manufacture of original and
9 aftermarket filtration parts and products for automobiles,
10 motor vehicles, light duty motor vehicles, light trucks and
11 utility vehicles, and heavy duty trucks, (ii) employs a
12 minimum of 1,000 full-time employees in Illinois at the
13 time of application, (iii) creates at least 250 full-time
14 jobs in Illinois, (iv) relocates its corporate
15 headquarters to Illinois from another state, and (v) makes
16 a capital investment of at least \$4,000,000 at the project
17 location.

18 (1.8) On and after the effective date of this
19 amendatory Act of the 97th General Assembly, any Taxpayer
20 that is awarded a Credit under this Act may elect to claim
21 the Credit against its obligation to pay over withholding
22 under Section 704A of the Illinois Income Tax Act.

23 (2) An election under this subsection shall allow the
24 credit to be taken against payments otherwise due under
25 Section 704A of the Illinois Income Tax Act during the
26 first calendar year beginning after the end of the taxable

1 year in which the credit is awarded under this Act.

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

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

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

25 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
26 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.

1 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

2 Section 95. No acceleration or delay. Where this Act makes
3 changes in a statute that is represented in this Act by text
4 that is not yet or no longer in effect (for example, a Section
5 represented by multiple versions), the use of that text does
6 not accelerate or delay the taking effect of (i) the changes
7 made by this Act or (ii) provisions derived from any other
8 Public Act.

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