



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1433

by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-5
35 ILCS 10/5-15
35 ILCS 10/5-20
35 ILCS 10/5-50
35 ILCS 5/917

from Ch. 120, par. 9-917

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that, for agreements entered into on or after the effective date of the amendatory Act, no Taxpayer may elect to apply the credit against its withholding tax liability unless certain conditions are met. Provides that each application for credits must contain an affidavit signed by the Taxpayer's chief executive officer or chief financial officer, or an individual holding an equivalent position, stating that, but for the Credit, the Taxpayer would not locate the project in the State. Requires the Department to post the taxpayer's tax information on its website. In the case of all EDGE credits, provides that, if the Applicant's project includes retained employees, the Credit may also include an amount agreed to between the Department and the Applicant based on the severity of the poverty or unemployment in the geographic area in which the Applicant's project is located or the retained employees reside. Provides that that amount may not be more than 40% of the total amount withheld from the compensation of retained employees. Amends the Illinois Income Tax Act to allow the Department of Revenue to provide information to the Department of Commerce and Economic Opportunity for the purpose of confirming the tax information submitted by the Taxpayer. Effective immediately.

LRB099 06483 HLH 26555 b

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 Sections 5-5, 5-15, 5-20,
6 and 5-50 as follows:

7 (35 ILCS 10/5-5)

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

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

11 "Applicant" means a Taxpayer that is operating a business
12 located or that the Taxpayer plans to locate within the State
13 of Illinois and that is engaged in interstate or intrastate
14 commerce for the purpose of manufacturing, processing,
15 assembling, warehousing, or distributing products, conducting
16 research and development, providing tourism services, or
17 providing services in interstate commerce, office industries,
18 or agricultural processing, but excluding retail, retail food,
19 health, or professional services. "Applicant" does not include
20 a Taxpayer who closes or substantially reduces an operation at
21 one location in the State and relocates substantially the same
22 operation to another location in the State. This does not
23 prohibit a Taxpayer from expanding its operations at another

1 location in the State, provided that existing operations of a
2 similar nature located within the State are not closed or
3 substantially reduced. This also does not prohibit a Taxpayer
4 from moving its operations from one location in the State to
5 another location in the State for the purpose of expanding the
6 operation provided that the Department determines that
7 expansion cannot reasonably be accommodated within the
8 municipality in which the business is located, or in the case
9 of a business located in an incorporated area of the county,
10 within the county in which the business is located, after
11 conferring with the chief elected official of the municipality
12 or county and taking into consideration any evidence offered by
13 the municipality or county regarding the ability to accommodate
14 expansion within the municipality or county.

15 "Committee" means the Illinois Business Investment
16 Committee created under Section 5-25 of this Act within the
17 Illinois Economic Development Board.

18 "Credit" means the amount agreed to between the Department
19 and Applicant under this Act, but not to exceed the Incremental
20 Income Tax attributable to the Applicant's project. However, if
21 the Applicant's project includes retained employees, then the
22 amount of the Credit may also include an amount agreed to
23 between the Department and the Applicant based on the severity
24 of the poverty or unemployment in the geographic area in which
25 the Applicant's project is located or the retained employees
26 reside. That amount may not be more than 40% of the total

1 amount withheld during the taxable year under Article 7 of the
2 Illinois Income Tax Act from the compensation of retained
3 employees. For the purposes of this definition, "retained
4 employee" means a full-time employee of the Applicant who is
5 employed at the project location and whose job is identified in
6 the application as being at risk of being relocated outside of
7 Illinois if the Applicant does not receive a credit under this
8 Act.

9 "Department" means the Department of Commerce and Economic
10 Opportunity.

11 "Director" means the Director of Commerce and Economic
12 Opportunity.

13 "Full-time Employee" means an individual who is employed
14 for consideration for at least 35 hours each week or who
15 renders any other standard of service generally accepted by
16 industry custom or practice as full-time employment. An
17 individual for whom a W-2 is issued by a Professional Employer
18 Organization (PEO) is a full-time employee if employed in the
19 service of the Applicant for consideration for at least 35
20 hours each week or who renders any other standard of service
21 generally accepted by industry custom or practice as full-time
22 employment to Applicant.

23 "Geographic area of high poverty or high unemployment"
24 means a census tract in which more than 20% of the residents
25 live below the poverty level, as determined by the most recent
26 data from the United States Census Bureau, or the average

1 unemployment rate for that census tract exceeds the average
2 unemployment rate for the State by 3% or more.

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

7 "New Employee" means:

8 (a) A Full-time Employee first employed by a Taxpayer
9 in the project that is the subject of an Agreement and who
10 is hired after the Taxpayer enters into the tax credit
11 Agreement.

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

13 (1) an employee of the Taxpayer who performs a job
14 that was previously performed by another employee, if
15 that job existed for at least 6 months before hiring
16 the employee;

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

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

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

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

6 and

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

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

11 (1) the Applicant is in receipt of a letter from
12 the Department stating an intent to enter into a credit
13 Agreement;

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

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

19 "Noncompliance Date" means, in the case of a Taxpayer that
20 is not complying with the requirements of the Agreement or the
21 provisions of this Act, the day following the last date upon
22 which the Taxpayer was in compliance with the requirements of
23 the Agreement and the provisions of this Act, as determined by
24 the Director, pursuant to Section 5-65.

25 "Pass Through Entity" means an entity that is exempt from
26 the tax under subsection (b) or (c) of Section 205 of the

1 Illinois Income Tax Act.

2 "Professional Employer Organization" (PEO) means an
3 employee leasing company, as defined in Section 206.1(A)(2) of
4 the Illinois Unemployment Insurance Act.

5 "Related Member" means a person that, with respect to the
6 Taxpayer during any portion of the taxable year, is any one of
7 the following:

8 (1) An individual stockholder, if the stockholder and
9 the members of the stockholder's family (as defined in
10 Section 318 of the Internal Revenue Code) own directly,
11 indirectly, beneficially, or constructively, in the
12 aggregate, at least 50% of the value of the Taxpayer's
13 outstanding stock.

14 (2) A partnership, estate, or trust and any partner or
15 beneficiary, if the partnership, estate, or trust, and its
16 partners or beneficiaries own directly, indirectly,
17 beneficially, or constructively, in the aggregate, at
18 least 50% of the profits, capital, stock, or value of the
19 Taxpayer.

20 (3) A corporation, and any party related to the
21 corporation in a manner that would require an attribution
22 of stock from the corporation to the party or from the
23 party to the corporation under the attribution rules of
24 Section 318 of the Internal Revenue Code, if the Taxpayer
25 owns directly, indirectly, beneficially, or constructively
26 at least 50% of the value of the corporation's outstanding

1 stock.

2 (4) A corporation and any party related to that
3 corporation in a manner that would require an attribution
4 of stock from the corporation to the party or from the
5 party to the corporation under the attribution rules of
6 Section 318 of the Internal Revenue Code, if the
7 corporation and all such related parties own in the
8 aggregate at least 50% of the profits, capital, stock, or
9 value of the Taxpayer.

10 (5) A person to or from whom there is attribution of
11 stock ownership in accordance with Section 1563(e) of the
12 Internal Revenue Code, except, for purposes of determining
13 whether a person is a Related Member under this paragraph,
14 20% shall be substituted for 5% wherever 5% appears in
15 Section 1563(e) of the Internal Revenue Code.

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

18 (Source: P.A. 94-793, eff. 5-19-06; 95-375, eff. 8-23-07.)

19 (35 ILCS 10/5-15)

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

1 January 1, 1999, if the Taxpayer is awarded a Credit by the
2 Department under this Act for that taxable year.

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

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

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

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

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

16 (f) Subject to the requirements of paragraph (5) of this
17 subsection (f), in ~~in~~ lieu of the Credit allowed under this Act
18 against the taxes imposed pursuant to subsections (a) and (b)
19 of Section 201 of the Illinois Income Tax Act for any taxable
20 year ending on or after December 31, 2009, the Taxpayer may
21 elect to claim the Credit against its obligation to pay over
22 withholding under Section 704A of the Illinois Income Tax Act.

23 (1) The election under this subsection (f) may be made
24 only by a Taxpayer that (i) is primarily engaged in one of
25 the following business activities: water purification and
26 treatment, motor vehicle metal stamping, automobile

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

9 (A) 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, (iii) has an
15 Agreement under this Act on December 14, 2009 (the
16 effective date of Public Act 96-834), and (iv) is in
17 compliance with all provisions of that Agreement;

18 (B) the Taxpayer (i) had an Illinois net loss or an
19 Illinois net loss deduction under Section 207 of the
20 Illinois Income Tax Act for the taxable year in which
21 the Credit is awarded, (ii) employed a minimum of 1,000
22 full-time employees in this State during the taxable
23 year in which the Credit is awarded, and (iii) has
24 applied for an Agreement within 365 days after December
25 14, 2009 (the effective date of Public Act 96-834);

26 (C) the Taxpayer (i) had an Illinois net operating

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

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

20 (E) the Taxpayer (i) employed at least 2,500
21 full-time employees in the State during the year in
22 which the Credit is awarded, (ii) commits to make at
23 least \$500,000,000 in combined capital improvements
24 and project costs under the Agreement, (iii) applies
25 for an Agreement between January 1, 2011 and June 30,
26 2011, (iv) executes an Agreement for the Credit during

1 calendar year 2011, and (v) was incorporated no more
2 than 5 years before the filing of an application for an
3 Agreement.

4 (1.5) The election under this subsection (f) may also
5 be made by a Taxpayer for any Credit awarded pursuant to an
6 agreement that was executed between January 1, 2011 and
7 June 30, 2011, if the Taxpayer (i) is primarily engaged in
8 the manufacture of inner tubes or tires, or both, from
9 natural and synthetic rubber, (ii) employs a minimum of
10 2,400 full-time employees in Illinois at the time of
11 application, (iii) creates at least 350 full-time jobs and
12 retains at least 250 full-time jobs in Illinois that would
13 have been at risk of being created or retained outside of
14 Illinois, and (iv) makes a capital investment of at least
15 \$200,000,000 at the project location.

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

1 Illinois, (v) had a minimum of \$40,000,000,000 in total
2 revenue in 2010, and (vi) makes a capital investment of at
3 least \$300,000,000 at the project location.

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

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

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

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

8 (5) With respect to Agreements entered into on or after
9 the effective date of this amendatory Act of the 99th
10 General Assembly, no Taxpayer may make an election under
11 this subsection (f) unless all of the following conditions
12 are met:

13 (A) The General Assembly authorizes that election
14 by law.

15 (B) The Taxpayer applies with the Department for a
16 Credit prior to the date the General Assembly
17 authorizes the election.

18 (C) The Taxpayer (i) agrees to hire a specified
19 number of New Employees at a project location in a
20 geographic area of high poverty or high unemployment or
21 (ii) agrees to hire a specified number of New Employees
22 at least 65% of whom reside in a geographic area of
23 high poverty or high unemployment; the number of New
24 Employees hired under item (ii) shall be verified
25 annually by the Department through payroll information
26 submitted by the Taxpayer; for the purposes of this

1 subparagraph (C), an employee who is retained by the
2 Taxpayer is not considered a New Employee.

3 (D) The Taxpayer files a statement with the
4 Department at the time of the application for the
5 Credit containing the following information from the
6 Taxpayer's Illinois income tax return for the 2 years
7 immediately preceding the date of the application; in
8 addition, the Taxpayer shall file an additional
9 statement with the Department containing the same
10 information for the first taxable year with respect to
11 which an election is made under this subsection (f) and
12 for each subsequent tax year covered by the Agreement:

13 (i) the Taxpayer's base income, as calculated
14 under Section 203 of the Illinois Income Tax Act;

15 (ii) the apportionment factor to the State for
16 the Taxpayer;

17 (iii) the total business income of the
18 Taxpayer apportioned to the State;

19 (iv) the Illinois net operating loss deduction
20 for the Taxpayer, if any;

21 (v) the total non-business income of the
22 Taxpayer and the amount of the Taxpayer's
23 non-business income allocated to the State;

24 (vi) the net income of the Taxpayer;

25 (vii) the Taxpayer's total State income tax
26 liability before credits;

1 (viii) the Taxpayer's net income tax
2 liability;

3 (ix) the Taxpayer's total personal property
4 tax replacement tax liability before credits;

5 (x) the Taxpayer's net personal property tax
6 replacement tax liability; and

7 (xi) tax credits claimed by the Taxpayer, with
8 each credit individually enumerated.

9 Each additional statement required under this
10 subparagraph (D) for a taxable year shall be filed no
11 later than the earlier of 30 days after (i) the
12 Taxpayer files its Illinois income tax return for that
13 taxable year, (ii) the due date (including extensions)
14 for the filing of that return, or (iii) in the case of
15 the additional statement covering the taxable year in
16 which an election is made, the date the election is
17 made under this subsection (f).

18 (E) The Taxpayer files a statement with the
19 Department reporting any changes to the information
20 required to be reported under subparagraph (D) that
21 were reported by the Taxpayer on an amended return for
22 the taxable year or that were made by the Department of
23 Revenue; the report required under this subparagraph
24 (E) must be filed within 30 days after the Taxpayer
25 files the amended return or within 30 days after the
26 date on which all proceedings in court for review of

1 the changes made by the Department of Revenue have
2 terminated or the time for taking thereof has expired
3 without such proceedings being instituted.

4 (F) The Agreement includes a consent by the
5 Taxpayer to allow the Department to confirm with the
6 Department of Revenue the accuracy of the information
7 required to be reported under subparagraphs (D) and
8 (E).

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; 97-636, eff. 6-1-12.)

1 Sec. 5-20. Application for a project to create and retain
2 new jobs.

3 (a) Any Taxpayer proposing a project located or planned to
4 be located in Illinois may request consideration for
5 designation of its project, by formal written letter of request
6 or by formal application to the Department, in which the
7 Applicant states its intent to make at least a specified level
8 of investment and intends to hire or retain a specified number
9 of full-time employees at a designated location in Illinois. As
10 circumstances require, the Department may require a formal
11 application from an Applicant and a formal letter of request
12 for assistance. Each application must contain an affidavit
13 signed by the Taxpayer's chief executive officer or chief
14 financial officer, or an individual holding an equivalent
15 position in the organization, stating that, but for the Credit,
16 the Taxpayer would not locate the project in the State.

17 (b) In order to qualify for Credits under this Act, an
18 Applicant's project must:

19 (1) except as provided in paragraphs (2) and (3),
20 involve an investment of at least \$5,000,000 in capital
21 improvements to be placed in service and ~~to~~ employ at least
22 25 New Employees within the State as a direct result of the
23 project;

24 (2) involve an investment of at least an amount (to be
25 expressly specified by the Department and the Committee) in
26 capital improvements to be placed in service and will

1 employ at least an amount (to be expressly specified by the
2 Department and the Committee) of New Employees within the
3 State, provided that the Department and the Committee have
4 determined that the project will provide a substantial
5 economic benefit to the State; or

6 (3) if the applicant has 100 or fewer employees, then
7 the applicant is not subject to the capital improvement
8 requirements set forth in paragraph (1) of this subsection,
9 but the applicant's project must ~~involve an investment of~~
10 ~~at least \$1,000,000 in capital improvements to be placed in~~
11 ~~service and to~~ employ at least 5 New Employees within the
12 State as a direct result of the project.

13 (c) After receipt of an application, the Department may
14 enter into an Agreement with the Applicant if the application
15 is accepted in accordance with Section 5-25.

16 (Source: P.A. 93-882, eff. 1-1-05.)

17 (35 ILCS 10/5-50)

18 Sec. 5-50. Contents of Agreements with Applicants. The
19 Department shall enter into an Agreement with an Applicant that
20 is awarded a Credit under this Act. The Agreement must include
21 all of the following:

22 (1) A detailed description of the project that is the
23 subject of the Agreement, including the location and amount
24 of the investment and jobs created or retained.

25 (2) The duration of the Credit and the first taxable

1 year for which the Credit may be claimed.

2 (3) The Credit amount that will be allowed for each
3 taxable year.

4 (4) A requirement that the Taxpayer shall maintain
5 operations at the project location that shall be stated as
6 a minimum number of years not to exceed 10.

7 (5) A specific method for determining the number of New
8 Employees employed during a taxable year.

9 (6) A requirement that the Taxpayer shall annually
10 report to the Department the number of New Employees, the
11 home addresses of any retained employees, the Incremental
12 Income Tax withheld in connection with the New Employees
13 and retained employees, and any other information the
14 Director needs to perform the Director's duties under this
15 Act.

16 (7) A requirement that the Director is authorized to
17 verify with the appropriate State agencies the amounts
18 reported under paragraph (6), and after doing so shall
19 issue a certificate to the Taxpayer stating that the
20 amounts have been verified.

21 (8) A requirement that the Taxpayer shall provide
22 written notification to the Director not more than 30 days
23 after the Taxpayer makes or receives a proposal that would
24 transfer the Taxpayer's State tax liability obligations to
25 a successor Taxpayer.

26 (9) A detailed description of the number of New

1 Employees to be hired, and the occupation and payroll of
2 the full-time jobs to be created or retained as a result of
3 the project.

4 (10) The minimum investment the business enterprise
5 will make in capital improvements, the time period for
6 placing the property in service, and the designated
7 location in Illinois for the investment.

8 (11) A requirement that the Taxpayer shall provide
9 written notification to the Director and the Committee not
10 more than 30 days after the Taxpayer determines that the
11 minimum job creation or retention, employment payroll, or
12 investment no longer is being or will be achieved or
13 maintained as set forth in the terms and conditions of the
14 Agreement.

15 (12) A provision that, if the total number of New
16 Employees falls below a specified level, the allowance of
17 Credit shall be suspended until the number of New Employees
18 equals or exceeds the Agreement amount.

19 (13) A detailed description of the items for which the
20 costs incurred by the Taxpayer will be included in the
21 limitation on the Credit provided in Section 5-30.

22 (13.5) A provision that, if the Taxpayer never meets
23 either the investment or job creation and retention
24 requirements specified in the Agreement during the entire
25 5-year period beginning on the first day of the first
26 taxable year in which the Agreement is executed and ending

1 on the last day of the fifth taxable year after the
2 Agreement is executed, then the Agreement is automatically
3 terminated on the last day of the fifth taxable year after
4 the Agreement is executed and the Taxpayer is not entitled
5 to the award of any credits for any of that 5-year period.

6 (14) Any other performance conditions or contract
7 provisions as the Department determines are appropriate.

8 The Department shall post on its website (i) the terms of
9 each Agreement entered into under this Act on or after the
10 effective date of this amendatory Act of the 97th General
11 Assembly and (ii) the tax information provided to the
12 Department under subparagraphs (D) and (E) of paragraph (5) of
13 subsection (f).

14 (Source: P.A. 97-2, eff. 5-6-11; 97-749, eff. 7-6-12.)

15 Section 10. The Illinois Income Tax Act is amended by
16 changing Section 917 as follows:

17 (35 ILCS 5/917) (from Ch. 120, par. 9-917)

18 Sec. 917. Confidentiality and information sharing.

19 (a) Confidentiality. Except as provided in this Section,
20 all information received by the Department from returns filed
21 under this Act, or from any investigation conducted under the
22 provisions of this Act, shall be confidential, except for
23 official purposes within the Department or pursuant to official
24 procedures for collection of any State tax or pursuant to an

1 investigation or audit by the Illinois State Scholarship
2 Commission of a delinquent student loan or monetary award or
3 enforcement of any civil or criminal penalty or sanction
4 imposed by this Act or by another statute imposing a State tax,
5 and any person who divulges any such information in any manner,
6 except for such purposes and pursuant to order of the Director
7 or in accordance with a proper judicial order, shall be guilty
8 of a Class A misdemeanor. However, the provisions of this
9 paragraph are not applicable to information furnished to (i)
10 the Department of Healthcare and Family Services (formerly
11 Department of Public Aid), State's Attorneys, and the Attorney
12 General for child support enforcement purposes and (ii) a
13 licensed attorney representing the taxpayer where an appeal or
14 a protest has been filed on behalf of the taxpayer. If it is
15 necessary to file information obtained pursuant to this Act in
16 a child support enforcement proceeding, the information shall
17 be filed under seal.

18 (b) Public information. Nothing contained in this Act shall
19 prevent the Director from publishing or making available to the
20 public the names and addresses of persons filing returns under
21 this Act, or from publishing or making available reasonable
22 statistics concerning the operation of the tax wherein the
23 contents of returns are grouped into aggregates in such a way
24 that the information contained in any individual return shall
25 not be disclosed.

26 (c) Governmental agencies. The Director may make available

1 to the Secretary of the Treasury of the United States or his
2 delegate, or the proper officer or his delegate of any other
3 state imposing a tax upon or measured by income, for
4 exclusively official purposes, information received by the
5 Department in the administration of this Act, but such
6 permission shall be granted only if the United States or such
7 other state, as the case may be, grants the Department
8 substantially similar privileges. The Director may exchange
9 information with the Department of Healthcare and Family
10 Services and the Department of Human Services (acting as
11 successor to the Department of Public Aid under the Department
12 of Human Services Act) for the purpose of verifying sources and
13 amounts of income and for other purposes directly connected
14 with the administration of this Act, the Illinois Public Aid
15 Code, and any other health benefit program administered by the
16 State. The Director may exchange information with the Director
17 of the Department of Employment Security for the purpose of
18 verifying sources and amounts of income and for other purposes
19 directly connected with the administration of this Act and Acts
20 administered by the Department of Employment Security. The
21 Director may make available to the Illinois Workers'
22 Compensation Commission information regarding employers for
23 the purpose of verifying the insurance coverage required under
24 the Workers' Compensation Act and Workers' Occupational
25 Diseases Act. The Director may exchange information with the
26 Illinois Department on Aging for the purpose of verifying

1 sources and amounts of income for purposes directly related to
2 confirming eligibility for participation in the programs of
3 benefits authorized by the Senior Citizens and Disabled Persons
4 Property Tax Relief and Pharmaceutical Assistance Act.

5 The Director may make available to any State agency,
6 including the Illinois Supreme Court, which licenses persons to
7 engage in any occupation, information that a person licensed by
8 such agency has failed to file returns under this Act or pay
9 the tax, penalty and interest shown therein, or has failed to
10 pay any final assessment of tax, penalty or interest due under
11 this Act. The Director may make available to any State agency,
12 including the Illinois Supreme Court, information regarding
13 whether a bidder, contractor, or an affiliate of a bidder or
14 contractor has failed to file returns under this Act or pay the
15 tax, penalty, and interest shown therein, or has failed to pay
16 any final assessment of tax, penalty, or interest due under
17 this Act, for the limited purpose of enforcing bidder and
18 contractor certifications. For purposes of this Section, the
19 term "affiliate" means any entity that (1) directly,
20 indirectly, or constructively controls another entity, (2) is
21 directly, indirectly, or constructively controlled by another
22 entity, or (3) is subject to the control of a common entity.
23 For purposes of this subsection (a), an entity controls another
24 entity if it owns, directly or individually, more than 10% of
25 the voting securities of that entity. As used in this
26 subsection (a), the term "voting security" means a security

1 that (1) confers upon the holder the right to vote for the
2 election of members of the board of directors or similar
3 governing body of the business or (2) is convertible into, or
4 entitles the holder to receive upon its exercise, a security
5 that confers such a right to vote. A general partnership
6 interest is a voting security.

7 The Director may make available to any State agency,
8 including the Illinois Supreme Court, units of local
9 government, and school districts, information regarding
10 whether a bidder or contractor is an affiliate of a person who
11 is not collecting and remitting Illinois Use taxes, for the
12 limited purpose of enforcing bidder and contractor
13 certifications.

14 The Director may also make available to the Secretary of
15 State information that a corporation which has been issued a
16 certificate of incorporation by the Secretary of State has
17 failed to file returns under this Act or pay the tax, penalty
18 and interest shown therein, or has failed to pay any final
19 assessment of tax, penalty or interest due under this Act. An
20 assessment is final when all proceedings in court for review of
21 such assessment have terminated or the time for the taking
22 thereof has expired without such proceedings being instituted.
23 For taxable years ending on or after December 31, 1987, the
24 Director may make available to the Director or principal
25 officer of any Department of the State of Illinois, information
26 that a person employed by such Department has failed to file

1 returns under this Act or pay the tax, penalty and interest
2 shown therein. For purposes of this paragraph, the word
3 "Department" shall have the same meaning as provided in Section
4 3 of the State Employees Group Insurance Act of 1971.

5 The Director may provide information to the Department of
6 Commerce and Economic Opportunity for the purpose of confirming
7 information provided by a taxpayer under subparagraphs (D) and
8 (E) of item (5) of subsection (f) of Section 5-15 of the
9 Economic Development for a Growing Economy Tax Credit Act if
10 the taxpayer consents to that disclosure in the Agreement under
11 that Act.

12 (d) The Director shall make available for public inspection
13 in the Department's principal office and for publication, at
14 cost, administrative decisions issued on or after January 1,
15 1995. These decisions are to be made available in a manner so
16 that the following taxpayer information is not disclosed:

17 (1) The names, addresses, and identification numbers
18 of the taxpayer, related entities, and employees.

19 (2) At the sole discretion of the Director, trade
20 secrets or other confidential information identified as
21 such by the taxpayer, no later than 30 days after receipt
22 of an administrative decision, by such means as the
23 Department shall provide by rule.

24 The Director shall determine the appropriate extent of the
25 deletions allowed in paragraph (2). In the event the taxpayer
26 does not submit deletions, the Director shall make only the

1 deletions specified in paragraph (1).

2 The Director shall make available for public inspection and
3 publication an administrative decision within 180 days after
4 the issuance of the administrative decision. The term
5 "administrative decision" has the same meaning as defined in
6 Section 3-101 of Article III of the Code of Civil Procedure.
7 Costs collected under this Section shall be paid into the Tax
8 Compliance and Administration Fund.

9 (e) Nothing contained in this Act shall prevent the
10 Director from divulging information to any person pursuant to a
11 request or authorization made by the taxpayer, by an authorized
12 representative of the taxpayer, or, in the case of information
13 related to a joint return, by the spouse filing the joint
14 return with the taxpayer.

15 (Source: P.A. 95-331, eff. 8-21-07; 96-1501, eff. 1-25-11.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.