

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, 5-20, 5-25,
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.

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

23 "Director" means the Director of Commerce and Economic
24 Opportunity.

25 "Full-time Employee" means an individual who is employed
26 for consideration for at least 35 hours each week or who

1 renders any other standard of service generally accepted by
2 industry custom or practice as full-time employment. An
3 individual for whom a W-2 is issued by a Professional Employer
4 Organization (PEO) is a full-time employee if employed in the
5 service of the Applicant for consideration for at least 35
6 hours each week or who renders any other standard of service
7 generally accepted by industry custom or practice as full-time
8 employment to Applicant.

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

13 "New Employee" means:

14 (a) A Full-time Employee first employed by a Taxpayer
15 in the project that is the subject of an Agreement and who
16 is hired after the Taxpayer enters into the tax credit
17 Agreement.

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

19 (1) an employee of the Taxpayer who performs a job
20 that was previously performed by another employee, if
21 that job existed for at least 6 months before hiring
22 the employee;

23 (2) an employee of the Taxpayer who was previously
24 employed in Illinois by a Related Member of the
25 Taxpayer and whose employment was shifted to the
26 Taxpayer after the Taxpayer entered into the tax credit

1 Agreement; ~~or~~

2 (3) a child, grandchild, parent, or spouse, other
3 than a spouse who is legally separated from the
4 individual, of any individual who has a direct or an
5 indirect ownership interest of at least 5% in the
6 profits, capital, or value of the Taxpayer; or ~~or~~

7 (4) an employee of the Taxpayer who was previously
8 employed in Illinois by the Taxpayer and whose
9 employment was shifted to the project after the
10 Taxpayer entered into the Agreement.

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

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

16 and

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

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

21 (1) the Applicant is in receipt of a letter from
22 the Department stating an intent to enter into a credit
23 Agreement;

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

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

3 "Noncompliance Date" means, in the case of a Taxpayer that
4 is not complying with the requirements of the Agreement or the
5 provisions of this Act, the day following the last date upon
6 which the Taxpayer was in compliance with the requirements of
7 the Agreement and the provisions of this Act, as determined by
8 the Director, pursuant to Section 5-65.

9 "Pass Through Entity" means an entity that is exempt from
10 the tax under subsection (b) or (c) of Section 205 of the
11 Illinois Income Tax Act.

12 "Project" means a for-profit economic development activity
13 or activities at a single site, or of one or more taxpayers at
14 multiple sites if the economic activities are vertically
15 integrated.

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

19 "Related Member" means a person that, with respect to the
20 Taxpayer during any portion of the taxable year, is any one of
21 the following:

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

1 outstanding stock.

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 value of the
7 Taxpayer.

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 to the party or from the
11 party to the corporation under the attribution rules of
12 Section 318 of the Internal Revenue Code, if the Taxpayer
13 owns directly, indirectly, beneficially, or constructively
14 at least 50% of the value of the corporation's outstanding
15 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 value of the Taxpayer.

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, for purposes of determining

1 whether a person is a Related Member under this paragraph,
2 20% shall be substituted for 5% wherever 5% appears in
3 Section 1563(e) of the Internal Revenue Code.

4 "Retained Employee" means a full-time employee employed by
5 a taxpayer during the term of the Agreement whose job duties
6 are directly and substantially related to the project. The term
7 "Retained Employee" does not include a child, grandchild,
8 parent, or spouse, other than a spouse who is legally separated
9 from the individual, of any individual who has direct or
10 indirect ownership interest of at least 5% in the profits,
11 capital, or value of the taxpayer. For purposes of this
12 definition, "directly and substantially related to the
13 project" means at least two-thirds of the employee's job duties
14 must be directly related to the project and the employee must
15 devote at least two-thirds of his or her time to the project.

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 10/5-20)

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

22 (a) Any Taxpayer proposing a project located or planned to
23 be located in Illinois may request consideration for
24 designation of its project, by formal written letter of request
25 or by formal application to the Department, in which the

1 Applicant states its intent to make at least a specified level
2 of investment and intends to hire or retain a specified number
3 of full-time employees at a designated location in Illinois. As
4 circumstances require, the Department may require a formal
5 application from an Applicant and a formal letter of request
6 for assistance.

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

9 (1) involve an investment of at least \$5,000,000 in
10 capital improvements to be placed in service and to employ
11 at least 25 New Employees within the State as a direct
12 result of the project;

13 (2) involve an investment in capital improvements to be
14 placed in service in the State at a level ~~of at least an~~
15 ~~amount (to be expressly~~ specified by the Department ~~and the~~
16 ~~Committee) in capital improvements to be placed in service~~
17 ~~and will~~ employ at least an amount ~~(to be expressly~~
18 ~~specified by the Department and the Committee)~~ of New
19 Employees or Retained Employees within the State as
20 specified by the Department, provided that the Department
21 has ~~and the Committee have~~ determined that the project will
22 provide a substantial economic benefit to the State; or

23 (3) if the applicant has 100 or fewer employees,
24 involve an investment of at least \$1,000,000 in capital
25 improvements to be placed in service and to employ at least
26 5 New Employees within the State as a direct result of the

1 project.

2 The Director may approve projects that do not meet the
3 specified minimum job creation and investment thresholds set
4 forth in this subsection (b) for an applicant meeting all other
5 requirements of this Act provided that one or more of the
6 following conditions are met:

7 (A) approval would support a business with potential to
8 generate additional growth by attracting companion
9 businesses; or

10 (B) approval would avert loss of one of the area's
11 major sources of employment.

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

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

16 (35 ILCS 10/5-25)

17 Sec. 5-25. Review of Application.

18 (a) In addition to those duties granted under the Illinois
19 Economic Development Board Act, the Illinois Economic
20 Development Board shall form a Business Investment Committee
21 for the purpose of making recommendations for applications. At
22 the request of the Board, the Director of Commerce and Economic
23 Opportunity or his or her designee, the Director of the
24 Governor's Office of Management and Budget or his or her
25 designee, the Director of Revenue or his or her designee, the

1 Director of Employment Security or his or her designee, and an
2 elected official of the affected locality, such as the chair of
3 the county board or the mayor, may serve as members of the
4 Committee to assist with its analysis and deliberations.

5 (b) At the Department's request, the Committee shall
6 convene, make inquiries, and conduct studies in the manner and
7 by the methods as it deems desirable, review information with
8 respect to Applicants, and make recommendations for projects to
9 benefit the State. In making its recommendation that an
10 Applicant's application for Credit should or should not be
11 accepted, which shall occur within a reasonable time frame as
12 determined by the nature of the application, the Committee
13 shall determine that all the following conditions exist:

14 (1) The Applicant's project intends, as required by
15 subsection (b) of Section 5-20 to make the required
16 investment in the State and intends to hire or retain the
17 required number of New Employees or Retained Employees in
18 Illinois as a result of that project.

19 (2) The Applicant's project is economically sound and
20 will benefit the people of the State of Illinois by
21 increasing opportunities for employment and strengthen the
22 economy of Illinois.

23 (3) That, if not for the Credit, the project would not
24 occur in Illinois, which may be demonstrated by any means
25 including, but not limited to, evidence the Applicant has
26 multi-state location options and could reasonably and

1 efficiently locate outside of the State, or demonstration
2 that at least one other state is being considered for the
3 project, or evidence the receipt of the Credit is a major
4 factor in the Applicant's decision and that without the
5 Credit, the Applicant likely would not create new jobs in
6 Illinois, or demonstration that receiving the Credit is
7 essential to the Applicant's decision to create or retain
8 new jobs in the State.

9 (4) A cost differential is identified, using best
10 available data, in the projected costs for the Applicant's
11 project compared to the costs in the competing state,
12 including the impact of the competing state's incentive
13 programs. The competing state's incentive programs shall
14 include state, local, private, and federal funds
15 available.

16 (5) The political subdivisions affected by the project
17 have committed local incentives with respect to the
18 project, considering local ability to assist.

19 (6) Awarding the Credit will result in an overall
20 positive fiscal impact to the State, as certified by the
21 Committee using the best available data.

22 (7) The Credit is not prohibited by Section 5-35 of
23 this Act.

24 (Source: P.A. 94-793, eff. 5-19-06.)

25 (35 ILCS 10/5-50)

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

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

8 (2) The duration of the Credit and the first taxable
9 year for which the Credit may be claimed.

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

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

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

17 (6) A requirement that the Taxpayer shall annually
18 report to the Department the number of New Employees and
19 Retained Employees, the Incremental Income Tax withheld in
20 connection with the New Employees and Retained Employees,
21 and any other information the Director needs to perform the
22 Director's duties under this Act.

23 (7) A requirement that the Director is authorized to
24 verify with the appropriate State agencies the amounts
25 reported under paragraph (6), and after doing so shall
26 issue a certificate to the Taxpayer stating that the

1 amounts have been verified.

2 (8) A requirement that the Taxpayer shall provide
3 written notification to the Director not more than 30 days
4 after the Taxpayer makes or receives a proposal that would
5 transfer the Taxpayer's State tax liability obligations to
6 a successor Taxpayer.

7 (9) A detailed description of the number of New
8 Employees to be hired, Retained Employees to be retained,
9 and the occupation and payroll of the full-time jobs to be
10 created or retained as a result of the project.

11 (10) The minimum investment the business enterprise
12 will make in capital improvements, the time period for
13 placing the property in service, and the designated
14 location in Illinois for the investment.

15 (11) A requirement that the Taxpayer shall provide
16 written notification to the Director and the Committee not
17 more than 30 days after the Taxpayer determines that the
18 minimum job creation or retention, employment payroll, or
19 investment no longer is being or will be achieved or
20 maintained as set forth in the terms and conditions of the
21 Agreement.

22 (12) A provision that, if the total number of New
23 Employees or Retained Employees falls below a specified
24 level, the allowance of Credit shall be suspended until the
25 number of New Employees and Retained Employees equals or
26 exceeds the Agreement amount.

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

4 (13.5) A provision that, if the Taxpayer never meets
5 either the investment or job creation and retention
6 requirements specified in the Agreement during the entire
7 5-year period beginning on the first day of the first
8 taxable year in which the Agreement is executed and ending
9 on the last day of the fifth taxable year after the
10 Agreement is executed, then the Agreement is automatically
11 terminated on the last day of the fifth taxable year after
12 the Agreement is executed and the Taxpayer is not entitled
13 to the award of any credits for any of that 5-year period.

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

16 The Department shall post on its website the terms of each
17 Agreement entered into under this Act on or after the effective
18 date of this amendatory Act of the 97th General Assembly.

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

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.