

# SB1328



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1328

Introduced 2/7/2019, by Sen. Linda Holmes

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/229 new  
35 ILCS 735/3-3

from Ch. 120, par. 2603-3

Amends the Illinois Income Tax Act. Creates an income tax credit in an amount equal to 1% of the expenses claimed by the taxpayer as a federal income tax deduction pursuant to Section 179 of the Internal Revenue Code for the tax year. Provides that the taxpayer may sell, assign, or transfer the credit. Provides that the maximum aggregate amount of credits awarded for those purposes may not exceed \$30,000,000 in any calendar year. Amends the Uniform Penalty and Interest Act to provide that, if the amount of the credit is reduced because the claims for credit exceed the maximum aggregate amount of the credit, then no underpayment penalty or interest shall accrue on the additional tax so long as the additional tax is paid within 60 days after the notice of reduction. Effective immediately.

LRB101 07578 HLH 52623 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 Illinois Income Tax Act is amended by adding  
5 Section 229 as follows:

6 (35 ILCS 5/229 new)

7 Sec. 229. Small business bonus investment credit.

8 (a) For tax years beginning on or after January 1, 2019,  
9 subject to the limitations of subsection (e), a taxpayer is  
10 entitled to a credit against the taxes imposed under  
11 subsections (a) and (b) of Section 201 of this Act in an amount  
12 equal to 1% of the expenses claimed by the taxpayer as a  
13 federal income tax deduction pursuant to Section 179 of the  
14 Internal Revenue Code for the tax year.

15 (b) If the taxpayer is a partnership or Subchapter S  
16 corporation, the credit is allowed to the partners or  
17 shareholders in accordance with the determination of income and  
18 distributive share of income under Sections 702 and 704 and  
19 Subchapter S of the Internal Revenue Code.

20 (c) If the amount of the credit exceeds the tax liability  
21 for the year, then the excess credit may be carried forward and  
22 applied to the tax liability of the 5 taxable years following  
23 the excess credit year. The credit shall be applied to the

1 earliest year for which there is a tax liability. If there are  
2 credits from more than one tax year that are available to  
3 offset a liability, the earlier credit shall be applied first.  
4 In no event shall a credit under this Section reduce the  
5 taxpayer's liability to less than zero.

6 (d) A sale, assignment, or transfer of this credit may be  
7 made by the taxpayer in accordance with rules adopted by the  
8 Department. In the event the Department audits the taxpayer and  
9 establishes a final liability that reduces the amount of a  
10 credit that has been sold, assigned, or transferred, the  
11 taxpayer remains liable to the Department and the Department  
12 may not attempt to recoup the credit from a purchaser,  
13 assignee, or transferee.

14 (e) The maximum aggregate amount of credits awarded under  
15 this Section may not exceed \$30,000,000 in any calendar year.  
16 No credit may be awarded if claimed on a return that is filed  
17 after the original due date plus any automatic extension. The  
18 Department shall determine the total amount of credits claimed  
19 for a calendar year by March 1 of the next calendar year. If  
20 the timely claims for the credit exceed \$30,000,000 in any  
21 calendar year, the Department shall reduce the amount of the  
22 credit pro rata and provide written notice of the reduction to  
23 each taxpayer. The notice of reduction is a Notice and Demand  
24 under Section 902 of this Act and shall not be a protestable  
25 notice under Section 903 of this Act. In no event shall any  
26 purchaser, assignee, or transferee be responsible for such

1 additional tax. Each taxpayer shall report and repay additional  
2 taxes required by the reduction of the credit within 60 days  
3 after the notice of the reduction. No underpayment penalty or  
4 interest shall accrue pursuant to the Uniform Penalty and  
5 Interest Act on such additional tax so long as the additional  
6 tax is paid within 60 days after the notice of reduction.  
7 Nothing in this subsection shall preclude the Department from  
8 reducing the amount of credit granted to any taxpayer as a  
9 result of an audit.

10 (f) The Department shall adopt rules to enforce and  
11 administer provisions of this Section on or before January 1,  
12 2020.

13 (g) This Section is exempt from the provisions of Section  
14 250.

15 Section 10. The Uniform Penalty and Interest Act is amended  
16 by changing Section 3-3 as follows:

17 (35 ILCS 735/3-3) (from Ch. 120, par. 2603-3)

18 Sec. 3-3. Penalty for failure to file or pay.

19 (a) This subsection (a) is applicable before January 1,  
20 1996. A penalty of 5% of the tax required to be shown due on a  
21 return shall be imposed for failure to file the tax return on  
22 or before the due date prescribed for filing determined with  
23 regard for any extension of time for filing (penalty for late  
24 filing or nonfiling). If any unprocessable return is corrected

1 and filed within 21 days after notice by the Department, the  
2 late filing or nonfiling penalty shall not apply. If a penalty  
3 for late filing or nonfiling is imposed in addition to a  
4 penalty for late payment, the total penalty due shall be the  
5 sum of the late filing penalty and the applicable late payment  
6 penalty. Beginning on the effective date of this amendatory Act  
7 of 1995, in the case of any type of tax return required to be  
8 filed more frequently than annually, when the failure to file  
9 the tax return on or before the date prescribed for filing  
10 (including any extensions) is shown to be nonfraudulent and has  
11 not occurred in the 2 years immediately preceding the failure  
12 to file on the prescribed due date, the penalty imposed by  
13 Section 3-3(a) shall be abated.

14 (a-5) This subsection (a-5) is applicable to returns due on  
15 and after January 1, 1996 and on or before December 31, 2000. A  
16 penalty equal to 2% of the tax required to be shown due on a  
17 return, up to a maximum amount of \$250, determined without  
18 regard to any part of the tax that is paid on time or by any  
19 credit that was properly allowable on the date the return was  
20 required to be filed, shall be imposed for failure to file the  
21 tax return on or before the due date prescribed for filing  
22 determined with regard for any extension of time for filing.  
23 However, if any return is not filed within 30 days after notice  
24 of nonfiling mailed by the Department to the last known address  
25 of the taxpayer contained in Department records, an additional  
26 penalty amount shall be imposed equal to the greater of \$250 or

1 2% of the tax shown on the return. However, the additional  
2 penalty amount may not exceed \$5,000 and is determined without  
3 regard to any part of the tax that is paid on time or by any  
4 credit that was properly allowable on the date the return was  
5 required to be filed (penalty for late filing or nonfiling). If  
6 any unprocessable return is corrected and filed within 30 days  
7 after notice by the Department, the late filing or nonfiling  
8 penalty shall not apply. If a penalty for late filing or  
9 nonfiling is imposed in addition to a penalty for late payment,  
10 the total penalty due shall be the sum of the late filing  
11 penalty and the applicable late payment penalty. In the case of  
12 any type of tax return required to be filed more frequently  
13 than annually, when the failure to file the tax return on or  
14 before the date prescribed for filing (including any  
15 extensions) is shown to be nonfraudulent and has not occurred  
16 in the 2 years immediately preceding the failure to file on the  
17 prescribed due date, the penalty imposed by Section 3-3(a-5)  
18 shall be abated.

19 (a-10) This subsection (a-10) is applicable to returns due  
20 on and after January 1, 2001. A penalty equal to 2% of the tax  
21 required to be shown due on a return, up to a maximum amount of  
22 \$250, reduced by any tax that is paid on time or by any credit  
23 that was properly allowable on the date the return was required  
24 to be filed, shall be imposed for failure to file the tax  
25 return on or before the due date prescribed for filing  
26 determined with regard for any extension of time for filing.

1 However, if any return is not filed within 30 days after notice  
2 of nonfiling mailed by the Department to the last known address  
3 of the taxpayer contained in Department records, an additional  
4 penalty amount shall be imposed equal to the greater of \$250 or  
5 2% of the tax shown on the return. However, the additional  
6 penalty amount may not exceed \$5,000 and is determined without  
7 regard to any part of the tax that is paid on time or by any  
8 credit that was properly allowable on the date the return was  
9 required to be filed (penalty for late filing or nonfiling). If  
10 any unprocessable return is corrected and filed within 30 days  
11 after notice by the Department, the late filing or nonfiling  
12 penalty shall not apply. If a penalty for late filing or  
13 nonfiling is imposed in addition to a penalty for late payment,  
14 the total penalty due shall be the sum of the late filing  
15 penalty and the applicable late payment penalty. In the case of  
16 any type of tax return required to be filed more frequently  
17 than annually, when the failure to file the tax return on or  
18 before the date prescribed for filing (including any  
19 extensions) is shown to be nonfraudulent and has not occurred  
20 in the 2 years immediately preceding the failure to file on the  
21 prescribed due date, the penalty imposed by this subsection  
22 (a-10) shall be abated. This subsection (a-10) does not apply  
23 to transaction reporting returns required by Section 3 of the  
24 Retailers' Occupation Tax Act and Section 9 of the Use Tax Act  
25 that would not, when properly prepared and filed, result in the  
26 imposition of a tax; however, those returns are subject to the

1 penalty set forth in subsection (a-15).

2 (a-15) A penalty of \$100 shall be imposed for failure to  
3 file a transaction reporting return required by Section 3 of  
4 the Retailers' Occupation Tax Act and Section 9 of the Use Tax  
5 Act on or before the date a return is required to be filed;  
6 provided, however, that this penalty shall be imposed only if  
7 the return when properly prepared and filed would not result in  
8 the imposition of a tax. If such a transaction reporting return  
9 would result in the imposition of a tax when properly prepared  
10 and filed, then that return is subject to the provisions of  
11 subsection (a-10).

12 (b) This subsection is applicable before January 1, 1998. A  
13 penalty of 15% of the tax shown on the return or the tax  
14 required to be shown due on the return shall be imposed for  
15 failure to pay:

16 (1) the tax shown due on the return on or before the  
17 due date prescribed for payment of that tax, an amount of  
18 underpayment of estimated tax, or an amount that is  
19 reported in an amended return other than an amended return  
20 timely filed as required by subsection (b) of Section 506  
21 of the Illinois Income Tax Act (penalty for late payment or  
22 nonpayment of admitted liability); or

23 (2) the full amount of any tax required to be shown due  
24 on a return and which is not shown (penalty for late  
25 payment or nonpayment of additional liability), within 30  
26 days after a notice of arithmetic error, notice and demand,



1 or a final assessment is issued by the Department. In the  
2 case of a final assessment arising following a protest and  
3 hearing, the 30-day period shall not begin until all  
4 proceedings in court for review of the final assessment  
5 have terminated or the period for obtaining a review has  
6 expired without proceedings for a review having been  
7 instituted. In the case of a notice of tax liability that  
8 becomes a final assessment without a protest and hearing,  
9 the penalty provided in this paragraph (2) shall be imposed  
10 at the expiration of the period provided for the filing of  
11 a protest.

12 (b-5) This subsection is applicable to returns due on and  
13 after January 1, 1998 and on or before December 31, 2000. A  
14 penalty of 20% of the tax shown on the return or the tax  
15 required to be shown due on the return shall be imposed for  
16 failure to pay:

17 (1) the tax shown due on the return on or before the  
18 due date prescribed for payment of that tax, an amount of  
19 underpayment of estimated tax, or an amount that is  
20 reported in an amended return other than an amended return  
21 timely filed as required by subsection (b) of Section 506  
22 of the Illinois Income Tax Act (penalty for late payment or  
23 nonpayment of admitted liability); or

24 (2) the full amount of any tax required to be shown due  
25 on a return and which is not shown (penalty for late  
26 payment or nonpayment of additional liability), within 30

1 days after a notice of arithmetic error, notice and demand,  
2 or a final assessment is issued by the Department. In the  
3 case of a final assessment arising following a protest and  
4 hearing, the 30-day period shall not begin until all  
5 proceedings in court for review of the final assessment  
6 have terminated or the period for obtaining a review has  
7 expired without proceedings for a review having been  
8 instituted. In the case of a notice of tax liability that  
9 becomes a final assessment without a protest and hearing,  
10 the penalty provided in this paragraph (2) shall be imposed  
11 at the expiration of the period provided for the filing of  
12 a protest.

13 (b-10) This subsection (b-10) is applicable to returns due  
14 on and after January 1, 2001 and on or before December 31,  
15 2003. A penalty shall be imposed for failure to pay:

16 (1) the tax shown due on a return on or before the due  
17 date prescribed for payment of that tax, an amount of  
18 underpayment of estimated tax, or an amount that is  
19 reported in an amended return other than an amended return  
20 timely filed as required by subsection (b) of Section 506  
21 of the Illinois Income Tax Act (penalty for late payment or  
22 nonpayment of admitted liability). The amount of penalty  
23 imposed under this subsection (b-10) (1) shall be 2% of any  
24 amount that is paid no later than 30 days after the due  
25 date, 5% of any amount that is paid later than 30 days  
26 after the due date and not later than 90 days after the due

1 date, 10% of any amount that is paid later than 90 days  
2 after the due date and not later than 180 days after the  
3 due date, and 15% of any amount that is paid later than 180  
4 days after the due date. If notice and demand is made for  
5 the payment of any amount of tax due and if the amount due  
6 is paid within 30 days after the date of the notice and  
7 demand, then the penalty for late payment or nonpayment of  
8 admitted liability under this subsection (b-10)(1) on the  
9 amount so paid shall not accrue for the period after the  
10 date of the notice and demand.

11 (2) the full amount of any tax required to be shown due  
12 on a return and that is not shown (penalty for late payment  
13 or nonpayment of additional liability), within 30 days  
14 after a notice of arithmetic error, notice and demand, or a  
15 final assessment is issued by the Department. In the case  
16 of a final assessment arising following a protest and  
17 hearing, the 30-day period shall not begin until all  
18 proceedings in court for review of the final assessment  
19 have terminated or the period for obtaining a review has  
20 expired without proceedings for a review having been  
21 instituted. The amount of penalty imposed under this  
22 subsection (b-10)(2) shall be 20% of any amount that is not  
23 paid within the 30-day period. In the case of a notice of  
24 tax liability that becomes a final assessment without a  
25 protest and hearing, the penalty provided in this  
26 subsection (b-10)(2) shall be imposed at the expiration of

1 the period provided for the filing of a protest.

2 (b-15) This subsection (b-15) is applicable to returns due  
3 on and after January 1, 2004 and on or before December 31,  
4 2004. A penalty shall be imposed for failure to pay the tax  
5 shown due or required to be shown due on a return on or before  
6 the due date prescribed for payment of that tax, an amount of  
7 underpayment of estimated tax, or an amount that is reported in  
8 an amended return other than an amended return timely filed as  
9 required by subsection (b) of Section 506 of the Illinois  
10 Income Tax Act (penalty for late payment or nonpayment of  
11 admitted liability). The amount of penalty imposed under this  
12 subsection (b-15) (1) shall be 2% of any amount that is paid no  
13 later than 30 days after the due date, 10% of any amount that  
14 is paid later than 30 days after the due date and not later  
15 than 90 days after the due date, 15% of any amount that is paid  
16 later than 90 days after the due date and not later than 180  
17 days after the due date, and 20% of any amount that is paid  
18 later than 180 days after the due date. If notice and demand is  
19 made for the payment of any amount of tax due and if the amount  
20 due is paid within 30 days after the date of this notice and  
21 demand, then the penalty for late payment or nonpayment of  
22 admitted liability under this subsection (b-15) (1) on the  
23 amount so paid shall not accrue for the period after the date  
24 of the notice and demand.

25 (b-20) This subsection (b-20) is applicable to returns due  
26 on and after January 1, 2005.

1           (1) A penalty shall be imposed for failure to pay,  
2           prior to the due date for payment, any amount of tax the  
3           payment of which is required to be made prior to the filing  
4           of a return or without a return (penalty for late payment  
5           or nonpayment of estimated or accelerated tax). The amount  
6           of penalty imposed under this paragraph (1) shall be 2% of  
7           any amount that is paid no later than 30 days after the due  
8           date and 10% of any amount that is paid later than 30 days  
9           after the due date.

10           (2) A penalty shall be imposed for failure to pay the  
11           tax shown due or required to be shown due on a return on or  
12           before the due date prescribed for payment of that tax or  
13           an amount that is reported in an amended return other than  
14           an amended return timely filed as required by subsection  
15           (b) of Section 506 of the Illinois Income Tax Act (penalty  
16           for late payment or nonpayment of tax). The amount of  
17           penalty imposed under this paragraph (2) shall be 2% of any  
18           amount that is paid no later than 30 days after the due  
19           date, 10% of any amount that is paid later than 30 days  
20           after the due date and prior to the date the Department has  
21           initiated an audit or investigation of the taxpayer, and  
22           20% of any amount that is paid after the date the  
23           Department has initiated an audit or investigation of the  
24           taxpayer; provided that the penalty shall be reduced to 15%  
25           if the entire amount due is paid not later than 30 days  
26           after the Department has provided the taxpayer with an

1 amended return (following completion of an occupation,  
2 use, or excise tax audit) or a form for waiver of  
3 restrictions on assessment (following completion of an  
4 income tax audit); provided further that the reduction to  
5 15% shall be rescinded if the taxpayer makes any claim for  
6 refund or credit of the tax, penalties, or interest  
7 determined to be due upon audit, except in the case of a  
8 claim filed pursuant to subsection (b) of Section 506 of  
9 the Illinois Income Tax Act or to claim a carryover of a  
10 loss or credit, the availability of which was not  
11 determined in the audit. For purposes of this paragraph  
12 (2), any overpayment reported on an original return that  
13 has been allowed as a refund or credit to the taxpayer  
14 shall be deemed to have not been paid on or before the due  
15 date for payment and any amount paid under protest pursuant  
16 to the provisions of the State Officers and Employees Money  
17 Disposition Act shall be deemed to have been paid after the  
18 Department has initiated an audit and more than 30 days  
19 after the Department has provided the taxpayer with an  
20 amended return (following completion of an occupation,  
21 use, or excise tax audit) or a form for waiver of  
22 restrictions on assessment (following completion of an  
23 income tax audit).

24 (3) The penalty imposed under this subsection (b-20)  
25 shall be deemed assessed at the time the tax upon which the  
26 penalty is computed is assessed, except that, if the

1 reduction of the penalty imposed under paragraph (2) of  
2 this subsection (b-20) to 15% is rescinded because a claim  
3 for refund or credit has been filed, the increase in  
4 penalty shall be deemed assessed at the time the claim for  
5 refund or credit is filed.

6 (b-25) If the amount of the credit awarded to a taxpayer  
7 under Section 229 of the Illinois Income Tax Act is reduced  
8 because the claims for credit exceed the maximum aggregate  
9 amount of the credit set forth in that Section, then no  
10 underpayment penalty or interest shall accrue pursuant to this  
11 Act on the additional tax so long as the additional tax is paid  
12 within 60 days after the notice of reduction.

13 (c) For purposes of the late payment penalties, the basis  
14 of the penalty shall be the tax shown or required to be shown  
15 on a return, whichever is applicable, reduced by any part of  
16 the tax which is paid on time and by any credit which was  
17 properly allowable on the date the return was required to be  
18 filed.

19 (d) A penalty shall be applied to the tax required to be  
20 shown even if that amount is less than the tax shown on the  
21 return.

22 (e) This subsection (e) is applicable to returns due before  
23 January 1, 2001. If both a subsection (b)(1) or (b-5)(1)  
24 penalty and a subsection (b)(2) or (b-5)(2) penalty are  
25 assessed against the same return, the subsection (b)(2) or  
26 (b-5)(2) penalty shall be assessed against only the additional

1 tax found to be due.

2 (e-5) This subsection (e-5) is applicable to returns due on  
3 and after January 1, 2001. If both a subsection (b-10)(1)  
4 penalty and a subsection (b-10)(2) penalty are assessed against  
5 the same return, the subsection (b-10)(2) penalty shall be  
6 assessed against only the additional tax found to be due.

7 (f) If the taxpayer has failed to file the return, the  
8 Department shall determine the correct tax according to its  
9 best judgment and information, which amount shall be prima  
10 facie evidence of the correctness of the tax due.

11 (g) The time within which to file a return or pay an amount  
12 of tax due without imposition of a penalty does not extend the  
13 time within which to file a protest to a notice of tax  
14 liability or a notice of deficiency.

15 (h) No return shall be determined to be unprocessable  
16 because of the omission of any information requested on the  
17 return pursuant to Section 2505-575 of the Department of  
18 Revenue Law (20 ILCS 2505/2505-575).

19 (i) If a taxpayer has a tax liability for the taxable  
20 period ending after June 30, 1983 and prior to July 1, 2002  
21 that is eligible for amnesty under the Tax Delinquency Amnesty  
22 Act and the taxpayer fails to satisfy the tax liability during  
23 the amnesty period provided for in that Act for that taxable  
24 period, then the penalty imposed by the Department under this  
25 Section shall be imposed in an amount that is 200% of the  
26 amount that would otherwise be imposed under this Section.



1           (j) If a taxpayer has a tax liability for the taxable  
2 period ending after June 30, 2002 and prior to July 1, 2009  
3 that is eligible for amnesty under the Tax Delinquency Amnesty  
4 Act, except for any tax liability reported pursuant to Section  
5 506(b) of the Illinois Income Tax Act (35 ILCS 5/506(b)) that  
6 is not final, and the taxpayer fails to satisfy the tax  
7 liability during the amnesty period provided for in that Act  
8 for that taxable period, then the penalty imposed by the  
9 Department under this Section shall be imposed in an amount  
10 that is 200% of the amount that would otherwise be imposed  
11 under this Section.

12           (Source: P.A. 98-425, eff. 8-16-13; 99-335, eff. 8-10-15.)

13           Section 99. Effective date. This Act takes effect upon  
14 becoming law.