

HB4882



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4882

by Rep. Susana A Mendoza

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/218 new

Creates the Biotechnology Investment Tax Credit Act and amends the Illinois Income Tax Act. Creates an income tax credit for qualified investors who make an investment in biotechnology companies in the State. Provides that the Department of Commerce and Economic Opportunity must certify the amount of the credit and sets forth the procedures for the application and certification of the credit. Sets forth provisions for the revocation and recapture of the tax credit. Contains other provisions. Effective immediately.

LRB095 15329 BDD 45126 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 1. Short title. This Act may be cited as the
5 Biotechnology Investment Tax Credit Act.

6 Section 5. Definitions. As used in this Act:

7 "Biotechnology company" means a company organized for
8 profit that is primarily engaged in the research, development,
9 or commercialization of innovative and proprietary technology
10 that compromises, interacts with, or analyzes biological
11 material including biomolecules (DNA, RNA, or protein), cells,
12 tissues, or organs.

13 "Department" means the Department of Commerce and Economic
14 Opportunity.

15 "Investment" means the contribution of property, at a risk
16 of loss, to a qualified Illinois biotechnology company in
17 exchange for stock, a partnership interest, or other ownership
18 interest in the qualified company. For the purposes of this
19 definition, an investment is at risk of loss if its repayment
20 depends entirely upon the success of the business operations of
21 the qualified Illinois biotechnology company.

22 "Qualified investor" means an investor who is:

23 (1) an individual who invests at least \$25,000 in a

1 qualified Illinois biotechnology company;

2 (2) an Illinois corporation that invests at least
3 \$250,000 in a qualified Illinois biotechnology company; or

4 (3) a qualified Illinois venture capital firm.

5 "Qualified Illinois biotechnology company" means a company
6 that has:

7 (1) its headquarters and base of operations in
8 Illinois;

9 (2) fewer than 50 full-time employees;

10 (3) been in active business no longer than 10 years;
11 and

12 (4) been certified in writing as a biotechnology
13 company by the Department.

14 "Qualified Illinois venture capital firm" means an entity
15 that:

16 (1) is organized for the purpose of investing funds in
17 privately-held companies engaged in the research,
18 development, or commercialization of innovative and
19 propriety technology;

20 (2) has at least 2 principals who each have at least 5
21 years of venture capital experience;

22 (3) has at least one year of experience investing in
23 biotechnology or biopharmaceutical companies; and

24 (4) has its headquarters and principal place of
25 operations in Illinois.

1 Section 10. Income tax credit. A qualified investor may
2 claim a credit against the tax imposed under subsections (a)
3 and (b) of Section 201 of the Illinois Income Tax Act. The
4 amount of the credit awarded under this Act is an amount equal
5 to the final credit certificate approved by the Department for
6 an investment in a qualified Illinois biotechnology company, as
7 provided under Sections 15 and 20 of this Act.

8 Section 15. Tax credit application; certification.

9 (a) In order to receive the tax credit under this Act, the
10 qualified investor must submit an application to the Department
11 on forms provided by the Department at least 30 days prior to
12 making an investment in a qualified Illinois biotechnology
13 company for which the qualified investor is eligible for an
14 initial tax credit certificate.

15 (b) The Department shall approve all applications that
16 qualify for credits under this Act on a first-come-first-served
17 basis. Within 30 days after its receipt of an application, the
18 Department must certify the amount of any approved tax credits
19 to a qualified investor.

20 (c) The qualified investor must make an investment in a
21 qualified Illinois biotechnology company within 30 days after
22 the Department has issued a tax credit certificate under
23 subsection (b). Within 10 days after making the investment, the
24 qualified investor must provide written notice to the
25 Department. If the qualified investor fails to provide this

1 written notice within 40 days after the issuance of the tax
2 credit certificate, then the Department shall rescind the
3 certificate.

4 Section 20. Amount of the tax credit. The tax credit
5 allowed in a tax credit certificate issued under this Act is
6 25% of the investment in a qualified Illinois biotechnology
7 company, but not to exceed:

8 (1) \$50,000 for a qualified investor that is an
9 individual; or

10 (2) \$250,000 for a qualified investor that is a
11 corporation or a qualified Illinois venture capital firm.

12 Section 30. Recapture of the tax credit.

13 (a) If, within 2 taxable years after the close of the
14 taxable year in which a credit under this Act is approved, the
15 qualified investor sells, transfers, or otherwise disposes of
16 the ownership interest in the qualified Illinois biotechnology
17 company that gave rise to the credit, then the credit must be
18 recaptured.

19 (b) The amount required to be recaptured under this Section
20 is:

21 (1) 100% of the amount of the credit if the disposition
22 occurs during the taxable year in which the tax credit is
23 approved;

24 (2) 67% of the amount of the credit if the disposition

1 occurs during the first taxable year after the close of the
2 taxable year for which the tax is approved; or

3 (3) 33% of the amount of the credit if the disposition
4 occurs more than one taxable year but not more than 2
5 taxable years after the close of the taxable year for which
6 the tax credit is approved.

7 (c) The qualified investor who claimed the credit shall pay
8 the recaptured amount as taxes payable to the State for the
9 taxable year in which the disposition occurred.

10 Section 35. Revocation of the credit.

11 (a) The Department may revoke its certification of an
12 approved credit under this Act if any representation in
13 connection with the application for the certification proves to
14 have been false when made.

15 (b) The revocation may be in full or in part as the
16 Department determines and, subject to subsection (c), must be
17 communicated in writing to the qualified investor and the
18 Department of Revenue.

19 (c) The Department of Revenue may make an assessment
20 against the qualified investor to recapture any amount of the
21 tax credit that the qualified investor has already claimed.

22 Section 40. Annual report.

23 (a) On or before January 10 of each year, the Department
24 shall report to the Governor and to the General Assembly on the

1 tax credit certificates awarded under this Act for the prior
2 calendar year.

3 (b) This report must include, for each tax credit
4 certificate awarded:

5 (1) the name of the qualified investor and the amount
6 of credit awarded or allocated to that investor;

7 (2) the name and address of the qualified Illinois
8 biotechnology company that received the investment giving
9 rise to the credit and the county in which the qualified
10 Illinois biotechnology company is located; and

11 (3) The dates of receipt and approval by the Department
12 of the applications for the tax credit certificate.

13 (c) The report must summarize for each category of
14 qualified investors:

15 (1) the total number of applicants for initial tax
16 credit certificates under this Act in the prior calendar
17 year;

18 (2) the total number of applications for which initial
19 tax credit certificates were issued in the prior calendar
20 year; and

21 (3) the total tax credit certificates authorized under
22 this Act for all calendar years.

23 Section 45. Rules. The Department and the Department of
24 Revenue shall adopt any rule necessary for the administration
25 of this Act.

1 Section 905. The Illinois Income Tax Act is amended by
2 adding Section 218 as follows:

3 (35 ILCS 5/218 new)

4 Sec. 218. Biotechnology Investment Tax Credit.

5 (a) For tax years beginning on or after January 1, 2008, a
6 taxpayer who has been awarded a tax credit under the
7 Biotechnology Investment Tax Credit Act is entitled to a credit
8 against the taxes imposed under subsections (a) and (b) of
9 Section 201 of this Act in an amount determined by the
10 Department of Commerce and Economic Opportunity under the
11 Biotechnology Investment Tax Credit Act.

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

17 (c) The credit may not be carried forward or back.

18 (d) The Department, in cooperation with the Department of
19 Commerce and Economic Opportunity, must prescribe rules to
20 enforce and administer the provisions of this Section.

21 (e) This Section is exempt from the provisions of Section
22 250 of this Act.

23 Section 999. Effective date. This Act takes effect upon
24 becoming law.