

HB3743



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3743

by Rep. Ron Sandack

SYNOPSIS AS INTRODUCED:

35 ILCS 5/211
35 ILCS 10/5-15

Amends the Illinois Income Tax Act and the Economic Development for a Growing Economy Tax Credit Act. Provides that no new agreements may be entered into under the Economic Development for a Growing Economy Tax Credit Act during the 99th General Assembly. Effective immediately.

LRB099 10286 HLH 30512 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
5 changing Section 211 as follows:

6 (35 ILCS 5/211)

7 Sec. 211. Economic Development for a Growing Economy Tax
8 Credit. For tax years beginning on or after January 1, 1999, a
9 Taxpayer who has entered into an Agreement under the Economic
10 Development for a Growing Economy Tax Credit Act is entitled to
11 a credit against the taxes imposed under subsections (a) and
12 (b) of Section 201 of this Act in an amount to be determined in
13 the Agreement. If the Taxpayer is a partnership or Subchapter S
14 corporation, the credit shall be allowed to the partners or
15 shareholders in accordance with the determination of income and
16 distributive share of income under Sections 702 and 704 and
17 subchapter S of the Internal Revenue Code. The Department, in
18 cooperation with the Department of Commerce and Economic
19 Opportunity, shall prescribe rules to enforce and administer
20 the provisions of this Section. This Section is exempt from the
21 provisions of Section 250 of this Act.

22 The credit shall be subject to the conditions set forth in
23 the Agreement and the following limitations:

1 (1) The tax credit shall not exceed the Incremental
2 Income Tax (as defined in Section 5-5 of the Economic
3 Development for a Growing Economy Tax Credit Act) with
4 respect to the project.

5 (2) The amount of the credit allowed during the tax
6 year plus the sum of all amounts allowed in prior years
7 shall not exceed 100% of the aggregate amount expended by
8 the Taxpayer during all prior tax years on approved costs
9 defined by Agreement.

10 (3) The amount of the credit shall be determined on an
11 annual basis. Except as applied in a carryover year
12 pursuant to Section 211(4) of this Act, the credit may not
13 be applied against any State income tax liability in more
14 than 10 taxable years; provided, however, that (i) an
15 eligible business certified by the Department of Commerce
16 and Economic Opportunity under the Corporate Headquarters
17 Relocation Act may not apply the credit against any of its
18 State income tax liability in more than 15 taxable years
19 and (ii) credits allowed to that eligible business are
20 subject to the conditions and requirements set forth in
21 Sections 5-35 and 5-45 of the Economic Development for a
22 Growing Economy Tax Credit Act.

23 (4) The credit may not exceed the amount of taxes
24 imposed pursuant to subsections (a) and (b) of Section 201
25 of this Act. Any credit that is unused in the year the
26 credit is computed may be carried forward and applied to

1 the tax liability of the 5 taxable years following the
2 excess credit year. The credit shall be applied to the
3 earliest year for which there is a tax liability. If there
4 are credits from more than one tax year that are available
5 to offset a liability, the earlier credit shall be applied
6 first.

7 (5) No credit shall be allowed with respect to any
8 Agreement for any taxable year ending after the
9 Noncompliance Date. Upon receiving notification by the
10 Department of Commerce and Economic Opportunity of the
11 noncompliance of a Taxpayer with an Agreement, the
12 Department shall notify the Taxpayer that no credit is
13 allowed with respect to that Agreement for any taxable year
14 ending after the Noncompliance Date, as stated in such
15 notification. If any credit has been allowed with respect
16 to an Agreement for a taxable year ending after the
17 Noncompliance Date for that Agreement, any refund paid to
18 the Taxpayer for that taxable year shall, to the extent of
19 that credit allowed, be an erroneous refund within the
20 meaning of Section 912 of this Act.

21 (6) For purposes of this Section, the terms
22 "Agreement", "Incremental Income Tax", and "Noncompliance
23 Date" have the same meaning as when used in the Economic
24 Development for a Growing Economy Tax Credit Act.

25 Notwithstanding any other provision of law, no new
26 Agreements may be entered into under the Economic Development

1 for a Growing Economy Tax Credit Act during the term of the
2 99th General Assembly.

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

4 Section 10. The Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Section 5-15 as follows:

6 (35 ILCS 10/5-15)

7 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
8 forth in this Act, a Taxpayer is entitled to a Credit against
9 or, as described in subsection (g) of this Section, a payment
10 towards taxes imposed pursuant to subsections (a) and (b) of
11 Section 201 of the Illinois Income Tax Act that may be imposed
12 on the Taxpayer for a taxable year beginning on or after
13 January 1, 1999, if the Taxpayer is awarded a Credit by the
14 Department under this Act for that taxable year.

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

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

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

22 (d) The Credit shall not exceed the Incremental Income Tax
23 attributable to the project that is the subject of the
24 Agreement.

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

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

10 (1) The election under this subsection (f) may be made
11 only by a Taxpayer that (i) is primarily engaged in one of
12 the following business activities: water purification and
13 treatment, motor vehicle metal stamping, automobile
14 manufacturing, automobile and light duty motor vehicle
15 manufacturing, motor vehicle manufacturing, light truck
16 and utility vehicle manufacturing, heavy duty truck
17 manufacturing, motor vehicle body manufacturing, cable
18 television infrastructure design or manufacturing, or
19 wireless telecommunication or computing terminal device
20 design or manufacturing for use on public networks and (ii)
21 meets the following criteria:

22 (A) the Taxpayer (i) had an Illinois net loss or an
23 Illinois net loss deduction under Section 207 of the
24 Illinois Income Tax Act for the taxable year in which
25 the Credit is awarded, (ii) employed a minimum of 1,000
26 full-time employees in this State during the taxable

1 year in which the Credit is awarded, (iii) has an
2 Agreement under this Act on December 14, 2009 (the
3 effective date of Public Act 96-834), and (iv) is in
4 compliance with all provisions of that Agreement;

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

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

23 (D) the Taxpayer (i) had an Illinois net operating
24 loss carryforward under Section 207 of the Illinois
25 Income Tax Act in a taxable year ending during calendar
26 year 2009, (ii) has applied for an Agreement within 150

1 days after the effective date of this amendatory Act of
2 the 96th General Assembly, (iii) creates at least 150
3 new jobs, (iv) retains at least 1,000 jobs in Illinois
4 that would have been at risk of relocation out of
5 Illinois over a 10-year period, and (v) makes a capital
6 investment of at least \$57,000,000; or

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

17 (1.5) The election under this subsection (f) may also
18 be made by a Taxpayer for any Credit awarded pursuant to an
19 agreement that was executed between January 1, 2011 and
20 June 30, 2011, if the Taxpayer (i) is primarily engaged in
21 the manufacture of inner tubes or tires, or both, from
22 natural and synthetic rubber, (ii) employs a minimum of
23 2,400 full-time employees in Illinois at the time of
24 application, (iii) creates at least 350 full-time jobs and
25 retains at least 250 full-time jobs in Illinois that would
26 have been at risk of being created or retained outside of

1 Illinois, and (iv) makes a capital investment of at least
2 \$200,000,000 at the project location.

3 (1.6) The election under this subsection (f) may also
4 be made by a Taxpayer for any Credit awarded pursuant to an
5 agreement that was executed within 150 days after the
6 effective date of this amendatory Act of the 97th General
7 Assembly, if the Taxpayer (i) is primarily engaged in the
8 operation of a discount department store, (ii) maintains
9 its corporate headquarters in Illinois, (iii) employs a
10 minimum of 4,250 full-time employees at its corporate
11 headquarters in Illinois at the time of application, (iv)
12 retains at least 4,250 full-time jobs in Illinois that
13 would have been at risk of being relocated outside of
14 Illinois, (v) had a minimum of \$40,000,000,000 in total
15 revenue in 2010, and (vi) makes a capital investment of at
16 least \$300,000,000 at the project location.

17 (1.7) Notwithstanding any other provision of law, the
18 election under this subsection (f) may also be made by a
19 Taxpayer for any Credit awarded pursuant to an agreement
20 that was executed or applied for on or after July 1, 2011
21 and on or before March 31, 2012, if the Taxpayer is
22 primarily engaged in the manufacture of original and
23 aftermarket filtration parts and products for automobiles,
24 motor vehicles, light duty motor vehicles, light trucks and
25 utility vehicles, and heavy duty trucks, (ii) employs a
26 minimum of 1,000 full-time employees in Illinois at the

1 time of application, (iii) creates at least 250 full-time
2 jobs in Illinois, (iv) relocates its corporate
3 headquarters to Illinois from another state, and (v) makes
4 a capital investment of at least \$4,000,000 at the project
5 location.

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

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

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

21 (g) A pass-through entity that has been awarded a credit
22 under this Act, its shareholders, or its partners may treat
23 some or all of the credit awarded pursuant to this Act as a tax
24 payment for purposes of the Illinois Income Tax Act. The term
25 "tax payment" means a payment as described in Article 6 or
26 Article 8 of the Illinois Income Tax Act or a composite payment

1 made by a pass-through entity on behalf of any of its
2 shareholders or partners to satisfy such shareholders' or
3 partners' taxes imposed pursuant to subsections (a) and (b) of
4 Section 201 of the Illinois Income Tax Act. In no event shall
5 the amount of the award credited pursuant to this Act exceed
6 the Illinois income tax liability of the pass-through entity or
7 its shareholders or partners for the taxable year.

8 (h) Notwithstanding any other provision of law, no new
9 Agreements may be entered into under this Act during the term
10 of the 99th General Assembly.

11 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
12 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
13 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

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