

# SB1660



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB1660

Introduced 2/20/2015, by Sen. Karen McConnaughay

#### SYNOPSIS AS INTRODUCED:

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

Amends the Economic Development for a Growing Economy Tax Credit Act and the Illinois Income Tax. Authorizes taxpayers to sell, assign, or transfer credits awarded under the Economic Development for a Growing Economy Tax Credit Act. Effective immediately.

LRB099 10118 HLH 30341 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 (5.5) A sale, assignment, or transfer of the tax credit  
22 award may be made by the taxpayer in accordance with rules  
23 adopted by the Department of Commerce and Economic  
24 Opportunity.

25 (6) For purposes of this Section, the terms  
26 "Agreement", "Incremental Income Tax", and "Noncompliance

1           Date" have the same meaning as when used in the Economic  
2           Development for a Growing Economy Tax Credit Act.

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) Effective July 1, 2015, any tax credits awarded under  
9 this Act and not previously claimed by a taxpayer against its  
10 income tax liability under Section 201 of the Illinois Income  
11 Tax Act may be sold, assigned, or transferred, in whole or in  
12 part, to another Illinois taxpayer subject to all of the  
13 following conditions:

14 (1) A taxpayer awarded an income tax credit under this  
15 Act may make only a single sale, assignment, or transfer of  
16 the tax credit earned in a taxable year; however, the  
17 credit may be sold, assigned, or transferred to one or more  
18 transferees.

19 (2) The tax credit earned by the transferor may be  
20 transferred before the due date, including extensions, of  
21 the Illinois income tax return of the transferor. The  
22 amount of the credit transferred to the transferee or  
23 transferees may not exceed the amount of the credit earned  
24 by the transferor in the transferor's taxable year.

25 (3) Written notification of the transfer or sale of  
26 credits awarded under this Act shall be submitted to the

1 Department of Commerce and Economic Opportunity and the  
2 Department of Revenue within 30 days after the sale,  
3 assignment, or transfer. The Department of Revenue shall  
4 provide by rule the information required to be provided in  
5 such written notification.

6 (4) The transfer or sale of tax credits under this  
7 subsection does not extend the time during which those tax  
8 credits can be used. The carry-forward period for a tax  
9 credit that is transferred or sold shall begin on the date  
10 on which the tax credit was originally earned.

11 (5) A transferee shall have only those rights to claim  
12 and use the tax credit that were available to the taxpayer  
13 that earned the credit, except that credits sold or  
14 transferred may not be used against a transferee's  
15 withholding tax liability.

16 (6) If the taxpayer earning the credit fails to comply  
17 with the terms and requirements of the Agreement, and,  
18 pursuant to the provisions of Section 5-65 of this Act,  
19 notice is provided to the Department of Revenue of the  
20 taxpayer's non-compliance, the Department shall hold the  
21 transferor liable for any tax, penalty, or interest due as  
22 a result of non-compliance with the Agreement.

23 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;  
24 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.  
25 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.