

SB3486



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3486

Introduced 1/19/2022, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Provides for a credit against withholding taxes in an amount equal to the wages or salary paid by a private employer to an Illinois employee while the employee is on organ donation leave if the employer grants all of its employees the option of taking a paid leave of absence of at least 30 days for the purpose of serving as an organ donor or bone marrow donor. Provides that the credit may not exceed \$1,000 for each employee who takes organ donation leave. Provides that such a leave of absence must be taken without loss of pay, vacation time, compensatory time, personal days, or sick time for at least the first 30 days of the leave of absence. Provides that the credit applies for reporting periods beginning on or after January 1, 2022. Effective immediately.

LRB102 24636 HLH 33874 b

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 704A as follows:

6 (35 ILCS 5/704A)

7 Sec. 704A. Employer's return and payment of tax withheld.

8 (a) In general, every employer who deducts and withholds
9 or is required to deduct and withhold tax under this Act on or
10 after January 1, 2008 shall make those payments and returns as
11 provided in this Section.

12 (b) Returns. Every employer shall, in the form and manner
13 required by the Department, make returns with respect to taxes
14 withheld or required to be withheld under this Article 7 for
15 each quarter beginning on or after January 1, 2008, on or
16 before the last day of the first month following the close of
17 that quarter.

18 (c) Payments. With respect to amounts withheld or required
19 to be withheld on or after January 1, 2008:

20 (1) Semi-weekly payments. For each calendar year, each
21 employer who withheld or was required to withhold more
22 than \$12,000 during the one-year period ending on June 30
23 of the immediately preceding calendar year, payment must

1 be made:

2 (A) on or before each Friday of the calendar year,
3 for taxes withheld or required to be withheld on the
4 immediately preceding Saturday, Sunday, Monday, or
5 Tuesday;

6 (B) on or before each Wednesday of the calendar
7 year, for taxes withheld or required to be withheld on
8 the immediately preceding Wednesday, Thursday, or
9 Friday.

10 Beginning with calendar year 2011, payments made under
11 this paragraph (1) of subsection (c) must be made by
12 electronic funds transfer.

13 (2) Semi-weekly payments. Any employer who withholds
14 or is required to withhold more than \$12,000 in any
15 quarter of a calendar year is required to make payments on
16 the dates set forth under item (1) of this subsection (c)
17 for each remaining quarter of that calendar year and for
18 the subsequent calendar year.

19 (3) Monthly payments. Each employer, other than an
20 employer described in items (1) or (2) of this subsection,
21 shall pay to the Department, on or before the 15th day of
22 each month the taxes withheld or required to be withheld
23 during the immediately preceding month.

24 (4) Payments with returns. Each employer shall pay to
25 the Department, on or before the due date for each return
26 required to be filed under this Section, any tax withheld

1 or required to be withheld during the period for which the
2 return is due and not previously paid to the Department.

3 (d) Regulatory authority. The Department may, by rule:

4 (1) Permit employers, in lieu of the requirements of
5 subsections (b) and (c), to file annual returns due on or
6 before January 31 of the year for taxes withheld or
7 required to be withheld during the previous calendar year
8 and, if the aggregate amounts required to be withheld by
9 the employer under this Article 7 (other than amounts
10 required to be withheld under Section 709.5) do not exceed
11 \$1,000 for the previous calendar year, to pay the taxes
12 required to be shown on each such return no later than the
13 due date for such return.

14 (2) Provide that any payment required to be made under
15 subsection (c)(1) or (c)(2) is deemed to be timely to the
16 extent paid by electronic funds transfer on or before the
17 due date for deposit of federal income taxes withheld
18 from, or federal employment taxes due with respect to, the
19 wages from which the Illinois taxes were withheld.

20 (3) Designate one or more depositories to which
21 payment of taxes required to be withheld under this
22 Article 7 must be paid by some or all employers.

23 (4) Increase the threshold dollar amounts at which
24 employers are required to make semi-weekly payments under
25 subsection (c)(1) or (c)(2).

26 (e) Annual return and payment. Every employer who deducts

1 and withholds or is required to deduct and withhold tax from a
2 person engaged in domestic service employment, as that term is
3 defined in Section 3510 of the Internal Revenue Code, may
4 comply with the requirements of this Section with respect to
5 such employees by filing an annual return and paying the taxes
6 required to be deducted and withheld on or before the 15th day
7 of the fourth month following the close of the employer's
8 taxable year. The Department may allow the employer's return
9 to be submitted with the employer's individual income tax
10 return or to be submitted with a return due from the employer
11 under Section 1400.2 of the Unemployment Insurance Act.

12 (f) Magnetic media and electronic filing. With respect to
13 taxes withheld in calendar years prior to 2017, any W-2 Form
14 that, under the Internal Revenue Code and regulations
15 promulgated thereunder, is required to be submitted to the
16 Internal Revenue Service on magnetic media or electronically
17 must also be submitted to the Department on magnetic media or
18 electronically for Illinois purposes, if required by the
19 Department.

20 With respect to taxes withheld in 2017 and subsequent
21 calendar years, the Department may, by rule, require that any
22 return (including any amended return) under this Section and
23 any W-2 Form that is required to be submitted to the Department
24 must be submitted on magnetic media or electronically.

25 The due date for submitting W-2 Forms shall be as
26 prescribed by the Department by rule.

1 (g) For amounts deducted or withheld after December 31,
2 2009, a taxpayer who makes an election under subsection (f) of
3 Section 5-15 of the Economic Development for a Growing Economy
4 Tax Credit Act for a taxable year shall be allowed a credit
5 against payments due under this Section for amounts withheld
6 during the first calendar year beginning after the end of that
7 taxable year equal to the amount of the credit for the
8 incremental income tax attributable to full-time employees of
9 the taxpayer awarded to the taxpayer by the Department of
10 Commerce and Economic Opportunity under the Economic
11 Development for a Growing Economy Tax Credit Act for the
12 taxable year and credits not previously claimed and allowed to
13 be carried forward under Section 211(4) of this Act as
14 provided in subsection (f) of Section 5-15 of the Economic
15 Development for a Growing Economy Tax Credit Act. The credit
16 or credits may not reduce the taxpayer's obligation for any
17 payment due under this Section to less than zero. If the amount
18 of the credit or credits exceeds the total payments due under
19 this Section with respect to amounts withheld during the
20 calendar year, the excess may be carried forward and applied
21 against the taxpayer's liability under this Section in the
22 succeeding calendar years as allowed to be carried forward
23 under paragraph (4) of Section 211 of this Act. The credit or
24 credits shall be applied to the earliest year for which there
25 is a tax liability. If there are credits from more than one
26 taxable year that are available to offset a liability, the

1 earlier credit shall be applied first. Each employer who
2 deducts and withholds or is required to deduct and withhold
3 tax under this Act and who retains income tax withholdings
4 under subsection (f) of Section 5-15 of the Economic
5 Development for a Growing Economy Tax Credit Act must make a
6 return with respect to such taxes and retained amounts in the
7 form and manner that the Department, by rule, requires and pay
8 to the Department or to a depository designated by the
9 Department those withheld taxes not retained by the taxpayer.
10 For purposes of this subsection (g), the term taxpayer shall
11 include taxpayer and members of the taxpayer's unitary
12 business group as defined under paragraph (27) of subsection
13 (a) of Section 1501 of this Act. This Section is exempt from
14 the provisions of Section 250 of this Act. No credit awarded
15 under the Economic Development for a Growing Economy Tax
16 Credit Act for agreements entered into on or after January 1,
17 2015 may be credited against payments due under this Section.

18 (g-1) For amounts deducted or withheld after December 31,
19 2024, a taxpayer who makes an election under the Reimagining
20 Electric Vehicles in Illinois Act shall be allowed a credit
21 against payments due under this Section for amounts withheld
22 during the first quarterly reporting period beginning after
23 the certificate is issued equal to the portion of the REV
24 Illinois Credit attributable to the incremental income tax
25 attributable to new employees and retained employees as
26 certified by the Department of Commerce and Economic

1 Opportunity pursuant to an agreement with the taxpayer under
2 the Reimagining Electric Vehicles in Illinois Act for the
3 taxable year. The credit or credits may not reduce the
4 taxpayer's obligation for any payment due under this Section
5 to less than zero. If the amount of the credit or credits
6 exceeds the total payments due under this Section with respect
7 to amounts withheld during the quarterly reporting period, the
8 excess may be carried forward and applied against the
9 taxpayer's liability under this Section in the succeeding
10 quarterly reporting period as allowed to be carried forward
11 under paragraph (4) of Section 211 of this Act. The credit or
12 credits shall be applied to the earliest quarterly reporting
13 period for which there is a tax liability. If there are credits
14 from more than one quarterly reporting period that are
15 available to offset a liability, the earlier credit shall be
16 applied first. Each employer who deducts and withholds or is
17 required to deduct and withhold tax under this Act and who
18 retains income tax withholdings this subsection must make a
19 return with respect to such taxes and retained amounts in the
20 form and manner that the Department, by rule, requires and pay
21 to the Department or to a depository designated by the
22 Department those withheld taxes not retained by the taxpayer.
23 For purposes of this subsection (g-1), the term taxpayer shall
24 include taxpayer and members of the taxpayer's unitary
25 business group as defined under paragraph (27) of subsection
26 (a) of Section 1501 of this Act. This Section is exempt from

1 the provisions of Section 250 of this Act.

2 (h) An employer may claim a credit against payments due
3 under this Section for amounts withheld during the first
4 calendar year ending after the date on which a tax credit
5 certificate was issued under Section 35 of the Small Business
6 Job Creation Tax Credit Act. The credit shall be equal to the
7 amount shown on the certificate, but may not reduce the
8 taxpayer's obligation for any payment due under this Section
9 to less than zero. If the amount of the credit exceeds the
10 total payments due under this Section with respect to amounts
11 withheld during the calendar year, the excess may be carried
12 forward and applied against the taxpayer's liability under
13 this Section in the 5 succeeding calendar years. The credit
14 shall be applied to the earliest year for which there is a tax
15 liability. If there are credits from more than one calendar
16 year that are available to offset a liability, the earlier
17 credit shall be applied first. This Section is exempt from the
18 provisions of Section 250 of this Act.

19 (i) Each employer with 50 or fewer full-time equivalent
20 employees during the reporting period may claim a credit
21 against the payments due under this Section for each qualified
22 employee in an amount equal to the maximum credit allowable.
23 The credit may be taken against payments due for reporting
24 periods that begin on or after January 1, 2020, and end on or
25 before December 31, 2027. An employer may not claim a credit
26 for an employee who has worked fewer than 90 consecutive days

1 immediately preceding the reporting period; however, such
2 credits may accrue during that 90-day period and be claimed
3 against payments under this Section for future reporting
4 periods after the employee has worked for the employer at
5 least 90 consecutive days. In no event may the credit exceed
6 the employer's liability for the reporting period. Each
7 employer who deducts and withholds or is required to deduct
8 and withhold tax under this Act and who retains income tax
9 withholdings under this subsection must make a return with
10 respect to such taxes and retained amounts in the form and
11 manner that the Department, by rule, requires and pay to the
12 Department or to a depository designated by the Department
13 those withheld taxes not retained by the employer.

14 For each reporting period, the employer may not claim a
15 credit or credits for more employees than the number of
16 employees making less than the minimum or reduced wage for the
17 current calendar year during the last reporting period of the
18 preceding calendar year. Notwithstanding any other provision
19 of this subsection, an employer shall not be eligible for
20 credits for a reporting period unless the average wage paid by
21 the employer per employee for all employees making less than
22 \$55,000 during the reporting period is greater than the
23 average wage paid by the employer per employee for all
24 employees making less than \$55,000 during the same reporting
25 period of the prior calendar year.

26 For purposes of this subsection (i):

1 "Compensation paid in Illinois" has the meaning ascribed
2 to that term under Section 304(a)(2)(B) of this Act.

3 "Employer" and "employee" have the meaning ascribed to
4 those terms in the Minimum Wage Law, except that "employee"
5 also includes employees who work for an employer with fewer
6 than 4 employees. Employers that operate more than one
7 establishment pursuant to a franchise agreement or that
8 constitute members of a unitary business group shall aggregate
9 their employees for purposes of determining eligibility for
10 the credit.

11 "Full-time equivalent employees" means the ratio of the
12 number of paid hours during the reporting period and the
13 number of working hours in that period.

14 "Maximum credit" means the percentage listed below of the
15 difference between the amount of compensation paid in Illinois
16 to employees who are paid not more than the required minimum
17 wage reduced by the amount of compensation paid in Illinois to
18 employees who were paid less than the current required minimum
19 wage during the reporting period prior to each increase in the
20 required minimum wage on January 1. If an employer pays an
21 employee more than the required minimum wage and that employee
22 previously earned less than the required minimum wage, the
23 employer may include the portion that does not exceed the
24 required minimum wage as compensation paid in Illinois to
25 employees who are paid not more than the required minimum
26 wage.

1 (1) 25% for reporting periods beginning on or after
2 January 1, 2020 and ending on or before December 31, 2020;

3 (2) 21% for reporting periods beginning on or after
4 January 1, 2021 and ending on or before December 31, 2021;

5 (3) 17% for reporting periods beginning on or after
6 January 1, 2022 and ending on or before December 31, 2022;

7 (4) 13% for reporting periods beginning on or after
8 January 1, 2023 and ending on or before December 31, 2023;

9 (5) 9% for reporting periods beginning on or after
10 January 1, 2024 and ending on or before December 31, 2024;

11 (6) 5% for reporting periods beginning on or after
12 January 1, 2025 and ending on or before December 31, 2025.

13 The amount computed under this subsection may continue to
14 be claimed for reporting periods beginning on or after January
15 1, 2026 and:

16 (A) ending on or before December 31, 2026 for
17 employers with more than 5 employees; or

18 (B) ending on or before December 31, 2027 for
19 employers with no more than 5 employees.

20 "Qualified employee" means an employee who is paid not
21 more than the required minimum wage and has an average wage
22 paid per hour by the employer during the reporting period
23 equal to or greater than his or her average wage paid per hour
24 by the employer during each reporting period for the
25 immediately preceding 12 months. A new qualified employee is
26 deemed to have earned the required minimum wage in the

1 preceding reporting period.

2 "Reporting period" means the quarter for which a return is
3 required to be filed under subsection (b) of this Section.

4 (j) For reporting periods beginning on or after January 1,
5 2022, if a private employer grants all of its employees the
6 option of taking a paid leave of absence of at least 30 days
7 for the purpose of serving as an organ donor or bone marrow
8 donor, then the private employer may take a credit against the
9 payments due under this Section in an amount equal to the
10 amount withheld under this Section with respect to wages paid
11 while the employee is on organ donation leave, not to exceed
12 \$1,000 in withholdings for each employee who takes organ
13 donation leave. To be eligible for the credit, such a leave of
14 absence must be taken without loss of pay, vacation time,
15 compensatory time, personal days, or sick time for at least
16 the first 30 days of the leave of absence. The private employer
17 shall adopt rules governing organ donation leave, including
18 rules that (i) establish conditions and procedures for
19 requesting and approving leave and (ii) require medical
20 documentation of the proposed organ or bone marrow donation
21 before leave is approved by the private employer. A private
22 employer must provide, in the manner required by the
23 Department, documentation from the employee's medical
24 provider, which the private employer receives from the
25 employee, that verifies the employee's organ donation. The
26 private employer must also provide, in the manner required by

1 the Department, documentation that shows that a qualifying
2 organ donor leave policy was in place and offered to all
3 qualifying employees at the time the leave was taken. For the
4 private employer to receive the tax credit, the employee
5 taking organ donor leave must allow for the applicable medical
6 records to be disclosed to the Department. If the private
7 employer cannot provide the required documentation to the
8 Department, then the private employer is ineligible for the
9 credit under this Section. A private employer must also
10 provide, in the form required by the Department, any
11 additional documentation or information required by the
12 Department to administer the credit under this Section. The
13 credit under this subsection (j) shall be taken within one
14 year after the date upon which the organ donation leave
15 begins. If the leave taken spans into a second tax year, the
16 employer qualifies for the allowable credit in the later of
17 the 2 years. If the amount of credit exceeds the tax liability
18 for the year, the excess may be carried and applied to the tax
19 liability for the 3 taxable years following the excess credit
20 year. The tax credit shall be applied to the earliest year for
21 which there is a tax liability. If there are credits for more
22 than one year that are available to offset liability, the
23 earlier credit shall be applied first.

24 Nothing in this subsection (j) prohibits a private
25 employer from providing an unpaid leave of absence to its
26 employees for the purpose of serving as an organ donor or bone

1 marrow donor; however, if the employer's policy provides for
2 fewer than 30 days of paid leave for organ or bone marrow
3 donation, then the employer shall not be eligible for the
4 credit under this Section.

5 As used in this subsection (j):

6 "Organ" means any biological tissue of the human body
7 that may be donated by a living donor, including, but not
8 limited to, the kidney, liver, lung, pancreas, intestine,
9 bone, skin, or any subpart of those organs.

10 "Organ donor" means a person from whose body an organ
11 is taken to be transferred to the body of another person.

12 "Private employer" means a sole proprietorship,
13 corporation, partnership, limited liability company, or
14 other entity with one or more employees. "Private
15 employer" does not include a municipality, county, State
16 agency, or other public employer.

17 This subsection (j) is exempt from the provisions of
18 Section 250 of this Act.

19 (Source: P.A. 101-1, eff. 2-19-19; 102-669, eff. 11-16-21.)

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