

1 AN ACT concerning business.

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 Small
5 Business Job Creation Tax Credit Act.

6 Section 5. Findings and purpose. The General Assembly finds
7 that the Illinois economy is mired in one of the worst economic
8 recessions it has ever suffered. Small businesses in particular
9 have been hit hard by the economy, resulting in levels of high
10 unemployment throughout the State. In order to reverse the
11 trend of high unemployment and to help spur the economy to
12 recovery, it is necessary to assist and encourage small
13 businesses in the hiring of new employees.

14 Section 10. Definitions. In this Act:

15 "Applicant" means a person that is operating a business
16 located within the State of Illinois that is engaged in
17 interstate or intrastate commerce and has no more than 50
18 full-time employees, without regard to the location of
19 employment of such employees at the beginning of the incentive
20 period. In the case of any person that is a member of a unitary
21 business group within the meaning of subdivision (a)(27) of
22 Section 1501 of the Illinois Income Tax Act, "applicant" refers

1 to the unitary business group.

2 "Certificate" means the tax credit certificate issued by
3 the Department under Section 35 of this Act.

4 "Certificate of eligibility" means the certificate issued
5 by the Department under Section 20 of this Act.

6 "Credit" means the amount awarded by the Department to an
7 applicant by issuance of a certificate under Section 35 of this
8 Act for each new full-time equivalent employee hired or job
9 created.

10 "Department" means the Department of Commerce and Economic
11 Opportunity.

12 "Director" means the Director of the Department.

13 "Full-time employee" means an individual who is employed
14 for a basic wage for at least 35 hours each week or who renders
15 any other standard of service generally accepted by industry
16 custom or practice as full-time employment.

17 "Incentive period" means the period beginning July 1, 2010
18 and ending on June 30, 2011.

19 "Basic wage" means compensation for employment that is no
20 less than \$13.75 per hour or the equivalent salary for a new
21 employee.

22 "New employee" means a full-time employee first employed by
23 an applicant within the incentive period whose hire results in
24 a net increase in the applicant's full-time Illinois employees
25 and who is receiving a basic wage as compensation. The term
26 "new employee" does not include:

1 (1) a person who was previously employed in Illinois by
2 the applicant or a related member prior to the onset of the
3 incentive period; or

4 (2) any individual who has a direct or indirect
5 ownership interest of at least 5% in the profits, capital,
6 or value of the applicant or a related member.

7 "Noncompliance date" means, in the case of an applicant
8 that is not complying with the requirements of the provisions
9 of this Act, the day following the last date upon which the
10 taxpayer was in compliance with the requirements of the
11 provisions of this Act, as determined by the Director, pursuant
12 to Section 45 of this Act.

13 "Related member" means a person that, with respect to the
14 applicant during any portion of the incentive period, is any
15 one of the following,

16 (1) An individual, if the individual and the members of
17 the individual's family (as defined in Section 318 of the
18 Internal Revenue Code) own directly, indirectly,
19 beneficially, or constructively, in the aggregate, at
20 least 50% of the value of the outstanding profits, capital,
21 stock, or other ownership interest in the applicant.

22 (2) A partnership, estate, or trust and any partner or
23 beneficiary, if the partnership, estate, or trust and its
24 partners or beneficiaries own directly, indirectly,
25 beneficially, or constructively, in the aggregate, at
26 least 50% of the profits, capital, stock, or other

1 ownership interest in the applicant.

2 (3) A corporation, and any party related to the
3 corporation in a manner that would require an attribution
4 of stock from the corporation under the attribution rules
5 of Section 318 of the Internal Revenue Code, if the
6 applicant and any other related member own, in the
7 aggregate, directly, indirectly, beneficially, or
8 constructively, at least 50% of the value of the
9 corporation's outstanding stock.

10 (4) A corporation and any party related to that
11 corporation in a manner that would require an attribution
12 of stock from the corporation to the party or from the
13 party to the corporation under the attribution rules of
14 Section 318 of the Internal Revenue Code, if the
15 corporation and all such related parties own, in the
16 aggregate, at least 50% of the profits, capital, stock, or
17 other ownership interest in the applicant.

18 (5) A person to or from whom there is attribution of
19 stock ownership in accordance with Section 1563(e) of the
20 Internal Revenue Code, except that for purposes of
21 determining whether a person is a related member under this
22 paragraph, "20%" shall be substituted for "5%" whenever
23 "5%" appears in Section 1563(e) of the Internal Revenue
24 Code.

25 Section 15. Powers of the Department. The Department, in

1 addition to those powers granted under the Civil Administrative
2 Code of Illinois, is granted and shall have all the powers
3 necessary or convenient to carry out and effectuate the
4 purposes and provisions of this Act, including, but not limited
5 to, power and authority to:

6 (1) Promulgate procedures, rules, or regulations
7 deemed necessary and appropriate for the administration of
8 this Act; establish forms for applications, notifications,
9 contracts, or any other agreements; and accept
10 applications at any time during the year and require that
11 all applications be submitted via the Internet. The
12 Department shall require that applications be submitted in
13 electronic form.

14 (2) Provide guidance and assistance to applicants
15 pursuant to the provisions of this Act, and cooperate with
16 applicants to promote, foster, and support job creation
17 within the State.

18 (3) Enter into agreements and memoranda of
19 understanding for participation of and engage in
20 cooperation with agencies of the federal government, units
21 of local government, universities, research foundations or
22 institutions, regional economic development corporations,
23 or other organizations for the purposes of this Act.

24 (4) Gather information and conduct inquiries, in the
25 manner and by the methods it deems desirable, including,
26 without limitation, gathering information with respect to

1 applicants for the purpose of making any designations or
2 certifications necessary or desirable or to gather
3 information in furtherance of the purposes of this Act.

4 (5) Establish, negotiate, and effectuate any term,
5 agreement, or other document with any person necessary or
6 appropriate to accomplish the purposes of this Act; and
7 consent, subject to the provisions of any agreement with
8 another party, to the modification or restructuring of any
9 agreement to which the Department is a party.

10 (6) Provide for sufficient personnel to permit
11 administration, staffing, operation, and related support
12 required to adequately discharge its duties and
13 responsibilities described in this Act from funds made
14 available through charges to applicants or from funds as
15 may be appropriated by the General Assembly for the
16 administration of this Act.

17 (7) Require applicants, upon written request, to issue
18 any necessary authorization to the appropriate federal,
19 State, or local authority or any other person for the
20 release to the Department of information requested by the
21 Department, with the information requested to include, but
22 not be limited to, financial reports, returns, or records
23 relating to the applicant or to the amount of credit
24 allowable under this Act.

25 (8) Require that an applicant shall at all times keep
26 proper books of record and account in accordance with

1 generally accepted accounting principles consistently
2 applied, with the books, records, or papers related to the
3 agreement in the custody or control of the applicant open
4 for reasonable Department inspection and audits, and
5 including, without limitation, the making of copies of the
6 books, records, or papers.

7 (9) Take whatever actions are necessary or appropriate
8 to protect the State's interest in the event of bankruptcy,
9 default, foreclosure, or noncompliance with the terms and
10 conditions of financial assistance or participation
11 required under this Act, including the power to sell,
12 dispose of, lease, or rent, upon terms and conditions
13 determined by the Director to be appropriate, real or
14 personal property that the Department may recover as a
15 result of these actions.

16 Section 20. Certificate of eligibility for tax credit.

17 (a) An applicant that has hired a new employee during the
18 incentive period may apply for a certificate of eligibility for
19 the credit with respect to that position on or after the date
20 of hire of the new employee. The date of hire shall be the
21 first day on which the employee begins providing services for
22 basic wage compensation.

23 (b) An applicant may apply for a certificate of eligibility
24 for the credit for more than one new employee on or after the
25 date of hire of each qualifying new employee.

1 (c) After receipt of an application under this Section, the
2 Department shall issue a certificate of eligibility to the
3 applicant, stating:

4 (1) The date and time on which the application was
5 received by the Department and an identifying number
6 assigned to the applicant by the Department.

7 (2) The maximum amount of the credit the applicant
8 could potentially receive under this Act with respect to
9 the new employees listed on the application.

10 (3) The maximum amount of the credit potentially
11 allowable on certificates of eligibility issued for
12 applications received prior to the application for which
13 the certificate of eligibility is issued.

14 Section 25. Tax credit.

15 (a) Subject to the conditions set forth in this Act, an
16 applicant is entitled to a credit against payment of taxes
17 withheld under Section 704A of the Illinois Income Tax Act for
18 calendar years ending on or after the date that is 12 months
19 after the date of hire of a new employee. The credit shall be
20 allowed as a credit to an applicant for each full-time employee
21 hired during the incentive period that results in a net
22 increase in full-time Illinois employees, where the net
23 increase in the employer's full-time Illinois employees is
24 maintained for at least 12 months.

25 (b) The Department shall make credit awards under this Act

1 to further job creation.

2 (c) The credit shall be claimed for the first calendar year
3 ending on or after the date on which the certificate is issued
4 by the Department.

5 (d) The credit shall not exceed \$2,500 per new employee
6 hired.

7 (e) The net increase in full-time Illinois employees,
8 measured on an annual full-time equivalent basis, shall be the
9 total number of full-time Illinois employees of the applicant
10 on June 30, 2011, minus the number of full-time Illinois
11 employees employed by the employer on July 1, 2010. For
12 purposes of the calculation, an employer that begins doing
13 business in this State during the incentive period, as
14 determined by the Director, shall be treated as having zero
15 Illinois employees on July 1, 2010.

16 (f) The net increase in the number of full-time Illinois
17 employees of the applicant must be sustained continuously for
18 at least 12 months, starting with the date of hire of a new
19 employee during the incentive period. Eligibility for the
20 credit does not depend on the continuous employment of any
21 particular individual. For purposes of this subsection (f), if
22 a new employee ceases to be employed before the completion of
23 the 12-month period for any reason, the net increase in the
24 number of full-time Illinois employees shall be treated as
25 continuous if a different new employee is hired as a
26 replacement within a reasonable time for the same position.

1 Section 30. Maximum amount of credits allowed. The
2 Department shall limit the monetary amount of credits awarded
3 under this Act to no more than \$50,000,000. If applications for
4 a greater amount are received, credits shall be allowed on a
5 first-come-first-served basis, based on the date on which each
6 properly completed application for a certificate of
7 eligibility is received by the Department. If more than one
8 certificate of eligibility is received on the same day, the
9 credits will be awarded based on the time of submission for
10 that particular day.

11 Section 35. Application for award of tax credit; tax credit
12 certificate.

13 (a) On or after the conclusion of the 12-month period after
14 a new employee has been hired, an applicant shall file with the
15 Department an application for award of a credit. The
16 application shall include the following:

17 (1) The names, Social Security numbers, job
18 descriptions, salary or wage rates, and dates of hire of
19 the new employees with respect to whom the credit is being
20 requested.

21 (2) A certification that each new employee listed has
22 been retained on the job for one year from the date of
23 hire.

24 (3) The number of new employees hired by the applicant

1 during the incentive period.

2 (4) The net increase in the number of full-time
3 Illinois employees of the applicant (including the new
4 employees listed in the request) between the beginning of
5 the incentive period and the dates on which the new
6 employees listed in the request were hired.

7 (5) An agreement that the Director is authorized to
8 verify with the appropriate State agencies the information
9 contained in the request before issuing a certificate to
10 the applicant.

11 (6) Any other information the Department determines to
12 be appropriate.

13 (b) Although an application may be filed at any time after
14 the conclusion of the 12-month period after a new employee was
15 hired, an application filed more than 90 days after the
16 earliest date on which it could have been filed shall not be
17 awarded any credit if, prior to the date it is filed, the
18 Department has received applications under this Section for
19 credits totaling more than \$50,000,000.

20 (c) The Department shall issue a certificate to each
21 applicant awarded a credit under this Act. The certificate
22 shall include the following:

23 (1) The name and taxpayer identification number of the
24 applicant.

25 (2) The date on which the certificate is issued.

26 (3) The credit amount that will be allowed.

1 (4) Any other information the Department determines to
2 be appropriate.

3 Section 40. Submission of tax credit certificate to
4 Department of Revenue. An applicant claiming a credit under
5 this Act shall submit to the Department of Revenue a copy of
6 each certificate issued under Section 35 of this Act with the
7 first return for which the credit shown on the certificate is
8 claimed. However, failure to submit a copy of the certificate
9 with the applicant's return shall not invalidate a claim for a
10 credit.

11 Section 45. Noncompliance with Act. If the Director
12 determines that an applicant who has received a credit under
13 this Act is not complying with the requirements of the
14 provisions of this Act, the Director shall provide notice to
15 the applicant of the alleged noncompliance, and allow the
16 taxpayer a hearing under the provisions of the Illinois
17 Administrative Procedure Act. If, after such notice and any
18 hearing, the Director determines that a noncompliance exists,
19 the Director shall issue to the Department of Revenue notice to
20 that effect, stating the noncompliance date.

21 Section 50. Rules. The Department may adopt rules necessary
22 to implement this Act. The rules may provide for recipients of
23 credits under this Act to be charged fees to cover

1 administrative costs of the tax credit program.

2 Section 90. The Illinois Income Tax Act is amended by
3 changing Section 704A as follows:

4 (35 ILCS 5/704A)

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

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

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

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

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

22 (A) on or before each Friday of the calendar year,
23 for taxes withheld or required to be withheld on the
24 immediately preceding Saturday, Sunday, Monday, or

1 Tuesday;

2 (B) on or before each Wednesday of the calendar
3 year, for taxes withheld or required to be withheld on
4 the immediately preceding Wednesday, Thursday, or
5 Friday.

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

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

17 (4) Payments with returns. Each employer shall pay to
18 the Department, on or before the due date for each return
19 required to be filed under this Section, any tax withheld
20 or required to be withheld during the period for which the
21 return is due and not previously paid to the Department.

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

23 (1) If the aggregate amounts required to be withheld
24 under this Article 7 do not exceed \$1,000 for the calendar
25 year, permit employers, in lieu of the requirements of
26 subsections (b) and (c), to file annual returns due on or

1 before January 31 of the following year for taxes withheld
2 or required to be withheld during that calendar year and to
3 pay the taxes required to be shown on each such return no
4 later than the due date for such return.

5 (2) Provide that any payment required to be made under
6 subsection (c)(1) or (c)(2) is deemed to be timely to the
7 extent paid by electronic funds transfer on or before the
8 due date for deposit of federal income taxes withheld from,
9 or federal employment taxes due with respect to, the wages
10 from which the Illinois taxes were withheld.

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

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

17 (e) Annual return and payment. Every employer who deducts
18 and withholds or is required to deduct and withhold tax from a
19 person engaged in domestic service employment, as that term is
20 defined in Section 3510 of the Internal Revenue Code, may
21 comply with the requirements of this Section with respect to
22 such employees by filing an annual return and paying the taxes
23 required to be deducted and withheld on or before the 15th day
24 of the fourth month following the close of the employer's
25 taxable year. The Department may allow the employer's return to
26 be submitted with the employer's individual income tax return

1 or to be submitted with a return due from the employer under
2 Section 1400.2 of the Unemployment Insurance Act.

3 (f) Magnetic media and electronic filing. Any W-2 Form
4 that, under the Internal Revenue Code and regulations
5 promulgated thereunder, is required to be submitted to the
6 Internal Revenue Service on magnetic media or electronically
7 must also be submitted to the Department on magnetic media or
8 electronically for Illinois purposes, if required by the
9 Department.

10 (g) For amounts deducted or withheld after December 31,
11 2009, a taxpayer who makes an election under Section 5-15(f) of
12 the Economic Development for a Growing Economy Act for a
13 taxable year shall be allowed a credit against payments due
14 under this Section for amounts withheld during the first
15 calendar year beginning after the end of that taxable year
16 equal to the amount of the credit awarded to the taxpayer by
17 the Department of Commerce and Economic Opportunity under the
18 Economic Development for a Growing Economy Act for the taxable
19 year. The credit may not reduce the taxpayer's obligation for
20 any payment due under this Section to less than zero. If the
21 amount of the credit exceeds the total payments due under this
22 Section with respect to amounts withheld during the calendar
23 year, the excess may be carried forward and applied against the
24 taxpayer's liability under this Section in the 5 succeeding
25 calendar years. The credit shall be applied to the earliest
26 year for which there is a tax liability. If there are credits

1 from more than one taxable year that are available to offset a
2 liability, the earlier credit shall be applied first. This
3 Section is exempt from the provisions of Section 250 of this
4 Act.

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

22 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,
23 eff. 12-14-09.)

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