

SB3009



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3009

Introduced 2/18/2016, by Sen. Chuck Weaver

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/224 new

Creates the Business and Employment Development Tax Credit Act. Provides that the Department of Commerce and Economic Opportunity may certify a business as eligible for an income tax credit under the Act and may award credits to certified businesses. Sets forth the amount of the credit, which is calculated as a percentage of the wages paid to new or retained full-time and part-time employees. Provides that the duration of the credit is 5 taxable years, except that the credit may be carried forward for 5 years. Contains provisions concerning recapture of the credit. Amends the Illinois Income Tax Act to make conforming changes. Provides that the Business and Employment Development Tax Credit is exempt from the Act's automatic sunset provision. Effective immediately.

LRB099 18719 HLH 43103 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 Business and Employment Development Tax Credit Act.

6 Section 5. Purpose. The General Assembly finds that, in an
7 increasingly global economy, the State's economy would benefit
8 from efficient use of State resources in support of business
9 development and increased employment. Tax credits shall be
10 granted under this Act only for genuine business development
11 and employment growth within the State.

12 Section 10. Definitions. As used in this Act:

13 "Applicant" means a taxpayer seeking certified business
14 status from the Department.

15 "Average number of employees" means, in the case of a
16 calendar year taxpayer, the sum of the total number of
17 full-time equivalent employees of the business in the State on
18 March 31, June 30, September 30, and December 31, divided by 4.
19 In the case of a fiscal year taxpayer, the sum of the total
20 number of full-time equivalent employees of the business in the
21 State at the end of each quarter of the taxable year of the
22 taxpayer divided by 4.

1 "Certified business" means a taxpayer that is operating a
2 business located, or that the taxpayer plans to locate, within
3 the State that is certified as eligible for the credits awarded
4 under this Act.

5 "Credit" means the credits awarded pursuant to Section 20
6 of this Act.

7 "Department" means the Department of Commerce and Economic
8 Opportunity or its successor.

9 "Director" means the Director of Commerce and Economic
10 Opportunity.

11 "Eligible new employee" means a full-time or part-time
12 employee of a certified business. The term "eligible new
13 employee" does not include a person classified as an
14 independent contractor under laws and rules administered by the
15 Department of Employment Security.

16 "Full-time employee" means an individual who is employed for
17 consideration for at least 35 hours each week or who renders
18 any other standard of service generally accepted by industry
19 custom or practice as full-time employment. An individual for
20 whom a W-2 is issued by a Professional Employer Organization
21 (PEO) is a full-time employee if employed in the service of the
22 Applicant for consideration for at least 35 hours each week or
23 who renders any other standard of service generally accepted by
24 industry custom or practice as full-time employment.

25 "New employee" means each Illinois-domiciled resident
26 hired as an eligible new employee employed in a net new job.

1 "New job" means a job that did not exist in the business of
2 the taxpayer in this State prior to the taxable year in which
3 the new job was created. New jobs must be filled by new
4 employees.

5 "Net new employment" means the average number of new jobs
6 of a certified business in the State during the taxable year
7 that equals or exceeds the average number of employees of the
8 business in the State during the immediately preceding taxable
9 year.

10 "Net new job" means a job that: (1) is new to this State;
11 (2) has not been transferred from another business located in
12 this State through an acquisition, merger, consolidation, or
13 other reorganization of the business, or through the
14 acquisition of the assets of another business, or transferred
15 from the existing employees of a related person, as defined in
16 Section 465(b)(3)(C) of the Internal Revenue Code, located in
17 the State, to similar employment with the taxpayer unless the
18 business has received approval from the Department; and (3) is
19 not filled by an individual employed within the State within
20 the preceding 60 months by a related person.

21 "Pass-through entity" means an entity that is exempt from
22 the tax under subsection (b) or (c) of Section 205 of the
23 Illinois Income Tax Act.

24 "Professional Employer Organization" (PEO) means an
25 employee leasing company, as defined in Section 206.1 of the
26 Unemployment Insurance Act.

1 "Related member" means a person who, with respect to the
2 taxpayer during any portion of the taxable year, is any one of
3 the following:

4 (1) An individual stockholder, if the stockholder and
5 the members of the stockholder's family (as defined in
6 Section 318 of the Internal Revenue Code) own directly,
7 indirectly, beneficially, or constructively, in the
8 aggregate, at least 50% of the value of the taxpayer's
9 outstanding stock.

10 (2) A partnership, estate, or trust, and any partner or
11 beneficiary, if the partnership, estate, or trust, and its
12 partners or beneficiaries own directly, indirectly,
13 beneficially, or constructively, in the aggregate, at
14 least 50% of the profits, capital, stock, or value of the
15 taxpayer.

16 (3) A corporation, and any party related to the
17 corporation in a manner that would require an attribution
18 of stock from the corporation to the party or from the
19 party to the corporation under the attribution rules of
20 Section 318 of the Internal Revenue Code, if the taxpayer
21 owns directly, indirectly, beneficially, or
22 constructively, at least 50% of the value of the
23 corporation's outstanding stock.

24 (4) A corporation and any party related to that
25 corporation in a manner that would require an attribution
26 of stock from the corporation to the party or from the

1 party to the corporation under the attribution rules of
2 Section 318 of the Internal Revenue Code, if the
3 corporation and all such related parties own in the
4 aggregate at least 50% of the profits, capital, stock, or
5 value of the taxpayer.

6 (5) A person to or from whom there is attribution of
7 stock ownership in accordance with Section 1563(e) of the
8 Internal Revenue Code, except that, for purposes of
9 determining whether a person is a related member under this
10 paragraph, 20% shall be substituted for 5% wherever 5%
11 appears in Section 1563(e) of the Internal Revenue Code.

12 "Retained job" means a full-time or part-time position of
13 employment by a taxpayer that would either be eliminated or
14 transferred outside of this State absent an award of the
15 credits in Section 20 of this Act.

16 "Taxpayer" means an individual, corporation, partnership,
17 or other entity that is subject to the Illinois Income Tax Act,
18 and means each individual member of a unitary business group,
19 as that term is defined in Section 1501 of the Illinois Income
20 Tax Act, and does not mean a unitary business group as a whole.

21 "Training costs" means 50% of employee wage costs for a new
22 employee during the first 6 months of employment of that new
23 employee.

24 Section 15. Powers of the Department. The Department, in
25 addition to those powers granted under the Civil Administrative

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

5 (1) adopt rules deemed necessary and appropriate for
6 the administration of the this Act;

7 (2) establish forms for applications, notifications,
8 contracts, or any other agreements, and accept
9 applications for credits under this Act at any time
10 during the year;

11 (3) provide and assist taxpayers pursuant to the
12 provisions of this Act and cooperate with taxpayers that
13 are certified businesses to promote, foster, and support
14 economic development, capital investment, and job creation
15 or retention within the State;

16 (4) enter into agreements and memoranda of
17 understanding for participation of and engage in
18 cooperation with agencies of the federal government, units
19 of local government, universities, research foundations or
20 institutions, regional economic development corporations,
21 or other organizations for the purposes of this Act;

22 (5) establish, negotiate, and effectuate any term,
23 agreement, or other document with any person, necessary or
24 appropriate to accomplish the purposes of this Act;

25 (6) provide for sufficient personnel to permit the
26 administration, staffing, operation, and related support

1 required to adequately discharge the Department's duties
2 and responsibilities described in this Act from funds as
3 may be appropriated by the General Assembly for the
4 administration of this Act;

5 (7) require applicants, upon written request, to issue
6 any necessary authorization to the appropriate federal,
7 State, or local authority for the release of information
8 concerning a project being considered under the provisions
9 of this Act, with the information requested to include, but
10 not be limited to, financial reports, returns, or records
11 relating to the taxpayer or the project; and

12 (8) require that a certified business shall at all
13 times keep proper books of record and account in accordance
14 with generally accepted accounting principles consistently
15 applied, with the books, records, or papers related in the
16 custody or control of the certified business open for
17 reasonable Department inspection and audits, and
18 including, without limitation, the making of copies of the
19 books, records, or papers, and the inspection or appraisal
20 of any assets of the certified business or project.

21 Section 20. Tax credit awards.

22 (a) For taxable years beginning after December 31, 2016, the
23 Department shall award credits against the tax imposed under
24 subsections (a) and (b) of Section 201 of the Illinois Income
25 Tax Act to certified businesses for jobs created or retained in

1 an amount equal to:

2 (1) 10% of the wages paid to each eligible new
3 full-time employee during the taxable year in which he or
4 she is hired and each of the subsequent 4 taxable years;
5 10% of the wages paid to each eligible retained full-time
6 employee in the first year in which the taxpayer is a
7 certified business and each of the subsequent 4 taxable
8 years; and an additional 5% of the wages paid to an
9 eligible new or retained full-time employee during those
10 taxable years if the wages paid to that eligible new or
11 retained full-time employee are more than 150% of the
12 Illinois minimum wage when calculated on an hourly basis;
13 and

14 (2) 5% of the wages paid to each eligible new part-time
15 employee during the taxable year in which he or she is
16 hired and the subsequent 4 taxable years; 5% of the wages
17 paid to each eligible retained part-time employee in the
18 first year in which the taxpayer is a certified business
19 and each of the subsequent 4 taxable years; and

20 (3) an additional amount of 10% of the wages of an
21 eligible new or retained full-time or part-time employee
22 employed by the certified business in a labor market area
23 that meets any one of the following criteria:

24 (A) the labor market area has a poverty rate of at
25 least 20%, according to the latest federal decennial
26 census;

1 (B) 50% or more of the children in the local labor
2 market participate in the federal free lunch program,
3 according to reported statistics from the State Board
4 of Education, or

5 (C) 20% or more of the households in the local
6 labor market area receive food stamps, according to the
7 latest federal decennial census.

8 (4) In lieu of the credits provided under paragraphs
9 (1), (2), and (3) of this subsection (a), an amount equal
10 to 50% of the training costs, as defined in Section 10,
11 associated with each new employee.

12 (b) The Department shall award credits for investment in an
13 amount equal to:

14 (1) 50% of the amount claimed by the certified business
15 for the taxable year pursuant to subsection (e) of Section
16 201 of the Illinois Income Tax Act; or

17 (2) 50% of the amount claimed by the Certified Business
18 for the taxable year pursuant to subsection (h) or (f) of
19 Section 201 of the Illinois Income Tax.

20 (c) The maximum amount of all new credits awarded by the
21 Department during any calendar year may not exceed \$50,000,000.
22 Any taxpayer who is otherwise qualified for a credit but is not
23 awarded a credit in a taxable year solely because the
24 \$50,000,000 cap has been reached is eligible for the credit in
25 the following taxable year.

26 (d) Any tax credits awarded under this Act and not

1 previously claimed by a taxpayer against its income tax
2 liability under Section 201 of the Illinois Income Tax Act may
3 be sold, assigned, or transferred, in whole or in part, to
4 another Illinois taxpayer subject to all of the following
5 conditions:

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

11 (2) The tax credit earned by the transferor may be
12 transferred before the due date, including extensions, of
13 the Illinois income tax return of the transferor. The
14 amount of the credit transferred to the transferee or
15 transferees may not exceed the amount of the credit earned
16 by the transferor in the transferor's taxable year.

17 (3) Written notification of the transfer or sale of
18 credits awarded under this Act shall be submitted to the
19 Department and the Department of Revenue within 30 days
20 after the sale, assignment, or transfer. The Department of
21 Revenue shall provide by rule the information required to
22 be provided in such written notification.

23 (4) The transfer or sale of tax credits under this
24 subsection does not extend the time during which those tax
25 credits may be used. The carry-forward period for a tax
26 credit that is transferred or sold shall begin on the date

1 on which the tax credit was originally earned.

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

7 (6) If the taxpayer earning the credit is later
8 determined to not be in entitled to the credit, the
9 Department of Revenue shall hold the transferor liable for
10 any tax, penalty, or interest due as a result of such
11 determination.

12 Section 25. Application to be a certified business.

13 (a) Any taxpayer proposing to increase investment and
14 employment in Illinois may request designation as a certified
15 business by application to the Department in which the taxpayer
16 states its intent to hire or retain a specified number of
17 full-time or full-time equivalent employees at designated
18 locations in Illinois.

19 (b) In order to qualify for credits under this Act, the
20 applicant must create net new jobs or retain existing jobs that
21 would be eliminated or transferred to locations outside of
22 Illinois but for the credits to be received by the taxpayer.

23 (c) After review of the application, the Department may
24 certify the applicant as a certified business.

1 Section 30. Relocation of jobs in Illinois. A taxpayer may
2 not claim the credits provided by this Act with respect to any
3 jobs that the taxpayer relocates from one site in Illinois to
4 another site in Illinois, except for those jobs certified as
5 retained jobs. Determinations under this Section shall be made
6 by the Department.

7 Section 35. Duration of the credit. The duration of the
8 credit is 5 taxable years, except as the credit may be applied
9 in a carryover year pursuant to Section 224 of the Illinois
10 Income Tax Act.

11 Section 40. Recapture of the credit. If a taxpayer fails to
12 maintain any retained job or net new job for the year in which
13 the job was created or retained, then no credit shall be
14 granted for that net new job. If a taxpayer fails to maintain
15 any retained job or net new job for the subsequent 4 taxable
16 years after the year of creation or retention, the credits
17 granted under this Act for those jobs shall be recaptured. Any
18 amounts recaptured pursuant to this Section shall be reported
19 and paid to the Department of Revenue on the income tax return
20 for the taxable year in which the recapture is triggered. Any
21 such amounts repaid by the original due date of the income tax
22 return on which the recapture is reported shall be subject to
23 only to interest, but not penalties under the Uniform Penalty
24 and Interest Act.

1 Section 45. Certificate of verification.

2 (a) A certified business claiming credits under this Act
3 shall submit to the Department of Revenue a copy of the
4 Department's certificate of verification under this Act for the
5 taxable year. However, a failure to submit a copy of the
6 certificate with the tax return of the certified business shall
7 not invalidate a claim for a credit.

8 (b) For a certified business to be eligible for a
9 certificate of verification, the certified business shall
10 provide proof as required by the Department prior to the end of
11 each calendar year, including, but not limited to, attestation
12 by the certified business of the retained jobs and net new
13 employment in the State during the taxable year.

14 Section 50. Pass-through entity. The shareholders or
15 partners of a certified business that is a pass-through entity
16 shall be entitled to the credits awarded under this Act.

17 Section 55. Rulemaking. The Department and the Department
18 of Revenue shall adopt rules necessary to implement this Act.

19 Section 60. Noncompliance; notice; assessment. If the
20 Department determines that a taxpayer who has received a credit
21 under this Act is not complying with the requirements of this
22 Act, the Department shall provide written notice to the

1 taxpayer of the alleged noncompliance. The notice shall provide
2 the basis for the Department's determination and shall allow
3 the taxpayer to request a hearing before the Department of
4 Revenue, provided such request is made within 60 days after the
5 notice is provided to the taxpayer. Any hearing authorized
6 pursuant to this Section shall be subject to the rules of the
7 Department of Revenue and shall be open to the public in the
8 same manner as any other matter before the Department of
9 Revenue. If, after such notice and any hearing, the Department
10 of Revenue determines that a noncompliance exists, the
11 Department of Revenue shall issue to the Department of Commerce
12 and Economic Opportunity a notice to that effect, stating the
13 revocation date.

14 Section 65. Annual report. On or before July 1 each year,
15 the Department shall submit a report on the tax credit program
16 under this Act to the Governor and the General Assembly. The
17 report shall include information on the number of
18 certifications made under this Act during the preceding
19 calendar year, a description of the subject of each
20 certification, an update of the status of certifications
21 entered into in preceding calendar years, and the sum of
22 credits awarded under this Act.

23 Section 100. The Illinois Income Tax Act is amended by
24 adding Section 224 as follows:

1 (35 ILCS 5/224 new)

2 Sec. 224. Business and employment development tax credit.

3 (a) For tax years beginning on or after January 1, 2017, a
4 taxpayer who has been certified by the Department of Commerce
5 and Economic Opportunity as a certified business under the
6 Business and Employment Development Tax Credit Act is entitled
7 to a credit against the taxes imposed under subsections (a) and
8 (b) of Section 201 of this Act as provided in this Act. If the
9 taxpayer is a partnership or Subchapter S corporation, the
10 credit shall be allowed to the partners or shareholders in
11 accordance with the determination of income and distributive
12 share of income under Sections 702 and 704 and subchapter S of
13 the Internal Revenue Code. The Department, in cooperation with
14 the Department of Commerce and Economic Opportunity, shall
15 adopt rules to enforce and administer the provisions of this
16 Section. This Section is exempt from the provisions of Section
17 250 of this Act.

18 (b) The amount of the credit shall be determined on an
19 annual basis. Except as applied in a carryover year, the credit
20 may not be applied against any State income tax liability in
21 more than 10 taxable years.

22 (c) In no event shall a credit under this Section reduce
23 the taxpayer's liability to less than zero. If the amount of
24 the credit exceeds the tax liability for the year, the excess
25 may be carried forward and applied to the tax liability of the

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

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

19 (e) A sale, assignment, or transfer of the tax credit award
20 may be made by the taxpayer in accordance with rules adopted by
21 the Department of Commerce and Economic Opportunity.

22 (f) The terms used in this Section have the meanings given
23 to those terms in the Business and Employment Development Tax
24 Credit Act.

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