

# SB3459



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB3459

Introduced 1/9/2017, by Sen. Pamela J. Althoff - Melinda Bush - Neil Anderson - James F. Clayborne, Jr. - Toi W. Hutchinson, et al.

#### SYNOPSIS AS INTRODUCED:

New Act  
35 ILCS 5/224 new

Creates the Transforming, Helping, and Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax Credit Act. Provides that the Department of Commerce and Economic Opportunity shall award the credit if the taxpayer meets certain criteria. Contains job creation and capital investment requirements. Provides that the credit may not exceed 50% of the incremental income tax attributable to the applicant's project. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB099 24221 HLH 52021 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 Transforming, Helping, and Reviving Illinois' Versatile  
6 Economy (THRIVE) Job Creation Tax Credit Act.

7 Section 5. Definitions.

8 "Agreement" means the Agreement between a taxpayer and the  
9 Department for tax credits under this Act.

10 "Applicant" means a taxpayer that is operating a business  
11 located within, or that the taxpayer plans to locate within,  
12 the State and that is engaged in interstate or intrastate  
13 commerce for the purpose of manufacturing, processing,  
14 assembling, warehousing, or distributing products, conducting  
15 research and development, providing tourism services, or  
16 providing services in interstate commerce, office industries,  
17 or agricultural processing, but excluding retail, retail food,  
18 health, or professional services. "Applicant" does not include  
19 a taxpayer who closes or substantially reduces an operation at  
20 one location in the State and relocates substantially the same  
21 operation to another location in the State. This does not  
22 prohibit a taxpayer from expanding its operations at another  
23 location in the State, provided that existing operations of a

1 similar nature located within the State are not closed or  
2 substantially reduced. This also does not prohibit a taxpayer  
3 from moving its operations from one location in the State to  
4 another location in the State for the purpose of expanding the  
5 operation, provided that the Department determines that  
6 expansion cannot reasonably be accommodated within the  
7 municipality in which the business is located, or, in the case  
8 of a business located in an incorporated area of the county,  
9 within the county in which the business is located, after  
10 conferring with the chief elected official of the municipality  
11 or county and taking into consideration any evidence offered by  
12 the municipality or county regarding the ability to accommodate  
13 expansion within the municipality or county.

14 "Credit" means the amount agreed to between the Department  
15 and applicant under this Act, but not to exceed 50% of the  
16 incremental income tax attributable to the applicant's  
17 project.

18 "Department" means the Department of Commerce and Economic  
19 Opportunity.

20 "Full-time employee" means an individual who is employed  
21 for consideration for at least 35 hours each week. An  
22 individual for whom a W-2 is issued by a Professional Employer  
23 Organization (PEO) is a full-time employee if employed in the  
24 service of the applicant for consideration for at least 35  
25 hours each week.

26 "Incremental income tax" means the total amount withheld

1 during the taxable year from the compensation of new employees  
2 under Article 7 of the Illinois Income Tax Act arising from  
3 employment at a project that is the subject of an agreement.

4 "New employee" means a full-time employee first employed by  
5 a taxpayer in the project that is the subject of an agreement  
6 and who is hired after the taxpayer enters into the tax credit  
7 agreement. The term "new employee" does not include:

8 (1) an employee of the taxpayer who performs a job that  
9 was previously performed by another employee, if that job  
10 existed for at least 6 months before the employee was hired  
11 by the taxpayer;

12 (2) an employee of the taxpayer who was previously  
13 employed in Illinois by a related member of the taxpayer  
14 and whose employment was shifted to the taxpayer after the  
15 taxpayer entered into the agreement; or

16 (3) a child, grandchild, parent, or spouse, other than  
17 a spouse who is legally separated from the individual, of  
18 any individual who has a direct or an indirect ownership  
19 interest of at least 5% in the profits, capital, or value  
20 of the taxpayer.

21 Notwithstanding paragraph (1) above, an employee may be  
22 considered a new employee under the agreement if the employee  
23 performs a job that was previously performed by an employee who  
24 was:

25 (1) treated under the agreement as a new employee; and

26 (2) promoted by the taxpayer to another job.

1           An employee hired prior to the date of the Agreement who  
2 otherwise qualifies as a new employee may be considered a new  
3 employee if:

4           (1) the applicant is in receipt of a letter from the  
5 Department stating an intent to enter into a credit  
6 agreement;

7           (2) that letter is issued by the Department not later  
8 than 15 days after the effective date of this Act; and

9           (3) the employee was hired after the date the letter  
10 was issued.

11           "Noncompliance date" means, in the case of a taxpayer that  
12 is not complying with the requirements of the agreement or the  
13 provisions of this Act, the day following the last date upon  
14 which the taxpayer was in compliance with the requirements of  
15 the agreement and the provisions of this Act, as determined by  
16 the Director.

17           "Professional Employer Organization" or "PEO" means an  
18 employee leasing company, as defined in Section 206.1(A)(2) of  
19 the Illinois Unemployment Insurance Act.

20           "Related member" means a person that, with respect to the  
21 taxpayer during any portion of the taxable year, is any one of  
22 the following:

23           (1) an individual stockholder, if the stockholder and  
24 the members of the stockholder's family (as defined in  
25 Section 318 of the Internal Revenue Code) own directly,  
26 indirectly, beneficially, or constructively, in the

1 aggregate, at least 50% of the value of the taxpayer's  
2 outstanding stock;

3 (2) a partnership, estate, or trust and any partner or  
4 beneficiary, if the partnership, estate, or trust, and its  
5 partners or beneficiaries own directly, indirectly,  
6 beneficially, or constructively, in the aggregate, at  
7 least 50% of the profits, capital, stock, or value of the  
8 taxpayer;

9 (3) a corporation, and any party related to the  
10 corporation in a manner that would require an attribution  
11 of stock from the corporation to the party or from the  
12 party to the corporation under the attribution rules of  
13 Section 318 of the Internal Revenue Code, if the taxpayer  
14 owns directly, indirectly, beneficially, or constructively  
15 at least 50% of the value of the corporation's outstanding  
16 stock;

17 (4) a corporation and any party related to that  
18 corporation in a manner that would require an attribution  
19 of stock from the corporation to the party or from the  
20 party to the corporation under the attribution rules of  
21 Section 318 of the Internal Revenue Code, if the  
22 corporation and all such related parties own in the  
23 aggregate at least 50% of the profits, capital, stock, or  
24 value of the taxpayer; and

25 (5) a person to or from whom there is attribution of  
26 stock ownership in accordance with Section 1563(e) of the

1 Internal Revenue Code, except, for purposes of determining  
2 whether a person is a related member under this paragraph,  
3 20% shall be substituted for 5% wherever 5% appears in  
4 Section 1563(e) of the Internal Revenue Code.

5 "Taxpayer" means an individual, corporation, partnership,  
6 or other entity that has any Illinois income tax liability.

7 Section 10. Powers of the Department. The Department, in  
8 addition to those powers granted under the Civil Administrative  
9 Code of Illinois, is granted and shall have all the powers  
10 necessary or convenient to carry out and effectuate the  
11 purposes and provisions of this Act, including, but not limited  
12 to, power and authority to:

13 (1) Promulgate procedures or regulations deemed  
14 necessary and appropriate for the administration of the  
15 programs; establish forms for applications, notifications,  
16 contracts, or any other agreements; and accept  
17 applications at any time during the year.

18 (2) Provide and assist taxpayers pursuant to the  
19 provisions of this Act, and cooperate with taxpayers that  
20 are parties to agreements to promote, foster, and support  
21 economic development, capital investment, and job creation  
22 within the State.

23 (3) Enter into agreements and memoranda of  
24 understanding for participation of and engage in  
25 cooperation with agencies of the federal government, units

1 of local government, universities, research foundations or  
2 institutions, regional economic development corporations,  
3 or other organizations for the purposes of this Act.

4 (4) Gather information and conduct inquiries, in the  
5 manner and by the methods as it deems desirable, including  
6 without limitation, gathering information with respect to  
7 applicants for the purpose of making any designations or  
8 certifications necessary or desirable in the furtherance  
9 of the purposes of this Act.

10 (5) Establish, negotiate, and effectuate any term,  
11 agreement or other document with any person, necessary or  
12 appropriate to accomplish the purposes of this Act; and to  
13 consent, subject to the provisions of any agreement with  
14 another party, to the modification or restructuring of any  
15 agreement to which the Department is a party.

16 (6) Fix, determine, charge, and collect any premiums,  
17 fees, charges, costs, and expenses from Applicants,  
18 including, without limitation, any application fees,  
19 commitment fees, program fees, financing charges, or  
20 publication fees as deemed appropriate to pay expenses  
21 necessary or incident to the administration, staffing, or  
22 operation in connection with the Department's activities  
23 under this Act, or for preparation, implementation, and  
24 enforcement of the terms of the agreement, or for  
25 consultation, advisory and legal fees, and other costs;  
26 however, all fees and expenses incident thereto shall be



1 the responsibility of the applicant.

2 (7) Provide for sufficient personnel to permit  
3 administration, staffing, operation, and related support  
4 required to adequately discharge its duties and  
5 responsibilities described in this Act from funds made  
6 available through charges to applicants or from funds as  
7 may be appropriated by the General Assembly for the  
8 administration of this Act.

9 (8) Require applicants, upon written request, to issue  
10 any necessary authorization to the appropriate federal,  
11 State, or local authority for the release of information  
12 concerning a project being considered under the provisions  
13 of this Act, with the information requested to include, but  
14 not be limited to, financial reports, returns, or records  
15 relating to the taxpayer or its project.

16 (9) Require that a taxpayer shall at all times keep  
17 proper books of record and account in accordance with  
18 generally accepted accounting principles consistently  
19 applied, with the books, records, or papers related to the  
20 agreement in the custody or control of the taxpayer open  
21 for reasonable Department inspection and audits, and  
22 including, without limitation, the making of copies of the  
23 books, records, or papers, and the inspection or appraisal  
24 of any of the taxpayer or project assets.

25 (10) Take whatever actions are necessary or  
26 appropriate to protect the State's interest in the event of

1 bankruptcy, default, foreclosure, or noncompliance with  
2 the terms and conditions of financial assistance or  
3 participation required under this Act, including the power  
4 to sell, dispose, lease, or rent, upon terms and conditions  
5 determined by the Director to be appropriate, real or  
6 personal property that the Department may receive as a  
7 result of these actions.

8 Section 15. Tax credit awards. Subject to the conditions  
9 set forth in this Act, a taxpayer is entitled to a credit  
10 against the taxes imposed pursuant to subsections (a) and (b)  
11 of Section 201 of the Illinois Income Tax Act if the Taxpayer  
12 is awarded a Credit by the Department under this Act for that  
13 taxable year.

14 The Department shall make credit awards under this Act to  
15 foster job creation in Illinois.

16 A person that proposes a project to create new jobs in  
17 Illinois must enter into an agreement with the Department for  
18 the credit under this Act.

19 The credit shall be claimed for the taxable years specified  
20 in the agreement.

21 The credit shall not exceed 50% of the incremental income  
22 tax attributable to the project that is the subject of the  
23 agreement.

24 Nothing herein shall prohibit a tax credit award to an  
25 applicant that uses a PEO if all other award criteria are

1 satisfied.

2 Credits awarded under this Act are transferable through the  
3 Department at the discretion of the Director within 2 years  
4 after the credit is awarded. Credits may be transferred only to  
5 a single taxpayer or to common entities within a single  
6 ownership structure and may not be transferred more than once.  
7 The Department shall maintain an online information portal  
8 where entities anticipating the purchase or sale of credits  
9 shall register their intent to do so. The Department may retain  
10 up to 5% of the transferred credit amount, and that amount  
11 shall be invested consistent with the clawback provisions set  
12 forth in Section 43 of this Act.

13 For partners, shareholders of Subchapter S corporations,  
14 and owners of limited liability companies, if the liability  
15 company is treated as a partnership for purposes of federal and  
16 State income taxation, the credit under this Act shall be  
17 determined in accordance with the determination of income and  
18 distributive share of income under Sections 702 and 704 and  
19 Subchapter S of the Internal Revenue Code or as allowed under  
20 the agreement with the Department.

21 An applicant may not receive more than one credit award for  
22 the same location.

23 Section 20. Application for a project to create new jobs.

24 (a) Any taxpayer proposing a project located or planned to  
25 be located in Illinois may request consideration for

1 designation of its project, by formal application to the  
2 Department in which the applicant states its intent to meet the  
3 criteria set forth in this Section.

4 (b) The applicant's project must: (1) employ a number of  
5 new employees equal to the lesser of (A) 10% of the number of  
6 employees employed by the applicant on the date the application  
7 is filed with the Department or (B) 50 new employees; and (2)  
8 involve a capital investment of at least \$2,500,000 at a  
9 project location in the State, except that, if the applicant  
10 employs fewer than 100 employees on the date the application is  
11 filed with the Department, then the applicant's capital  
12 investment may be less than \$500,000 if the capital investment  
13 is approved by the Department at the time of the application.

14 (c) The Department may enter into an agreement with the  
15 applicant if the application is accepted.

16 Section 25. Relocation of jobs within Illinois; baseline  
17 employment. A taxpayer is not entitled to claim the credit  
18 provided by this Act with respect to any jobs that the taxpayer  
19 relocates from one site in Illinois to another site in  
20 Illinois. In addition, a taxpayer is not entitled to claim a  
21 credit under this Act for a taxable year if the average number  
22 of full-time employees employed by the taxpayer in this State  
23 during that taxable year is less than the average number of  
24 full-time employees employed by the taxpayer in this State in  
25 the taxable year prior to taxable year in which the credit was

1 first awarded. If the project is a qualifying project certified  
2 under the Corporate Headquarters Relocation Act, however, then  
3 the taxpayer is not subject to the requirements of this Section  
4 but is nevertheless considered an applicant for purposes of  
5 this Act. Moreover, any full-time employee of an eligible  
6 business relocated to Illinois in connection with that  
7 qualifying project is deemed to be a new employee for purposes  
8 of this Act. Determinations under this Section shall be made by  
9 the Department and at the Department's discretion.

10 Section 30. Determination of amount of the credit. In  
11 determining the amount of the credit that should be awarded,  
12 the Department may take into consideration, the following  
13 factors:

14 (1) The number and location of jobs created in relation  
15 to the economy of the county where the projected investment  
16 is to occur.

17 (2) The potential impact on the economy of Illinois.

18 (3) The magnitude of the cost differential between  
19 Illinois and the competing state.

20 (4) The incremental payroll attributable to the  
21 project.

22 (5) The capital investment attributable to the  
23 project.

24 (6) The amount of the average wage and benefits paid by  
25 the applicant in relation to the wage and benefits of the

1 area of the project.

2 (7) The costs to Illinois and the affected political  
3 subdivisions with respect to the project.

4 (8) The financial assistance that is otherwise  
5 provided by Illinois and the affected political  
6 subdivisions.

7 Section 35. Duration of the credit. The duration of the  
8 credit may not exceed 10 taxable years, except that, if the  
9 project is located in a census tract with an unemployment rate  
10 that is greater than 150% of the State unemployment rate at the  
11 time the application is filed with the Department, then the  
12 duration of the credit may not exceed 15 taxable years. The  
13 credit may not exceed the amount of taxes imposed pursuant to  
14 subsections (a) and (b) of Section 201 of the Illinois Income  
15 Tax Act. Any credit that is unused in the year the credit is  
16 computed may be carried forward and applied to the tax  
17 liability of the 5 taxable years following the excess credit  
18 year. The credit shall be applied to the earliest year for  
19 which there is a tax liability. If there are credits from more  
20 than one tax year that are available to offset a liability, the  
21 earlier credit shall be applied first.

22 Section 40. Contents of agreements with applicants. The  
23 Department shall enter into an agreement with an applicant that  
24 is awarded a credit under this Act. The agreement must include

1 all of the following:

2 (1) A detailed description of the project that is the  
3 subject of the agreement, including the location and amount  
4 of the investment and jobs created.

5 (2) The duration of the credit and the first taxable  
6 year for which the credit may be claimed.

7 (3) The credit amount that will be allowed for each  
8 taxable year.

9 (4) A requirement that the taxpayer shall maintain  
10 operations at the project location that shall be stated as  
11 a minimum number of years not to exceed 10.

12 (5) A requirement that the Department is authorized to  
13 verify with the appropriate State agencies the amounts  
14 reported under paragraph (5), and after doing so shall  
15 issue a certificate to the taxpayer stating that the  
16 amounts have been verified.

17 (6) A requirement that the taxpayer shall provide  
18 written notification to the Department not more than 30  
19 days after the taxpayer makes or receives a proposal that  
20 would transfer the taxpayer's State tax liability  
21 obligations to a successor taxpayer.

22 (7) A detailed description of the number of new  
23 employees to be hired, and the occupation and payroll of  
24 the full-time jobs to be created as a result of the  
25 project.

26 (8) The minimum investment the business enterprise

1 will make in capital improvements, the time period for  
2 placing the property in service, and the designated  
3 location in Illinois for the investment.

4 (9) A requirement that the taxpayer shall provide  
5 written notification to the Department not more than 30  
6 days after the taxpayer determines that the minimum job  
7 creation, employment payroll, or investment no longer is  
8 being or will be achieved or maintained as set forth in the  
9 terms and conditions of the agreement.

10 (10) A provision specifying that, if the taxpayer  
11 ceases principal operations with the intent to shut down  
12 the project in the State permanently, then the entire  
13 credit amount awarded to the taxpayer prior to the date the  
14 taxpayer ceases principal operations shall be returned to  
15 the Department and shall be reallocated to the local  
16 workforce investment area in which the project was located  
17 as provided in Section 43.

18 (11) Any other performance conditions or contract  
19 provisions as the Department determines are appropriate.

20 Section 43. Taxpayer ceases principal operations. If the  
21 taxpayer ceases principal operations at the project location  
22 during the term of the agreement with the intent to shut down  
23 the project in the State permanently, then the entire credit  
24 amount awarded to the taxpayer prior to the date the taxpayer  
25 ceases principal operations shall be returned to the Department



1 and shall be reallocated to the local workforce investment area  
2 in which the project was located for the purposes of workforce  
3 development, expanded opportunities for unemployed persons,  
4 and expanded opportunities for women and minorities in the  
5 workforce.

6 Section 45. Certificate of verification; submission to the  
7 Department of Revenue. A taxpayer claiming a credit under this  
8 Act shall submit to the Department of Revenue a copy of the  
9 certificate of verification under this Act for the taxable  
10 year. However, failure to submit a copy of the certificate with  
11 the taxpayer's tax return shall not invalidate a claim for a  
12 credit.

13 For a taxpayer to be eligible for a certificate of  
14 verification, the taxpayer shall provide proof as required by  
15 the Department prior to the end of each calendar year,  
16 including, but not limited to, attestation by the Taxpayer that  
17 the project continues to meet the terms of the agreement.

18 Section 50. Noncompliance; notice; assessment. If the  
19 Department determines that a taxpayer who has received a credit  
20 under this Act is not complying with the requirements of the  
21 agreement or all of the provisions of this Act, the Department  
22 shall provide notice to the taxpayer of the alleged  
23 noncompliance, and allow the taxpayer a hearing under the  
24 provisions of the Illinois Administrative Procedure Act. If,

1 after such notice and any hearing, the Department determines  
2 that a noncompliance exists, the Department shall issue to the  
3 Department of Revenue notice to that effect, stating the  
4 noncompliance date.

5 Section 55. Rules. The Department may adopt rules under the  
6 Illinois Administrative Procedure Act necessary to implement  
7 this Act.

8 Section 800. The Illinois Income Tax Act is amended by  
9 adding Section 224 as follows:

10 (35 ILCS 5/224 new)

11 Sec. 224. Transforming, Helping, and Reviving Illinois'  
12 Versatile Economy (THRIVE) Job Creation Tax Credit. For taxable  
13 years beginning on or after January 1, 2017, a taxpayer who has  
14 been granted a credit under the Transforming, Helping, and  
15 Reviving Illinois' Versatile Economy (THRIVE) Job Creation Tax  
16 Credit Act is entitled to a credit against the taxes imposed  
17 under subsections (a) and (b) of Section 201 as provided in  
18 that Act.

19 Section 999. Effective date. This Act takes effect upon  
20 becoming law.