

# HB2425



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2425

by Rep. Ryan Spain

### SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Provides that an employer with fewer than 25 employees shall make returns for withholding taxes annually. Effective immediately.

LRB100 08703 HLH 18839 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by  
5 changing Section 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 or  
9 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. On and after January 1, 2017, an employer with an  
18 average employee head count of fewer than 25 employees during  
19 the previous calendar year shall make returns with respect to  
20 taxes withheld or required to be withheld under this Article 7  
21 annually.

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

1           (1) Semi-weekly payments. For each calendar year, each  
2 employer who withheld or was required to withhold more than  
3 \$12,000 during the one-year period ending on June 30 of the  
4 immediately preceding calendar year, payment must be made:

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

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

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

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

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

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

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

7           (1) Permit employers, in lieu of the requirements of  
8           subsections (b) and (c), to file annual returns due on or  
9           before January 31 of the year for taxes withheld or  
10          required to be withheld during the previous calendar year  
11          and, if the aggregate amounts required to be withheld by  
12          the employer under this Article 7 (other than amounts  
13          required to be withheld under Section 709.5) do not exceed  
14          \$1,000 for the previous calendar year, to pay the taxes  
15          required to be shown on each such return no later than the  
16          due date for such return.

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

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

26          (4) Increase the threshold dollar amounts at which

1 employers are required to make semi-weekly payments under  
2 subsection (c) (1) or (c) (2).

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

15 (f) Magnetic media and electronic filing. Any W-2 Form  
16 that, under the Internal Revenue Code and regulations  
17 promulgated thereunder, is required to be submitted to the  
18 Internal Revenue Service on magnetic media or electronically  
19 must also be submitted to the Department on magnetic media or  
20 electronically for Illinois purposes, if required by the  
21 Department.

22 (g) For amounts deducted or withheld after December 31,  
23 2009, a taxpayer who makes an election under subsection (f) of  
24 Section 5-15 of the Economic Development for a Growing Economy  
25 Tax Credit Act for a taxable year shall be allowed a credit  
26 against payments due under this Section for amounts withheld

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

1 and retained amounts in the form and manner that the  
2 Department, by rule, requires and pay to the Department or to a  
3 depositary designated by the Department those withheld taxes  
4 not retained by the taxpayer. For purposes of this subsection  
5 (g), the term taxpayer shall include taxpayer and members of  
6 the taxpayer's unitary business group as defined under  
7 paragraph (27) of subsection (a) of Section 1501 of this Act.  
8 This Section is exempt from the provisions of Section 250 of  
9 this Act.

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

1 (Source: P.A. 96-834, eff. 12-14-09; 96-888, eff. 4-13-10;  
2 96-905, eff. 6-4-10; 96-1027, eff. 7-12-10; 97-333, eff.  
3 8-12-11; 97-507, eff. 8-23-11.)

4 Section 99. Effective date. This Act takes effect upon  
5 becoming law.