

HB5038



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5038

by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

35 ILCS 10/5-5
35 ILCS 10/5-35

Amends the Economic Development for a Growing Economy Tax Credit Act. Repeals provisions allowing an applicant to move its operations from one location in the State to another location in the State for the purpose of expanding the operation. Provides that an employee of the Taxpayer who was previously employed in Illinois by the Taxpayer and whose employment was shifted to the project after the Taxpayer entered into the Agreement is not considered a new employee for purposes of the Act. Effective immediately.

LRB100 17412 HLH 32578 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 Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Sections 5-5 and 5-35 as
6 follows:

7 (35 ILCS 10/5-5)

8 Sec. 5-5. Definitions. As used in this Act:

9 "Agreement" means the Agreement between a Taxpayer and the
10 Department under the provisions of Section 5-50 of this Act.

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

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

15 "Committee" means the Illinois Business Investment
16 Committee created under Section 5-25 of this Act within the
17 Illinois Economic Development Board.

18 "Credit" means the amount agreed to between the Department
19 and Applicant under this Act, but not to exceed the lesser of:
20 (1) the sum of (i) 50% of the Incremental Income Tax
21 attributable to New Employees at the Applicant's project and
22 (ii) 10% of the training costs of New Employees; or (2) 100% of
23 the Incremental Income Tax attributable to New Employees at the
24 Applicant's project. However, if the project is located in an
25 underserved area, then the amount of the Credit may not exceed
26 the lesser of: (1) the sum of (i) 75% of the Incremental Income

1 Tax attributable to New Employees at the Applicant's project
2 and (ii) 10% of the training costs of New Employees; or (2)
3 100% of the Incremental Income Tax attributable to New
4 Employees at the Applicant's project. If an Applicant agrees to
5 hire the required number of New Employees, then the maximum
6 amount of the Credit for that Applicant may be increased by an
7 amount not to exceed 25% of the Incremental Income Tax
8 attributable to retained employees at the Applicant's project;
9 provided that, in order to receive the increase for retained
10 employees, the Applicant must provide the additional evidence
11 required under paragraph (3) of subsection (b) of Section 5-25.

12 "Department" means the Department of Commerce and Economic
13 Opportunity.

14 "Director" means the Director of Commerce and Economic
15 Opportunity.

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

26 "Incremental Income Tax" means the total amount withheld

1 during the taxable year from the compensation of New Employees
2 and, if applicable, retained employees under Article 7 of the
3 Illinois Income Tax Act arising from employment at a project
4 that is the subject of an Agreement.

5 "New Employee" means:

6 (a) A Full-time Employee first employed by a Taxpayer
7 in the project that is the subject of an Agreement and who
8 is hired after the Taxpayer enters into the tax credit
9 Agreement.

10 (b) The term "New Employee" does not include:

11 (1) an employee of the Taxpayer who performs a job
12 that was previously performed by another employee, if
13 that job existed for at least 6 months before hiring
14 the employee;

15 (2) an employee of the Taxpayer who was previously
16 employed in Illinois by a Related Member of the
17 Taxpayer and whose employment was shifted to the
18 Taxpayer after the Taxpayer entered into the tax credit
19 Agreement; ~~or~~

20 (3) a child, grandchild, parent, or spouse, other
21 than a spouse who is legally separated from the
22 individual, of any individual who has a direct or an
23 indirect ownership interest of at least 5% in the
24 profits, capital, or value of the Taxpayer; or ~~or~~

25 (4) an employee of the Taxpayer who was previously
26 employed in Illinois by the Taxpayer and whose

1 employment was shifted to the project after the
2 Taxpayer entered into the Agreement.

3 (c) Notwithstanding paragraph (1) of subsection (b),
4 an employee may be considered a New Employee under the
5 Agreement if the employee performs a job that was
6 previously performed by an employee who was:

7 (1) treated under the Agreement as a New Employee;

8 and

9 (2) promoted by the Taxpayer to another job.

10 (d) Notwithstanding subsection (a), the Department may
11 award Credit to an Applicant with respect to an employee
12 hired prior to the date of the Agreement if:

13 (1) the Applicant is in receipt of a letter from
14 the Department stating an intent to enter into a credit
15 Agreement;

16 (2) the letter described in paragraph (1) is issued
17 by the Department not later than 15 days after the
18 effective date of this Act; and

19 (3) the employee was hired after the date the
20 letter described in paragraph (1) was issued.

21 "Noncompliance Date" means, in the case of a Taxpayer that
22 is not complying with the requirements of the Agreement or the
23 provisions of this Act, the day following the last date upon
24 which the Taxpayer was in compliance with the requirements of
25 the Agreement and the provisions of this Act, as determined by
26 the Director, pursuant to Section 5-65.

1 "Pass Through Entity" means an entity that is exempt from
2 the tax under subsection (b) or (c) of Section 205 of the
3 Illinois Income Tax Act.

4 "Professional Employer Organization" (PEO) means an
5 employee leasing company, as defined in Section 206.1(A)(2) of
6 the Illinois Unemployment Insurance Act.

7 "Related Member" means a person that, with respect to the
8 Taxpayer during any portion of the taxable year, is any one of
9 the following:

10 (1) An individual stockholder, if the stockholder and
11 the members of the stockholder's family (as defined in
12 Section 318 of the Internal Revenue Code) own directly,
13 indirectly, beneficially, or constructively, in the
14 aggregate, at least 50% of the value of the Taxpayer's
15 outstanding stock.

16 (2) A partnership, estate, or trust and any partner or
17 beneficiary, if the partnership, estate, or trust, and its
18 partners or beneficiaries own directly, indirectly,
19 beneficially, or constructively, in the aggregate, at
20 least 50% of the profits, capital, stock, or value of the
21 Taxpayer.

22 (3) A corporation, and any party related to the
23 corporation in a manner that would require an attribution
24 of stock from the corporation to the party or from the
25 party to the corporation under the attribution rules of
26 Section 318 of the Internal Revenue Code, if the Taxpayer

1 owns directly, indirectly, beneficially, or constructively
2 at least 50% of the value of the corporation's outstanding
3 stock.

4 (4) A corporation and any party related to that
5 corporation in a manner that would require an attribution
6 of stock from the corporation to the party or from the
7 party to the corporation under the attribution rules of
8 Section 318 of the Internal Revenue Code, if the
9 corporation and all such related parties own in the
10 aggregate at least 50% of the profits, capital, stock, or
11 value of the Taxpayer.

12 (5) A person to or from whom there is attribution of
13 stock ownership in accordance with Section 1563(e) of the
14 Internal Revenue Code, except, for purposes of determining
15 whether a person is a Related Member under this paragraph,
16 20% shall be substituted for 5% wherever 5% appears in
17 Section 1563(e) of the Internal Revenue Code.

18 "Taxpayer" means an individual, corporation, partnership,
19 or other entity that has any Illinois Income Tax liability.

20 "Underserved area" means a geographic area that meets one
21 or more of the following conditions:

22 (1) the area has a poverty rate of at least 20%
23 according to the latest federal decennial census;

24 (2) 75% or more of the children in the area participate
25 in the federal free lunch program according to reported
26 statistics from the State Board of Education;

1 (3) at least 20% of the households in the area receive
2 assistance under the Supplemental Nutrition Assistance
3 Program (SNAP); or

4 (4) the area has an average unemployment rate, as
5 determined by the Illinois Department of Employment
6 Security, that is more than 120% of the national
7 unemployment average, as determined by the U.S. Department
8 of Labor, for a period of at least 2 consecutive calendar
9 years preceding the date of the application.

10 (Source: P.A. 100-511, eff. 9-18-17.)

11 (35 ILCS 10/5-35)

12 Sec. 5-35. Relocation of jobs in Illinois. A taxpayer is
13 not entitled to claim the credit provided by this Act with
14 respect to any jobs that the taxpayer relocates from one site
15 in Illinois to another site in Illinois. A taxpayer with
16 respect to a qualifying project certified under the Corporate
17 Headquarters Relocation Act, however, is not subject to the
18 requirements of this Section but is nevertheless considered an
19 applicant for purposes of this Act. ~~Moreover, any full-time~~
20 ~~employee of an eligible business relocated to Illinois in~~
21 ~~connection with that qualifying project is deemed to be a new~~
22 ~~employee for purposes of this Act. Determinations under this~~
23 ~~Section shall be made by the Department.~~

24 (Source: P.A. 91-476, eff. 8-11-99; 92-207, eff. 8-1-01.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.