



Sen. Karen McConnaughay

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LRB099 10118 HLH 33472 a

1 AMENDMENT TO SENATE BILL 1660

2 AMENDMENT NO. _____. Amend Senate Bill 1660 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Income Tax Act is amended by
5 changing Section 211 as follows:

6 (35 ILCS 5/211)

7 Sec. 211. Economic Development for a Growing Economy Tax
8 Credit. For tax years beginning on or after January 1, 1999, a
9 Taxpayer who has entered into an Agreement under the Economic
10 Development for a Growing Economy Tax Credit Act is entitled to
11 a credit against the taxes imposed under subsections (a) and
12 (b) of Section 201 of this Act and the taxes imposed under
13 Sections 409, 444, and 444.1 of the Illinois Insurance Code in
14 an amount to be determined in the Agreement. If the Taxpayer is
15 a partnership or Subchapter S corporation, the credit shall be
16 allowed to the partners or shareholders in accordance with the

1 determination of income and distributive share of income under
2 Sections 702 and 704 and subchapter S of the Internal Revenue
3 Code. The Department, in cooperation with the Department of
4 Commerce and Economic Opportunity, shall prescribe rules to
5 enforce and administer the provisions of this Section. This
6 Section is exempt from the provisions of Section 250 of this
7 Act.

8 The credit shall be subject to the conditions set forth in
9 the Agreement and the following limitations:

10 (1) The tax credit shall not exceed the Incremental
11 Income Tax (as defined in Section 5-5 of the Economic
12 Development for a Growing Economy Tax Credit Act) with
13 respect to the project.

14 (2) The amount of the credit allowed during the tax
15 year plus the sum of all amounts allowed in prior years
16 shall not exceed 100% of the aggregate amount expended by
17 the Taxpayer during all prior tax years on approved costs
18 defined by Agreement.

19 (3) The amount of the credit shall be determined on an
20 annual basis. Except as applied in a carryover year
21 pursuant to Section 211(4) of this Act, the credit may not
22 be applied against any State income tax liability in more
23 than 10 taxable years; provided, however, that (i) an
24 eligible business certified by the Department of Commerce
25 and Economic Opportunity under the Corporate Headquarters
26 Relocation Act may not apply the credit against any of its

1 State income tax liability in more than 15 taxable years
2 and (ii) credits allowed to that eligible business are
3 subject to the conditions and requirements set forth in
4 Sections 5-35 and 5-45 of the Economic Development for a
5 Growing Economy Tax Credit Act.

6 (4) The credit taken against the taxes imposed under
7 subsections (a) and (b) of Section 201 of this Act may not
8 exceed the amount of taxes imposed pursuant to subsections
9 (a) and (b) of Section 201 of this Act. Any credit that is
10 unused in the year the credit is computed may be carried
11 forward and applied to the tax liability of the 5 taxable
12 years following the excess credit year or may be taken as a
13 credit against the taxes imposed under Section 409, 444, or
14 444.1 of the Illinois Insurance Code, as provided in the
15 Agreement. Credits that are carried forward ~~The credit~~
16 shall be applied to the earliest year for which there is a
17 tax liability. If there are credits from more than one tax
18 year that are available to offset a liability, the earlier
19 credit shall be applied first.

20 (5) No credit shall be allowed with respect to any
21 Agreement for any taxable year ending after the
22 Noncompliance Date. Upon receiving notification by the
23 Department of Commerce and Economic Opportunity of the
24 noncompliance of a Taxpayer with an Agreement, the
25 Department shall notify the Taxpayer that no credit is
26 allowed with respect to that Agreement for any taxable year

1 ending after the Noncompliance Date, as stated in such
2 notification. If any credit has been allowed with respect
3 to an Agreement for a taxable year ending after the
4 Noncompliance Date for that Agreement, any refund paid to
5 the Taxpayer for that taxable year shall, to the extent of
6 that credit allowed, be an erroneous refund within the
7 meaning of Section 912 of this Act.

8 (6) For purposes of this Section, the terms
9 "Agreement", "Incremental Income Tax", and "Noncompliance
10 Date" have the same meaning as when used in the Economic
11 Development for a Growing Economy Tax Credit Act.

12 (Source: P.A. 94-793, eff. 5-19-06.)

13 Section 10. The Economic Development for a Growing Economy
14 Tax Credit Act is amended by changing Sections 5-5, 5-15, and
15 5-45 as follows:

16 (35 ILCS 10/5-5)

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

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

20 "Applicant" means a Taxpayer that is operating a business
21 located or that the Taxpayer plans to locate within the State
22 of Illinois and that is engaged in interstate or intrastate
23 commerce for the purpose of manufacturing, processing,
24 assembling, warehousing, or distributing products, conducting

1 research and development, providing tourism services, or
2 providing services in interstate commerce, office industries,
3 or agricultural processing, but excluding retail, retail food,
4 health, or professional services. "Applicant" does not include
5 a Taxpayer who closes or substantially reduces an operation at
6 one location in the State and relocates substantially the same
7 operation to another location in the State. This does not
8 prohibit a Taxpayer from expanding its operations at another
9 location in the State, provided that existing operations of a
10 similar nature located within the State are not closed or
11 substantially reduced. This also does not prohibit a Taxpayer
12 from moving its operations from one location in the State to
13 another location in the State for the purpose of expanding the
14 operation provided that the Department determines that
15 expansion cannot reasonably be accommodated within the
16 municipality in which the business is located, or in the case
17 of a business located in an incorporated area of the county,
18 within the county in which the business is located, after
19 conferring with the chief elected official of the municipality
20 or county and taking into consideration any evidence offered by
21 the municipality or county regarding the ability to accommodate
22 expansion within the municipality or county.

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

26 "Credit" means the amount agreed to between the Department

1 and Applicant under this Act, but not to exceed the Incremental
2 Income Tax attributable to the Applicant's project.

3 "Department" means the Department of Commerce and Economic
4 Opportunity.

5 "Director" means the Director of Commerce and Economic
6 Opportunity.

7 "Full-time Employee" means an individual who is employed
8 for consideration for at least 35 hours each week or who
9 renders any other standard of service generally accepted by
10 industry custom or practice as full-time employment. An
11 individual for whom a W-2 is issued by a Professional Employer
12 Organization (PEO) is a full-time employee if employed in the
13 service of the Applicant for consideration for at least 35
14 hours each week or who renders any other standard of service
15 generally accepted by industry custom or practice as full-time
16 employment to Applicant.

17 "Incremental Income Tax" means the total amount withheld
18 during the taxable year from the compensation of New Employees
19 under Article 7 of the Illinois Income Tax Act arising from
20 employment at a project that is the subject of an Agreement.

21 "New Employee" means:

22 (a) A Full-time Employee first employed by a Taxpayer
23 in the project that is the subject of an Agreement and who
24 is hired after the Taxpayer enters into the tax credit
25 Agreement.

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

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

5 (2) an employee of the Taxpayer who was previously
6 employed in Illinois by a Related Member of the
7 Taxpayer and whose employment was shifted to the
8 Taxpayer after the Taxpayer entered into the tax credit
9 Agreement; or

10 (3) a child, grandchild, parent, or spouse, other
11 than a spouse who is legally separated from the
12 individual, of any individual who has a direct or an
13 indirect ownership interest of at least 5% in the
14 profits, capital, or value of the Taxpayer.

15 (c) Notwithstanding paragraph (1) of subsection (b),
16 an employee may be considered a New Employee under the
17 Agreement if the employee performs a job that was
18 previously performed by an employee who was:

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

20 and

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

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

25 (1) the Applicant is in receipt of a letter from
26 the Department stating an intent to enter into a credit

1 Agreement;

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

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

7 "Noncompliance Date" means, in the case of a Taxpayer that
8 is not complying with the requirements of the Agreement or the
9 provisions of this Act, the day following the last date upon
10 which the Taxpayer was in compliance with the requirements of
11 the Agreement and the provisions of this Act, as determined by
12 the Director, pursuant to Section 5-65.

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

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

19 "Related Member" means a person that, with respect to the
20 Taxpayer during any portion of the taxable year, is any one of
21 the following:

22 (1) An individual stockholder, if the stockholder and
23 the members of the stockholder's family (as defined in
24 Section 318 of the Internal Revenue Code) own directly,
25 indirectly, beneficially, or constructively, in the
26 aggregate, at least 50% of the value of the Taxpayer's

1 outstanding stock.

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

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

16 (4) A corporation and any party related to that
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
21 corporation and all such related parties own in the
22 aggregate at least 50% of the profits, capital, stock, or
23 value of the Taxpayer.

24 (5) A person to or from whom there is attribution of
25 stock ownership in accordance with Section 1563(e) of the
26 Internal Revenue Code, except, for purposes of determining

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

4 "Taxpayer" means an individual, corporation, partnership,
5 or other entity that has any Illinois Income Tax liability or
6 any liability under Section 409, 444, or 444.1 of the Illinois
7 Insurance Code.

8 (Source: P.A. 94-793, eff. 5-19-06; 95-375, eff. 8-23-07.)

9 (35 ILCS 10/5-15)

10 Sec. 5-15. Tax Credit Awards. Subject to the conditions set
11 forth in this Act, a Taxpayer is entitled to a Credit against
12 or, as described in subsection (g) of this Section, a payment
13 towards (i) taxes imposed pursuant to subsections (a) and (b)
14 of Section 201 of the Illinois Income Tax Act that may be
15 imposed on the Taxpayer for a taxable year beginning on or
16 after January 1, 1999, (ii) taxes imposed on or after the
17 effective date of this amendatory Act of the 99th General
18 Assembly pursuant to Section 409, 444, or 444.1 of the Illinois
19 Insurance Code, or (iii) both (i) and (ii), if the Taxpayer is
20 awarded a Credit by the Department under this Act for that
21 taxable year.

22 (a) The Department shall make Credit awards under this Act
23 to foster job creation and retention in Illinois.

24 (b) A person that proposes a project to create new jobs in
25 Illinois must enter into an Agreement with the Department for

1 the Credit under this Act.

2 (c) The Credit shall be claimed for the taxable years
3 specified in the Agreement.

4 (d) The Credit shall not exceed the Incremental Income Tax
5 attributable to the project that is the subject of the
6 Agreement.

7 (e) Nothing herein shall prohibit a Tax Credit Award to an
8 Applicant that uses a PEO if all other award criteria are
9 satisfied.

10 (f) In lieu of the Credit allowed under this Act against
11 the taxes imposed pursuant to subsections (a) and (b) of
12 Section 201 of the Illinois Income Tax Act for any taxable year
13 ending on or after December 31, 2009, the Taxpayer may elect to
14 claim the Credit against its obligation to pay over withholding
15 under Section 704A of the Illinois Income Tax Act.

16 (1) The election under this subsection (f) may be made
17 only by a Taxpayer that (i) is primarily engaged in one of
18 the following business activities: water purification and
19 treatment, motor vehicle metal stamping, automobile
20 manufacturing, automobile and light duty motor vehicle
21 manufacturing, motor vehicle manufacturing, light truck
22 and utility vehicle manufacturing, heavy duty truck
23 manufacturing, motor vehicle body manufacturing, cable
24 television infrastructure design or manufacturing, or
25 wireless telecommunication or computing terminal device
26 design or manufacturing for use on public networks and (ii)

1 meets the following criteria:

2 (A) the Taxpayer (i) had an Illinois net loss or an
3 Illinois net loss deduction under Section 207 of the
4 Illinois Income Tax Act for the taxable year in which
5 the Credit is awarded, (ii) employed a minimum of 1,000
6 full-time employees in this State during the taxable
7 year in which the Credit is awarded, (iii) has an
8 Agreement under this Act on December 14, 2009 (the
9 effective date of Public Act 96-834), and (iv) is in
10 compliance with all provisions of that Agreement;

11 (B) the Taxpayer (i) had an Illinois net loss or an
12 Illinois net loss deduction under Section 207 of the
13 Illinois Income Tax Act for the taxable year in which
14 the Credit is awarded, (ii) employed a minimum of 1,000
15 full-time employees in this State during the taxable
16 year in which the Credit is awarded, and (iii) has
17 applied for an Agreement within 365 days after December
18 14, 2009 (the effective date of Public Act 96-834);

19 (C) the Taxpayer (i) had an Illinois net operating
20 loss carryforward under Section 207 of the Illinois
21 Income Tax Act in a taxable year ending during calendar
22 year 2008, (ii) has applied for an Agreement within 150
23 days after the effective date of this amendatory Act of
24 the 96th General Assembly, (iii) creates at least 400
25 new jobs in Illinois, (iv) retains at least 2,000 jobs
26 in Illinois that would have been at risk of relocation

1 out of Illinois over a 10-year period, and (v) makes a
2 capital investment of at least \$75,000,000;

3 (D) the Taxpayer (i) had an Illinois net operating
4 loss carryforward under Section 207 of the Illinois
5 Income Tax Act in a taxable year ending during calendar
6 year 2009, (ii) has applied for an Agreement within 150
7 days after the effective date of this amendatory Act of
8 the 96th General Assembly, (iii) creates at least 150
9 new jobs, (iv) retains at least 1,000 jobs in Illinois
10 that would have been at risk of relocation out of
11 Illinois over a 10-year period, and (v) makes a capital
12 investment of at least \$57,000,000; or

13 (E) the Taxpayer (i) employed at least 2,500
14 full-time employees in the State during the year in
15 which the Credit is awarded, (ii) commits to make at
16 least \$500,000,000 in combined capital improvements
17 and project costs under the Agreement, (iii) applies
18 for an Agreement between January 1, 2011 and June 30,
19 2011, (iv) executes an Agreement for the Credit during
20 calendar year 2011, and (v) was incorporated no more
21 than 5 years before the filing of an application for an
22 Agreement.

23 (1.5) The election under this subsection (f) may also
24 be made by a Taxpayer for any Credit awarded pursuant to an
25 agreement that was executed between January 1, 2011 and
26 June 30, 2011, if the Taxpayer (i) is primarily engaged in

1 the manufacture of inner tubes or tires, or both, from
2 natural and synthetic rubber, (ii) employs a minimum of
3 2,400 full-time employees in Illinois at the time of
4 application, (iii) creates at least 350 full-time jobs and
5 retains at least 250 full-time jobs in Illinois that would
6 have been at risk of being created or retained outside of
7 Illinois, and (iv) makes a capital investment of at least
8 \$200,000,000 at the project location.

9 (1.6) The election under this subsection (f) may also
10 be made by a Taxpayer for any Credit awarded pursuant to an
11 agreement that was executed within 150 days after the
12 effective date of this amendatory Act of the 97th General
13 Assembly, if the Taxpayer (i) is primarily engaged in the
14 operation of a discount department store, (ii) maintains
15 its corporate headquarters in Illinois, (iii) employs a
16 minimum of 4,250 full-time employees at its corporate
17 headquarters in Illinois at the time of application, (iv)
18 retains at least 4,250 full-time jobs in Illinois that
19 would have been at risk of being relocated outside of
20 Illinois, (v) had a minimum of \$40,000,000,000 in total
21 revenue in 2010, and (vi) makes a capital investment of at
22 least \$300,000,000 at the project location.

23 (1.7) Notwithstanding any other provision of law, the
24 election under this subsection (f) may also be made by a
25 Taxpayer for any Credit awarded pursuant to an agreement
26 that was executed or applied for on or after July 1, 2011

1 and on or before March 31, 2012, if the Taxpayer is
2 primarily engaged in the manufacture of original and
3 aftermarket filtration parts and products for automobiles,
4 motor vehicles, light duty motor vehicles, light trucks and
5 utility vehicles, and heavy duty trucks, (ii) employs a
6 minimum of 1,000 full-time employees in Illinois at the
7 time of application, (iii) creates at least 250 full-time
8 jobs in Illinois, (iv) relocates its corporate
9 headquarters to Illinois from another state, and (v) makes
10 a capital investment of at least \$4,000,000 at the project
11 location.

12 (2) An election under this subsection shall allow the
13 credit to be taken against payments otherwise due under
14 Section 704A of the Illinois Income Tax Act during the
15 first calendar year beginning after the end of the taxable
16 year in which the credit is awarded under this Act.

17 (3) The election shall be made in the form and manner
18 required by the Illinois Department of Revenue and, once
19 made, shall be irrevocable.

20 (4) If a Taxpayer who meets the requirements of
21 subparagraph (A) of paragraph (1) of this subsection (f)
22 elects to claim the Credit against its withholdings as
23 provided in this subsection (f), then, on and after the
24 date of the election, the terms of the Agreement between
25 the Taxpayer and the Department may not be further amended
26 during the term of the Agreement.

1 (g) A pass-through entity that has been awarded a credit
2 under this Act, its shareholders, or its partners may treat
3 some or all of the credit awarded pursuant to this Act as a tax
4 payment for purposes of the Illinois Income Tax Act. The term
5 "tax payment" means a payment as described in Article 6 or
6 Article 8 of the Illinois Income Tax Act or a composite payment
7 made by a pass-through entity on behalf of any of its
8 shareholders or partners to satisfy such shareholders' or
9 partners' taxes imposed pursuant to subsections (a) and (b) of
10 Section 201 of the Illinois Income Tax Act. In no event shall
11 the amount of the award credited pursuant to this Act exceed
12 the Illinois income tax liability of the pass-through entity or
13 its shareholders or partners for the taxable year.

14 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
15 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
16 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

17 (35 ILCS 10/5-45)

18 Sec. 5-45. Amount and duration of the credit.

19 (a) The Department shall determine the amount and duration
20 of the credit awarded under this Act. The duration of the
21 credit may not exceed 10 taxable years. The credit may be
22 stated as a percentage of the Incremental Income Tax
23 attributable to the applicant's project and may include a fixed
24 dollar limitation.

25 (b) Notwithstanding subsection (a), and except as the

1 credit may be applied in a carryover year pursuant to Section
2 211(4) of the Illinois Income Tax Act, the credit may be
3 applied against the State income tax liability, or the tax
4 liability under Section 409, 444, or 444.1 of the Illinois
5 Insurance Code, in more than 10 taxable years but not in more
6 than 15 taxable years for an eligible business that (i)
7 qualifies under this Act and the Corporate Headquarters
8 Relocation Act and has in fact undertaken a qualifying project
9 within the time frame specified by the Department of Commerce
10 and Economic Opportunity under that Act, and (ii) applies
11 against its State income tax liability and insurance tax
12 liability, during the entire 15-year period, no more than 60%
13 of the maximum credit per year that would otherwise be
14 available under this Act.

15 (Source: P.A. 94-793, eff. 5-19-06.)

16 Section 15. The Illinois Insurance Code is amended by
17 adding Section 405.1 as follows:

18 (215 ILCS 5/405.1 new)

19 Sec. 405.1. Economic Development for a Growing Economy Tax
20 Credit. Credits may be granted against the taxes imposed under
21 Section 409, 444, or 444.1 of this Act on or after the
22 effective date of this amendatory Act of the 99th General
23 Assembly as provided in Section 211 of the Illinois Income Tax
24 Act or the Economic Development for a Growing Economy Tax

1 Credit Act.".