**Section 100.2164 Data Center Investment Credit (IITA Section 229)**

a) For taxable years beginning on or after January 1, 2019, *a taxpayer who has been awarded a credit by the Department of Commerce and Economic Opportunity* (DCEO) *under Section 605-1025*(b) *of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois* [20 ILCS 605] (DCEO Law) *is entitled to a credit against the taxes imposed under* IITA *Section 201 (a) and (b).* (IITA Section 229(a))

b) Data Center. For the purposes of the data center investment credit, "data center" shall have the same meaning as when used in Section 605-1025(c) of the DCEO Law.

c) The credit shall be computed as established in this subsection. *The amount of the credit shall be 20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if those wages are paid for the construction of a new data center in a geographic area that meets any one of the following criteria:*

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

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

3) *20% or more of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP); or*

4) *the area has an average unemployment rate, as determined by the Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the U.S. Department of Labor, for a period of at least 2 consecutive calendar years preceding the date of the application.* (IITA Section 229(a))

d) Year in Which Credit is Taken. The credit allowed under this Section shall be taken in the taxable year that includes the date of the tax credit award issued by DCEO under Section 605-1025(b) of the DCEO Law.

e) In the case of a credit earned by a partnership or subchapter S corporation, the credit passes through to the owners as provided in the partnership agreement under IRC section 704(a) or in proportion to their ownership of the stock of the subchapter S corporation under IRC section 1366(a). The credit earned by a partnership or subchapter S corporation will be treated as earned by its owners as of the last day of the taxable year of the partnership or subchapter S corporation in which the tax credit award was issued by DCEO under Section 605-1025(b) of the DCEO Law. The credit shall be allowed to each owner in the taxable year of the owner in which the taxable year of the partnership or subchapter S corporation ends.

f) *In no event shall a credit under this Section reduce the taxpayer's liability to less than zero. If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The tax credit shall be applied to the earliest year for which there is a tax liability. If there are credits for more than one year that are available to offset a liability, the earlier credit shall be applied first.* (IITA Section 229(b))

g) Revocation. *No credit shall be allowed with respect to any certification for any taxable year ending after the revocation of the certification by DCEO. Upon receiving notification by DCEO of the revocation of certification, the Department shall notify the taxpayer that no credit is allowed for any taxable year ending after the revocation date, as stated in the notification.* (IITA Section 229(c))

h) *If any credit has been allowed with respect to a certification for a taxable year ending after the revocation date, any refund paid to the taxpayer for that taxable year shall be, to the extent of that credit allowed, an erroneous refund within the meaning of IITA Section 912.* (IITA Section 229(c))

i) Documentation of the Credit. A claimant shall attach to its Illinois income tax return:

1) a copy of the Tax Credit Certificate and/or annual certification (if any) issued by DCEO; and

2) in the case of a partner in a partnership or shareholder of a subchapter S corporation that earned the credit, a Schedule K-1-P or other written statement from the partnership or subchapter S corporation stating:

A) the portion of the total credit shown on the Tax Credit Certificate that is allowed to that partner or shareholder; and

B) the taxable year of the partnership or subchapter S corporation in which the Tax Credit Certificate was issued.

j) *This Section is exempt from the automatic sunset provisions of IITA Section 250.* (IITA Section 229(a))

(Source: Added at 45 Ill. Reg. 5523, effective April 15, 2021)