



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4655

by Rep. Natalie A. Manley

SYNOPSIS AS INTRODUCED:

35 ILCS 5/227 new	
35 ILCS 5/302	from Ch. 120, par. 3-302
35 ILCS 5/601	from Ch. 120, par. 6-601
35 ILCS 5/701	from Ch. 120, par. 7-701

Amends the Illinois Income Tax Act. Makes changes concerning the allocation of compensation paid to nonresidents to provide that the allocation is based on the number of working days spent in this State. Makes corresponding changes concerning employer withholding requirements. Creates a credit in an amount equal to the amount of the investment made by the taxpayer during the taxable year in qualified property and qualified expenses that are used for tracking and reporting the location of resident and non-resident employees for purposes of compliance with the tracking, reporting, and income tax withholding requirements of the amendatory Act.

LRB100 16339 HLH 31465 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 Sections 302, 601, and 701 and by adding Section 227
6 as follows:

7 (35 ILCS 5/227 new)

8 Sec. 227. Credit for tracking and reporting expenses.

9 (a) For taxable years ending on and after December 31, 2018
10 and prior to January 1, 2022, a taxpayer shall be allowed a
11 credit against the tax imposed by subsections (a) and (b) of
12 Section 201 equal to the amount of the investment made by the
13 taxpayer during the taxable year in qualified property and
14 qualified expenses that are used for tracking and reporting the
15 location of resident and nonresident employees for purposes of
16 compliance with the tracking, reporting, and income tax
17 withholding requirements of this amendatory Act of the 100th
18 General Assembly.

19 (b) In no event shall a credit under this Section reduce a
20 taxpayer's liability to less than zero. The credit shall be
21 allowed for the taxable year in which the qualified property is
22 placed in service or qualified expenses are incurred, or, if
23 the amount of the credit exceeds the tax liability for that

1 year, whether it exceeds the original liability or the
2 liability as later amended, the excess may be carried forward
3 and applied to the tax liability of the 5 taxable years
4 following the excess credit years. The credit shall be applied
5 to the earliest year for which there is a liability. If there
6 is credit from more than one taxable year that is available to
7 offset a liability, the earlier credit shall be applied first.

8 (c) As used in this Section:

9 "Qualified property" means tangible and intangible
10 personal property, including custom or canned computer
11 software that is licensed, acquired by purchase, or
12 developed internally by a taxpayer.

13 "Qualified expenses" includes, but is not limited to,
14 salary expenses and expenses of non-employee contractors.

15 (35 ILCS 5/302) (from Ch. 120, par. 3-302)

16 Sec. 302. Compensation paid to nonresidents.

17 (a) In general. For taxable years beginning prior to
18 January 1, 2019, all ~~All~~ items of compensation paid in this
19 State (as determined under Section 304(a)(2)(B)) to an
20 individual who is a nonresident at the time of such payment and
21 all items of deduction directly allocable thereto, shall be
22 allocated to this State.

23 For taxable years beginning on or after January 1, 2019,
24 the amount of all items of compensation of nonresident
25 individual employees, and all items of deduction directly

1 allocable thereto, allocated to this State shall be the portion
2 of the individual's total compensation for services performed
3 for his or her employer during the taxable year which the
4 number of working days spent in this State during the taxable
5 year in excess of 30 working days bears to the total number of
6 working days in the taxable year regardless of location. For
7 purposes of this subsection:

8 (1) A "working day" is any day during which the
9 employee performs duties on behalf of the employer.
10 Weekends, vacation days, sick days, and holidays (whether
11 or not paid) are not working days unless the employee is
12 required by the employer to perform some duties on that
13 day.

14 (2) A working day is spent in this State if:

15 (A) a greater amount of time is spent by the
16 employee in this State during that day performing
17 duties on behalf of the employer (other than traveling)
18 than is spent performing duties in any other State; or

19 (B) the only work performed by the employee on
20 behalf of the employer on that day is traveling to a
21 destination within this State, and the employee
22 arrives in this State on that day.

23 (3) A working day is not spent in this State if the
24 only activity engaged in by the employee on behalf of the
25 employer in this State on that day is traveling from or
26 through this State to a destination outside of this State.

1 (4) Working days spent in this State do not include any
2 day in which the employee is performing services in this
3 State during a disaster period solely in response to a
4 request made to his or her employer by the government of
5 this State or of any political subdivision of this State,
6 or by a person conducting business in this State, to
7 perform disaster or emergency-related services in this
8 State. For purposes of this paragraph (4):

9 "Declared State disaster or emergency" means a
10 disaster or emergency event (i) for which a Governor's
11 proclamation of a state of emergency has been issued or
12 (ii) for which a Presidential declaration of a federal
13 major disaster or emergency has been issued.

14 "Disaster period" means a period that begins 10
15 days prior to the date of the Governor's proclamation
16 or the President's declaration (whichever is earlier)
17 and extends for a period of 60 calendar days after the
18 end of the declared disaster or emergency period.

19 "Disaster or emergency-related services" means
20 repairing, renovating, installing, building, or
21 rendering services or conducting other business
22 activities that relate to infrastructure that has been
23 damaged, impaired, or destroyed by the declared State
24 disaster or emergency.

25 "Infrastructure" means property and equipment
26 owned or used by a public utility, communications

1 network, broadband and internet service provider,
2 cable and video service provider, electric or gas
3 distribution system, or water pipeline that provides
4 service to more than one customer or person, including
5 related support facilities. Infrastructure includes
6 real and personal property such as buildings, offices,
7 power lines, cable lines, poles, communications lines,
8 pipes, structures, and equipment.

9 Notwithstanding the provisions of this subsection,
10 compensation of a nonresident individual who is a member of a
11 professional athletic team, and all items of deduction directly
12 allocable thereto, shall be allocated to this State as
13 determined under item (iv) of subparagraph (B) of paragraph (2)
14 of subsection (a) of Section 304.

15 (b) Reciprocal exemption. The Director may enter into an
16 agreement with the taxing authorities of any state which
17 imposes a tax on or measured by income to provide that
18 compensation paid in such state to residents of this State
19 shall be exempt from such tax; in such case, any compensation
20 paid in this State to residents of such state shall not be
21 allocated to this State. All reciprocal agreements shall be
22 subject to the requirements of Section 2505-575 of the
23 Department of Revenue Law (20 ILCS 2505/2505-575).

24 (c) Cross references.

25 (1) For allocation of amounts received by nonresidents
26 from certain employee trusts, see Section 301(b)(2).

1 (2) For allocation of compensation by residents, see
2 Section 301(a).

3 (Source: P.A. 90-491, eff. 1-1-98; 91-239, eff. 1-1-00.)

4 (35 ILCS 5/601) (from Ch. 120, par. 6-601)

5 Sec. 601. Payment on Due Date of Return.

6 (a) In general. Every taxpayer required to file a return
7 under this Act shall, without assessment, notice or demand, pay
8 any tax due thereon to the Department, at the place fixed for
9 filing, on or before the date fixed for filing such return
10 (determined without regard to any extension of time for filing
11 the return) pursuant to regulations prescribed by the
12 Department. If, however, the due date for payment of a
13 taxpayer's federal income tax liability for a tax year (as
14 provided in the Internal Revenue Code or by Treasury
15 regulation, or as extended by the Internal Revenue Service) is
16 later than the date fixed for filing the taxpayer's Illinois
17 income tax return for that tax year, the Department may, by
18 rule, prescribe a due date for payment that is not later than
19 the due date for payment of the taxpayer's federal income tax
20 liability. For purposes of the Illinois Administrative
21 Procedure Act, the adoption of rules to prescribe a later due
22 date for payment shall be deemed an emergency and necessary for
23 the public interest, safety, and welfare.

24 (b) Amount payable. In making payment as provided in this
25 section there shall remain payable only the balance of such tax

1 remaining due after giving effect to the following:

2 (1) Withheld tax. Any amount withheld during any
3 calendar year pursuant to Article 7 from compensation paid
4 to a taxpayer shall be deemed to have been paid on account
5 of any tax imposed by subsections 201(a) and (b) of this
6 Act on such taxpayer for his taxable year beginning in such
7 calendar year. If more than one taxable year begins in a
8 calendar year, such amount shall be deemed to have been
9 paid on account of such tax for the last taxable year so
10 beginning.

11 (2) Estimated and tentative tax payments. Any amount of
12 estimated tax paid by a taxpayer pursuant to Article 8 for
13 a taxable year shall be deemed to have been paid on account
14 of the tax imposed by this Act for such taxable year.

15 (3) Foreign tax. The aggregate amount of tax which is
16 imposed upon or measured by income and which is paid by a
17 resident for a taxable year to another state or states on
18 income which is also subject to the tax imposed by
19 subsections 201(a) and (b) of this Act shall be credited
20 against the tax imposed by subsections 201(a) and (b)
21 otherwise due under this Act for such taxable year. For
22 taxable years ending prior to December 31, 2009, the
23 aggregate credit provided under this paragraph shall not
24 exceed that amount which bears the same ratio to the tax
25 imposed by subsections 201(a) and (b) otherwise due under
26 this Act as the amount of the taxpayer's base income

1 subject to tax both by such other state or states and by
2 this State bears to his total base income subject to tax by
3 this State for the taxable year. For taxable years ending
4 on or after December 31, 2009, the credit provided under
5 this paragraph for tax paid to other states shall not
6 exceed that amount which bears the same ratio to the tax
7 imposed by subsections 201(a) and (b) otherwise due under
8 this Act as the amount of the taxpayer's base income that
9 would be allocated or apportioned to other states if all
10 other states had adopted the provisions in Article 3 of
11 this Act (other than the provisions of paragraph (4) of
12 subsection (a) of Section 302 and the 30-day threshold set
13 forth in subsection (a) of Section 302) bears to the
14 taxpayer's total base income subject to tax by this State
15 for the taxable year. The credit provided by this paragraph
16 shall not be allowed if any creditable tax was deducted in
17 determining base income for the taxable year. Any person
18 claiming such credit shall attach a statement in support
19 thereof and shall notify the Director of any refund or
20 reductions in the amount of tax claimed as a credit
21 hereunder all in such manner and at such time as the
22 Department shall by regulations prescribe.

23 (4) Accumulation and capital gain distributions. If
24 the net income of a taxpayer includes amounts included in
25 his base income by reason of Section 667 of the Internal
26 Revenue Code (relating to accumulation and capital gain

1 distributions by a trust, respectively), the tax imposed on
2 such taxpayer by this Act shall be credited with his pro
3 rata portion of the taxes imposed by this Act on such trust
4 for preceding taxable years which would not have been
5 payable for such preceding years if the trust had in fact
6 made distributions to its beneficiaries at the times and in
7 the amounts specified in Sections 666 and 669 of the
8 Internal Revenue Code. The credit provided by this
9 paragraph shall not reduce the tax otherwise due from the
10 taxpayer to an amount less than that which would be due if
11 the amounts included by reason of Section 667 of the
12 Internal Revenue Code were excluded from his or her base
13 income.

14 (c) Cross reference. For application against tax due of
15 overpayments of tax for a prior year, see Section 909.

16 (Source: P.A. 96-468, eff. 8-14-09; 97-507, eff. 8-23-11.)

17 (35 ILCS 5/701) (from Ch. 120, par. 7-701)

18 Sec. 701. Requirement and Amount of Withholding.

19 (a) In General. Every employer maintaining an office or
20 transacting business within this State and required under the
21 provisions of the Internal Revenue Code to withhold a tax on:

22 (1) for taxable years beginning prior to January 1,
23 2019, compensation paid in this State (as determined under
24 Section 304(a)(2)(B) to an individual; ~~or~~

25 (1.1) for taxable years beginning on or after January

1 1, 2019, compensation allocated to this State under Section
2 302 of this Code; or

3 (2) for all taxable years, payments described in
4 subsection (b) shall deduct and withhold from such
5 compensation for each payroll period (as defined in Section
6 3401 of the Internal Revenue Code) an amount equal to the
7 amount by which such individual's compensation exceeds the
8 proportionate part of this withholding exemption (computed
9 as provided in Section 702) attributable to the payroll
10 period for which such compensation is payable multiplied by
11 a percentage equal to the percentage tax rate for
12 individuals provided in subsection (b) of Section 201.

13 (a-5) Withholding for nonresident employees. For taxable
14 years beginning on or after January 1, 2018, for the purposes
15 of determining compensation allocated to this State under
16 subsection (a) of Section 302 of this Code:

17 (1) an employer may rely on an employee's annual
18 determination of the time expected to be spent by such
19 employee in the states in which the employee will perform
20 duties absent:

21 (A) the employer's actual knowledge of fraud by the
22 employee in making the determination; or

23 (B) collusion between the employer and the
24 employee to evade tax;

25 (2) except as provided in paragraph (3), if records are
26 maintained by an employer in the regular course of business

1 that record the location of an employee, those records
2 shall not preclude an employer's ability to rely on an
3 employee's determination under paragraph (1); and

4 (3) notwithstanding paragraph (2), if an employer, in
5 its sole discretion, maintains a time and attendance system
6 that tracks where the employee performs duties on a daily
7 basis, data from the time and attendance system shall be
8 used instead of the employee's determination under
9 paragraph (1). For purposes of this paragraph, the term
10 "time and attendance system" means a system in which:

11 (A) the employee is required on a contemporaneous
12 basis to record his or her work location for every day
13 worked outside of the State in which the employee's
14 employment duties are primarily performed; and

15 (B) the system is designed to allow the employer to
16 allocate the employee's wages for income tax purposes
17 among all states in which the employee performs
18 employment duties for such employer.

19 (b) Payment to Residents. Any payment (including
20 compensation, but not including a payment from which
21 withholding is required under Section 710 of this Act) to a
22 resident by a payor maintaining an office or transacting
23 business within this State (including any agency, officer, or
24 employee of this State or of any political subdivision of this
25 State) and on which withholding of tax is required under the
26 provisions of the Internal Revenue Code shall be deemed to be

1 compensation paid in this State by an employer to an employee
2 for the purposes of Article 7 and Section 601(b)(1) to the
3 extent such payment is included in the recipient's base income
4 and not subjected to withholding by another state.
5 Notwithstanding any other provision to the contrary, no amount
6 shall be withheld from unemployment insurance benefit payments
7 made to an individual pursuant to the Unemployment Insurance
8 Act unless the individual has voluntarily elected the
9 withholding pursuant to rules promulgated by the Director of
10 Employment Security.

11 (c) Special Definitions. Withholding shall be considered
12 required under the provisions of the Internal Revenue Code to
13 the extent the Internal Revenue Code either requires
14 withholding or allows for voluntary withholding the payor and
15 recipient have entered into such a voluntary withholding
16 agreement. For the purposes of Article 7 and Section 1002(c)
17 the term "employer" includes any payor who is required to
18 withhold tax pursuant to this Section.

19 (d) Reciprocal Exemption. The Director may enter into an
20 agreement with the taxing authorities of any state which
21 imposes a tax on or measured by income to provide that
22 compensation paid in such state to residents of this State
23 shall be exempt from withholding of such tax; in such case, any
24 compensation paid in this State to residents of such state
25 shall be exempt from withholding. All reciprocal agreements
26 shall be subject to the requirements of Section 2505-575 of the

1 Department of Revenue Law (20 ILCS 2505/2505-575).

2 (e) Notwithstanding subsection (a)(2) of this Section, no
3 withholding is required on payments for which withholding is
4 required under Section 3405 or 3406 of the Internal Revenue
5 Code.

6 (Source: P.A. 97-507, eff. 8-23-11; 98-496, eff. 1-1-14.)