

HB0186



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0186

Introduced 1/22/2021, by Rep. Maurice A. West, II

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Creates a credit against withholding tax payments for employers with 250 or fewer full-time equivalent employees in an amount equal to a percentage of the compensation paid to qualified employees who received a raise from the employer.

LRB102 04787 HLH 14806 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
9 or 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.

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

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

1 be made:

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

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

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

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

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

24 (4) Payments with returns. Each employer shall pay to
25 the Department, on or before the due date for each return
26 required to be filed under this Section, any tax withheld

1 or required to be withheld during the period for which the
2 return is due and not previously paid to the Department.

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

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

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

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

23 (4) Increase the threshold dollar amounts at which
24 employers are required to make semi-weekly payments under
25 subsection (c)(1) or (c)(2).

26 (e) Annual return and payment. Every employer who deducts

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

12 (f) Magnetic media and electronic filing. With respect to
13 taxes withheld in calendar years prior to 2017, any W-2 Form
14 that, under the Internal Revenue Code and regulations
15 promulgated thereunder, is required to be submitted to the
16 Internal Revenue Service on magnetic media or electronically
17 must also be submitted to the Department on magnetic media or
18 electronically for Illinois purposes, if required by the
19 Department.

20 With respect to taxes withheld in 2017 and subsequent
21 calendar years, the Department may, by rule, require that any
22 return (including any amended return) under this Section and
23 any W-2 Form that is required to be submitted to the Department
24 must be submitted on magnetic media or electronically.

25 The due date for submitting W-2 Forms shall be as
26 prescribed by the Department by rule.

1 (g) For amounts deducted or withheld after December 31,
2 2009, a taxpayer who makes an election under subsection (f) of
3 Section 5-15 of the Economic Development for a Growing Economy
4 Tax Credit Act for a taxable year shall be allowed a credit
5 against payments due under this Section for amounts withheld
6 during the first calendar year beginning after the end of that
7 taxable year equal to the amount of the credit for the
8 incremental income tax attributable to full-time employees of
9 the taxpayer awarded to the taxpayer by the Department of
10 Commerce and Economic Opportunity under the Economic
11 Development for a Growing Economy Tax Credit Act for the
12 taxable year and credits not previously claimed and allowed to
13 be carried forward under Section 211(4) of this Act as
14 provided in subsection (f) of Section 5-15 of the Economic
15 Development for a Growing Economy Tax Credit Act. The credit
16 or credits may not reduce the taxpayer's obligation for any
17 payment due under this Section to less than zero. If the amount
18 of the credit or credits exceeds the total payments due under
19 this Section with respect to amounts withheld during the
20 calendar year, the excess may be carried forward and applied
21 against the taxpayer's liability under this Section in the
22 succeeding calendar years as allowed to be carried forward
23 under paragraph (4) of Section 211 of this Act. The credit or
24 credits shall be applied to the earliest year for which there
25 is a tax liability. If there are credits from more than one
26 taxable year that are available to offset a liability, the

1 earlier credit shall be applied first. Each employer who
2 deducts and withholds or is required to deduct and withhold
3 tax under this Act and who retains income tax withholdings
4 under subsection (f) of Section 5-15 of the Economic
5 Development for a Growing Economy Tax Credit Act must make a
6 return with respect to such taxes and retained amounts in the
7 form and manner that the Department, by rule, requires and pay
8 to the Department or to a depository designated by the
9 Department those withheld taxes not retained by the taxpayer.
10 For purposes of this subsection (g), the term taxpayer shall
11 include taxpayer and members of the taxpayer's unitary
12 business group as defined under paragraph (27) of subsection
13 (a) of Section 1501 of this Act. This Section is exempt from
14 the provisions of Section 250 of this Act. No credit awarded
15 under the Economic Development for a Growing Economy Tax
16 Credit Act for agreements entered into on or after January 1,
17 2015 may be credited against payments due under this Section.

18 (h) An employer may claim a credit against payments due
19 under this Section for amounts withheld during the first
20 calendar year ending after the date on which a tax credit
21 certificate was issued under Section 35 of the Small Business
22 Job Creation Tax Credit Act. The credit shall be equal to the
23 amount shown on the certificate, but may not reduce the
24 taxpayer's obligation for any payment due under this Section
25 to less than zero. If the amount of the credit exceeds the
26 total payments due under this Section with respect to amounts

1 withheld during the calendar year, the excess may be carried
2 forward and applied against the taxpayer's liability under
3 this Section in the 5 succeeding calendar years. The credit
4 shall be applied to the earliest year for which there is a tax
5 liability. If there are credits from more than one calendar
6 year that are available to offset a liability, the earlier
7 credit shall be applied first. This Section is exempt from the
8 provisions of Section 250 of this Act.

9 (i) Each employer with 50 or fewer full-time equivalent
10 employees during the reporting period may claim a credit
11 against the payments due under this Section for each qualified
12 employee in an amount equal to the maximum credit allowable.
13 The credit may be taken against payments due for reporting
14 periods that begin on or after January 1, 2020, and end on or
15 before December 31, 2027. An employer may not claim a credit
16 for an employee who has worked fewer than 90 consecutive days
17 immediately preceding the reporting period; however, such
18 credits may accrue during that 90-day period and be claimed
19 against payments under this Section for future reporting
20 periods after the employee has worked for the employer at
21 least 90 consecutive days. In no event may the credit exceed
22 the employer's liability for the reporting period. Each
23 employer who deducts and withholds or is required to deduct
24 and withhold tax under this Act and who retains income tax
25 withholdings under this subsection must make a return with
26 respect to such taxes and retained amounts in the form and

1 manner that the Department, by rule, requires and pay to the
2 Department or to a depository designated by the Department
3 those withheld taxes not retained by the employer.

4 For each reporting period, the employer may not claim a
5 credit or credits for more employees than the number of
6 employees making less than the minimum or reduced wage for the
7 current calendar year during the last reporting period of the
8 preceding calendar year. Notwithstanding any other provision
9 of this subsection, an employer shall not be eligible for
10 credits for a reporting period unless the average wage paid by
11 the employer per employee for all employees making less than
12 \$55,000 during the reporting period is greater than the
13 average wage paid by the employer per employee for all
14 employees making less than \$55,000 during the same reporting
15 period of the prior calendar year.

16 For purposes of this subsection (i):

17 "Compensation paid in Illinois" has the meaning ascribed
18 to that term under Section 304(a)(2)(B) of this Act.

19 "Employer" and "employee" have the meaning ascribed to
20 those terms in the Minimum Wage Law, except that "employee"
21 also includes employees who work for an employer with fewer
22 than 4 employees. Employers that operate more than one
23 establishment pursuant to a franchise agreement or that
24 constitute members of a unitary business group shall aggregate
25 their employees for purposes of determining eligibility for
26 the credit.

1 "Full-time equivalent employees" means the ratio of the
2 number of paid hours during the reporting period and the
3 number of working hours in that period.

4 "Maximum credit" means the percentage listed below of the
5 difference between the amount of compensation paid in Illinois
6 to employees who are paid not more than the required minimum
7 wage reduced by the amount of compensation paid in Illinois to
8 employees who were paid less than the current required minimum
9 wage during the reporting period prior to each increase in the
10 required minimum wage on January 1. If an employer pays an
11 employee more than the required minimum wage and that employee
12 previously earned less than the required minimum wage, the
13 employer may include the portion that does not exceed the
14 required minimum wage as compensation paid in Illinois to
15 employees who are paid not more than the required minimum
16 wage.

17 (1) 25% for reporting periods beginning on or after
18 January 1, 2020 and ending on or before December 31, 2020;

19 (2) 21% for reporting periods beginning on or after
20 January 1, 2021 and ending on or before December 31, 2021;

21 (3) 17% for reporting periods beginning on or after
22 January 1, 2022 and ending on or before December 31, 2022;

23 (4) 13% for reporting periods beginning on or after
24 January 1, 2023 and ending on or before December 31, 2023;

25 (5) 9% for reporting periods beginning on or after
26 January 1, 2024 and ending on or before December 31, 2024;

1 (6) 5% for reporting periods beginning on or after
2 January 1, 2025 and ending on or before December 31, 2025.

3 The amount computed under this subsection may continue to
4 be claimed for reporting periods beginning on or after January
5 1, 2026 and:

6 (A) ending on or before December 31, 2026 for
7 employers with more than 5 employees; or

8 (B) ending on or before December 31, 2027 for
9 employers with no more than 5 employees.

10 "Qualified employee" means an employee who is paid not
11 more than the required minimum wage and has an average wage
12 paid per hour by the employer during the reporting period
13 equal to or greater than his or her average wage paid per hour
14 by the employer during each reporting period for the
15 immediately preceding 12 months. A new qualified employee is
16 deemed to have earned the required minimum wage in the
17 preceding reporting period.

18 "Reporting period" means the quarter for which a return is
19 required to be filed under subsection (b) of this Section.

20 (j) Each employer with 250 or fewer full-time equivalent
21 employees during the reporting period may claim a credit
22 against the payments due under this Section for each qualified
23 employee in an amount equal to the credit amount. The credit
24 may be taken against payments due for reporting periods that
25 begin on or after January 1, 2022 and end on or before December
26 31, 2030. Credits for a particular qualified employee may not

1 be taken for reporting periods that begin more than 2 years
2 after the effective date of the raise. An employer may not
3 claim a credit for an employee who has worked fewer than 180
4 consecutive days immediately preceding the first day of the
5 first pay period during which the raise is in effect. In no
6 event may the credit exceed the employer's liability for the
7 reporting period. Each employer who deducts and withholds or
8 is required to deduct and withhold tax under this Act and who
9 retains income tax withholdings under this subsection must
10 make a return with respect to such taxes and retained amounts
11 in the form and manner that the Department, by rule, requires
12 and pay to the Department or to a depository designated by the
13 Department those withheld taxes not retained by the employer.

14 Notwithstanding any other provision of this subsection, an
15 employer is not eligible for credits under this subsection for
16 a reporting period unless the average wage paid by the
17 employer per employee for all employees making less than
18 \$52,000 during the reporting period is greater than the
19 average wage paid by the employer per employee for all
20 employees making less than \$52,000 during the same reporting
21 period of the prior calendar year.

22 For purposes of this subsection (j):

23 "Base period" means the employer's reporting period that
24 immediately precedes the reporting period in which the
25 qualified employee's raise takes effect.

26 "Compensation paid in Illinois" has the meaning ascribed

1 to that term under paragraph (B) of item (2) of subsection (a)
2 of Section 304 of this Act.

3 "Credit amount" means the amount listed below:

4 (1) 25% of the difference between the amount of
5 compensation paid in Illinois by the employer to the
6 qualified employee in the base period and the portion of
7 the compensation paid in Illinois by the employer to the
8 qualified employee in the reporting period for which the
9 credit is taken that does not exceed \$37,400 when
10 annualized; plus

11 (2) 20% of the compensation paid in Illinois by the
12 employer to the qualified employee in the reporting period
13 for which the credit is taken that exceeds the greater of
14 (i) the amount of compensation paid in Illinois by the
15 employer to the qualified employee in the base period or
16 (ii) \$37,400 when annualized but does not exceed \$41,600
17 when annualized; plus

18 (3) 15% of the compensation paid in Illinois by the
19 employer to the qualified employee in the reporting period
20 for which the credit is taken that exceeds the greater of
21 (i) the amount of compensation paid in Illinois by the
22 employer to the qualified employee in the base period or
23 (ii) \$41,600 when annualized but does not exceed \$52,000
24 when annualized.

25 "Employer" and "employee" have the meanings ascribed to
26 those terms in the Minimum Wage Law, except that "employee"

1 also includes employees who work for an employer with fewer
2 than 4 employees. Employers that operate more than one
3 establishment pursuant to a franchise agreement or that
4 constitute members of a unitary business group shall aggregate
5 their employees for purposes of determining eligibility for
6 the credit.

7 "Full-time equivalent employee" means an individual who is
8 employed for a basic wage for at least 35 hours each week or
9 who renders any other standard of service generally accepted
10 by industry custom or practice as full-time employment.

11 "Qualified employee" means an employee who receives a
12 raise from an employer, whose post-raise annual salary
13 attributable to that employer is not less than \$31,200, and
14 who continues to be employed by the employer during the
15 reporting period for which the credit is taken.

16 "Raise" means a permanent increase in an employee's hourly
17 pay or salary that does not result in reduced hours or reduced
18 benefits and is not a temporary bonus.

19 "Reporting period" means the quarter for which a return is
20 required to be filed under subsection (b) of this Section.

21 (Source: P.A. 100-303, eff. 8-24-17; 100-511, eff. 9-18-17;
22 100-863, eff. 8-14-18; 101-1, eff. 2-19-19.)