



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### HB5320

Introduced 1/31/2022, by Rep. Margaret Croke

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Provides that, for the purposes of calculating a credit against withholding taxes for employers with 50 or fewer full-time equivalent employees, for reporting periods beginning on or after January 1, 2022 and ending on or before December 31, 2024, the maximum credit is 25% of the difference between the amount of compensation paid in Illinois to employees who are paid not more than the required minimum wage reduced by the amount of compensation paid in Illinois to employees who were paid less than the current required minimum wage during the reporting period prior to each increase in the required minimum wage on January 1 (currently: 17% in calendar year 2022; 13% in calendar year 2023; and 9% in calendar year 2024). Effective immediately.

LRB102 25151 HLH 34413 b

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 (g-1) For amounts deducted or withheld after December 31,  
19 2024, a taxpayer who makes an election under the Reimagining  
20 Electric Vehicles in Illinois Act shall be allowed a credit  
21 against payments due under this Section for amounts withheld  
22 during the first quarterly reporting period beginning after  
23 the certificate is issued equal to the portion of the REV  
24 Illinois Credit attributable to the incremental income tax  
25 attributable to new employees and retained employees as  
26 certified by the Department of Commerce and Economic

1 Opportunity pursuant to an agreement with the taxpayer under  
2 the Reimagining Electric Vehicles in Illinois Act for the  
3 taxable year. The credit or credits may not reduce the  
4 taxpayer's obligation for any payment due under this Section  
5 to less than zero. If the amount of the credit or credits  
6 exceeds the total payments due under this Section with respect  
7 to amounts withheld during the quarterly reporting period, the  
8 excess may be carried forward and applied against the  
9 taxpayer's liability under this Section in the succeeding  
10 quarterly reporting period as allowed to be carried forward  
11 under paragraph (4) of Section 211 of this Act. The credit or  
12 credits shall be applied to the earliest quarterly reporting  
13 period for which there is a tax liability. If there are credits  
14 from more than one quarterly reporting period that are  
15 available to offset a liability, the earlier credit shall be  
16 applied first. Each employer who deducts and withholds or is  
17 required to deduct and withhold tax under this Act and who  
18 retains income tax withholdings this subsection must make a  
19 return with respect to such taxes and retained amounts in the  
20 form and manner that the Department, by rule, requires and pay  
21 to the Department or to a depository designated by the  
22 Department those withheld taxes not retained by the taxpayer.  
23 For purposes of this subsection (g-1), the term taxpayer shall  
24 include taxpayer and members of the taxpayer's unitary  
25 business group as defined under paragraph (27) of subsection  
26 (a) of Section 1501 of this Act. This Section is exempt from



1 the provisions of Section 250 of this Act.

2 (h) An employer may claim a credit against payments due  
3 under this Section for amounts withheld during the first  
4 calendar year ending after the date on which a tax credit  
5 certificate was issued under Section 35 of the Small Business  
6 Job Creation Tax Credit Act. The credit shall be equal to the  
7 amount shown on the certificate, but may not reduce the  
8 taxpayer's obligation for any payment due under this Section  
9 to less than zero. If the amount of the credit exceeds the  
10 total payments due under this Section with respect to amounts  
11 withheld during the calendar year, the excess may be carried  
12 forward and applied against the taxpayer's liability under  
13 this Section in the 5 succeeding calendar years. The credit  
14 shall be applied to the earliest year for which there is a tax  
15 liability. If there are credits from more than one calendar  
16 year that are available to offset a liability, the earlier  
17 credit shall be applied first. This Section is exempt from the  
18 provisions of Section 250 of this Act.

19 (i) Each employer with 50 or fewer full-time equivalent  
20 employees during the reporting period may claim a credit  
21 against the payments due under this Section for each qualified  
22 employee in an amount equal to the maximum credit allowable.  
23 The credit may be taken against payments due for reporting  
24 periods that begin on or after January 1, 2020, and end on or  
25 before December 31, 2027. An employer may not claim a credit  
26 for an employee who has worked fewer than 90 consecutive days

1 immediately preceding the reporting period; however, such  
2 credits may accrue during that 90-day period and be claimed  
3 against payments under this Section for future reporting  
4 periods after the employee has worked for the employer at  
5 least 90 consecutive days. In no event may the credit exceed  
6 the employer's liability for the reporting period. Each  
7 employer who deducts and withholds or is required to deduct  
8 and withhold tax under this Act and who retains income tax  
9 withholdings under this subsection must make a return with  
10 respect to such taxes and retained amounts in the form and  
11 manner that the Department, by rule, requires and pay to the  
12 Department or to a depository designated by the Department  
13 those withheld taxes not retained by the employer.

14 For each reporting period, the employer may not claim a  
15 credit or credits for more employees than the number of  
16 employees making less than the minimum or reduced wage for the  
17 current calendar year during the last reporting period of the  
18 preceding calendar year. Notwithstanding any other provision  
19 of this subsection, an employer shall not be eligible for  
20 credits for a reporting period unless the average wage paid by  
21 the employer per employee for all employees making less than  
22 \$55,000 during the reporting period is greater than the  
23 average wage paid by the employer per employee for all  
24 employees making less than \$55,000 during the same reporting  
25 period of the prior calendar year.

26 For purposes of this subsection (i):

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

3 "Employer" and "employee" have the meaning ascribed to  
4 those terms in the Minimum Wage Law, except that "employee"  
5 also includes employees who work for an employer with fewer  
6 than 4 employees. Employers that operate more than one  
7 establishment pursuant to a franchise agreement or that  
8 constitute members of a unitary business group shall aggregate  
9 their employees for purposes of determining eligibility for  
10 the credit.

11 "Full-time equivalent employees" means the ratio of the  
12 number of paid hours during the reporting period and the  
13 number of working hours in that period.

14 "Maximum credit" means the percentage listed below of the  
15 difference between the amount of compensation paid in Illinois  
16 to employees who are paid not more than the required minimum  
17 wage reduced by the amount of compensation paid in Illinois to  
18 employees who were paid less than the current required minimum  
19 wage during the reporting period prior to each increase in the  
20 required minimum wage on January 1. If an employer pays an  
21 employee more than the required minimum wage and that employee  
22 previously earned less than the required minimum wage, the  
23 employer may include the portion that does not exceed the  
24 required minimum wage as compensation paid in Illinois to  
25 employees who are paid not more than the required minimum  
26 wage.

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

3 (2) 21% for reporting periods beginning on or after  
4 January 1, 2021 and ending on or before December 31, 2021;

5 (3) 25% ~~17%~~ for reporting periods beginning on or  
6 after January 1, 2022 and ending on or before December 31,  
7 2024 ~~December 31, 2022~~;

8 (4) (blank); ~~13% for reporting periods beginning on or~~  
9 ~~after January 1, 2023 and ending on or before December 31,~~  
10 ~~2023~~;

11 (5) (blank); and ~~9% for reporting periods beginning on~~  
12 ~~or after January 1, 2024 and ending on or before December~~  
13 ~~31, 2024~~;

14 (6) 5% for reporting periods beginning on or after  
15 January 1, 2025 and ending on or before December 31, 2025.

16 The amount computed under this subsection may continue to  
17 be claimed for reporting periods beginning on or after January  
18 1, 2026 and:

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

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

23 "Qualified employee" means an employee who is paid not  
24 more than the required minimum wage and has an average wage  
25 paid per hour by the employer during the reporting period  
26 equal to or greater than his or her average wage paid per hour

1 by the employer during each reporting period for the  
2 immediately preceding 12 months. A new qualified employee is  
3 deemed to have earned the required minimum wage in the  
4 preceding reporting period.

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

7 (Source: P.A. 101-1, eff. 2-19-19; 102-669, eff. 11-16-21.)

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.