

HB3806



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3806

Introduced 2/17/2023, by Rep. Maurice A. West, II

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. Provides that an employer with 250 or fewer full-time equivalent employees during the reporting period may claim a credit against the withholding payments for each qualified employee. Provides that a qualified employee is an employee who receives a raise from an employer, whose post-raise annual salary attributable to that employer is not less than \$31,200, and who continues to be employed by the employer during the reporting period for which the credit is taken.

LRB103 25812 HLH 52163 b

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 (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 (g-2) For amounts deducted or withheld after December 31,
3 2024, a taxpayer who makes an election under the Manufacturing
4 Illinois Chips for Real Opportunity (MICRO) Act shall be
5 allowed a credit against payments due under this Section for
6 amounts withheld during the first quarterly reporting period
7 beginning after the certificate is issued equal to the portion
8 of the MICRO Illinois Credit attributable to the incremental
9 income tax attributable to new employees and retained
10 employees as certified by the Department of Commerce and
11 Economic Opportunity pursuant to an agreement with the
12 taxpayer under the Manufacturing Illinois Chips for Real
13 Opportunity (MICRO) Act for the taxable year. The credit or
14 credits may not reduce the taxpayer's obligation for any
15 payment due under this Section to less than zero. If the amount
16 of the credit or credits exceeds the total payments due under
17 this Section with respect to amounts withheld during the
18 quarterly reporting period, the excess may be carried forward
19 and applied against the taxpayer's liability under this
20 Section in the succeeding quarterly reporting period as
21 allowed to be carried forward under paragraph (4) of Section
22 211 of this Act. The credit or credits shall be applied to the
23 earliest quarterly reporting period for which there is a tax
24 liability. If there are credits from more than one quarterly
25 reporting period that are available to offset a liability, the
26 earlier credit shall be applied first. Each employer who

1 deducts and withholds or is required to deduct and withhold
2 tax under this Act and who retains income tax withholdings
3 this subsection must make a return with respect to such taxes
4 and retained amounts in the form and manner that the
5 Department, by rule, requires and pay to the Department or to a
6 depository designated by the Department those withheld taxes
7 not retained by the taxpayer. For purposes of this subsection,
8 the term taxpayer shall include taxpayer and members of the
9 taxpayer's unitary business group as defined under paragraph
10 (27) of subsection (a) of Section 1501 of this Act. This
11 Section is exempt from the provisions of Section 250 of this
12 Act.

13 (h) An employer may claim a credit against payments due
14 under this Section for amounts withheld during the first
15 calendar year ending after the date on which a tax credit
16 certificate was issued under Section 35 of the Small Business
17 Job Creation Tax Credit Act. The credit shall be equal to the
18 amount shown on the certificate, but may not reduce the
19 taxpayer's obligation for any payment due under this Section
20 to less than zero. If the amount of the credit exceeds the
21 total payments due under this Section with respect to amounts
22 withheld during the calendar year, the excess may be carried
23 forward and applied against the taxpayer's liability under
24 this Section in the 5 succeeding calendar years. The credit
25 shall be applied to the earliest year for which there is a tax
26 liability. If there are credits from more than one calendar

1 year that are available to offset a liability, the earlier
2 credit shall be applied first. This Section is exempt from the
3 provisions of Section 250 of this Act.

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

25 For each reporting period, the employer may not claim a
26 credit or credits for more employees than the number of

1 employees making less than the minimum or reduced wage for the
2 current calendar year during the last reporting period of the
3 preceding calendar year. Notwithstanding any other provision
4 of this subsection, an employer shall not be eligible for
5 credits for a reporting period unless the average wage paid by
6 the employer per employee for all employees making less than
7 \$55,000 during the reporting period is greater than the
8 average wage paid by the employer per employee for all
9 employees making less than \$55,000 during the same reporting
10 period of the prior calendar year.

11 For purposes of this subsection (i):

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

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

22 "Full-time equivalent employees" means the ratio of the
23 number of paid hours during the reporting period and the
24 number of working hours in that period.

25 "Maximum credit" means the percentage listed below of the
26 difference between the amount of compensation paid in Illinois

1 to employees who are paid not more than the required minimum
2 wage reduced by the amount of compensation paid in Illinois to
3 employees who were paid less than the current required minimum
4 wage during the reporting period prior to each increase in the
5 required minimum wage on January 1. If an employer pays an
6 employee more than the required minimum wage and that employee
7 previously earned less than the required minimum wage, the
8 employer may include the portion that does not exceed the
9 required minimum wage as compensation paid in Illinois to
10 employees who are paid not more than the required minimum
11 wage.

12 (1) 25% for reporting periods beginning on or after
13 January 1, 2020 and ending on or before December 31, 2020;

14 (2) 21% for reporting periods beginning on or after
15 January 1, 2021 and ending on or before December 31, 2021;

16 (3) 17% for reporting periods beginning on or after
17 January 1, 2022 and ending on or before December 31, 2022;

18 (4) 13% for reporting periods beginning on or after
19 January 1, 2023 and ending on or before December 31, 2023;

20 (5) 9% for reporting periods beginning on or after
21 January 1, 2024 and ending on or before December 31, 2024;

22 (6) 5% for reporting periods beginning on or after
23 January 1, 2025 and ending on or before December 31, 2025.

24 The amount computed under this subsection may continue to
25 be claimed for reporting periods beginning on or after January
26 1, 2026 and:

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

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

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

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

15 (i-5) Each employer with 250 or fewer full-time equivalent
16 employees during the reporting period may claim a credit
17 against the payments due under this Section for each qualified
18 employee in an amount equal to the credit amount. The credit
19 may be taken against payments due for reporting periods that
20 begin on or after January 1, 2023 and end on or before December
21 31, 2032. Credits for a particular qualified employee may be
22 taken during the tax year in which the credit was earned. An
23 employer may not claim a credit for an employee who has worked
24 fewer than 180 consecutive days immediately preceding the
25 first day of the first pay period during which the raise is in
26 effect. In no event may the credit exceed the employer's

1 liability for the reporting period. Each employer who deducts
2 and withholds or is required to deduct and withhold tax under
3 this Act and who retains income tax withholdings under this
4 subsection must make a return with respect to such taxes and
5 retained amounts in the form and manner that the Department,
6 by rule, requires and pay to the Department or to a depository
7 designated by the Department those withheld taxes not retained
8 by the employer.

9 Notwithstanding any other provision of this subsection, an
10 employer is not eligible for credits under this subsection for
11 a reporting period unless the average wage paid by the
12 employer per employee for all employees making less than
13 \$52,000 during the reporting period is greater than the
14 average wage paid by the employer per employee for all
15 employees making less than \$52,000 during the same reporting
16 period of the prior calendar year.

17 For purposes of this subsection (i-5):

18 "Base period" means the employer's reporting period that
19 immediately precedes the reporting period in which the
20 qualified employee's raise takes effect.

21 "Compensation paid in Illinois" has the meaning ascribed
22 to that term under paragraph (B) of item (2) of subsection (a)
23 of Section 304 of this Act.

24 "Credit amount" means the amount listed below:

25 (1) 25% of the difference between the amount of
26 compensation paid in Illinois by the employer to the

1 qualified employee in the base period and the portion of
2 the compensation paid in Illinois by the employer to the
3 qualified employee in the reporting period for which the
4 credit is taken that does not exceed \$37,400 when
5 annualized; plus

6 (2) 20% of the compensation paid in Illinois by the
7 employer to the qualified employee in the reporting period
8 for which the credit is taken that exceeds the greater of
9 (i) the amount of compensation paid in Illinois by the
10 employer to the qualified employee in the base period or
11 (ii) \$37,400 when annualized but does not exceed \$41,600
12 when annualized; plus

13 (3) 15% of the compensation paid in Illinois by the
14 employer to the qualified employee in the reporting period
15 for which the credit is taken that exceeds the greater of
16 (i) the amount of compensation paid in Illinois by the
17 employer to the qualified employee in the base period or
18 (ii) \$41,600 when annualized but does not exceed \$52,000
19 when annualized.

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

1 the credit.

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

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

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

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

15 (j) For reporting periods beginning on or after January 1,
16 2023, if a private employer grants all of its employees the
17 option of taking a paid leave of absence of at least 30 days
18 for the purpose of serving as an organ donor or bone marrow
19 donor, then the private employer may take a credit against the
20 payments due under this Section in an amount equal to the
21 amount withheld under this Section with respect to wages paid
22 while the employee is on organ donation leave, not to exceed
23 \$1,000 in withholdings for each employee who takes organ
24 donation leave. To be eligible for the credit, such a leave of
25 absence must be taken without loss of pay, vacation time,
26 compensatory time, personal days, or sick time for at least

1 the first 30 days of the leave of absence. The private employer
2 shall adopt rules governing organ donation leave, including
3 rules that (i) establish conditions and procedures for
4 requesting and approving leave and (ii) require medical
5 documentation of the proposed organ or bone marrow donation
6 before leave is approved by the private employer. A private
7 employer must provide, in the manner required by the
8 Department, documentation from the employee's medical
9 provider, which the private employer receives from the
10 employee, that verifies the employee's organ donation. The
11 private employer must also provide, in the manner required by
12 the Department, documentation that shows that a qualifying
13 organ donor leave policy was in place and offered to all
14 qualifying employees at the time the leave was taken. For the
15 private employer to receive the tax credit, the employee
16 taking organ donor leave must allow for the applicable medical
17 records to be disclosed to the Department. If the private
18 employer cannot provide the required documentation to the
19 Department, then the private employer is ineligible for the
20 credit under this Section. A private employer must also
21 provide, in the form required by the Department, any
22 additional documentation or information required by the
23 Department to administer the credit under this Section. The
24 credit under this subsection (j) shall be taken within one
25 year after the date upon which the organ donation leave
26 begins. If the leave taken spans into a second tax year, the

1 employer qualifies for the allowable credit in the later of
2 the 2 years. If the amount of credit exceeds the tax liability
3 for the year, the excess may be carried and applied to the tax
4 liability for the 3 taxable years following the excess credit
5 year. The tax credit shall be applied to the earliest year for
6 which there is a tax liability. If there are credits for more
7 than one year that are available to offset liability, the
8 earlier credit shall be applied first.

9 Nothing in this subsection (j) prohibits a private
10 employer from providing an unpaid leave of absence to its
11 employees for the purpose of serving as an organ donor or bone
12 marrow donor; however, if the employer's policy provides for
13 fewer than 30 days of paid leave for organ or bone marrow
14 donation, then the employer shall not be eligible for the
15 credit under this Section.

16 As used in this subsection (j):

17 "Organ" means any biological tissue of the human body that
18 may be donated by a living donor, including, but not limited
19 to, the kidney, liver, lung, pancreas, intestine, bone, skin,
20 or any subpart of those organs.

21 "Organ donor" means a person from whose body an organ is
22 taken to be transferred to the body of another person.

23 "Private employer" means a sole proprietorship,
24 corporation, partnership, limited liability company, or other
25 entity with one or more employees. "Private employer" does not
26 include a municipality, county, State agency, or other public

1 employer.

2 This subsection (j) is exempt from the provisions of
3 Section 250 of this Act.

4 (Source: P.A. 101-1, eff. 2-19-19; 102-669, eff. 11-16-21;
5 102-700, Article 30, Section 30-5, eff. 4-19-22; 102-700,
6 Article 110, Section 110-905, eff. 4-19-22; revised 6-1-22.)