

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 Economic Development for a Growing Economy
5 Tax Credit Act is amended by changing Sections 5-5 and 5-15 as
6 follows:

7 (35 ILCS 10/5-5)

8 Sec. 5-5. Definitions. As used in this Act:

9 "Agreement" means the Agreement between a Taxpayer and the
10 Department under the provisions of Section 5-50 of this Act.

11 "Applicant" means a Taxpayer that is operating a business
12 located or that the Taxpayer plans to locate within the State
13 of Illinois and that is engaged in interstate or intrastate
14 commerce for the purpose of manufacturing, processing,
15 assembling, warehousing, or distributing products, conducting
16 research and development, providing tourism services, or
17 providing services in interstate commerce, office industries,
18 or agricultural processing, but excluding retail, retail food,
19 health, or professional services. "Applicant" does not include
20 a Taxpayer who closes or substantially reduces an operation at
21 one location in the State and relocates substantially the same
22 operation to another location in the State. This does not
23 prohibit a Taxpayer from expanding its operations at another

1 location in the State, provided that existing operations of a
2 similar nature located within the State are not closed or
3 substantially reduced. This also does not prohibit a Taxpayer
4 from moving its operations from one location in the State to
5 another location in the State for the purpose of expanding the
6 operation provided that the Department determines that
7 expansion cannot reasonably be accommodated within the
8 municipality in which the business is located, or in the case
9 of a business located in an incorporated area of the county,
10 within the county in which the business is located, after
11 conferring with the chief elected official of the municipality
12 or county and taking into consideration any evidence offered
13 by the municipality or county regarding the ability to
14 accommodate expansion within the municipality or county.

15 "Credit" means the amount agreed to between the Department
16 and Applicant under this Act, but not to exceed the lesser of:
17 (1) the sum of (i) 50% of the Incremental Income Tax
18 attributable to New Employees at the Applicant's project and
19 (ii) 10% of the training costs of New Employees; or (2) 100% of
20 the Incremental Income Tax attributable to New Employees at
21 the Applicant's project. However, if the project is located in
22 an underserved area, then the amount of the Credit may not
23 exceed the lesser of: (1) the sum of (i) 75% of the Incremental
24 Income Tax attributable to New Employees at the Applicant's
25 project and (ii) 10% of the training costs of New Employees; or
26 (2) 100% of the Incremental Income Tax attributable to New

1 Employees at the Applicant's project. If the project is not
2 located in an underserved area and the Applicant agrees to
3 hire the required number of New Employees, then the maximum
4 amount of the Credit for that Applicant may be increased by an
5 amount not to exceed 25% of the Incremental Income Tax
6 attributable to retained employees at the Applicant's project.
7 If the project is located in an underserved area and the
8 Applicant agrees to hire the required number of New Employees,
9 then the maximum amount of the credit for that Applicant may be
10 increased by an amount not to exceed 50% of the Incremental
11 Income Tax attributable to retained employees at the
12 Applicant's project.

13 "Department" means the Department of Commerce and Economic
14 Opportunity.

15 "Director" means the Director of Commerce and Economic
16 Opportunity.

17 "Full-time Employee" means an individual who is employed
18 for consideration for at least 35 hours each week or who
19 renders any other standard of service generally accepted by
20 industry custom or practice as full-time employment. An
21 individual for whom a W-2 is issued by a Professional Employer
22 Organization (PEO) is a full-time employee if employed in the
23 service of the Applicant for consideration for at least 35
24 hours each week or who renders any other standard of service
25 generally accepted by industry custom or practice as full-time
26 employment to Applicant.

1 "Incremental Income Tax" means the total amount withheld
2 during the taxable year from the compensation of New Employees
3 and, if applicable, retained employees under Article 7 of the
4 Illinois Income Tax Act arising from employment at a project
5 that is the subject of an Agreement.

6 "New Construction EDGE Agreement" means the Agreement
7 between a Taxpayer and the Department under the provisions of
8 Section 5-51 of this Act.

9 "New Construction EDGE Credit" means an amount agreed to
10 between the Department and the Applicant under this Act as
11 part of a New Construction EDGE Agreement that does not exceed
12 50% of the Incremental Income Tax attributable to New
13 Construction EDGE Employees at the Applicant's project;
14 however, if the New Construction EDGE Project is located in an
15 underserved area, then the amount of the New Construction EDGE
16 Credit may not exceed 75% of the Incremental Income Tax
17 attributable to New Construction EDGE Employees at the
18 Applicant's New Construction EDGE Project.

19 "New Construction EDGE Employee" means a laborer or worker
20 who is employed by an Illinois contractor or subcontractor in
21 the actual construction work on the site of a New Construction
22 EDGE Project, pursuant to a New Construction EDGE Agreement.

23 "New Construction EDGE Incremental Income Tax" means the
24 total amount withheld during the taxable year from the
25 compensation of New Construction EDGE Employees.

26 "New Construction EDGE Project" means the building of a

1 Taxpayer's structure or building, or making improvements of
2 any kind to real property. "New Construction EDGE Project"
3 does not include the routine operation, routine repair, or
4 routine maintenance of existing structures, buildings, or real
5 property.

6 "New Employee" means:

7 (a) A Full-time Employee first employed by a Taxpayer
8 in the project that is the subject of an Agreement and who
9 is hired after the Taxpayer enters into the tax credit
10 Agreement.

11 (b) The term "New Employee" does not include:

12 (1) an employee of the Taxpayer who performs a job
13 that was previously performed by another employee, if
14 that job existed for at least 6 months before hiring
15 the employee;

16 (2) an employee of the Taxpayer who was previously
17 employed in Illinois by a Related Member of the
18 Taxpayer and whose employment was shifted to the
19 Taxpayer after the Taxpayer entered into the tax
20 credit Agreement; or

21 (3) a child, grandchild, parent, or spouse, other
22 than a spouse who is legally separated from the
23 individual, of any individual who has a direct or an
24 indirect ownership interest of at least 5% in the
25 profits, capital, or value of the Taxpayer.

26 (c) Notwithstanding paragraph (1) of subsection (b),

1 an employee may be considered a New Employee under the
2 Agreement if the employee performs a job that was
3 previously performed by an employee who was:

4 (1) treated under the Agreement as a New Employee;

5 and

6 (2) promoted by the Taxpayer to another job.

7 (d) Notwithstanding subsection (a), the Department may
8 award Credit to an Applicant with respect to an employee
9 hired prior to the date of the Agreement if:

10 (1) the Applicant is in receipt of a letter from
11 the Department stating an intent to enter into a
12 credit Agreement;

13 (2) the letter described in paragraph (1) is
14 issued by the Department not later than 15 days after
15 the effective date of this Act; and

16 (3) the employee was hired after the date the
17 letter described in paragraph (1) was issued.

18 "Noncompliance Date" means, in the case of a Taxpayer that
19 is not complying with the requirements of the Agreement or the
20 provisions of this Act, the day following the last date upon
21 which the Taxpayer was in compliance with the requirements of
22 the Agreement and the provisions of this Act, as determined by
23 the Director, pursuant to Section 5-65.

24 "Pass Through Entity" means an entity that is exempt from
25 the tax under subsection (b) or (c) of Section 205 of the
26 Illinois Income Tax Act.

1 "Professional Employer Organization" (PEO) means an
2 employee leasing company, as defined in Section 206.1(A)(2) of
3 the Illinois Unemployment Insurance Act.

4 "Related Member" means a person that, with respect to the
5 Taxpayer during any portion of the taxable year, is any one of
6 the following:

7 (1) An individual stockholder, if the stockholder and
8 the members of the stockholder's family (as defined in
9 Section 318 of the Internal Revenue Code) own directly,
10 indirectly, beneficially, or constructively, in the
11 aggregate, at least 50% of the value of the Taxpayer's
12 outstanding stock.

13 (2) A partnership, estate, or trust and any partner or
14 beneficiary, if the partnership, estate, or trust, and its
15 partners or beneficiaries own directly, indirectly,
16 beneficially, or constructively, in the aggregate, at
17 least 50% of the profits, capital, stock, or value of the
18 Taxpayer.

19 (3) A corporation, and any party related to the
20 corporation in a manner that would require an attribution
21 of stock from the corporation to the party or from the
22 party to the corporation under the attribution rules of
23 Section 318 of the Internal Revenue Code, if the Taxpayer
24 owns directly, indirectly, beneficially, or constructively
25 at least 50% of the value of the corporation's outstanding
26 stock.

1 (4) A corporation and any party related to that
2 corporation in a manner that would require an attribution
3 of stock from the corporation to the party or from the
4 party to the corporation under the attribution rules of
5 Section 318 of the Internal Revenue Code, if the
6 corporation and all such related parties own in the
7 aggregate at least 50% of the profits, capital, stock, or
8 value of the Taxpayer.

9 (5) A person to or from whom there is attribution of
10 stock ownership in accordance with Section 1563(e) of the
11 Internal Revenue Code, except, for purposes of determining
12 whether a person is a Related Member under this paragraph,
13 20% shall be substituted for 5% wherever 5% appears in
14 Section 1563(e) of the Internal Revenue Code.

15 "Startup taxpayer" means, for Agreements that are executed
16 before the effective date of this amendatory Act of the 103rd
17 General Assembly, a corporation, partnership, or other entity
18 incorporated or organized no more than 5 years before the
19 filing of an application for an Agreement that has never had
20 any Illinois income tax liability, excluding any Illinois
21 income tax liability of a Related Member which shall not be
22 attributed to the startup taxpayer. "Startup taxpayer" means,
23 for Agreements that are executed on or after the effective
24 date of this amendatory Act of the 103rd General Assembly, a
25 corporation, partnership, or other entity incorporated or
26 organized no more than 10 years before the filing of an

1 application for an Agreement that has never had any Illinois
2 income tax liability, excluding any Illinois income tax
3 liability of a Related Member which shall not be attributed to
4 the startup taxpayer.

5 "Taxpayer" means an individual, corporation, partnership,
6 or other entity that has any Illinois Income Tax liability.

7 Until July 1, 2022, "underserved area" means a geographic
8 area that meets one or more of the following conditions:

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

11 (2) 75% or more of the children in the area
12 participate in the federal free lunch program according to
13 reported statistics from the State Board of Education;

14 (3) at least 20% of the households in the area receive
15 assistance under the Supplemental Nutrition Assistance
16 Program (SNAP); or

17 (4) the area has an average unemployment rate, as
18 determined by the Illinois Department of Employment
19 Security, that is more than 120% of the national
20 unemployment average, as determined by the U.S. Department
21 of Labor, for a period of at least 2 consecutive calendar
22 years preceding the date of the application.

23 On and after July 1, 2022, "underserved area" means a
24 geographic area that meets one or more of the following
25 conditions:

26 (1) the area has a poverty rate of at least 20%

1 according to the latest American Community Survey;

2 (2) 35% or more of the families with children in the
3 area are living below 130% of the poverty line, according
4 to the latest American Community Survey;

5 (3) at least 20% of the households in the area receive
6 assistance under the Supplemental Nutrition Assistance
7 Program (SNAP); or

8 (4) the area has an average unemployment rate, as
9 determined by the Illinois Department of Employment
10 Security, that is more than 120% of the national
11 unemployment average, as determined by the U.S. Department
12 of Labor, for a period of at least 2 consecutive calendar
13 years preceding the date of the application.

14 (Source: P.A. 101-9, eff. 6-5-19; 102-330, eff. 1-1-22;
15 102-700, eff. 4-19-22; 102-1125, eff. 2-3-23.)

16 (35 ILCS 10/5-15)

17 Sec. 5-15. Tax Credit Awards. Subject to the conditions
18 set forth in this Act, a Taxpayer is entitled to a Credit
19 against or, as described in subsection (g) of this Section, a
20 payment towards taxes imposed pursuant to subsections (a) and
21 (b) of Section 201 of the Illinois Income Tax Act that may be
22 imposed on the Taxpayer for a taxable year beginning on or
23 after January 1, 1999, if the Taxpayer is awarded a Credit by
24 the Department under this Act for that taxable year.

25 (a) The Department shall make Credit awards under this Act

1 to foster job creation and retention in Illinois.

2 (b) A person that proposes a project to create new jobs in
3 Illinois must enter into an Agreement with the Department for
4 the Credit under this Act.

5 (c) The Credit shall be claimed for the taxable years
6 specified in the Agreement.

7 (d) The Credit shall not exceed the Incremental Income Tax
8 attributable to the project that is the subject of the
9 Agreement.

10 (e) Nothing herein shall prohibit a Tax Credit Award to an
11 Applicant that uses a PEO if all other award criteria are
12 satisfied.

13 (f) In lieu of the Credit allowed under this Act against
14 the taxes imposed pursuant to subsections (a) and (b) of
15 Section 201 of the Illinois Income Tax Act for any taxable year
16 ending on or after December 31, 2009, for Taxpayers that
17 entered into Agreements prior to January 1, 2015 and otherwise
18 meet the criteria set forth in this subsection (f), the
19 Taxpayer may elect to claim the Credit against its obligation
20 to pay over withholding under Section 704A of the Illinois
21 Income Tax Act.

22 (1) The election under this subsection (f) may be made
23 only by a Taxpayer that (i) is primarily engaged in one of
24 the following business activities: water purification and
25 treatment, motor vehicle metal stamping, automobile
26 manufacturing, automobile and light duty motor vehicle

1 manufacturing, motor vehicle manufacturing, light truck
2 and utility vehicle manufacturing, heavy duty truck
3 manufacturing, motor vehicle body manufacturing, cable
4 television infrastructure design or manufacturing, or
5 wireless telecommunication or computing terminal device
6 design or manufacturing for use on public networks and
7 (ii) meets the following criteria:

8 (A) the Taxpayer (i) had an Illinois net loss or an
9 Illinois net loss deduction under Section 207 of the
10 Illinois Income Tax Act for the taxable year in which
11 the Credit is awarded, (ii) employed a minimum of
12 1,000 full-time employees in this State during the
13 taxable year in which the Credit is awarded, (iii) has
14 an Agreement under this Act on December 14, 2009 (the
15 effective date of Public Act 96-834), and (iv) is in
16 compliance with all provisions of that Agreement;

17 (B) the Taxpayer (i) had an Illinois net loss or an
18 Illinois net loss deduction under Section 207 of the
19 Illinois Income Tax Act for the taxable year in which
20 the Credit is awarded, (ii) employed a minimum of
21 1,000 full-time employees in this State during the
22 taxable year in which the Credit is awarded, and (iii)
23 has applied for an Agreement within 365 days after
24 December 14, 2009 (the effective date of Public Act
25 96-834);

26 (C) the Taxpayer (i) had an Illinois net operating

1 loss carryforward under Section 207 of the Illinois
2 Income Tax Act in a taxable year ending during
3 calendar year 2008, (ii) has applied for an Agreement
4 within 150 days after the effective date of this
5 amendatory Act of the 96th General Assembly, (iii)
6 creates at least 400 new jobs in Illinois, (iv)
7 retains at least 2,000 jobs in Illinois that would
8 have been at risk of relocation out of Illinois over a
9 10-year period, and (v) makes a capital investment of
10 at least \$75,000,000;

11 (D) the Taxpayer (i) had an Illinois net operating
12 loss carryforward under Section 207 of the Illinois
13 Income Tax Act in a taxable year ending during
14 calendar year 2009, (ii) has applied for an Agreement
15 within 150 days after the effective date of this
16 amendatory Act of the 96th General Assembly, (iii)
17 creates at least 150 new jobs, (iv) retains at least
18 1,000 jobs in Illinois that would have been at risk of
19 relocation out of Illinois over a 10-year period, and
20 (v) makes a capital investment of at least
21 \$57,000,000; or

22 (E) the Taxpayer (i) employed at least 2,500
23 full-time employees in the State during the year in
24 which the Credit is awarded, (ii) commits to make at
25 least \$500,000,000 in combined capital improvements
26 and project costs under the Agreement, (iii) applies

1 for an Agreement between January 1, 2011 and June 30,
2 2011, (iv) executes an Agreement for the Credit during
3 calendar year 2011, and (v) was incorporated no more
4 than 5 years before the filing of an application for an
5 Agreement.

6 (1.5) The election under this subsection (f) may also
7 be made by a Taxpayer for any Credit awarded pursuant to an
8 agreement that was executed between January 1, 2011 and
9 June 30, 2011, if the Taxpayer (i) is primarily engaged in
10 the manufacture of inner tubes or tires, or both, from
11 natural and synthetic rubber, (ii) employs a minimum of
12 2,400 full-time employees in Illinois at the time of
13 application, (iii) creates at least 350 full-time jobs and
14 retains at least 250 full-time jobs in Illinois that would
15 have been at risk of being created or retained outside of
16 Illinois, and (iv) makes a capital investment of at least
17 \$200,000,000 at the project location.

18 (1.6) The election under this subsection (f) may also
19 be made by a Taxpayer for any Credit awarded pursuant to an
20 agreement that was executed within 150 days after the
21 effective date of this amendatory Act of the 97th General
22 Assembly, if the Taxpayer (i) is primarily engaged in the
23 operation of a discount department store, (ii) maintains
24 its corporate headquarters in Illinois, (iii) employs a
25 minimum of 4,250 full-time employees at its corporate
26 headquarters in Illinois at the time of application, (iv)

1 retains at least 4,250 full-time jobs in Illinois that
2 would have been at risk of being relocated outside of
3 Illinois, (v) had a minimum of \$40,000,000,000 in total
4 revenue in 2010, and (vi) makes a capital investment of at
5 least \$300,000,000 at the project location.

6 (1.7) Notwithstanding any other provision of law, the
7 election under this subsection (f) may also be made by a
8 Taxpayer for any Credit awarded pursuant to an agreement
9 that was executed or applied for on or after July 1, 2011
10 and on or before March 31, 2012, if the Taxpayer is
11 primarily engaged in the manufacture of original and
12 aftermarket filtration parts and products for automobiles,
13 motor vehicles, light duty motor vehicles, light trucks
14 and utility vehicles, and heavy duty trucks, (ii) employs
15 a minimum of 1,000 full-time employees in Illinois at the
16 time of application, (iii) creates at least 250 full-time
17 jobs in Illinois, (iv) relocates its corporate
18 headquarters to Illinois from another state, and (v) makes
19 a capital investment of at least \$4,000,000 at the project
20 location.

21 (1.8) Notwithstanding any other provision of law, the
22 election under this subsection (f) may also be made by a
23 startup taxpayer for any Credit awarded pursuant to an
24 Agreement that was executed ~~or applied for~~ on or after the
25 effective date of this amendatory Act of the 102nd General
26 Assembly, ~~if the startup taxpayer, without considering any~~

1 ~~Related Member or other investor, (i) has never had any~~
2 ~~Illinois income tax liability and (ii) was incorporated no~~
3 ~~more than 5 years before the filing of an application for~~
4 ~~an Agreement.~~ Any such election under this paragraph (1.8)
5 shall be effective unless and until such startup taxpayer
6 has any Illinois income tax liability. This election under
7 this paragraph (1.8) shall automatically terminate when
8 the startup taxpayer has any Illinois income tax liability
9 at the end of any taxable year during the term of the
10 Agreement. Thereafter, the startup taxpayer may receive a
11 Credit, taking into account any benefits previously
12 enjoyed or received by way of the election under this
13 paragraph (1.8), so long as the startup taxpayer remains
14 in compliance with the terms and conditions of the
15 Agreement.

16 (2) An election under this subsection shall allow the
17 credit to be taken against payments otherwise due under
18 Section 704A of the Illinois Income Tax Act during the
19 first calendar ~~quarter year~~ beginning after the end of the
20 taxable ~~quarter year~~ in which the credit is awarded under
21 this Act.

22 (3) The election shall be made in the form and manner
23 required by the Illinois Department of Revenue and, once
24 made, shall be irrevocable.

25 (4) If a Taxpayer who meets the requirements of
26 subparagraph (A) of paragraph (1) of this subsection (f)

1 elects to claim the Credit against its withholdings as
2 provided in this subsection (f), then, on and after the
3 date of the election, the terms of the Agreement between
4 the Taxpayer and the Department may not be further amended
5 during the term of the Agreement.

6 (g) A pass-through entity that has been awarded a credit
7 under this Act, its shareholders, or its partners may treat
8 some or all of the credit awarded pursuant to this Act as a tax
9 payment for purposes of the Illinois Income Tax Act. The term
10 "tax payment" means a payment as described in Article 6 or
11 Article 8 of the Illinois Income Tax Act or a composite payment
12 made by a pass-through entity on behalf of any of its
13 shareholders or partners to satisfy such shareholders' or
14 partners' taxes imposed pursuant to subsections (a) and (b) of
15 Section 201 of the Illinois Income Tax Act. In no event shall
16 the amount of the award credited pursuant to this Act exceed
17 the Illinois income tax liability of the pass-through entity
18 or its shareholders or partners for the taxable year.

19 (Source: P.A. 102-700, eff. 4-19-22.)