



Sen. Julie A. Morrison

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1 AMENDMENT TO SENATE BILL 805

2 AMENDMENT NO. _____. Amend Senate Bill 805 by replacing
3 everything after the enacting clause with the following:

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

1 providing services in interstate commerce, office industries,
2 or agricultural processing, but excluding retail, retail food,
3 health, or professional services. "Applicant" does not include
4 a Taxpayer who closes or substantially reduces an operation at
5 one location in the State and relocates substantially the same
6 operation to another location in the State. This does not
7 prohibit a Taxpayer from expanding its operations at another
8 location in the State, provided that existing operations of a
9 similar nature located within the State are not closed or
10 substantially reduced. This also does not prohibit a Taxpayer
11 from moving its operations from one location in the State to
12 another location in the State for the purpose of expanding the
13 operation provided that the Department determines that
14 expansion cannot reasonably be accommodated within the
15 municipality in which the business is located, or in the case
16 of a business located in an incorporated area of the county,
17 within the county in which the business is located, after
18 conferring with the chief elected official of the municipality
19 or county and taking into consideration any evidence offered
20 by the municipality or county regarding the ability to
21 accommodate expansion within the municipality or county.

22 "Credit" means the amount agreed to between the Department
23 and Applicant under this Act, but not to exceed the lesser of:
24 (1) the sum of (i) 50% of the Incremental Income Tax
25 attributable to New Employees at the Applicant's project and
26 (ii) 10% of the training costs of New Employees; or (2) 100% of

1 the Incremental Income Tax attributable to New Employees at
2 the Applicant's project. However, if the project is located in
3 an underserved area, then the amount of the Credit may not
4 exceed the lesser of: (1) the sum of (i) 75% of the Incremental
5 Income Tax attributable to New Employees at the Applicant's
6 project and (ii) 10% of the training costs of New Employees; or
7 (2) 100% of the Incremental Income Tax attributable to New
8 Employees at the Applicant's project. If the project is not
9 located in an underserved area and the Applicant agrees to
10 hire the required number of New Employees, then the maximum
11 amount of the Credit for that Applicant may be increased by an
12 amount not to exceed 25% of the Incremental Income Tax
13 attributable to retained employees at the Applicant's project.
14 If the project is located in an underserved area and the
15 Applicant agrees to hire the required number of New Employees,
16 then the maximum amount of the credit for that Applicant may be
17 increased by an amount not to exceed 50% of the Incremental
18 Income Tax attributable to retained employees at the
19 Applicant's project.

20 "Department" means the Department of Commerce and Economic
21 Opportunity.

22 "Director" means the Director of Commerce and Economic
23 Opportunity.

24 "Full-time Employee" means an individual who is employed
25 for consideration for at least 35 hours each week or who
26 renders any other standard of service generally accepted by

1 industry custom or practice as full-time employment. An
2 individual for whom a W-2 is issued by a Professional Employer
3 Organization (PEO) is a full-time employee if employed in the
4 service of the Applicant for consideration for at least 35
5 hours each week or who renders any other standard of service
6 generally accepted by industry custom or practice as full-time
7 employment to Applicant.

8 "Incremental Income Tax" means the total amount withheld
9 during the taxable year from the compensation of New Employees
10 and, if applicable, retained employees under Article 7 of the
11 Illinois Income Tax Act arising from employment at a project
12 that is the subject of an Agreement.

13 "New Construction EDGE Agreement" means the Agreement
14 between a Taxpayer and the Department under the provisions of
15 Section 5-51 of this Act.

16 "New Construction EDGE Credit" means an amount agreed to
17 between the Department and the Applicant under this Act as
18 part of a New Construction EDGE Agreement that does not exceed
19 50% of the Incremental Income Tax attributable to New
20 Construction EDGE Employees at the Applicant's project;
21 however, if the New Construction EDGE Project is located in an
22 underserved area, then the amount of the New Construction EDGE
23 Credit may not exceed 75% of the Incremental Income Tax
24 attributable to New Construction EDGE Employees at the
25 Applicant's New Construction EDGE Project.

26 "New Construction EDGE Employee" means a laborer or worker

1 who is employed by an Illinois contractor or subcontractor in
2 the actual construction work on the site of a New Construction
3 EDGE Project, pursuant to a New Construction EDGE Agreement.

4 "New Construction EDGE Incremental Income Tax" means the
5 total amount withheld during the taxable year from the
6 compensation of New Construction EDGE Employees.

7 "New Construction EDGE Project" means the building of a
8 Taxpayer's structure or building, or making improvements of
9 any kind to real property. "New Construction EDGE Project"
10 does not include the routine operation, routine repair, or
11 routine maintenance of existing structures, buildings, or real
12 property.

13 "New Employee" means:

14 (a) A Full-time Employee first employed by a Taxpayer
15 in the project that is the subject of an Agreement and who
16 is hired after the Taxpayer enters into the tax credit
17 Agreement.

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

19 (1) an employee of the Taxpayer who performs a job
20 that was previously performed by another employee, if
21 that job existed for at least 6 months before hiring
22 the employee;

23 (2) an employee of the Taxpayer who was previously
24 employed in Illinois by a Related Member of the
25 Taxpayer and whose employment was shifted to the
26 Taxpayer after the Taxpayer entered into the tax

1 credit Agreement; or

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

7 (c) Notwithstanding paragraph (1) of subsection (b),
8 an employee may be considered a New Employee under the
9 Agreement if the employee performs a job that was
10 previously performed by an employee who was:

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

12 and

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

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

17 (1) the Applicant is in receipt of a letter from
18 the Department stating an intent to enter into a
19 credit Agreement;

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

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

25 "Noncompliance Date" means, in the case of a Taxpayer that
26 is not complying with the requirements of the Agreement or the

1 provisions of this Act, the day following the last date upon
2 which the Taxpayer was in compliance with the requirements of
3 the Agreement and the provisions of this Act, as determined by
4 the Director, pursuant to Section 5-65.

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

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

11 "Related Member" means a person that, with respect to the
12 Taxpayer during any portion of the taxable year, is any one of
13 the following:

14 (1) An individual stockholder, if the stockholder and
15 the members of the stockholder's family (as defined in
16 Section 318 of the Internal Revenue Code) own directly,
17 indirectly, beneficially, or constructively, in the
18 aggregate, at least 50% of the value of the Taxpayer's
19 outstanding stock.

20 (2) A partnership, estate, or trust and any partner or
21 beneficiary, if the partnership, estate, or trust, and its
22 partners or beneficiaries own directly, indirectly,
23 beneficially, or constructively, in the aggregate, at
24 least 50% of the profits, capital, stock, or value of the
25 Taxpayer.

26 (3) A corporation, and any party related to the

1 corporation in a manner that would require an attribution
2 of stock from the corporation to the party or from the
3 party to the corporation under the attribution rules of
4 Section 318 of the Internal Revenue Code, if the Taxpayer
5 owns directly, indirectly, beneficially, or constructively
6 at least 50% of the value of the corporation's outstanding
7 stock.

8 (4) A corporation and any party related to that
9 corporation in a manner that would require an attribution
10 of stock from the corporation to the party or from the
11 party to the corporation under the attribution rules of
12 Section 318 of the Internal Revenue Code, if the
13 corporation and all such related parties own in the
14 aggregate at least 50% of the profits, capital, stock, or
15 value of the Taxpayer.

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

22 "Startup taxpayer" means, for Agreements that are executed
23 before the effective date of this amendatory Act of the 103rd
24 General Assembly, a corporation, partnership, or other entity
25 incorporated or organized no more than 5 years before the
26 filing of an application for an Agreement that has never had

1 any Illinois income tax liability, excluding any Illinois
2 income tax liability of a Related Member which shall not be
3 attributed to the startup taxpayer. "Startup taxpayer" means,
4 for Agreements that are executed on or after the effective
5 date of this amendatory Act of the 103rd General Assembly, a
6 corporation, partnership, or other entity incorporated or
7 organized no more than 10 years before the filing of an
8 application for an Agreement that has never had any Illinois
9 income tax liability, excluding any Illinois income tax
10 liability of a Related Member which shall not be attributed to
11 the startup taxpayer.

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

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

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

18 (2) 75% or more of the children in the area
19 participate in the federal free lunch program according to
20 reported statistics from the State Board of Education;

21 (3) at least 20% of the households in the area receive
22 assistance under the Supplemental Nutrition Assistance
23 Program (SNAP); or

24 (4) the area has an average unemployment rate, as
25 determined by the Illinois Department of Employment
26 Security, that is more than 120% of the national

1 unemployment average, as determined by the U.S. Department
2 of Labor, for a period of at least 2 consecutive calendar
3 years preceding the date of the application.

4 On and after July 1, 2022, "underserved area" means a
5 geographic area that meets one or more of the following
6 conditions:

7 (1) the area has a poverty rate of at least 20%
8 according to the latest American Community Survey;

9 (2) 35% or more of the families with children in the
10 area are living below 130% of the poverty line, according
11 to the latest American Community Survey;

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

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

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

23 (35 ILCS 10/5-15)

24 Sec. 5-15. Tax Credit Awards. Subject to the conditions
25 set forth in this Act, a Taxpayer is entitled to a Credit

1 against or, as described in subsection (g) of this Section, a
2 payment towards taxes imposed pursuant to subsections (a) and
3 (b) of Section 201 of the Illinois Income Tax Act that may be
4 imposed on the Taxpayer for a taxable year beginning on or
5 after January 1, 1999, if the Taxpayer is awarded a Credit by
6 the Department under this Act for that taxable year.

7 (a) The Department shall make Credit awards under this Act
8 to foster job creation and retention in Illinois.

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

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

14 (d) The Credit shall not exceed the Incremental Income Tax
15 attributable to the project that is the subject of the
16 Agreement.

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

20 (f) In lieu of the Credit allowed under this Act against
21 the taxes imposed pursuant to subsections (a) and (b) of
22 Section 201 of the Illinois Income Tax Act for any taxable year
23 ending on or after December 31, 2009, for Taxpayers that
24 entered into Agreements prior to January 1, 2015 and otherwise
25 meet the criteria set forth in this subsection (f), the
26 Taxpayer may elect to claim the Credit against its obligation

1 to pay over withholding under Section 704A of the Illinois
2 Income Tax Act.

3 (1) The election under this subsection (f) may be made
4 only by a Taxpayer that (i) is primarily engaged in one of
5 the following business activities: water purification and
6 treatment, motor vehicle metal stamping, automobile
7 manufacturing, automobile and light duty motor vehicle
8 manufacturing, motor vehicle manufacturing, light truck
9 and utility vehicle manufacturing, heavy duty truck
10 manufacturing, motor vehicle body manufacturing, cable
11 television infrastructure design or manufacturing, or
12 wireless telecommunication or computing terminal device
13 design or manufacturing for use on public networks and
14 (ii) meets the following criteria:

15 (A) the Taxpayer (i) had an Illinois net loss or an
16 Illinois net loss deduction under Section 207 of the
17 Illinois Income Tax Act for the taxable year in which
18 the Credit is awarded, (ii) employed a minimum of
19 1,000 full-time employees in this State during the
20 taxable year in which the Credit is awarded, (iii) has
21 an Agreement under this Act on December 14, 2009 (the
22 effective date of Public Act 96-834), and (iv) is in
23 compliance with all provisions of that Agreement;

24 (B) the Taxpayer (i) had an Illinois net loss or an
25 Illinois net loss deduction under Section 207 of the
26 Illinois Income Tax Act for the taxable year in which

1 the Credit is awarded, (ii) employed a minimum of
2 1,000 full-time employees in this State during the
3 taxable year in which the Credit is awarded, and (iii)
4 has applied for an Agreement within 365 days after
5 December 14, 2009 (the effective date of Public Act
6 96-834);

7 (C) the Taxpayer (i) had an Illinois net operating
8 loss carryforward under Section 207 of the Illinois
9 Income Tax Act in a taxable year ending during
10 calendar year 2008, (ii) has applied for an Agreement
11 within 150 days after the effective date of this
12 amendatory Act of the 96th General Assembly, (iii)
13 creates at least 400 new jobs in Illinois, (iv)
14 retains at least 2,000 jobs in Illinois that would
15 have been at risk of relocation out of Illinois over a
16 10-year period, and (v) makes a capital investment of
17 at least \$75,000,000;

18 (D) the Taxpayer (i) had an Illinois net operating
19 loss carryforward under Section 207 of the Illinois
20 Income Tax Act in a taxable year ending during
21 calendar year 2009, (ii) has applied for an Agreement
22 within 150 days after the effective date of this
23 amendatory Act of the 96th General Assembly, (iii)
24 creates at least 150 new jobs, (iv) retains at least
25 1,000 jobs in Illinois that would have been at risk of
26 relocation out of Illinois over a 10-year period, and

1 (v) makes a capital investment of at least
2 \$57,000,000; or

3 (E) the Taxpayer (i) employed at least 2,500
4 full-time employees in the State during the year in
5 which the Credit is awarded, (ii) commits to make at
6 least \$500,000,000 in combined capital improvements
7 and project costs under the Agreement, (iii) applies
8 for an Agreement between January 1, 2011 and June 30,
9 2011, (iv) executes an Agreement for the Credit during
10 calendar year 2011, and (v) was incorporated no more
11 than 5 years before the filing of an application for an
12 Agreement.

13 (1.5) The election under this subsection (f) may also
14 be made by a Taxpayer for any Credit awarded pursuant to an
15 agreement that was executed between January 1, 2011 and
16 June 30, 2011, if the Taxpayer (i) is primarily engaged in
17 the manufacture of inner tubes or tires, or both, from
18 natural and synthetic rubber, (ii) employs a minimum of
19 2,400 full-time employees in Illinois at the time of
20 application, (iii) creates at least 350 full-time jobs and
21 retains at least 250 full-time jobs in Illinois that would
22 have been at risk of being created or retained outside of
23 Illinois, and (iv) makes a capital investment of at least
24 \$200,000,000 at the project location.

25 (1.6) The election under this subsection (f) may also
26 be made by a Taxpayer for any Credit awarded pursuant to an

1 agreement that was executed within 150 days after the
2 effective date of this amendatory Act of the 97th General
3 Assembly, if the Taxpayer (i) is primarily engaged in the
4 operation of a discount department store, (ii) maintains
5 its corporate headquarters in Illinois, (iii) employs a
6 minimum of 4,250 full-time employees at its corporate
7 headquarters in Illinois at the time of application, (iv)
8 retains at least 4,250 full-time jobs in Illinois that
9 would have been at risk of being relocated outside of
10 Illinois, (v) had a minimum of \$40,000,000,000 in total
11 revenue in 2010, and (vi) makes a capital investment of at
12 least \$300,000,000 at the project location.

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

1 location.

2 (1.8) Notwithstanding any other provision of law, the
3 election under this subsection (f) may also be made by a
4 startup taxpayer for any Credit awarded pursuant to an
5 Agreement that was executed ~~or applied for~~ on or after the
6 effective date of this amendatory Act of the 102nd General
7 Assembly, ~~if the startup taxpayer, without considering any
8 Related Member or other investor, (i) has never had any
9 Illinois income tax liability and (ii) was incorporated no
10 more than 5 years before the filing of an application for
11 an Agreement.~~ Any such election under this paragraph (1.8)
12 shall be effective unless and until such startup taxpayer
13 has any Illinois income tax liability. This election under
14 this paragraph (1.8) shall automatically terminate when
15 the startup taxpayer has any Illinois income tax liability
16 at the end of any taxable year during the term of the
17 Agreement. Thereafter, the startup taxpayer may receive a
18 Credit, taking into account any benefits previously
19 enjoyed or received by way of the election under this
20 paragraph (1.8), so long as the startup taxpayer remains
21 in compliance with the terms and conditions of the
22 Agreement.

23 (2) An election under this subsection shall allow the
24 credit to be taken against payments otherwise due under
25 Section 704A of the Illinois Income Tax Act during the
26 first calendar ~~quarter~~ year beginning after the end of the

1 taxable quarter ~~year~~ in which the credit is awarded under
2 this Act.

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

6 (4) If a Taxpayer who meets the requirements of
7 subparagraph (A) of paragraph (1) of this subsection (f)
8 elects to claim the Credit against its withholdings as
9 provided in this subsection (f), then, on and after the
10 date of the election, the terms of the Agreement between
11 the Taxpayer and the Department may not be further amended
12 during the term of the Agreement.

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

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