

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 by  
13 the municipality or county regarding the ability to accommodate  
14 expansion within the municipality or county.

15 "Committee" means the Illinois Business Investment  
16 Committee created under Section 5-25 of this Act within the  
17 Illinois Economic Development Board.

18 "Credit" means the amount agreed to between the Department  
19 and Applicant under this Act, but not to exceed the Incremental  
20 Income Tax attributable to the Applicant's project.

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

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

25 "Full-time Employee" means an individual who is employed  
26 for consideration for at least 35 hours each week or who

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

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

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 credit

1 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 credit  
19 Agreement;

20 (2) the letter described in paragraph (1) is issued  
21 by the Department not later than 15 days after the  
22 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 "Taxpayer" means an individual, corporation, partnership,  
23 or other entity that has any Illinois Income Tax liability.

24 (Source: P.A. 94-793, eff. 5-19-06.)

25 (35 ILCS 10/5-15)

1           Sec. 5-15. Tax Credit Awards. Subject to the conditions set  
2 forth in this Act, a Taxpayer is entitled to a Credit against  
3 taxes imposed pursuant to subsections (a) and (b) of Section  
4 201 of the Illinois Income Tax Act that may be imposed on the  
5 Taxpayer for a taxable year beginning on or after January 1,  
6 1999, if the Taxpayer is awarded a Credit by the Department  
7 under this Act for that taxable year.

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

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

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

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

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

21           (Source: P.A. 91-476, eff. 8-11-99.)

22           Section 99. Effective date. This Act takes effect upon  
23 becoming law.