



Adopted in House Comm. on May 05, 2010

09600SB3089ham001

LRB096 18724 HLH 41196 a

1 AMENDMENT TO SENATE BILL 3089

2 AMENDMENT NO. _____. Amend Senate Bill 3089 by replacing
3 everything after the enacting clause with the following:

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 or
9 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

1 that quarter.

2 (c) Payments. With respect to amounts withheld or required
3 to be withheld on or after January 1, 2008:

4 (1) Semi-weekly payments. For each calendar year, each
5 employer who withheld or was required to withhold more than
6 \$12,000 during the one-year period ending on June 30 of the
7 immediately preceding calendar year, payment must be made:

8 (A) on or before each Friday of the calendar year,
9 for taxes withheld or required to be withheld on the
10 immediately preceding Saturday, Sunday, Monday, or
11 Tuesday;

12 (B) on or before each Wednesday of the calendar
13 year, for taxes withheld or required to be withheld on
14 the immediately preceding Wednesday, Thursday, or
15 Friday.

16 (2) Semi-weekly payments. Any employer who withholds
17 or is required to withhold more than \$12,000 in any quarter
18 of a calendar year is required to make payments on the
19 dates set forth under item (1) of this subsection (c) for
20 each remaining quarter of that calendar year and for the
21 subsequent calendar year.

22 (3) Monthly payments. Each employer, other than an
23 employer described in items (1) or (2) of this subsection,
24 shall pay to the Department, on or before the 15th day of
25 each month the taxes withheld or required to be withheld
26 during the immediately preceding month.

1 (4) Payments with returns. Each employer shall pay to
2 the Department, on or before the due date for each return
3 required to be filed under this Section, any tax withheld
4 or required to be withheld during the period for which the
5 return is due and not previously paid to the Department.

6 (d) Regulatory authority. The Department may, by rule:

7 (1) If the aggregate amounts required to be withheld
8 under this Article 7 do not exceed \$1,000 for the calendar
9 year, permit employers, in lieu of the requirements of
10 subsections (b) and (c), to file annual returns due on or
11 before January 31 of the following year for taxes withheld
12 or required to be withheld during that calendar year and to
13 pay the taxes required to be shown on each such return no
14 later than the due date for such return.

15 (2) Provide that any payment required to be made under
16 subsection (c)(1) or (c)(2) is deemed to be timely to the
17 extent paid by electronic funds transfer on or before the
18 due date for deposit of federal income taxes withheld from,
19 or federal employment taxes due with respect to, the wages
20 from which the Illinois taxes were withheld.

21 (3) Designate one or more depositories to which payment
22 of taxes required to be withheld under this Article 7 must
23 be paid by some or all employers.

24 (4) Increase the threshold dollar amounts at which
25 employers are required to make semi-weekly payments under
26 subsection (c)(1) or (c)(2).

1 (e) Annual return and payment. Every employer who deducts
2 and withholds or is required to deduct and withhold tax from a
3 person engaged in domestic service employment, as that term is
4 defined in Section 3510 of the Internal Revenue Code, may
5 comply with the requirements of this Section with respect to
6 such employees by filing an annual return and paying the taxes
7 required to be deducted and withheld on or before the 15th day
8 of the fourth month following the close of the employer's
9 taxable year. The Department may allow the employer's return to
10 be submitted with the employer's individual income tax return
11 or to be submitted with a return due from the employer under
12 Section 1400.2 of the Unemployment Insurance Act.

13 (f) Magnetic media and electronic filing. 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 (g) For amounts deducted or withheld after December 31,
21 2009, a taxpayer who makes an election under subsection (f) of
22 Section 5-15 ~~5-15(f)~~ of the Economic Development for a Growing
23 Economy Tax Credit Act for a taxable year shall be allowed a
24 credit against payments due under this Section for amounts
25 withheld during the first calendar year beginning after the end
26 of that taxable year equal to the amount of the credit for the

1 incremental income tax attributable to full-time employees of
2 the taxpayer awarded to the taxpayer by the Department of
3 Commerce and Economic Opportunity under the Economic
4 Development for a Growing Economy Tax Credit Act for the
5 taxable year and credits not previously claimed and allowed to
6 be carried forward under Section 211(4) of this Act as provided
7 in subsection (f) of Section 5-15 of the Economic Development
8 for a Growing Economy Tax Credit Act. The credit or credits may
9 not reduce the taxpayer's obligation for any payment due under
10 this Section to less than zero. If the amount of the credit or
11 credits exceeds the total payments due under this Section with
12 respect to amounts withheld during the calendar year, the
13 excess may be carried forward and applied against the
14 taxpayer's liability under this Section in the ~~5~~ succeeding
15 calendar years as allowed to be carried forward under paragraph
16 (4) of Section 211 of this Act. The credit or credits shall be
17 applied to the earliest year for which there is a tax
18 liability. If there are credits from more than one taxable year
19 that are available to offset a liability, the earlier credit
20 shall be applied first. Each employer who deducts and withholds
21 or is required to deduct and withhold tax under this Act and
22 who retains income tax withholdings under subsection (f) of
23 Section 5-15 of the Economic Development for a Growing Economy
24 Tax Credit Act must make a return with respect to such taxes
25 and retained amounts in the form and manner that the
26 Department, by rule, requires and pay to the Department or to a

1 depository designated by the Department those withheld taxes
2 not retained by the taxpayer. For purposes of this subsection
3 (g), the term taxpayer shall include taxpayer and members of
4 the taxpayer's unitary business group as defined under
5 paragraph (27) of subsection (a) of Section 1501 of this Act.

6 This Section is exempt from the provisions of Section 250 of
7 this Act.

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

25 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,
26 eff. 12-14-09; 96-888, eff. 4-13-10.)

1 Section 10. The Economic Development for a Growing Economy
2 Tax Credit Act is amended by changing Section 5-15 as follows:

3 (35 ILCS 10/5-15)

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

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

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

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

19 (d) The Credit shall not exceed the Incremental Income Tax
20 attributable to the project that is the subject of the
21 Agreement.

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

1 (f) In lieu of the Credit allowed under this Act against
2 the taxes imposed pursuant to subsections (a) and (b) of
3 Section 201 of the Illinois Income Tax Act for any taxable year
4 ending on or after December 31, 2009, the Taxpayer may elect to
5 claim the Credit against its obligation to pay over withholding
6 under Section 704A of the Illinois Income Tax Act.

7 (1) The election under this subsection (f) may be made
8 only by a Taxpayer that (i) is primarily engaged in one of
9 the following business activities: motor vehicle metal
10 stamping, automobile manufacturing, automobile and light
11 duty motor vehicle manufacturing, motor vehicle
12 manufacturing, light truck and utility vehicle
13 manufacturing, heavy duty truck manufacturing, or motor
14 vehicle body manufacturing and (ii) meets the following
15 criteria:

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

26 (B) the Taxpayer (i) had an Illinois net loss or an

1 Illinois net loss deduction under Section 207 of the
2 Illinois Income Tax Act for the taxable year in which
3 the Credit is awarded, (ii) employed a minimum of 1,000
4 full-time employees in this State during the taxable
5 year in which the Credit is awarded, and (iii) has
6 applied for an Agreement within 365 ~~180~~ days after
7 December 14, 2009 (the effective date of Public Act
8 96-834); ~~or this amendatory Act of the 96th General~~
9 ~~Assembly.~~

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

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

25 (3) The election shall be made in the form and manner
26 required by the Illinois Department of Revenue and, once

1 made, shall be irrevocable.

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

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

22 (Source: P.A. 95-375, eff. 8-23-07; 96-834, eff. 12-14-09;
23 96-836, eff. 12-16-09; revised 12-21-09.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."