



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1401

by Rep. Bill Mitchell

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/221 new  
35 ILCS 5/704A

Amends the Illinois Income Tax Act. Creates an income tax credit in an amount equal to \$210 for each employee hired by the taxpayer during the taxable year to fill a newly created position multiplied by the number of consecutive months during which the employee is employed by the taxpayer. Provides that the taxpayer may elect to use all or a portion of the credit against its withholding tax liability. Provides that, if the amount of the credit exceeds the taxpayer's liability for the taxable year, the credit may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. Effective immediately.

LRB097 06843 HLH 46936 b

FISCAL NOTE ACT  
MAY APPLY

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 adding  
5 Section 221 and by changing Section 704A as follows:

6 (35 ILCS 5/221 new)

7 Sec. 221. New employee credit.

8 (a) For taxable years beginning on or after January 1, 2011  
9 and ending on or before December 31, 2012, each taxpayer that  
10 operates a business within the State is entitled to a credit  
11 against the taxes imposed under subsections (a) and (b) of  
12 Section 201 of this Act in an amount equal to \$210 for each  
13 employee hired by the taxpayer during the taxable year to fill  
14 a newly created position multiplied by the number of  
15 consecutive months during which the employee is employed by the  
16 taxpayer. For partners, shareholders of Subchapter S  
17 corporations, and owners of limited liability companies, if the  
18 limited liability company is treated as a partnership for  
19 purposes of federal and State income taxation, there shall be  
20 allowed a credit under this Section to be determined in  
21 accordance with the determination of income and distributive  
22 share of income under Sections 702 and 704 and Subchapter S of  
23 the Internal Revenue Code.

1       (b) In addition, the taxpayer may elect to use all or a  
2 portion of the credit awarded under this Section as a credit  
3 against its withholding tax liability under Article 7 of this  
4 Act. The withholding tax credit shall be applied beginning with  
5 the first payment due date occurring on or after the last day  
6 of the taxable year. Such an election shall be made in the form  
7 and manner prescribed by the Department by rule and, once made,  
8 shall be irrevocable.

9       (c) In no event shall a credit under this Section reduce  
10 the taxpayer's liability to less than zero. If the amount of  
11 the credit exceeds the tax liability for the year, the excess  
12 may be carried forward and applied to the tax liability of the  
13 5 taxable years following the excess credit year. The tax  
14 credit shall be applied to the earliest year for which there is  
15 a tax liability. If there are credits for more than one year  
16 that are available to offset a liability, the earlier credit  
17 shall be applied first.

18       (35 ILCS 5/704A)

19       Sec. 704A. Employer's return and payment of tax withheld.

20       (a) In general, every employer who deducts and withholds or  
21 is required to deduct and withhold tax under this Act on or  
22 after January 1, 2008 shall make those payments and returns as  
23 provided in this Section.

24       (b) Returns. Every employer shall, in the form and manner  
25 required by the Department, make returns with respect to taxes

1 withheld or required to be withheld under this Article 7 for  
2 each quarter beginning on or after January 1, 2008, on or  
3 before the last day of the first month following the close of  
4 that quarter.

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

7 (1) Semi-weekly payments. For each calendar year, each  
8 employer who withheld or was required to withhold more than  
9 \$12,000 during the one-year period ending on June 30 of the  
10 immediately preceding calendar year, payment must be made:

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

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

19 Beginning with calendar year 2011, payments ~~payment~~  
20 made under this paragraph (1) of subsection (c) must be  
21 made by electronic funds transfer.

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

1 subsequent calendar year.

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

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

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

13 (1) Permit employers, in lieu of the requirements of  
14 subsections (b) and (c), to file annual returns due on or  
15 before January 31 of the year for taxes withheld or  
16 required to be withheld during the previous calendar year  
17 and, if the aggregate amounts required to be withheld by  
18 the employer under this Article 7 (other than amounts  
19 required to be withheld under Section 709.5) do not exceed  
20 \$1,000 for the previous calendar year, to pay the taxes  
21 required to be shown on each such return no later than the  
22 due date for such return.

23 (2) Provide that any payment required to be made under  
24 subsection (c)(1) or (c)(2) is deemed to be timely to the  
25 extent paid by electronic funds transfer on or before the  
26 due date for deposit of federal income taxes withheld from,

1           or federal employment taxes due with respect to, the wages  
2           from which the Illinois taxes were withheld.

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

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

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

21          (f) Magnetic media and electronic filing. Any W-2 Form  
22          that, under the Internal Revenue Code and regulations  
23          promulgated thereunder, is required to be submitted to the  
24          Internal Revenue Service on magnetic media or electronically  
25          must also be submitted to the Department on magnetic media or  
26          electronically for Illinois purposes, if required by the

1 Department.

2 (g) For amounts deducted or withheld after December 31,  
3 2009, a taxpayer who makes an election under subsection (f) of  
4 Section 5-15 of the Economic Development for a Growing Economy  
5 Tax Credit Act for a taxable year shall be allowed a credit  
6 against payments due under this Section for amounts withheld  
7 during the first calendar year beginning after the end of that  
8 taxable year equal to the amount of the credit for the  
9 incremental income tax attributable to full-time employees of  
10 the taxpayer awarded to the taxpayer by the Department of  
11 Commerce and Economic Opportunity under the Economic  
12 Development for a Growing Economy Tax Credit Act for the  
13 taxable year and credits not previously claimed and allowed to  
14 be carried forward under Section 211(4) of this Act as provided  
15 in subsection (f) of Section 5-15 of the Economic Development  
16 for a Growing Economy Tax Credit Act. The credit or credits may  
17 not reduce the taxpayer's obligation for any payment due under  
18 this Section to less than zero. If the amount of the credit or  
19 credits exceeds the total payments due under this Section with  
20 respect to amounts withheld during the calendar year, the  
21 excess may be carried forward and applied against the  
22 taxpayer's liability under this Section in the succeeding  
23 calendar years as allowed to be carried forward under paragraph  
24 (4) of Section 211 of this Act. The credit or credits shall be  
25 applied to the earliest year for which there is a tax  
26 liability. If there are credits from more than one taxable year

1 that are available to offset a liability, the earlier credit  
2 shall be applied first. Each employer who deducts and withholds  
3 or is required to deduct and withhold tax under this Act and  
4 who retains income tax withholdings under subsection (f) of  
5 Section 5-15 of the Economic Development for a Growing Economy  
6 Tax Credit Act must make a return with respect to such taxes  
7 and retained amounts in the form and manner that the  
8 Department, by rule, requires and pay to the Department or to a  
9 depository designated by the Department those withheld taxes  
10 not retained by the taxpayer. For purposes of this subsection  
11 (g), the term taxpayer shall include taxpayer and members of  
12 the taxpayer's unitary business group as defined under  
13 paragraph (27) of subsection (a) of Section 1501 of this Act.  
14 This Section is exempt from the provisions of Section 250 of  
15 this Act.

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



1 Section in the 5 succeeding calendar years. The credit shall be  
2 applied to the earliest year for which there is a tax  
3 liability. If there are credits from more than one calendar  
4 year that are available to offset a liability, the earlier  
5 credit shall be applied first. This Section is exempt from the  
6 provisions of Section 250 of this Act.

7 (i) A taxpayer may elect to claim all or a part of the  
8 credit awarded under Section 221 of this Act as a credit  
9 against payments due under this Section. Such an election shall  
10 be made in the form and manner prescribed by the Department by  
11 rule. If, in any payment period, the amount of the credit that  
12 is eligible to be applied toward the taxpayer's withholding tax  
13 liability exceeds the amount required to be withheld by the  
14 taxpayer for that payment period, then the excess may carried  
15 forward to the next payment period until the entire amount has  
16 been applied. If there are credits from more than one payment  
17 period that are available to offset a liability, the earlier  
18 credit shall be applied first.

19 (Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834,  
20 eff. 12-14-09; 96-888, eff. 4-13-10; 96-905, eff. 6-4-10;  
21 96-1027, eff. 7-12-10; revised 9-16-10.)

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