



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB4563

by Rep. David Harris

SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A
35 ILCS 10/5-15

Amends the Economic Development for a Growing Economy Tax Credit Act. Provides that any taxpayer that has been awarded an EDGE credit for a taxable year beginning on or after January 1, 2014 may elect to claim up to 20% of the amount of the credit against its obligation to pay over withholding taxes. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB098 18065 HLH 53194 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
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
17 that quarter.

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

20 (1) Semi-weekly payments. For each calendar year, each
21 employer who withheld or was required to withhold more than
22 \$12,000 during the one-year period ending on June 30 of the
23 immediately preceding calendar year, payment must be made:

1 (A) on or before each Friday of the calendar year,
2 for taxes withheld or required to be withheld on the
3 immediately preceding Saturday, Sunday, Monday, or
4 Tuesday;

5 (B) on or before each Wednesday of the calendar
6 year, for taxes withheld or required to be withheld on
7 the immediately preceding Wednesday, Thursday, or
8 Friday.

9 Beginning with calendar year 2011, payments made under
10 this paragraph (1) of subsection (c) must be made by
11 electronic funds transfer.

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

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

23 (4) Payments with returns. Each employer shall pay to
24 the Department, on or before the due date for each return
25 required to be filed under this Section, any tax withheld
26 or required to be withheld during the period for which the

1 return is due and not previously paid to the Department.

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

3 (1) Permit employers, in lieu of the requirements of
4 subsections (b) and (c), to file annual returns due on or
5 before January 31 of the year for taxes withheld or
6 required to be withheld during the previous calendar year
7 and, if the aggregate amounts required to be withheld by
8 the employer under this Article 7 (other than amounts
9 required to be withheld under Section 709.5) do not exceed
10 \$1,000 for the previous calendar year, to pay the taxes
11 required to be shown on each such return no later than the
12 due date for such return.

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

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

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

25 (e) Annual return and payment. Every employer who deducts
26 and withholds or is required to deduct and withhold tax from a

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

11 (f) Magnetic media and electronic filing. Any W-2 Form
12 that, under the Internal Revenue Code and regulations
13 promulgated thereunder, is required to be submitted to the
14 Internal Revenue Service on magnetic media or electronically
15 must also be submitted to the Department on magnetic media or
16 electronically for Illinois purposes, if required by the
17 Department.

18 (g) For amounts deducted or withheld after December 31,
19 2009, a taxpayer who makes an election under subsection (f) of
20 Section 5-15 of the Economic Development for a Growing Economy
21 Tax Credit Act for a taxable year shall be allowed a credit
22 against payments due under this Section for amounts withheld
23 during the first calendar year beginning after the end of that
24 taxable year equal to the amount of the credit for the
25 incremental income tax attributable to full-time employees of
26 the taxpayer awarded to the taxpayer by the Department of

1 Commerce and Economic Opportunity under the Economic
2 Development for a Growing Economy Tax Credit Act for the
3 taxable year and credits not previously claimed and allowed to
4 be carried forward under Section 211(4) of this Act as provided
5 in subsection (f) of Section 5-15 of the Economic Development
6 for a Growing Economy Tax Credit Act, except that, in the case
7 of an election made under item (1.8) of subsection (f) of
8 Section 5-15 of the Economic Development for a Growing Economy
9 Tax Credit Act, the amount of the credit that may be taken
10 against payments due under this Section shall be limited to 20%
11 of the amount of the credit awarded under the Economic
12 Development for a Growing Economy Tax Credit Act. The credit or
13 credits may not reduce the taxpayer's obligation for any
14 payment due under this Section to less than zero. If the amount
15 of the credit or credits exceeds the total payments due under
16 this Section with respect to amounts withheld during the
17 calendar year, the excess may be carried forward and applied
18 against the taxpayer's liability under this Section in the
19 succeeding calendar years as allowed to be carried forward
20 under paragraph (4) of Section 211 of this Act. The credit or
21 credits shall be applied to the earliest year for which there
22 is a tax liability. If there are credits from more than one
23 taxable year that are available to offset a liability, the
24 earlier credit shall be applied first. Each employer who
25 deducts and withholds or is required to deduct and withhold tax
26 under this Act and who retains income tax withholdings under

1 subsection (f) of Section 5-15 of the Economic Development for
2 a Growing Economy Tax Credit Act must make a return with
3 respect to such taxes and retained amounts in the form and
4 manner that the Department, by rule, requires and pay to the
5 Department or to a depository designated by the Department
6 those withheld taxes not retained by the taxpayer. For purposes
7 of this subsection (g), the term taxpayer shall include
8 taxpayer and members of the taxpayer's unitary business group
9 as defined under paragraph (27) of subsection (a) of Section
10 1501 of this Act. This Section is exempt from the provisions of
11 Section 250 of this Act.

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

1 credit shall be applied first. This Section is exempt from the
2 provisions of Section 250 of this Act.

3 (Source: P.A. 96-834, eff. 12-14-09; 96-888, eff. 4-13-10;
4 96-905, eff. 6-4-10; 96-1027, eff. 7-12-10; 97-333, eff.
5 8-12-11; 97-507, eff. 8-23-11.)

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

8 (35 ILCS 10/5-15)

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

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

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

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

24 (d) The Credit shall not exceed the Incremental Income Tax

1 attributable to the project that is the subject of the
2 Agreement.

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

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

12 (1) The election under this subsection (f) may be made
13 only by a Taxpayer that (i) is primarily engaged in one of
14 the following business activities: water purification and
15 treatment, motor vehicle metal stamping, automobile
16 manufacturing, automobile and light duty motor vehicle
17 manufacturing, motor vehicle manufacturing, light truck
18 and utility vehicle manufacturing, heavy duty truck
19 manufacturing, motor vehicle body manufacturing, cable
20 television infrastructure design or manufacturing, or
21 wireless telecommunication or computing terminal device
22 design or manufacturing for use on public networks and (ii)
23 meets the following criteria:

24 (A) 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 1,000
2 full-time employees in this State during the taxable
3 year in which the Credit is awarded, (iii) has an
4 Agreement under this Act on December 14, 2009 (the
5 effective date of Public Act 96-834), and (iv) is in
6 compliance with all provisions of that Agreement;

7 (B) the Taxpayer (i) had an Illinois net loss or an
8 Illinois net loss deduction under Section 207 of the
9 Illinois Income Tax Act for the taxable year in which
10 the Credit is awarded, (ii) employed a minimum of 1,000
11 full-time employees in this State during the taxable
12 year in which the Credit is awarded, and (iii) has
13 applied for an Agreement within 365 days after December
14 14, 2009 (the effective date of Public Act 96-834);

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

25 (D) the Taxpayer (i) had an Illinois net operating
26 loss carryforward under Section 207 of the Illinois

1 Income Tax Act in a taxable year ending during calendar
2 year 2009, (ii) has applied for an Agreement within 150
3 days after the effective date of this amendatory Act of
4 the 96th General Assembly, (iii) creates at least 150
5 new jobs, (iv) retains at least 1,000 jobs in Illinois
6 that would have been at risk of relocation out of
7 Illinois over a 10-year period, and (v) makes a capital
8 investment of at least \$57,000,000; or

9 (E) the Taxpayer (i) employed at least 2,500
10 full-time employees in the State during the year in
11 which the Credit is awarded, (ii) commits to make at
12 least \$500,000,000 in combined capital improvements
13 and project costs under the Agreement, (iii) applies
14 for an Agreement between January 1, 2011 and June 30,
15 2011, (iv) executes an Agreement for the Credit during
16 calendar year 2011, and (v) was incorporated no more
17 than 5 years before the filing of an application for an
18 Agreement.

19 (1.5) The election under this subsection (f) may also
20 be made by a Taxpayer for any Credit awarded pursuant to an
21 agreement that was executed between January 1, 2011 and
22 June 30, 2011, if the Taxpayer (i) is primarily engaged in
23 the manufacture of inner tubes or tires, or both, from
24 natural and synthetic rubber, (ii) employs a minimum of
25 2,400 full-time employees in Illinois at the time of
26 application, (iii) creates at least 350 full-time jobs and

1 retains at least 250 full-time jobs in Illinois that would
2 have been at risk of being created or retained outside of
3 Illinois, and (iv) makes a capital investment of at least
4 \$200,000,000 at the project location.

5 (1.6) The election under this subsection (f) may also
6 be made by a Taxpayer for any Credit awarded pursuant to an
7 agreement that was executed within 150 days after the
8 effective date of this amendatory Act of the 97th General
9 Assembly, if the Taxpayer (i) is primarily engaged in the
10 operation of a discount department store, (ii) maintains
11 its corporate headquarters in Illinois, (iii) employs a
12 minimum of 4,250 full-time employees at its corporate
13 headquarters in Illinois at the time of application, (iv)
14 retains at least 4,250 full-time jobs in Illinois that
15 would have been at risk of being relocated outside of
16 Illinois, (v) had a minimum of \$40,000,000,000 in total
17 revenue in 2010, and (vi) makes a capital investment of at
18 least \$300,000,000 at the project location.

19 (1.7) Notwithstanding any other provision of law, the
20 election under this subsection (f) may also be made by a
21 Taxpayer for any Credit awarded pursuant to an agreement
22 that was executed or applied for on or after July 1, 2011
23 and on or before March 31, 2012, if the Taxpayer is
24 primarily engaged in the manufacture of original and
25 aftermarket filtration parts and products for automobiles,
26 motor vehicles, light duty motor vehicles, light trucks and

1 utility vehicles, and heavy duty trucks, (ii) employs a
2 minimum of 1,000 full-time employees in Illinois at the
3 time of application, (iii) creates at least 250 full-time
4 jobs in Illinois, (iv) relocates its corporate
5 headquarters to Illinois from another state, and (v) makes
6 a capital investment of at least \$4,000,000 at the project
7 location.

8 (1.8) Notwithstanding any other provision of law, any
9 taxpayer that (i) is awarded a credit under this Act for a
10 taxable year beginning on or after January 1, 2014 and (ii)
11 is not a taxpayer that is otherwise entitled to make an
12 election under items (1) through (1.7) of this subsection
13 (f) may elect to claim up to 20% of the amount of the
14 credit awarded for the taxable year, including unused
15 credits that are carried forward from previous taxable
16 years, against its obligation to pay over withholding under
17 Section 704A of the Illinois Income Tax Act. If such an
18 election is made, the amount of the credit that may be used
19 against the taxes imposed under subsections (a) and (b) of
20 Section 201 of the Illinois Income Tax Act shall be reduced
21 accordingly.

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

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

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

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

24 (Source: P.A. 96-834, eff. 12-14-09; 96-836, eff. 12-16-09;
25 96-905, eff. 6-4-10; 96-1000, eff. 7-2-10; 96-1534, eff.
26 3-4-11; 97-2, eff. 5-6-11; 97-636, eff. 6-1-12.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.