

# SB3296



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB3296

Introduced 2/19/2016, by Sen. Toi W. Hutchinson

#### SYNOPSIS AS INTRODUCED:

35 ILCS 5/704A

Amends the Illinois Income Tax Act. In a Section concerning withholding taxes, provides that the Department may require any withholding tax return and any W-2 Form that is required to be submitted to the Department to be submitted on magnetic media or electronically (currently, the Department may require the form to be submitted on magnetic media or electronically if the form is required to be submitted to the Internal Revenue Service on magnetic media or electronically). Provides that the due date for submitting W-2 Forms shall be as prescribed by the Department by rule. Effective immediately.

LRB099 19738 HLH 44136 b

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.

12 With respect to taxes withheld in calendar years prior to  
13 2017, any ~~Any~~ W-2 Form that, under the Internal Revenue Code  
14 and regulations promulgated thereunder, is required to be  
15 submitted to the Internal Revenue Service on magnetic media or  
16 electronically must also be submitted to the Department on  
17 magnetic media or electronically for Illinois purposes, if  
18 required by the Department.

19 With respect to taxes withheld in 2017 and subsequent  
20 calendar years, the Department may, by rule, require that any  
21 return (including any amended return) under this Section and  
22 any W-2 Form that is required to be submitted to the Department  
23 must be submitted on magnetic media or electronically.

24 The due date for submitting W-2 Forms shall be as  
25 prescribed by the Department by rule.

26 (g) For amounts deducted or withheld after December 31,

1 2009, a taxpayer who makes an election under subsection (f) of  
2 Section 5-15 of the Economic Development for a Growing Economy  
3 Tax Credit Act for a taxable year shall be allowed a credit  
4 against payments due under this Section for amounts withheld  
5 during the first calendar year beginning after the end of that  
6 taxable year equal to the amount of the credit for the  
7 incremental income tax attributable to full-time employees of  
8 the taxpayer awarded to the taxpayer by the Department of  
9 Commerce and Economic Opportunity under the Economic  
10 Development for a Growing Economy Tax Credit Act for the  
11 taxable year and credits not previously claimed and allowed to  
12 be carried forward under Section 211(4) of this Act as provided  
13 in subsection (f) of Section 5-15 of the Economic Development  
14 for a Growing Economy Tax Credit Act. The credit or credits may  
15 not reduce the taxpayer's obligation for any payment due under  
16 this Section to less than zero. If the amount of the credit or  
17 credits exceeds the total payments due under this Section with  
18 respect to amounts withheld during the calendar year, the  
19 excess may be carried forward and applied against the  
20 taxpayer's liability under this Section in the succeeding  
21 calendar years as allowed to be carried forward under paragraph  
22 (4) of Section 211 of this Act. The credit or credits shall be  
23 applied to the earliest year for which there is a tax  
24 liability. If there are credits from more than one taxable year  
25 that are available to offset a liability, the earlier credit  
26 shall be applied first. Each employer who deducts and withholds

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

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

1 liability. If there are credits from more than one calendar  
2 year that are available to offset a liability, the earlier  
3 credit shall be applied first. This Section is exempt from the  
4 provisions of Section 250 of this Act.

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

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.