

ILLINOIS REGISTER

DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

NOTICE OF PROPOSED AMENDMENTS

TITLE 14: COMMERCE

SUBTITLE C: ECONOMIC DEVELOPMENT

CHAPTER I: DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY

PART 527

ECONOMIC DEVELOPMENT FOR A GROWING ECONOMY PROGRAM (EDGE)

Section

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AUTHORITY: Implementing Section 5-15 and authorized by Section 5-80 of the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10/5-15 and 5-80] and the Business Location Efficiency Incentive Act. [35 ILCS 11].

SOURCE: Emergency rules adopted at 23 Ill. Reg. 10862, effective August 16, 1999, for a maximum of 150 days; emergency expired on January 22, 2000; adopted at 24 Ill. Reg. 6884, effective April 19, 2000; amended at 29 Ill. Reg. 1186, effective January 5, 2005; amended at 31 Ill. Reg. 8085, effective May 23, 2007; amended at 32 Ill. Reg. 8916, effective June 3, 2008.

Section 527.10 Purpose

The Department shall make Credit awards under the Act to foster job creation and retention in Illinois. [35 ILCS 10/5-15(a)(1)]

Section 527.20 Definitions

The following definitions are applicable to this Part.

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"Accessible and affordable mass transit" means access to transit stops with regular and frequent service within one mile from the project site and pedestrian access to transit stops.

"Act" means the Economic Development for a Growing Economy Tax Credit Act. [35 ILCS 10]

"Affordable workforce housing" means owner-occupied or rental housing that costs, based on current census data for the municipality where the project is located or any municipality within 3 miles of the municipality where the project is located, no more than 35% of the median salary at the project site, exclusive of the highest 10% of the site's salaries. If the project is located in an unincorporated area, "affordable workforce housing" means no more than 35% of the median salary at the project site, excluding the highest 10% of the site's salaries, based on the median cost of rental or of owner-occupied housing in the county where the unincorporated area is located.

"Agreement" means the ~~Tax Credit~~ Agreement *between a Taxpayer and the Department under the provisions of Section 5-50 of this Act. [-created pursuant to 35 ILCS 10/5-50]-*

"Applicant" means a Taxpayer that is operating a business located or that the Taxpayer plans to locate within the State of Illinois and that is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling, warehousing, or distributing products, conducting research and development, providing tourism services, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, retail food, health, or professional services. "Applicant" does not include a Taxpayer who closes or substantially reduces an operation at one location in the State and relocates substantially the same operation to another location in the State. This does not prohibit a Taxpayer from expanding its operations at another location in the State, provided that existing operations of a similar nature located within the State are not closed or substantially reduced. This also does not prohibit a Taxpayer from moving its operations from one location in the State to another location in the State for the purposes of expanding the operation provided that the Department determines that expansion cannot reasonably be accommodated within the municipality in which the business is located, or in the case of a business located in an incorporated area of the county, within the county in which the business is located, after conferring with the chief elected official of the municipality or county and taking into consideration any evidence

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offered by the municipality or county regarding the ability to accommodate expansion within the municipality or county. [35 ILCS 10/5-5]

"Business Location Efficiency Incentive" means the incentive created by the Business Location Efficiency Incentive Act. [35 ILCS 11].

"Capital improvements" shall include the purchase, renovation, rehabilitation, or construction of permanent tangible land, buildings, structures, equipment and furnishings in an approved project sited in Illinois and in expenditures for goods or services that are normally capitalized, including organizational costs and research and development costs incurred in Illinois. For land, buildings, structures and equipment that are leased, the lease must equal or exceed the term of the Tax Credit Agreement and the cost of the property shall be determined from the present value, using the corporate interest rate prevailing at the time of the application, of the lease payments.

"Credit" means the amount agreed to between the Department and Applicant under this Act, but not to exceed the lesser of: (1) the sum of (i) 50% of the Incremental Income Tax ~~payroll~~ attributable to New Employees at the Applicant's project and (ii) 10% of the training costs of New Employees; or (2) 100% of the Incremental Income Tax attributable to New Employees at the Applicant's project. However, if the project is located in an underserved area, then the amount of the Credit may not exceed the lesser of: (1) the sum of (i) 75% of the Incremental Income Tax attributable to New Employees at the Applicant's project and (ii) 10% of the training costs of New Employees; or (2) 100% of the Incremental Income Tax attributable to New Employees at the Applicant's project. If an Applicant agrees to hire the required number of New Employees, then the maximum amount of the Credit for that Applicant may be increased by an amount not to exceed 25% of the Incremental Income Tax attributable to Retained Employees at the Applicant's project; provided that, in order to receive the increase for Retained Employees, the Applicant must provide the additional evidence required under paragraph (3) of subsection (b) of Section 5-25. [35 ILCS 10/5-~~4~~5]

"Department" means the Illinois Department of Commerce and Economic Opportunity, ~~formerly known as the Illinois Department of Commerce and Community Affairs.~~ [35 ILCS 10/5-5]

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"Director" means the Director of the Illinois Department of Commerce and Economic Opportunity, ~~formerly known as the Illinois Department of Commerce and Community Affairs.~~ [35 ILCS 10/5-5]

"Employee housing or transportation remediation plan" means a plan to increase affordable housing or transportation options, or both, for employees earning up to the median annual salary of the workforce at the project. The plan may include, but is not limited to, an employer-financed assisted housing program that can be supplemented by State or federal grants or shuttle services between the place of employment and existing transit stops or other reasonably accessible places.

"Existence of infrastructure" means the existence, within 1,500 feet of the proposed site, of roads, sewers, sidewalks, and other utilities and a description of the investments or improvements, if any, that an applicant expects State or local government to make to that infrastructure.

"Full-time ~~E~~mployee" means an individual who is employed for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment. [35 ILCS 10/5-5] Annually scheduled periods for inventory or repairs, vacations, holidays and paid time for sick leave, vacation or other leave shall be included in this computation of full-time employment. An individual for whom a W-2 is issued by a Professional Employer Organization (PEO) is a full-time employee if employed in the service of the Applicant for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment to the Applicant. [35 ILCS 10/5-5] For example, an employee who works 25 hours per week is considered the industry standard for full-time in the package delivery industry and an employee who is employed for a least 35 hours per week during the historical seasonal production is considered the industry standard for full-time in the candy manufacturing industry.

"Incremental Income Tax" means the total amount withheld during the taxable year from the compensation of New Employees and, if applicable, Retained Employees under Article 7 of the Illinois Income Tax Act arising from employment at incremental payroll attributable to a project that is the subject of an Agreement. [35 ILCS 10/5-5]

~~"Incremental payroll" means the total amount withheld by the taxpayer during the taxable year from the compensation of new employees and retained employees~~

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~~under Article 7 of the Illinois Income Tax Act [35 ILCS 5/Art. 7] arising from such employees' employment at a project that is the subject of an Agreement.~~

"Labor Surplus Area" or "LSA" must have an average unemployment rate at least 20 percent above the average rate for all states (plus the District of Columbia and Puerto Rico) during the previous two calendar years. However, the 20 percent ratio is disregarded:

when this 2-year average for all states is 8.3 percent or above, an average unemployment rate of 10 percent or more will qualify an area, and

when the all-states' average is 5.0 percent or less, an area will qualify with a 6.0 percent average.

The U.S. Department of Labor issues the labor surplus area listing on a fiscal year basis. The listing becomes effective each October 1 and remains in effect through the following September 30, but may be updated at any time during the fiscal year based on exceptional circumstance petitions. LSAs are classified on the basis of civil jurisdictions (cities with a population of at least 25,000 and all counties). LSAs are authorized by Public Law 96-302 and 20 CFR 654.

"Local workforce investment area" means a single county or multiple counties designated by the Governor, which allows for the receipt of an allotment of funds under Sections 127(b) or 132(b) of the Workforce Innovation and Opportunity Act, P.L. 113-128 (2014) ("WIOA"), with considerations consisting of the extent to which the areas - (i) are consistent with labor market areas in the State; (ii) are consistent with regional economic development areas in the State; and (iii) have available the Federal and non-Federal resources necessary to effectively administer activities under subtitle B and other applicable provisions of WIOA, including whether the areas have the appropriate education and training providers, such as institutions of higher education and area career and technical education schools.

"Location efficient" means a project that maximizes the use of existing investments in infrastructure, avoids or minimizes additional government expenditures for new infrastructure, and has nearby housing affordable to the permanent workforce of the project or has accessible and affordable mass transit or its equivalent or some combination of both.

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"Location efficiency report" means a report that is prepared by an applicant for increased State economic development assistance, under Section 10 of the Business Location Efficiency Incentive Act [35 ILCS 11/10] and follows that Act, and that describes the existence of affordable workforce housing or accessible and affordable mass transit or its equivalent. [35 ILCS 11/5]

"New Employee" means:

(a) ~~A~~ Full-~~T~~ime Employee first employed by a Taxpayer in the project that is the subject of an Agreement and who is hired after the Taxpayer enters into the ~~t~~Fax ~~c~~Credit Agreement and who continues to be employed by the Taxpayer on the last day of the taxable year for which the Taxpayer seeks a Credit under this Act.

(b) The term "~~n~~New ~~e~~Employee" does not include:

(1) an employee of the Taxpayer who performs a job that was previously performed by another employee, if that job existed for at least 6 months before hiring the employee;

(2) an employee of the Taxpayer who was previously employed in Illinois by a Related Member of the Taxpayer and whose employment was shifted to the Taxpayer after the Taxpayer entered into the ~~t~~Fax ~~c~~Credit Agreement;

~~an employee of the taxpayer who was previously employed in Illinois by the taxpayer and whose employment was shifted to the taxpayer project after the taxpayer entered into the Tax Credit Agreement; or~~

(3) any individual who has a direct or an indirect ownership interest of at least 5% in the profits, equity, capital, or value of the Taxpayer or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or an indirect ownership interest of at least 5% in the profits, equity, capital, or value of the Taxpayer; or

~~(3)~~(4) an employee of the Taxpayer who was previously employed in Illinois by the Taxpayer and whose employment

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was shifted to the project after the Taxpayer entered into the tax credit Agreement.

(c) Notwithstanding paragraph (1) of subsection (b), a~~An~~ employee may be considered a ~~N~~ew ~~E~~mployee under the Agreement if the employee performs a job that was previously performed by an employee who was:

(1) -treated under the Agreement as a ~~N~~ew ~~E~~mployee; and

(2) promoted by the ~~T~~axpayer to another job. [35 ILCS 10/5-5]

(d) Notwithstanding subsection (a), the Department may award a Credit to an Applicant with respect to an employee hired prior to the date of the Agreement if:

(1) the Applicant is in receipt of a letter from the Department stating an intent to enter into a credit Agreement;

(2) the letter described in paragraph (1) is issued by the Department not later than 15 days after the effective date of this Act; and

(3) the employee was hired after the date the letter described in paragraph (1) was issued.

(e) An employee shall be considered a new employee under the Agreement if the employee fills a job vacancy that had been continuously vacant for the 184 day period immediately preceding the date of the Agreement. A job vacancy whose incumbent is on approved leave, is locked out or is on strike is not a vacancy.

“Noncompliance Date” means, in the case of a Taxpayer that is not complying with the requirements of the Agreement or the provisions of this Act, the day following the last date upon which the Taxpayer was in compliance with the requirements of the Agreement and the provisions of this Act, as determined by the Director, pursuant to Section 5-65. [35 ILCS 10/5-5]

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“Pass Through Entity” means an entity that is exempt from the tax under subsection (b) or (c) of Section 205 of the Illinois Income Tax Act. [35 ILCS 10/5-5]

"Placed in service" means the state or condition of readiness and availability for a specifically assigned function.

"Professional Employer Organization" or "PEO" means an employee leasing company that is an individual or entity contracting with a client to supply or assume responsibility for personnel management of one or more workers to perform services for the client on an on-going basis rather than under a temporary help arrangement, as defined in Section 206.1(A)(2) of the Illinois Unemployment Insurance Act [820 ILCS 405]. [35 ILCS 10/5-5]

"Professional services" means a taxpayer engaged in the practice of law or medicine.

"Project" means a for-profit economic development activity or activities at a single site, or of one or more taxpayers at multiple sites if the economic activities are vertically integrated.

"Project costs" includes cost of the **P**project incurred or to be incurred by the taxpayer including: *capital investment, including, but not limited to, equipment, buildings, or land; infrastructure development; debt service, except refinancing of current debt; research and development; job training and education; lease costs or relocation costs*, but excludes the value of State incentives, including discretionary tax credits, discretionary job training grants, or the interest savings of below market rate loans. [35 ILCS 10/5-30]

“Related Member” means a person that, with respect to the Taxpayer during an portion of the taxable year, is any one of the following:

(1) An individual stockholder, if the stockholder and the members of the stockholder’s family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of the Taxpayer’s outstanding stock.

(2) A partnership, estate, or trust of any partner or beneficiary, if the partnership, estate, or trust, and its partners or beneficiaries own

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directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, equity, capital, stock, or value of the Taxpayer.

(3) A corporation, and any party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the Taxpayer owns directly, indirectly, beneficially, or constructively at least 50% of the value of the corporation's outstanding stock.

(4) A corporation and any party related to that corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code, if the corporation and all such related parties own in the aggregate at least 50% of the profits, equity, capital, stock, or value of the Taxpayer.

~~(4)~~(5) A person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code, except, for purposes of determining whether a person is a Related Member under this paragraph, 20% shall be substituted for 5% wherever 5% appears in Section 1563(e) of the Internal Revenue Code. [30 ILCS 10/5-5]

"Retained Employee" means a Full-Time Employee employed by a Taxpayer during the term of the Agreement whose job duties are directly and substantially-related to the pProject. For purposes of this definition, "directly and substantially-related to the Pproject" means at least two-thirds of the employee's job duties must be directly related to the Pproject and the employee must devote at least two-thirds of his or her time to the Pproject. The term "Retained Employee" does not include any individual who has a direct or an indirect ownership interest of at least 5% in the profits, equity, capital, or value of the Taxpayer or a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has direct or indirect ownership interest of at least 5% in the profits, equity, capital, or value of the taxpayer.

"Taxpayer" means an individual, corporation, partnership, or other entity that has any Illinois Income Tax liability. [35 ILCS 10/5-5]

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“Training costs” means costs incurred to upgrade the technological skills of Full-Time Employees in Illinois and includes: curriculum development; training materials (including scrap product costs); trainee domestic travel expenses; instructor costs (including wages, fringe benefits, tuition and domestic travel expenses); rent, purchase or lease of training equipment; and other usual and customary training costs. “Training costs” do not include costs associated with travel outside the United States (unless the Taxpayer receives prior written approval for such travel by the Department or Director based on a showing of substantial need or other proof that such training is not reasonably available within the United States), wages and fringe benefits of employees during periods of training, or administrative cost related to Full-Time Employees of the Taxpayer.

“Underserved area” means a geographic area that meets one or more of the following conditions:

- (1) the area has a poverty rate of at least 20% according to the latest federal decennial census, the most recent American Community Survey released by the U.S. Census Bureau or other appropriate data source produced by the U.S. Census Bureau;
- (2) 75% or more of the children in the area are eligible to participate in the federal free lunch or reduced-price meals program according to reported statistics from the State Board of Education for a period of at least two (2) consecutive calendar years preceding the date of the application;
- (3) at least 20% of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP) according to data from the U.S. Census Bureau for a period of at least two (2) consecutive calendar years preceding the date of the application; or
- (4) the area has an average unemployment rate, as determined by the Illinois Department of Employment Security, that is more than 120% of the national unemployment average, as determined by the U.S. Department of Labor, for a period of at least two (2) consecutive calendar years preceding the date of the application. [35 ILCS 10/5-5]

(Source: Amended at 32 Ill. Reg. 8916, effective June 3, 2008)

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Section 527.30 Eligibility Determination

- a) Any ~~T~~taxpayer that is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling, warehousing, or distributing products, conducting research and development, providing tourism services, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, retail food, health, or professional services is an eligible business. [\[35 ILCS 10/5-5\]](#)
- b) A ~~T~~taxpayer who is operating an eligible business that is located, or plans to be located, in the State of Illinois may be an "~~A~~applicant". Applicant does not include a ~~T~~taxpayer who closes or substantially reduces an operation at one location in the State and relocates substantially the same operation to another location in the State.
 - 1) This does not prohibit a ~~T~~taxpayer from expanding its operations at another location in the State, provided that existing operations of a similar nature located within the State are not closed or substantially reduced within the last two years. For the purpose of this Section, "substantially reduced" means a reduction in employment of 33.33% or more. [A Taxpayer may not enter into more than one \(1\) Agreement with respect to a single address or location for the same period of time. This provision does not preclude the Applicant from entering into an additional Agreement after the expiration of an earlier Agreement to the extent the Taxpayer's application otherwise satisfies the terms and conditions of the Act and is approved by the Department.](#)
 - 2) This also does not prohibit a taxpayer from moving its operations from one location in the State to another location in the State for the purpose of expanding the operation, provided that the Department determines that the expansion cannot reasonably be accommodated within the municipality in which the business is located, or in the case of a business located in an incorporated area of the county, within the county in which the business is located. A determination under this subsection (b)(2) shall be made by the Department after conferring with the chief elected official of the municipality or county and taking into consideration any evidence offered by the municipality or county regarding the ability to accommodate expansion within the municipality or county. [\[35 ILCS 10/5-15\]](#)

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- c) *In order to qualify for Credits under the Act, an ~~A~~applicant's ~~P~~project must:*
- 1) *~~if the Applicant has more than 100 employees, involve an investment of at least \$~~2,500,000~~ in capital improvements to be placed in service ~~and employ at least 25 new employees~~ within the State as a direct result of the ~~P~~project and the Applicant must employ a number of New Employees in the State equal to the lesser of (A) 10% of the number of Full-Time employees employed by the applicant world-wide on the date the application is filed with the Department or (B) 50 New Employees~~if the applicant has more than 100 employees at the time of the EDGE application; or*
 - 2) *~~if the Applicant has 100 or fewer employees, there is no capital improvement requirement but the Applicant must employ a number of New Employees in the State equal to the lesser of (A) 5% of the number of Full-Time Employees employed by the Applicant world-wide on the date the application is filed with the Department or (B) 50 New Employees~~involve an investment of at least \$1,000,000 in capital improvements to be placed in service and to employ at least 5 new employees within the State as a direct result of the project if the applicant has 100 or fewer employees at the time of the EDGE application.*
 - 3) ~~involve an investment at a level specified by the Department in capital improvements to be placed in service; employ new employees within the State at a level specified by the Department; and provide a substantial economic benefit to the State [35 ILCS 10/5-20], as determined by the Department.~~
 - A) ~~The Director may approve projects that do not meet the minimum job creation and investment thresholds specified in Section 527.30(e)(1) for an applicant meeting all other requirements in the Act and this Part provided that one or more of the following conditions are met:~~
 - i) ~~the applicant business is located in a distressed community with an unemployment rate that is higher than the State's average;~~
 - ii) ~~the applicant business is located in an area with limited economic development prospects as evidenced by prior and current development activities;~~

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- ~~iii) — approval would support a business with potential to generate additional growth in the area and create jobs as a result of spin-off businesses; or~~
- ~~iv) — approval would avert loss of one of the area's major sources of employment.~~
- ~~B) — The greater the impact on the economy of the area in which the applicant is located, the lower the amount of job creations and investment by the applicant that will be necessary for the Director to approve the application; or~~
- d) The ~~a~~Applicant must demonstrate that, if not for the credit, the ~~p~~Project would not occur in Illinois, which may be demonstrated by evidence that receipt of the Credit is essential to the Applicant's decision to create new jobs in the State, such as the magnitude of the cost differential between Illinois and a competing state. In the event that the Applicant is seeking an increase in the amount of the credit for Retained Employees, the Applicant must ~~by providing~~ documentation evidencing that:

 - 1) the ~~A~~applicant has multi-state location options and could reasonably and efficiently locate outside of the State; or
 - 2) demonstrating that at least one other state is being considered for the ~~P~~project. [35 ILCS 10/5-25]; ~~or~~
 - ~~3) — receipt of the credit is a major factor in the applicant's decision and that, without the credit, the applicant likely would not create new jobs in Illinois; or~~
 - ~~4) — the credit is essential to the applicant's decision to create or retain new jobs in the State.~~
- e) Identify a cost differential, using best available data, in the projected costs for the ~~A~~applicant's ~~P~~project compared to the costs in the competing state, including the impact of the competing state's incentive programs [35 ILCS 10/5-25], for example, by demonstrating:

 - 1) specific costs of labor, utilities, taxes and other costs of an out-of-state site or the industry's cost structure in the competing region; or

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- 2) specific cost differential due to the impact of a competing state's incentive programs.
- f) In order to qualify for increased EDGE benefits under the Business Location Efficiency Incentive Act, the Aapplicant must submit a location efficiency report that:
 - 1) describes the existence of infrastructure at the Project site and satisfies Business Location Efficiency Incentive Act's standards for affordable workforce housing or affordable and accessible mass transit; or
 - 2) if the Department determines from the location efficiency report that the applicant is seeking assistance in an area that is not location efficient, the Department may award an increase in State economic development assistance if an applicant submits, and the Department accepts, an employee housing and transportation remediation plan or creates jobs in a labor surplus area as defined by the Department of Employment Security at the end of each calendar year.

(Source: Amended at 31 Ill. Reg. 8085, effective May 23, 2007)

Section 527.40 Form of Application

- a) Applications will be accepted at any time during the year. The Department will provide interested Applicants with an application package upon request. Submittal of an application does not commit the Department to award assistance or to pay any costs, including the application fee, incurred by the Applicant in the preparation of an application.
- b) *Any Taxpayer proposing a Project located or planned to be located in Illinois may request consideration of its Project, by application to the Department, in which the Applicant states its intent to make at least a specified level of investment, if the Applicant has more than 100 employees, and intends to hire or retain a specified number of full-time employees at a designated location in Illinois as set forth Section 5-20 of the Act. [35 ILCS 10/5-20(a)]*
- c) Written applications will be required and must be submitted on the standard application form provided by the Department. Applications shall be submitted to the Department office location identified on the application. The application shall include:

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- 1) Application Cover Page – containing name, address, and telephone number of Aapplicant; key contact and title; total number of new employees to be hired and, where applicable, the number of Full-time Employees to be retained; company Federal Employer Identification Number (F.E.I.N.); Standard Industrial Code (S.I.C.); if available, Illinois Unemployment Insurance Account Code; State Senate District number; State Representative District number; authorized signatures; and related information.
- 2) Project Summary – *a detailed description of the Project that is to be the subject of the Agreement.* [35 ILCS 10/5-50(1)]
- 3) Site Map – an outline of the general location of the Project on a site map, including the location of any flood plain areas and wetland areas.
- 4) Jobs Impact – *a detailed description of the number of New Employees to be hired and the occupation and payroll of the full-time jobs to be created* [35 ILCS 10/5-50(9)] as a result of the Project, and a schedule of anticipated starting dates of the new hires. . In addition, the Applicant must provide the total number of Full-time Employees employed by the Applicant and any Related Member, subsidiary, parent, or sister company in the State of Illinois at the time of the Application. If the Applicant seeks a Credit with respect to Retained Employees, the occupation and payroll of the Full-time Employees to be retained as a result of the Project.
- 5) Capital Improvements Planned – *a detailed description of the investment the Taxpayer will make in Capital Improvements, and the designated location in Illinois for the investment.* [35 ILCS 10/5-50(10)] This shall include but not be limited to a description (or specifications or lists) of the planned Capital Improvements demonstrating the investment is qualified; documentation to substantiate the value of the investment (value of Capital Improvements as provided by appraisers, vendors, contractors and/or architects and engineers); and a schedule regarding when the eligible investment will be placed in service.
- 6) Total Project Costs – a detailed description of total Project Cost as defined in Section 527.20.
- 7) Competitive Requirements of the Project – evidence supplied by the

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Applicant demonstrating that, *if not for the Credit, the Project would not occur in Illinois, which may be demonstrated by evidence that receipt of the Credit is essential to the Applicant's decision to create new jobs in the State, such as the magnitude of the cost differential between Illinois and a competing state. In the event that the Applicant is seeking an increase in the amount of the credit for Retained Employees, the Applicant must provide documentation evidencing that any means, including, but not limited to:*

- A) ~~*evidence*~~ *the Applicant has multi-state location options and could reasonably and efficiently locate outside of the State, for example, documentation indicating firm interest in alternative non-Illinois locations, such as a prospective offer or letter; or*

- B) ~~*demonstrating*~~ *that at least one other state is being considered for the Project, for example, disclosure of sites of out-of-state location options that would receive the proposed investment and job creation in the event the business is not designated, which may include documentation such as incentive letters or prospective offers from other states. [35 ILCS 10/5-25]; or evidence the receipt of the Credit is a major factor in the Applicant's decision and that, without the Credit, the Applicant likely would not create new jobs in Illinois, for example, an affidavit signed by the Applicant stating that the Credit is a precondition to the Applicant's decision to create new jobs in the State; or*

- D) ~~*demonstration that receiving the Credit is essential to the Applicant's decision to create or retain new jobs in the State [35 ILCS 10/5-25(b)], for example, an affidavit signed by the Applicant stating that without the Credit the Applicant would not be inclined to create new jobs in the State.*~~

8) Cost Differential – documentation of a cost differential of alternative out-of-state sites, such as written information on non-Illinois sites under consideration, comparison of industry costs in other states, cost/benefit analyses of moving or closing the business, financial statements, internal memoranda, or any other financial documentation evidencing cost differential.

9) Financial Statement – a balance sheet and a profit and loss statement of

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the Taxpayer for the last two (2) years.

- 10) Other Provisions – any other provisions or information the Department determines is necessary to facilitate the Department's evaluation of the application.
- d) The Applicant is responsible for the accuracy of all data, information and documentation included in its application. Once submitted, applications shall become the property of the Department.
- e) Applications will not be evaluated unless the application fee has been included.
- f) *Any documentary materials or data made available or received by any member of a ~~Business Investment business development or other~~ Committee ("~~Committee~~") ~~formed by the Department of the Illinois Economic Development Board or any agent or employee of the Department shall be deemed confidential and shall not be deemed public records to the extent that the materials or data consist of trade secrets, commercial or financial information regarding the operation of the business conducted by the Applicant for, or recipient of, any Tax Credit under the Act, or any information regarding the competitive position of a business in a particular field of endeavor.~~ [35 ILCS 10/5-90(a)]*

Section 527.50 Application Review

- a) Prior to substantive evaluation of an application, the Department shall screen all applications to determine that all requirements of the application package have been addressed. Applicants will be notified of deficiencies in applications and given an opportunity to correct those deficiencies through submission of additional documentation.
- b) The Department shall evaluate applications in accordance with the policies ~~that have been~~ adopted by the ~~Business Investment Committee~~ Department or its Director. In evaluating applications, the Department shall determine that all of the following conditions exist:
 - 1) *the Applicant's Project intends to make the required investment in the State and intends to hire the required number of New Employees and, where applicable, to maintain the required number of Retained Employees in Illinois as a result of that Project.*

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- 2) *the Applicant's Project is economically sound and will benefit the people of the State of Illinois by increasing opportunities for employment and strengthen the economy of Illinois.*
- 3) *that, if not for the Credit, the Project would not occur in Illinois, which may be demonstrated by evidence that receipt of the Credit is essential to the Applicant's decision to create new jobs in the State, such as the magnitude of the cost differential between Illinois and a competing state In the event that the Applicant is seeking an increase in the amount of the credit for Retained Employees, the Applicant must provide documentation evidencing that any means, including, but not limited to, evidence the Applicant has multi-state location options and could reasonably and efficiently locate outside of the State, or demonstrating that at least one other state is being considered for the Project, ~~or evidence the receipt of the Credit is a major factor in the Applicant's decision and that, without the Credit, the Applicant likely would not create new jobs in Illinois, or demonstration that receiving the Credit is essential to the Applicant's decision to create or retain new jobs in the State.~~*
- 4) *a cost differential is identified, using best available data, in the projected costs for the Applicant's Project compared to the costs in the competing state, including the impact of the competing state's incentive programs. The competing state's incentive programs shall include state, local, private, and federal funds available.*
- 5) *the political subdivisions affected by the Project have committed local incentives with respect to the Project, considering local ability to assist.*
- 6) *awarding the Credit will result in an overall positive fiscal impact to the State, as certified by the Committee, using the best available data. [35 ILCS 10/5-25(b)]*
- 7) *if appropriate, an Applicant that has moved its operations from one political subdivision in the State to another political subdivision (and that has been determined by the Department to be an eligible Applicant) has demonstrated that it is not claiming a tax credit with respect to any jobs that the Taxpayer relocates from one site in Illinois to another site in Illinois.*

- c) An Applicant may not enter into more than one (1) Agreement with the

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Department with respect to the same location or address for the same period of time. This provision does not preclude the Applicant from entering into an additional Agreement after the expiration of an earlier Agreement to the extent the Taxpayer's application otherwise satisfies the terms and conditions of the Act and is approved by the Department.

- d) The Department reserves the right to request the Committee *to convene, make inquiries, and conduct studies in the manner and by the methods it deems desirable, review information with respect to Applicants, and make recommendations on Projects to benefit the State. Recommendations that an Applicant's application for Credit should or should not be accepted shall occur within a reasonable time frame as determined by the nature of the application.* [35 ILCS 10/5-25(b)]

Section 527.60 Application Denial/Approval

- a) Applicants shall be notified in writing as to the Department's evaluation of all completed applications. If the Department denies an application for the Credit, it will specify the reasons for the denial in writing and allow the Applicant 30 days to amend and resubmit its application for evaluation. If the Applicant disagrees with the Department's decision it may seek relief through the process afforded in the Department's Administrative Hearing Rules set forth at 47-56 Ill. Adm. Code 10-2605 (Administrative Hearing Rules Review and Appeal Procedures).
- b) The Department will negotiate a formal Agreement with Applicants determined to be eligible for the award of a Credit. *For tax years beginning on or after January 1, 1999, a Taxpayer who has entered an Agreement under the Economic Development for a Growing Economy Tax Credit Act is entitled to a credit against the taxes imposed under Section 201(a) and (b) of the Illinois Income Tax Act [35 ILCS 5/201(a) and (b)] in an amount to be determined in the Agreement.* [35 ILCS 5/211]

Section 527.70 Determination of Amount and Term of the Credit

- a) *The Department shall determine the amount and duration of the Credit awarded under the Act. The duration of the Credit may not exceed 10 taxable years.* [35 ILCS 10/5-45] *In determining the appropriate amount and duration of a Credit to be awarded to a Taxpayer, the Department shall take into consideration the following additional factors:*

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- 1) *The number and location of jobs created and retained in relation to the economy of the county where the projected investment is to occur.*
 - 2) *The potential impact of the Project on the economy of Illinois.*
 - 3) *The magnitude of the cost differential between Illinois and the competing states.*
 - 4) *The incremental payroll attributable to the Project.*
 - 5) *The capital investment attributable to the Project.*
 - 6) *The amount of the average wage and benefits paid by the Applicant in relation to the wage and benefits of the area of the Project.*
 - 7) *The costs to Illinois and the affected political subdivisions with respect to the Project.*
 - 8) *The financial assistance that is otherwise provided by Illinois and the affected political subdivisions. [35 ILCS 10/5-40]*
- b) *The Credit may be stated as a percentage of the Incremental Income Tax attributable to the Applicant's Project and may include a fixed dollar limitation. [35 ILCS 10/5-45]*
- c) *The Credit shall not exceed the Incremental Income Tax-Payroll attributable to the Project that is the subject of an Agreement. [35 ILCS 10/5-15(d)]*
- d) *The total amount of the Credit allowed during all tax years may not exceed the aggregate amount of costs incurred by the Taxpayer during all prior tax years to the extent provided in the Agreement of Project Costs. [35 ILCS 10/5-30]*
- e) Applicants that qualify for increased EDGE benefits under the Business Location Efficiency Incentive Act may receive:
- 1) up to 10 percent more than the maximum allowable tax credits for which they are eligible under the Act, but not to exceed 100 percent of the Applicant's tax liability; or
 - 2) such other adjustments of those tax credits, including but not limited to

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authorizing the term of the credit to exceed 10 taxable years, as the Department deems appropriate to foster job creation and retention in Illinois.

- f) Nothing in this Section shall prohibit a Tax Credit Award to an Applicant that uses a Professional Employer Organization if all other award criteria are satisfied.

(Source: Amended at 32 Ill. Reg. 8916, effective June 3, 2008)

Section 527.80 Tax Credit Agreement

The Department and each Taxpayer whom the Department determines qualifies for a Credit under the Act shall enter into an Agreement that specifies terms and conditions regarding the provision of the Credit and defines the rights and responsibilities of the Taxpayer and the Department. Provisions that the Taxpayer will be contractually bound to comply with include, but are not limited to, the following:

- a) *A detailed description of the Project that is the subject of the Agreement, including the location and amount of the investment and jobs created or retained.*
- b) *The duration of the Credit and the first taxable year for which the Credit may be claimed.*
- c) *The Credit amount that will be allowed for each taxable year*
- da) *A requirement that the Taxpayer shall maintain operations at the ~~p~~Project location that shall be stated as a minimum number of years not to exceed 10 less than 10.*
- be) *A specific method for determining the number of New Employees and Retained Employees employed during a taxable year.*
- fe) *A requirement that the Taxpayer shall annually report to the Department the number of New Employees and Retained Employees, the Incremental Income Tax Payroll withheld in connection with the New Employees and Retained Employees, and any other information the Department requires to ensure compliance with this Act, the Agreement, or other applicable law.*
- gd) *A requirement that the Director or Department is authorized to verify with the appropriate State agencies information required to be reported by the Taxpayer.*

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- he) *A requirement that the Taxpayer shall provide written notification to the Department not more than 30 days after the Taxpayer makes or receives a proposal that would transfer the Taxpayer's State tax liability obligations to a successor Taxpayer.*
- i) *A detailed description of the number of New Employees to be hired and Retained Employees to be maintained, and the occupation and payroll of the full-time jobs to be created or retained as a result of the project*
- j) *The Agreement shall include the total number of Full-time Employees employed by the Applicant and any Related Member, subsidiary, parent, sister, and any other related or associated company in the State of Illinois at the time of the Application (the "baseline"), and a provision that allowance of the Credit shall be suspended if the number of Full-time Employees employed by the Taxpayer in Illinois falls below that baseline until the number of Full-time Employees equals or exceeds the baseline amount identified in the Agreement.*
- k) *The minimum investment the business enterprise will make in capital improvements, if applicable, the time period for placing the property in service, and the designated location in Illinois for the investment.*
- lf) *A requirement that the Taxpayer shall provide written notification to the Department not more than 30 days after the Taxpayer determines that the minimum job creation or retention, employment payroll, or investment no longer is being or will be achieved or maintained as set forth in the terms and conditions of the Agreement.*
- mg) *A provision that, if the total number of New Employees and Retained Employees falls below a specified level, the allowance of Credit shall be suspended until the number of New Employees and Retained Employees equals or exceeds the Agreement amount. [35 ILCS 10/5-50]*
- n) *A detailed description of the items for which the costs incurred by the Taxpayer will be included in the limitation on the Credit provided in Section 5-30.*
- o) *A provision that, if the Taxpayer never meets either investment or job creation and retention requirements specified in the Agreement during the entire 5-year period beginning on the first day of the first taxable year in which the Agreement is executed and ending on the last day of the fifth taxable year after the*

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Agreement is executed, then the Agreement is automatically terminated on the last day of the fifth taxable year after the Agreement is executed and the Taxpayer is not entitled to the award of any credits for any of that 5-year period.

- p) A provision specifying that, if the Taxpayer ceases principal operations with the intent to shut down the project in the State permanently during the term of the Agreement, then the entire credit amount awarded to the Taxpayer prior to the date the Taxpayer ceases principal operations shall be returned to the Department and shall be reallocated to the local workforce investment area in which the project is located.
- qh) Any other performance conditions or contract provisions as that the Department determines are necessary to comply with the Act and other applicable State laws and administrative rules. [35 ILCS 10/5-50]

Section 527.90 Certificate of Verification

- a) The Taxpayer shall notify the Department on forms provided by the Department when the minimum eligible capital improvement investments have been placed in service and the minimum New Employee jobs have been created and that Retained Employees remain employed by the Taxpayer.
- b) The Taxpayer shall provide, for land and/or building acquisition, a copy of the purchase agreement; for building construction or renovation, a contractor's or architect's cost certification; for space rental, a rental/lease agreement.
- c) *For a Taxpayer to be eligible for a certificate of verification, the Taxpayer shall provide proof as required by the Department prior to the end of each calendar year, including, but not limited to, attestation by the Taxpayer that the Project:*
- 1) *has achieved the level of Full-time New Employees and Retained Employees specified in the Agreement;*
 - 2) *has achieved the level of annual payroll in Illinois specified in the Agreement;*
 - 3) *has achieved the level of capital investment in Illinois specified in the Agreement;*
 - 4) has maintained the baseline employment specified in the Agreement; and

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5) the Taxpayer has materially complied with the terms of the Agreement and is not otherwise in violation of any provision of the Act.

- d) Upon receipt of valid proof from the Taxpayer, the Department shall provide the Taxpayer with a Certificate of Verification.
- e) *A Taxpayer claiming a Credit under the Act shall submit to the Department of Revenue a copy of the Director's certificate of verification under the Act for the taxable year. However, failure to submit a copy of the certificate with the Taxpayer's tax return shall not invalidate a claim for a Credit. [35 ILCS 10/5-55]*

Section 527.100 Noncompliance with the Agreement

- a) *If the Department determines that a Taxpayer who has received a Credit under the Act is not complying with the requirements of the Agreement or all of the provisions of the Act, the Director shall provide notice to the Taxpayer of the alleged noncompliance, and allow the Taxpayer a hearing under the provisions of the Illinois Administrative Procedure Act [5 ILCS 100]. If, after notice and any hearing, the Director determines that a noncompliance exists, the Director shall issue to the Department of Revenue notice to that effect, stating the Noncompliance Date. [35 ILCS 10/5-65] Alleged noncompliance shall include:*
- 1) demonstration that the Taxpayer would have placed in service the capital investment and created or retained the requisite number of New Employee jobs without the benefits of certification. Proof of this shall include, but is not limited to, correspondence, financial plans and prospectuses, internal memoranda and other written documentation demonstrating the Taxpayer would have taken the actions without the designation;
 - 2) demonstration that the Taxpayer failed materially to comply with the terms and conditions of the Agreement;
 - 3) a determination upon investigation that the Taxpayer or any of its agents or representative provided business false or misleading ified application information to the Department in violation of 14 Ill. Adm. Code 520.730(f);
 - 4) a failure to submit the annual report required by Section 5-57 of the Act;
or

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- 5) a failure to submit an annual progress report ~~by an applicant~~ pursuant to an employee housing and transportation plan or a determination by the Department that adequate progress is not being made by the ~~applicant~~ Taxpayer to implement the plan, which will result in the revocation of the increased tax credits, extension of the term of the credit and/or other adjustments awarded pursuant to the Business Location Efficiency Incentive Act.
- b) The Department shall notify a Taxpayer in writing that it is subject to revocation. Such notice shall include the reason for revocation and the date and location of a hearing to be held pursuant to ~~4756~~ Ill. Adm. Code ~~260510~~ (~~Administrative Hearing Rules~~ Review and Appeal Procedures).
- c) Following revocation the Department will contact the Director of the Illinois Department of Revenue who shall begin proceedings to recover wrongfully exempted State taxes.

Section 527.110 Recapture and Reallocation of Recaptured Amounts

- a) *If, during the term of an Agreement, the Taxpayer ceases principal operations at a project location that is the subject of that Agreement with the intent to terminate operations in the State, the Department and the Department of Revenue shall recapture from the Taxpayer the entire Credit amount awarded under the Agreement prior to the date the taxpayer ceases principal operations.*
- 1) *If the Department determines that a Taxpayer ceases principal operations at a project location that is the subject of that Agreement with the intent to terminate operations in the State, the Director shall provide notice to the Taxpayer of such determination and allow the Taxpayer a hearing under the provisions of the Illinois Administrative Procedure Act. [5 ILCS 100] Example of activities that evidence a cessation of operation at a project location with an intent to terminate operations in the State include, but are not limited to: (i) a reduction of or WARN notices reflecting layoffs or reductions in excess of 65% of the Full-time Employees located at the project site from that reported by the Taxpayer as of the end of the most recent taxable year; (ii) a reduction of or WARN notices reflecting layoffs or reductions in excess of 50% of the Full-time Employees located at the project site from that reported by the Taxpayer as of the end of the most recent taxable year where the Taxpayer plans to relocate a majority of the*

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positions being reduced or laid off outside of Illinois; (iii) the Taxpayer reports a discontinuance of operations that includes any component of the project; (iv) public announcements or other media reflecting an intent to relocate project operations outside the State; or (v) any other information the Department determines reflects an intent to discontinue operations at the project site. A temporary cessation for retooling or maintenance lasting less than twelve (12) months does not constitute a cessation of operation at a project location with an intent to terminate operations in the State.

2) The Department shall notify a Taxpayer in writing that it is subject to recapture. Such notice shall include the reason for revocation and the date and location of a hearing to be held pursuant to 56 Ill. Adm. Code 2605 (Administrative Hearing Rules).

3) Following a determination that Credits received pursuant to an Agreement are subject to recapture, the Department will contact the Director of the Illinois Department of Revenue who shall begin proceedings to such amounts to be reallocated by the Department pursuant to Section 6-65 of the Act.

b) The Department shall, subject to appropriation, reallocate the recaptured amounts to the local workforce investment area, either by direct use of those or through grants as set forth more fully below, in which the Project was located for the purposes of workforce development, expanded opportunities for unemployed persons, and expanded opportunities for women and minorities in the workforce. [35 ILCS 10/5-65]

1) Any county, municipality, or other entity (“Grant Applicant”) may apply for a grant from the Department under this Section for the purposes of workforce development, expanded opportunities for unemployed persons, and expanded opportunities for women and minorities in the workforce in the local workforce investment area (a “Grant”).

a. An application should be submitted on the standard application form provided by the Department specifically setting forth how Grant-related activities would directly support workforce development, expanded opportunities for unemployed persons, and expanded opportunities for women and minorities in the workforce in the local workforce investment area.

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- b. The Department will evaluate applications based on the extent to which the Grant Applicant demonstrates that the proposed Grant-related activities will directly support the purposes of this Section.
 - c. Grant Applicants shall be notified in writing as to the Department's evaluation of all completed Grant applications. If the Department denies a Grant application, it will specify the reasons for the denial in writing and allow the Applicant 30 days to amend and resubmit its application for evaluation.
 - d. The Department shall determine the amount of funds awarded to any Grant Applicant under this Section.
 - e. Upon approval of a Grant application, the Department shall enter into a Grant agreement with the Grant Applicant in accordance with the Grant Accountability and Transparency Act, 30 ILCS 708/1, *et seq.*, as containing such terms and conditions as the Department deems necessary and proper to effect the purposes of the Act.
- 2) Such funds shall be distributed in accordance with the Grant Accountability and Transparency Act, 30 ILCS 708/1, *et seq.*, and any other applicable State laws.

(Source: Amended at 31 Ill. Reg. 8085, effective May 23, 2007)