

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Number: 100.2136 Proposed Action:
New Section
- 4) Statutory Authority: Implementing Section 239 as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of the Department of Revenue Law [20 ILCS 2505/2505-795].
- 5) A Complete Description of the Subjects and Issues Involved: The proposed rule implements the new Section 239 of the Illinois Income Tax Act, 35 ILCS 5/239, as created and amended by P.A. 102-0700. For tax years beginning on or after January 1, 2025, taxpayers may claim a Manufacturing Illinois Chips for Real Opportunity (MICRO) Investment tax credit for investment in qualified property which is placed in service at the site of a MICRO Illinois Project subject to an agreement between the taxpayer and the Illinois Department of Commerce and Economic Opportunity pursuant to the MICRO Act, 35 ILCS 45. The amount of the credit is equal to 0.5% of the basis of the qualified property and is allowed for the tax year in which the property is placed in service, or if the amount of the credit exceeds the tax liability for that year, the excess credit amount may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? Proposed rulemaking incorporates the definition of "Project" or "MICRO Illinois Project" found in 35 ILCS 45/110-10.
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citations</u>
100.2179	New Section	47 Ill. Reg. 16353; November 17, 2023

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100.7034	New Section	47 Ill. Reg. 18412; December 15, 2023
100.9730	Amendment	47 Ill. Reg. 18412; December 15, 2023

11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.

12) Time, Place, and Manner in which interested persons may comment on this proposed

rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Jennifer Uhles
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844
REV.GCO@illinois.gov

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Manufacturing companies that are also small businesses and meet the credit requirements would benefit from the credit.

B) Reporting, bookkeeping or other procedures required for compliance: Ability to determine whether property qualifies for the credit, ability to determine the basis of qualified property placed in service at a MICRO Illinois Project site, and ability to track and monitor the use of qualified property at a MICRO Illinois Project site over a period of time.

C) Types of professional skills necessary for compliance: Accounting; General business acumen

14) Small Business Impact Analysis: Positive impact for any small businesses that qualify for the credit. No adverse impact on other small businesses.

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- A) Types of businesses subject to the proposed rule;
31-33 Manufacturing
- B) Categories that the agency reasonably believes the rulemaking will impact, including:
vi. equipment and material needs
viii. record keeping

15) Regulatory Agenda on which this rulemaking was summarized: July 2023

The full text of the Proposed Amendment begins on the next page:

Section 100.2136 MICRO Investment Tax Credit (IITA Section 239)

- a) For tax years beginning on or after January 1, 2025, a taxpayer shall be allowed a credit against the tax imposed by IITA Section 201(a) and (b) for investment in qualified property which is placed in service at the site of a project that is subject to an agreement between the taxpayer and the Department of Commerce and Economic Opportunity (DCEO) pursuant to the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act [35 ILCS 45] (MICRO Act). (IITA Section 239(a))
- b) For the purposes of the MICRO Investment Tax Credit, "Project" or "MICRO Illinois Project" shall have the same meaning as when used in Section 110-10 of the MICRO Act.
- c) The credit shall be 0.5% of the basis for such property. (IITA Section 239(a))
- d) The credit shall be available only in the taxable year in which the property is placed in service and shall not be allowed to the extent that it would reduce a taxpayer's liability for the tax imposed by IITA Section 201(a) and (b) to less than zero. The credit shall be allowed for the tax year in which the property is placed in service, or if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a liability. If there is credit from more than one tax year that is available to

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offset a liability, the earlier credit shall be applied first. (IITA Section 239(a))

- e) The credit allowed under this Section shall be taken in the taxable year that includes the date of the tax credit certificate issued by DCEO under Section 110-100 of the MICRO Act.
- f) The term “qualified property” means property which:
 - 1) is tangible, whether new or used:
 - A) Tangible property includes objects or things that are physically capable of being touched and seen and over which a person may assert rights of ownership.
 - B) Tangible property consists of personal or real property and includes such items as buildings, structural components of buildings, machinery, equipment, and vehicles.
 - C) Items such as stock certificates, bonds, notes and the like are not tangible personal property. While the certificate or paper may be tangible, the item itself, the share of ownership of a corporation or the promise to pay, is an intangible that is memorialized by the paper.
 - D) The terms “new or used” shall have their commonly ascribed meanings.
 - 2) is depreciable pursuant to Internal Revenue Code (IRC) Section 167, except that “3-year property” as defined in IRC Section 168 is not eligible for the credit provided by IITA Section 239;
 - A) Depreciable property is property used in the trade or business of a taxpayer, or held for production of income, which is subject to wear and tear, exhaustion, or obsolescence.
 - B) Property that is depreciated under the Modified Accelerated Cost Recovery System (MACRS), as provided by IRC

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Section 168, is considered depreciable pursuant to IRC Section 167 for purposes of this credit.

- C) Examples of tangible property that is not depreciable include land, inventories or stock-in-trade, natural resources, and coin or currency.
 - D) The provisions of Internal Revenue Service (IRS) Regulation Section 1.167(a)-4 will be utilized in making determinations as to whether particular leasehold improvements are depreciable.
 - E) IRC Section 179 allows taxpayers, under certain circumstances, to expense a designated dollar amount of equipment purchased in a single tax year. Based on this provision, if the total cost of the property was equal to or less than the amount specified under IRC Section 179, the taxpayer has the option of expensing the cost all in one year as a depreciation expense. While the property does have a useful life of four or more years, since the election was made to completely expense the cost of the property in one year, the property has no federal depreciable basis and does not have a basis upon which to compute the MICRO Investment Tax Credit. Property not fully expensed under IRC Section 179 would qualify for the credit based on the cost of the depreciable property reduced by the IRC Section 179 deduction.
- 3) *is acquired by purchase as defined in IRC Section 179(d):*
- A) A purchase is any acquisition of property except
 - i) an acquisition from a person whose relationship to the acquiring person is such that a resulting loss would be disallowed under IRC Sections 267 or 707(b),
 - ii) an acquisition by one component member of a controlled group from another component member of the same controlled group,

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- iii) an acquisition of property if the basis of the property in the hands of the person acquiring it is determined in whole or in part by its adjusted basis in the hands of the person from whom the property was acquired, or
 - iv) an acquisition of property, the basis of which is determined under IRC Section 1014(a). IRC Section 1014(a) covers property received from a decedent. Property acquired by bequest or demise is not acquired by purchase.
 - B) For purposes of determining whether property is acquired by purchase as defined by IRC Section 179(d), the family of an individual includes only the individual's spouse and the ancestral and lineal descendants of the individual and the individual's spouse.
 - C) For purposes of determining whether property is acquired by purchase only, a controlled group has the same meaning as in IRC Section 1563(a), except stock ownership of only 50% or more is required (also see 26 C.F.R. 1.179-4).
 - D) Property that the taxpayer constructs, reconstructs or erects is generally considered acquired by purchase.
 - E) A lessee of tangible property may never claim the credit because a lessee has not acquired the property by purchase.
- 4) *is used at the site of the MICRO Illinois Project by the taxpayer; and*
 - A) The term "used at the site of the MICRO Illinois Project" means that the property for which the credit is being claimed is physically located within the boundaries of a MICRO Illinois Project site certified by DCEO. Storage of property in a MICRO Illinois Project site will not constitute use. The taxpayer must make use of, convert to its service, avail itself of, or employ the property in the MICRO Illinois Project site in order to demonstrate use of the property.

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- B) Mobile property, such as vehicles, must be used predominantly at the MICRO Illinois Project site in order to qualify for the credit.
 - i) Removal of such property from the MICRO Illinois Project site for a temporary or transitory purpose will not disqualify the property so long as it continues to be used predominantly in the Illinois operation of the taxpayer at the MICRO Illinois Project site.
 - ii) Mobile property is considered to be predominantly used at the MICRO Illinois Project site if usage at the site exceeds usage outside the site. For example, if a taxpayer sometimes uses its trucks based at a MICRO Illinois Project site to deliver goods both in Illinois and out-of-state, then the temporary absence of its trucks from the MICRO Illinois Project site does not disqualify them as qualified property used at the site by the taxpayer.

- C) A lessor may claim the credit for otherwise qualified property if the property is physically located in a MICRO Illinois Project site from the time it is placed in service and all other conditions of eligibility for the credit are met.

- 5) has not been previously used in Illinois in such a manner and by such a person as would qualify for the credit provided by this Section. (IITA Section 239(b))
 - A) Generally, used property will not qualify for the credit if it was previously used in Illinois in such a manner and by such a person that it could have qualified for the credit.

 - B) However, property that would otherwise qualify for the credit will not be disqualified because it was previously used in Illinois in such a manner and by such a person that it could have qualified for the credit, if that use pre-dated the effective date of the law that established the credit.

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EXAMPLE 1: Corporation A purchases a used pickup truck for use at its MICRO Illinois Project site from an Illinois resident who used the truck for personal purposes in Illinois. If the truck meets all other requirements for the credit, it will not be disqualified because it has been previously used in Illinois for a non-qualifying purpose.

EXAMPLE 2: Corporation A purchases a used pickup truck from Corporation B. Corporation B used the truck in its business in a qualifying manner and could have claimed the credit for the truck, but did not. Corporation A may not claim the credit for the truck because the truck has been previously used in Illinois in such a manner that it could have qualified for the credit.

- g) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes. (IITA Section 239(c))
- 1) In computing the amount of credit available for a taxable year, the credit rate will be applied to the total basis of all qualified property that is placed in service at the site of the MICRO Illinois Project during the taxable year, provided the property continues to qualify on the last day of the taxable year.
 - 2) If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service at the site of the project by the taxpayer, the amount of such increase shall be deemed property placed in service on the date of such increase in basis. (IITA Section 239(d))
 - 3) Property that has been fully expensed under IRC Section 179 has no federal depreciable basis with which to compute the credit. Property not fully expensed under IRC Section 179 can still qualify for the credit.
- h) The term "placed in service" shall have the same meaning as under IRC Section 46 (also see IRS Regulation Section 1.46-3). (IITA Section 239(e))
Property is placed in service for purposes of the credit in the earlier of the following taxable years:

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- 1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins, or
 - 2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.
- i) *If during any taxable year, any property ceases to be qualified property in the hands of the taxpayer within 48 months after being placed in service, or the situs of any qualified property is moved from the project site within 48 months after being placed in service, the tax imposed under IITA Section 201(a) and (b) for such taxable year shall be increased.*
- 1) Any property disposed of by the taxpayer within 48 months after being placed in service ceases to qualify for the credit.
 - A) A taxpayer disposes of property when the taxpayer sells the property, exchanges or trades-in worn-out property for new property, abandons the property or retires it from use.
 - B) Property destroyed by casualty, stolen, or transferred as a gift is disposed of property.
 - C) Property that is mortgaged or used as security for a loan is not disposed of property, provided that the taxpayer continues to use the property in its business at the MICRO Illinois Project site.
 - D) Property transferred to a trustee in bankruptcy is considered disposed of property in the year the property is transferred to the trustee.
 - E) A transfer of property by foreclosure is a disposition of property.
 - F) *A reduction of the basis of qualified property resulting from a redetermination of the purchase price of the property is a disposition of qualified property to the extent of such reduction in basis in the year in which the reduction takes*

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place. (IITA Section 239(f)) For example, this would occur when property is purchased and placed in service in one year, and in a later year the taxpayer receives a refund of a portion of the original purchase price.

2) Any property converted to personal use ceases to qualify for the credit.

3) The increase in tax shall be determined by:

A) recomputing the investment credit which would have been allowed for the year in which credit for such property was originally allowed by eliminating such property from such computation, and

B) subtracting such recomputed credit from the amount of credit previously allowed. (IITA Section 239(f)) The difference between the recomputed credit and the credit actually claimed is added to the income tax for the year in which the property ceased to qualify.

EXAMPLE: In 2025, taxpayer places qualifying property with a basis of \$65,000 into service at the site of a MICRO Illinois Project and computes a credit for the year of \$325 ($\$65,000 \times 0.5\%$). Taxpayer's 2025 income tax is \$325. After application of the credit, taxpayer has no remaining income tax liability. In the following year, taxpayer moved a qualifying asset having a basis of \$5,000 from Illinois to Missouri and is required to recapture a portion of the credit applied against its 2025 income tax liability. The credit applied against taxpayer's income tax must be recaptured because the property was moved outside of Illinois and no longer qualifies for the credit. In order to determine its additional income tax for 2026, taxpayer must recompute its 2025 credit by eliminating the disqualified property ($(\$65,000 - \$5,000) \times 0.5\% = \$300$). This recomputed credit is subtracted from the credit actually used in 2025 against the income tax ($\$325 - \$300 = \$25$) and the difference is added to taxpayer's 2026 income tax.

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- j) Partnerships and Subchapter S Corporations
- 1) *If the taxpayer is a partnership or a Subchapter S corporation, the credit shall be allowed to the partners or shareholders in accordance with the determination of income and distributive share of income under Sections 702 and 704 and subchapter S of the IRC, or as otherwise agreed by the partners or shareholders, provided that such agreement shall be executed in writing prior to the due date of the return for the taxable year and meet such other requirements as the Department may establish by rule. Partnership has the meaning prescribed in IITA Section 1501(a)(16). (IITA Section 239(a))*
 - 2) The credit earned by a partnership or a subchapter S corporation will be treated as earned by its owners as of the last day of the taxable year of the partnership or subchapter S corporation in which the tax credit certificate is issued by DCEO under Section 110-100 of the MICRO Act.
 - 3) The credit shall be allowed to each owner in the taxable year of the owner in which the taxable year of the partnership or subchapter S corporation ends and may be carried forward to the 5 succeeding taxable years of the owner until used.
 - 4) Any credit passed through to a partnership or subchapter S corporation under this subsection shall pass through to its partners or shareholders in the same manner as a credit earned by the partnership or subchapter S corporation.
- k) To claim the credit, a taxpayer shall attach to its Illinois income tax return
- 1) a copy of the tax credit certificate and annual certification (if any) issued by DCEO and
 - 2) in the case of a partner in a partnership or shareholder of a subchapter S corporation that earned the credit, a Schedule K-1-P or other written statement from the partnership or subchapter S corporation stating

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- A) the portion of the total credit shown on the tax credit certificate that is allowed to that partner or shareholder and
 - B) the taxable year of the partnership or subchapter S corporation in which the tax credit certificate was issued.
- l) Any taxpayer qualifying for the MICRO Investment Tax Credit shall not be eligible for the investment tax credits in Section 201(e), (f), or (h) of the IITA. (35 ILCS 45/110-100)

(Source: Added at 48 Ill. Reg. _____, effective _____)