

Section 100.2110 Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))

- a) A taxpayer shall be allowed a credit against the tax imposed by IITA Section 201(a) and (b) for investment in qualified property placed in service in an enterprise zone created pursuant to the Illinois Enterprise Zone Act [20 ILCS 655] or for qualified property placed in service on or after July 1, 2006 in a river edge redevelopment zone established pursuant to the River Edge Redevelopment Zone Act [65 ILCS 115].
- b) For partners and shareholders of Subchapter S corporations, there shall be allowed an enterprise zone or river edge redevelopment zone investment credit to be determined in accordance with the determination of income and distributive share of income under sections 702 and 704 and Subchapter S of the Internal Revenue Code.
- c) The credit shall be .5% of the basis for property in a zone.
- d) The credit shall be available only in the taxable year in which the property is placed in service in the enterprise zone or river edge redevelopment zone 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) below zero.
 - 1) Qualifying property shall be considered placed in service in an Illinois enterprise zone or river edge redevelopment zone on the date on which the property is placed in a condition or state of readiness and availability for a specifically assigned function.
 - 2) Property that is disposed of, is moved out of the enterprise zone or river edge redevelopment zone, or ceases to qualify for any other reason during the same taxable year it was placed in service in an enterprise zone or river edge redevelopment zone will not be considered in computing the credit for the taxable year.
 - 3) 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 original liability or the liability as later amended, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year.
 - 4) The credit shall be applied to the earliest year for which there is a liability.
 - 5) If there is credit for more than one tax year that is available to offset a liability, the credit accruing first in time shall be applied first.

- e) The term "qualified property" means property that is:
- 1) tangible, whether new or used. The terms "new" and "used" shall have their commonly ascribed meanings. Buildings and structural components of buildings may be qualified property. The term tangible property generally includes:
 - A) objects or things that are physically capable of being touched and seen and over which a person may assert rights of ownership.
 - B) personalty or realty, which may consist of such items as buildings, component parts 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.
 - 2) depreciable pursuant to IRC section 167, except that 3-year property as defined in IRC section 168(c)(2)(A) is not eligible for the credit.
 - A) Depreciable property is property used in the trade or business of a taxpayer, or held for production of income, that 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 section 168, is considered depreciable pursuant to IRC section 167 for purposes of the enterprise zone or river edge redevelopment zone Investment 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 26 CFR 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 Illinois investment tax credit. Property not fully expensed under section 179 would qualify for the credit based on the cost of the depreciable property reduced by the section 179 deduction.

- 3) 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 section 267 or 707(b);
 - ii) an acquisition by one component member of a controlled group from another component member of the group;
 - 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 his or her spouse and ancestral and lineal descendants of the individual and his or her 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 CFR 1.179-4).
 - D) Property that the taxpayer constructs, reconstructs or erects is generally considered acquired by purchase.
- 4) used in the enterprise zone or river edge redevelopment zone by the taxpayer.
 - A) The term "used in an Illinois enterprise zone or river edge

redevelopment zone" means that the property for which the credit is being claimed is physically located within the boundaries of an Illinois enterprise zone certified by the Illinois Department of Commerce and Economic Opportunity or river edge redevelopment zone established pursuant to the River Edge Redevelopment Zone Act from the time it is placed in service and while it is being utilized by the taxpayer claiming the credit in that taxpayer's business operation.

- i) Storage of property in an enterprise zone or river edge redevelopment zone will not constitute use. The taxpayer must make use of, convert to its service, avail itself of, or employ the property in the enterprise zone or river edge redevelopment zone in order to demonstrate use of the property in the enterprise zone or river edge redevelopment zone.
 - ii) A lessor may claim the credit for otherwise qualified property if the property is physically located in an Illinois enterprise zone or river edge redevelopment zone from the time it is placed in service and all other conditions of eligibility for the credit are met.
 - iii) A lessee of tangible property may never claim the credit because a lessee has not acquired the property by purchase.
- B) Mobile property, such as vehicles, must be used predominantly in an Illinois enterprise zone or river edge redevelopment zone in order to qualify for the credit.
- i) Removal of such property from the enterprise zone or river edge redevelopment zone for a temporary or transitory purpose will not disqualify the property so long as it continues to be used predominantly in the enterprise zone or river edge redevelopment zone.
 - ii) Mobile property is considered to be predominantly used in an enterprise zone or river edge redevelopment zone if usage in the enterprise zone or river edge redevelopment zone exceeds usage outside of the enterprise zone or river edge redevelopment zone.
- 5) not property that has been previously used in Illinois in such a manner and by such a person as would qualify for the credit.
- A) Generally, used property will not qualify for the credit if it was

previously used in Illinois in such a manner 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 that it could have qualified for the credit, if that use pre-dated the effective date of the law that established the credit.

EXAMPLE 1: Corporation A purchases a used pickup truck for use in its manufacturing business in Illinois 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.

- f) The basis of qualified property shall be the basis used to compute the depreciation deduction for federal income tax purposes, including any bonus depreciation deduction allowed under IRC section 168(k). If the basis of the property for federal income tax depreciation purposes is increased after it has been placed in service in the enterprise zone or river edge redevelopment zone by the taxpayer, the amount of the increase shall be deemed property placed in service on the date of the increase in basis.
- g) 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 outside the enterprise zone or river edge redevelopment zone within 48 months after being placed in service, the tax imposed under IITA Section 201(a) and (b) for the taxable year shall be increased.
 - 1) Any property disposed of by the taxpayer within 48 months after being placed in service ceases to qualify.
 - A) A taxpayer disposes of property when he or she 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 within an Illinois enterprise zone or river edge redevelopment zone.

- D) Property transferred to a trustee in bankruptcy is considered disposed of property.
 - E) A transfer of property by foreclosure is a disposition of property.
 - F) A reduction in the basis of qualified property resulting from a redetermination of the purchase price of the property is a disposition of property to the extent of the reduction in basis in the year in which the reduction takes place. 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 that would have been allowed for the year in which credit for the property was originally allowed by eliminating the property from the computation, and
 - B) subtracting the computed credit from the amount of credit previously allowed. 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 or was moved outside of the enterprise zone or river edge redevelopment zone.

EXAMPLE: In 2007, Corporation A places qualifying property with a basis of \$55,000 into service in an enterprise zone or river edge redevelopment zone located in Illinois and computes a Section 201(f) enterprise zone or river edge redevelopment zone Investment Tax Credit of \$275 ($\$55,000 \times .5\%$). Corporation A's 2007 income tax liability is \$420. After the application of the credit, Corporation A has remaining income tax liability of \$145. In the following year, Corporation A moved a qualifying asset having a basis in 2007 of \$5,000 from the enterprise zone or river edge redevelopment zone to another location in Illinois. As a result, Corporation A is required to recapture a portion of the enterprise zone or river edge redevelopment zone Investment Credit that was applied against its 2007 income tax liability. In order to determine its additional income tax for 2008, Corporation A must recompute its 2007 enterprise zone Investment Tax Credit by eliminating the disqualified property ($\$55,000 - \$5,000 \times .5\% = \$250$). This recomputed credit is subtracted

from the enterprise zone Investment Tax Credit actually used in 1985 (\$260 - \$250 = \$10), and the difference is added to Corporation A's 2008 income tax after application of the Investment Tax Credit.

- h) Automatic Sunset of Credit for River Edge Redevelopment Zone Property. IITA Section 250(a) provides that, *if a reasonable and appropriate sunset date is not specified in the Public Act that creates a credit, a taxpayer shall not be entitled to take the credit for tax years beginning on or after 5 years after the effective date of the Public Act creating the credit.* IITA Section 250(b) provides that *any credit scheduled to expire in 2011, 2012, or 2013 by operation of this Section shall be extended by 5 years.* The credit for property placed in service in a river edge redevelopment zone was created by PA 94-1021, which had an effective date of July 12, 2006, and specified no sunset date for the credit. Accordingly, no credit is allowed under this Section for property placed in service in a river edge redevelopment zone for any taxable year beginning on or after July 12, 2016.

(Source: Amended at 38 Ill. Reg. 38 Ill. Reg. 9550, effective April 21, 2014)