

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
100.2161	New Section
100.7385	New Section
100.7386	New Section
- 4) Statutory Authority: Implementing Sections 241 and 704A(k) of the Illinois Income Tax Act [35 ILCS 5] as authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5] and Section 2505-795 of the Civil Administrative Code of Illinois (Department of Revenue Law) [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Part 100 Income Tax, Subpart B Credits, to add new section 100.2161 for the Quantum Computing Campuses Tax Credit, implementing the changes in P.A. 103-0595. In addition, this rulemaking amends Part 100 Income Tax, Subpart V Employer's Return and Payment of Tax Withheld, to add new sections 100.7385 and 100.7386 for the Live Theater Production Tax Credit and the Local Journalism Sustainability Tax Credit, implementing the changes in P.A. 103-0592.
- 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? No
- 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>
100.2160	Amendment	48 Ill. Reg 13299; September 6, 2024
100.2193	Amendment	48 Ill. Reg 13299; September 6, 2024
100.2330	Amendment	48 Ill. Reg 13299; September 6, 2024

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- 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: Taxpayers who have received a tax credit certificate from DCEO are eligible to claim an income or withholding tax credit.
 - B) Reporting, bookkeeping or other procedures required for compliance: Regular income or withholding tax filings and recordkeeping. Basic accounting and computer skills.
 - C) Types of professional skills necessary for compliance: Basic accounting and computer skills.
- 14) Small Business Impact Analysis: Positive impact for small businesses that qualify for the credits. No adverse impact on other small businesses.
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2024

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

[Section 100.2161 Quantum Computing Campuses Tax Credit \(IITA Section 241\)](#)

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- a) For tax years ending on or after June 26, 2024 (the effective date of Public Act 103-0595), each taxpayer who has been awarded a credit by the Department of Commerce and Economic Opportunity (DCEO) is allowed a credit against the taxes imposed under IITA Section 201(a) and (b) in an amount equal to 20% of the wages paid by the taxpayer during the taxable year to a full-time or part-time employee of a construction contractor employed in the construction of an eligible facility located on a quantum computing campus. (IITA Section 241(a))
- b) For purposes of this section, the term "quantum computing campus" shall have the same meaning as when used in Section 605-1115(a) of the Civil Administrative Code of Illinois (Department of Commerce and Economic Opportunity Law) (DCEO Law) [20 ILCS 605].
- c) An "eligible facility" means a building used primarily to house one or more of the following:
- 1) A quantum computer operator;
 - 2) A research facility;
 - 3) A data center (as defined in Section 605-1115(a) of the DCEO Law);
 - 4) A manufacturer and assembler of quantum computers and component parts;
 - 5) A cryogenic or refrigeration facility; or
 - 6) Any other facility determined, by industry and academic leaders, to be fundamental to the research and development of quantum computing for practical solutions. (IITA Section 241(e))
- d) The amount of the credit shall be determined by DCEO and shall be the amount shown on the tax credit certificate issued by DCEO to the taxpayer.
- e) In no event shall a credit under this Section reduce the taxpayer's liability to less than zero. If the amount of the credit exceeds the tax liability for the year, the excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The tax credit shall be

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applied to the earliest year for which there is a tax liability. If there are credits for more than one year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 241(b))

f) 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 Internal Revenue Code, 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 251)

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 605-1115(c) of the DCEO Law.

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.

g) To claim the credit, a taxpayer shall attach to its Illinois income tax return for the taxable year:

1) a copy of the tax credit certificate and annual certification (if any) issued by DCEO; and

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- 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:
 - 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. (IITA Section 241(c))
- h) The credit may not be transferred or sold.
- i) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 241(f))

(Source: Added at 49 Ill. Reg. _____, effective _____)

SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section 100.7385 Live Theater Production Tax Credit (IITA Section 704A(k))

- a) An employer may claim a Live Theater Production Tax Credit against withholding payments due under IITA Section 704A(c) for a non-profit theater production. (IITA Section 704A(k))
- b) For purposes of the Live Theater Production Tax Credit, the term "non-profit theater production" shall have the same meaning as when used in Section 10-10 of the Live Theater Production Tax Credit Act [35 ILCS 17].
- c) The amount of the credit shall be determined by the Department of Commerce and Economic Opportunity (DCEO) and shall be the amount shown on the tax credit certificate issued by DCEO to the taxpayer.
- d) The credit may be taken against payments due for withholding reporting periods beginning on or after January 1, 2025, and ending before January 1, 2027. (IITA Section 704A(k))

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- 1) For purposes of this section, "reporting period" means the quarter for which a withholding tax return is required to be filed under IITA Section 704A(b).
- 2) The credit shall be applied to the first quarterly reporting period beginning after the end of the quarterly reporting period in which the tax credit certificate is issued by DCEO and begins on or after January 1, 2025. (IITA Section 704A(k))

EXAMPLE: Taxpayer is issued a tax credit certificate by DCEO in the amount of \$25,000. The tax credit certificate is dated March 17, 2025. The taxpayer is allowed a credit of \$25,000 against withholding payments due under IITA Section 704A(c) in its first quarterly reporting period that begins after the end of the quarterly reporting period in which the tax credit certificate is issued to the Taxpayer. Since the tax credit certificate was issued to the taxpayer during the first withholding quarter of 2025, the Taxpayer may claim the credit against any payments due in the second withholding quarter of 2025.

- e) A copy of the tax credit certificate shall be attached to the taxpayer's quarterly withholding tax return.
- f) The credit may not be transferred or sold.
- g) A taxpayer who has been issued a tax credit certificate by DCEO for a non-profit theater production shall not be allowed to claim that credit amount against the tax imposed under IITA Section 201(a) and (b).
- h) The credit may not reduce the taxpayer's obligation for any payment due under IITA Section 704A to less than zero. If the amount of the credit exceeds the total amount due under IITA Section 704A with respect to amounts withheld during the quarterly reporting period, the excess may be carried forward and applied against the taxpayer's liability under IITA Section 704A in succeeding quarterly reporting periods for the 20 quarterly reporting periods following the initial excess credit period, or until it has been fully utilized, whichever occurs first. The credit shall be applied to the earliest quarterly reporting period for which there is a payment due under IITA Section 704A. If there are credits from more than one quarterly

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reporting period that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 704A(k))

EXAMPLE: Taxpayer is issued a tax credit certificate by DCEO in the amount of \$25,000 during its withholding quarterly reporting period ending June 30, 2025. Under Section 704A(k) and this section, Taxpayer is allowed a credit of \$25,000 against withholding payments due under IITA 704A(c) in its quarterly reporting period ending September 30, 2025. Taxpayer withheld tax during its withholding quarter ending September 30, 2025, of \$4,000. Under Section 704A(k) and this Section, Taxpayer's credit may not exceed \$4,000. Taxpayer is allowed to carry forward the \$21,000 excess credit for application against its withholding liability in the succeeding quarterly reporting periods for 20 quarterly reporting periods following the initial excess credit period, or until the first succeeding quarterly reporting period that utilizes the remaining excess credit, whichever occurs first. If Taxpayer withheld tax during its withholding quarter ending December 31, 2025, of \$1,000, then Taxpayer is allowed to carry forward the \$20,000 excess credit to its withholding liability for the March 31, 2026, reporting period.

(Source: Added at 49 Ill. Reg. _____, effective _____)

Section 100.7386 Local Journalism Sustainability Tax Credit (IITA Section 704A(k))

- a) A taxpayer who is issued a tax credit certificate under the Local Journalism Sustainability Act for a taxable year shall be allowed a credit against payments due under IITA Section 704A(c) and this section as provided in that Act. (IITA Section 704A(k))
- b) Employers that maintain tax status under Section 501(c)(3) of the federal Internal Revenue Code, that are local news organizations and that are required to deduct and withhold taxes as provided in IITA Section 704A, may claim a Local Journalism Sustainability Tax Credit against withholding payments due under IITA Section 704A(c). (35 ILCS 18/40-10)
- c) For purposes of the Local Journalism Sustainability Tax Credit, the term "local news organization" shall have the same meaning as when used in Section 40-5 of the Local Journalism Sustainability Act [35 ILCS 18].

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- d) The amount of the credit shall be determined by the Department of Commerce and Economic Opportunity (DCEO) and shall be the amount shown on the tax credit certificate issued by DCEO to the taxpayer.
- e) The credit may be taken against payments due for withholding reporting periods that begin on or after January 1, 2025, and end before January 1, 2030. (35 ILCS 18/40-10)
- 1) For purposes of this section, "reporting period" means the quarter for which a withholding tax return is required to be filed under IITA Section 704A(b).
- 2) The credit shall be applied to the first quarterly reporting period beginning after the end of the quarterly reporting period in which the tax credit certificate is issued by DCEO and begins on or after January 1, 2025. (35 ILCS 18/40-10)
- EXAMPLE: Taxpayer is issued a tax credit certificate by DCEO in the amount of \$25,000. The tax credit certificate is dated March 17, 2025. The taxpayer is allowed a credit of \$25,000 against withholding payments due under IITA Section 704A(c) in its first quarterly reporting period that begins after the end of the quarterly reporting period in which the tax credit certificate is issued to the Taxpayer. Since the tax credit certificate was issued to the taxpayer during the first withholding quarter of 2025, the Taxpayer may claim the credit against any payments due in the second withholding quarter of 2025.
- f) A copy of the tax credit certificate shall be attached to the taxpayer's quarterly withholding tax return. (35 ILCS 18/40-10)
- g) The credit may not be transferred or sold.
- h) No carryover of excess credit is allowed. If the amount of the credit exceeds the liability for the reporting period, the excess credit shall be refunded to the taxpayer. (35 ILCS 18/40-10)

(Source: Added at 49 Ill. Reg. _____, effective _____)