

ILLINOIS REGISTER

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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>
100.2110	Amendment
100.2111	New Section
100.2112	New Section
100.2131	Renumbered/New Section
100.2135	Amendment
100.2164	Amendment
100.2198	Renumbered
100.2655	Amendment
100.7380	Amendment
100.7381	New Section
100.7382	New Section
- 4) Statutory Authority: Implementing Sections 236, 238, 704A(g-1), and 704A(g-2) 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 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 several sections of Part 100, Income Tax, to reflect statutory changes. This rulemaking also provides various technical changes and renumbering of sections in Part 100.

Section 100.2110 is amended to provide for the renumbered Section 100.2198 Economic Development for a Growing Economy Credit (IITA 211), include provisions for the New Construction EDGE Agreements created by P.A. 101-9, and update statutory language removed by P.A. 92-207.

New Section 100.2111 provides for the REV Tax Credit created by P.A. 102-669.

New Section 200.2112 provides for the MICRO Tax Credit created by P.A. 102-700.

New Section 100.2131 provides for the renumbered Section 100.2110 Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f)).

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Section 100.2135 is amended to update the title of the Reimagining Energy and Vehicles in Illinois Act pursuant to P.A. 102-1125 and update the pass-through provisions pursuant to P.A. 103-396.

Section 100.2164 is amended to update the credit title to mirror IITA Section 229, include changes pursuant to P.A. 101-604, and update the pass-through provisions pursuant to P.A. 103-396.

Section 100.2198 is renumbered to Section 100.2110.

Section 100.2655 is amended to update the new renumbered section citation.

Section 100.7380 is amended to update the new renumbered section citation and the new eligible taxpayer category pursuant to P.A. 103-595.

New Section 100.7381 provides for the REV Tax Credit withholding election created by P.A. 102-669.

New Section 100.7382 provides for the MICRO Tax Credit withholding election created by P.A. 102-700.

- 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
100.2161	New Section	48 Ill. Reg 14887; October 18, 2024
100.7385	New Section	48 Ill. Reg 14887; October 18, 2024
100.7386	New Section	48 Ill. Reg 14887; October 18, 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](mailto: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 entered into Agreements with DCEO and receive 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:

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 100  
INCOME TAX

SUBPART A: TAX IMPOSED

Section	
100.2000	Introduction
100.2050	Net Income (IITA Section 202)
100.2055	Standard Exemption (IITA Section 204)
100.2060	Compassionate Use of Medical Cannabis Pilot Program Act Surcharge (IITA Section 201(o))

SUBPART B: CREDITS

Section	
100.2100	Replacement Tax Investment Credit Prior to January 1, 1994 (IITA Section 201(e))
100.2101	Replacement Tax Investment Credit (IITA 201(e))
100.2110	<del>Economic Development for a Growing Economy Credit (IITA Section 211) Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))</del>
<u>100.2111</u>	<u>REV Tax Credit (IITA Section 236)</u>
<u>100.2112</u>	<u>MICRO Tax Credit (IITA Section 238)</u>
100.2120	Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone and River Edge Redevelopment Zone (IITA Section 201(g))
100.2130	Investment Credit; High Impact Business (IITA 201(h))
<u>100.2131</u>	<u>Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))</u>
100.2135	REV Illinois Investment Tax Credit (IITA Section 237)
100.2140	Credit Against Income Tax for Replacement Tax (IITA 201(i))
100.2150	Training Expense Credit (IITA 201(j))
100.2160	Research and Development Credit (IITA Section 201(k))
100.2163	Environmental Remediation Credit (IITA 201(l))
100.2164	Data Center <del>Construction Employment Tax</del> Investment Credit (IITA Section 229)
100.2165	Education Expense Credit (IITA 201(m))
100.2170	Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)

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- 100.2171 Angel Investment Credit (IITA 220)
- 100.2175 Invest in Kids Credit (IITA 224)
- 100.2179 Volunteer Emergency Worker Credit (IITA Section 234)
- 100.2180 Credit for Residential Real Property Taxes (IITA 208)
- 100.2181 Credit for Instructional Materials and Supplies (IITA Section 225)
- 100.2185 Film Production Services Credit (IITA Section 213)
- 100.2190 Tax Credit for Affordable Housing Donations (IITA Section 214)
- 100.2193 Student-Assistance Contributions Credit (IITA 218)
- 100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)
- 100.2196 Employee Child Care Assistance Program Tax Credit (IITA Section 210.5)
- 100.2197 Foreign Tax Credit (IITA Section 601(b)(3))
- 100.2198 Economic Development for a Growing Economy Credit (IITA 211)  
(Renumbered)
- 100.2199 Illinois Earned Income Tax Credit (IITA Section 212)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS  
OCCURRING PRIOR TO DECEMBER 31, 1986

- Section
- 100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Scope
  - 100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) – Definitions
  - 100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Current Net Operating Losses: Offsets Between Members
  - 100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group. (IITA Section 202) – Carrybacks and Carryforwards
  - 100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Effect of Combined Net Operating Loss in Computing Illinois Base Income
  - 100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) – Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

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SUBPART D: ILLINOIS NET LOSS DEDUCTIONS FOR LOSSES  
OCCURRING ON OR AFTER DECEMBER 31, 1986

Section	
100.2300	Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2310	Computation of the Illinois Net Loss Deduction for Losses Occurring On or After December 31, 1986 (IITA 207)
100.2320	Determination of the Amount of Illinois Net Loss for Losses Occurring On or After December 31, 1986
100.2330	Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring On or After December 31, 1986 (IITA Section 207)
100.2340	Illinois Net Losses and Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns
100.2350	Illinois Net Losses and Illinois Net Loss Deductions, for Losses Occurring On or After December 31, 1986, of Corporations that are Members of a Unitary Business Group: Changes in Membership
100.2360	Illinois Net Losses and Illinois Net Loss Deductions for Losses of Cooperatives Occurring On or After December 31, 1986 (IITA Section 203(e)(2)(F))

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF  
INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section	
100.2405	Gross Income, Adjusted Gross Income, Taxable Income and Base Income Defined; Double Deductions Prohibited; Legislative Intention (IITA Section 203(e), (g) and (h))
100.2410	Net Operating Loss Carryovers for Individuals, and Capital Loss and Other Carryovers for All Taxpayers (IITA Section 203)
100.2430	Addition and Subtraction Modifications for Transactions with 80/20 and Noncombination Rule Companies
100.2435	Addition Modification for Student-Assistance Contribution Credit (IITA Sections 203(a)(2)(D-23), (b)(2)(E-16), (c)(2)(G-15), (d)(2)(D-10))
100.2450	IIT Refunds (IITA Section 203(a)(2)(H), (b)(2)(F), (c)(2)(J) and (d)(2)(F))
100.2455	Subtraction Modification: Federally Disallowed Deductions (IITA Sections 203(a)(2)(M), 203(b)(2)(I), 203(c)(2)(L) and 203(d)(2)(J))

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- 100.2465 Claim of Right Repayments (IITA Section 203(a)(2)(P), (b)(2)(Q), (c)(2)(P) and (d)(2)(M))
- 100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))
- 100.2480 Enterprise Zone and River Edge Redevelopment Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))
- 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section

- 100.2510 Subtraction for Contributions to Illinois Qualified Tuition Programs (Section 529 Plans) (IITA Section 203(a)(2)(Y))
- 100.2565 Subtraction for Recovery of Itemized Deductions (IITA Section 203(a)(2)(I))
- 100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))
- 100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF CORPORATIONS

Section

- 100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))
- 100.2657 Subtraction Modification for High Impact Business Interest (IITA Section 203(b)(2)(M-1))
- 100.2665 Subtraction for Payments to an Attorney-in-Fact (IITA Section 203(b)(2)(R))
- 100.2668 Subtraction for Dividends from Controlled Foreign Corporations (IITA Section 203(b)(2)(Z))

SUBPART H: BASE INCOME OF TRUSTS AND ESTATES

Section

- 100.2770 Subtraction for Recovery of Itemized Deductions of a Decedent (IITA Section 203(c)(2)(W))

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100.2775 Subtraction for Refunds of Taxes Paid to Other States for Which a Credit Was Claimed (IITA Section 203(c)(2)(X))

SUBPART I: BASE INCOME OF PARTNERSHIPS

Section

100.2850 Subtraction Modification for Personal Service Income or Reasonable Allowance for Compensation to Partners (IITA Section 203(d)(2)(H))

SUBPART J: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF BASE INCOME

Section

100.3000 Terms Used in Article 3 (IITA Section 301)  
100.3010 Business and Nonbusiness Income (IITA Section 301)  
100.3015 Business Income Election (IITA Section 1501)  
100.3020 Resident (IITA Section 301)

SUBPART K: COMPENSATION

Section

100.3100 Compensation (IITA Section 302)  
100.3110 State (IITA Section 302)  
100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART L: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

100.3200 Taxability in Other State (IITA Section 303)  
100.3210 Commercial Domicile (IITA Section 303)  
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other Than Residents (IITA Section 303)

SUBPART M: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section

100.3300 Allocation and Apportionment of Base Income (IITA Section 304)  
100.3310 Business Income of Persons Other Than Residents (IITA Section 304) – In General  
100.3320 Business Income of Persons Other Than Residents (IITA Section 304) –



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- 100.3330 Apportionment (Repealed)  
Business Income of Persons Other Than Residents (IITA Section 304) – Allocation
- 100.3340 Business Income of Persons Other Than Residents (IITA Section 304)
- 100.3350 Property Factor (IITA Section 304)
- 100.3360 Payroll Factor (IITA Section 304)
- 100.3370 Sales Factor (IITA Section 304)
- 100.3371 Sales Factor for Telecommunications Services
- 100.3373 Sales Factor for Publishing
- 100.3380 Special Rules (IITA Section 304)
- 100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))
- 100.3400 Apportionment of Business Income of Financial Organizations for Taxable Years Ending Prior to December 31, 2008 (IITA Section 304(c))
- 100.3405 Apportionment of Business Income of Financial Organizations for Taxable Years Ending on or after December 31, 2008 (IITA Section 304(c))
- 100.3420 Apportionment of Business Income of Insurance Companies (IITA Section 304(b))
- 100.3450 Apportionment of Business Income of Transportation Companies (IITA Section 304(d))
- 100.3500 Allocation and Apportionment of Base Income by Nonresident Partners
- 100.3600 Combined Apportionment for Taxpayers Using Different Apportionment Formulas (IITA Section 1501(a)(27))

SUBPART N: ACCOUNTING

- Section
- 100.4100 Taxable Years (IITA Section 401)
- 100.4500 Carryovers of Tax Attributes (IITA Section 405)

SUBPART O: TIME AND PLACE FOR FILING RETURNS

- Section
- 100.5000 Time for Filing Returns (IITA Section 505)
- 100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)
- 100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)
- 100.5040 Innocent Spouses
- 100.5050 Frivolous Returns

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- 100.5060 Reportable Transactions (IITA Section 501(b))
- 100.5070 List of Investors in Potentially Abusive Tax Shelters and Reportable Transactions
- 100.5080 Registration of Tax Shelters (IITA Section 1405.5)

SUBPART P: COMPOSITE RETURNS

Section

- 100.5100 Composite Returns: Eligibility (IITA Section 502(f))
- 100.5110 Composite Returns: Responsibilities of Authorized Agent
- 100.5120 Composite Returns: Individual Liability
- 100.5130 Composite Returns: Required forms and computation of Income (IITA Section 502(f))
- 100.5140 Composite Returns: Estimated Payments
- 100.5150 Composite Returns: Tax, Penalties and Interest
- 100.5160 Composite Returns: Credits on Separate Returns
- 100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"
- 100.5180 Composite Returns: Overpayments and Underpayments

SUBPART Q: COMBINED RETURNS

Section

- 100.5200 Filing of Combined Returns
- 100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns
- 100.5205 Election to File a Combined Return
- 100.5210 Procedures for Elective and Mandatory Filing of Combined Returns
- 100.5215 Filing of Separate Unitary Returns (IITA Section 304(e))
- 100.5220 Designated Agent for the Members (IITA Section 304(e))
- 100.5230 Combined Estimated Tax Payments
- 100.5240 Claims for Credit of Overpayments
- 100.5250 Liability for Combined Tax, Penalty and Interest
- 100.5260 Combined Amended Returns
- 100.5265 Common Taxable Year
- 100.5270 Computation of Combined Net Income and Tax (IITA Section 304(e))
- 100.5280 Combined Return Issues Related to Audits

SUBPART R: PAYMENTS

Section

- 100.6000 Payment on Due Date of Return (IITA Section 601)

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SUBPART S: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section	
100.7000	Requirement of Withholding (IITA Section 701)
100.7010	Compensation Paid in this State (IITA Section 701)
100.7020	Transacting Business Within this State (IITA Section 701)
100.7030	Payments to Residents (IITA Section 701)
100.7034	Investment Partnership Withholding (IITA Section 709.5)
100.7035	Nonresident Partners, Subchapter S Corporation Shareholders, and Trust Beneficiaries (IITA Section 709.5)
100.7036	Withholding of Lottery, Gambling and Sports Wagering Winnings (IITA Section 710)
100.7040	Employer Registration (IITA Section 701)
100.7050	Computation of Amount Withheld (IITA Section 702)
100.7060	Additional Withholding (IITA Section 701)
100.7070	Voluntary Withholding (IITA Section 701)
100.7080	Correction of Underwithholding or Overwithholding (IITA Section 701)
100.7090	Reciprocal Agreement (IITA Section 701)
100.7095	Cross References

SUBPART T: AMOUNT EXEMPT FROM WITHHOLDING

Section	
100.7100	Withholding Exemption (IITA Section 702)
100.7110	Withholding Exemption Certificate (IITA Section 702)
100.7120	Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

SUBPART U: INFORMATION STATEMENT

Section	
100.7200	Reports for Employee (IITA Section 703)

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

Section	
100.7300	Returns and Payments of Income Tax Withheld from Wages (IITA Sections 704 and 704A)
100.7310	Returns Filed and Payments Made on Annual Basis (IITA Sections 704 and 704A)

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- 100.7320 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)
- 100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)
- 100.7330 Payment of Tax Required to be Shown Due on a Return (IITA Sections 704 and 704A)
- 100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)
- 100.7350 Domestic Service Employment (IITA Sections 704 and 704A)
- 100.7360 Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
- 100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)
- 100.7380 Economic Development for a Growing Economy (EDGE) and Small Business Job Creation Credit (IITA Section 704A(g) and (h))
- 100.7381 REV Tax Credit (IITA Section 704A(g-1))
- 100.7382 MICRO Tax Credit (IITA Section 704A(g-2))
- 100.7390 Minimum Wage Tax Credit (IITA Section 704A(i))

SUBPART W: ESTIMATED TAX PAYMENTS

- Section
- 100.8000 Payment of Estimated Tax (IITA Section 803)
- 100.8010 Failure to Pay Estimated Tax (IITA Sections 804 and 806)

SUBPART X: COLLECTION AUTHORITY

- Section
- 100.9000 General Income Tax Procedures (IITA Section 901)
- 100.9010 Collection Authority (IITA Section 901)
- 100.9020 Child Support Collection (IITA Section 901)

SUBPART Y: NOTICE AND DEMAND

- Section
- 100.9100 Notice and Demand (IITA Section 902)

SUBPART Z: ASSESSMENT

- Section
- 100.9200 Assessment (IITA Section 903)

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100.9210 Waiver of Restrictions on Assessment (IITA Section 907)

SUBPART AA: DEFICIENCIES AND OVERPAYMENTS

Section

100.9300 Deficiencies and Overpayments (IITA Section 904)  
100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)  
100.9320 Limitations on Notices of Deficiency (IITA Section 905)  
100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

SUBPART BB: CREDITS AND REFUNDS

Section

100.9400 Credits and Refunds (IITA Section 909)  
100.9410 Limitations on Claims for Refund (IITA Section 911)  
100.9420 Recovery of Erroneous Refund (IITA Section 912)

SUBPART CC: INVESTIGATIONS AND HEARINGS

Section

100.9500 Access to Books and Records (IITA Section 913)  
100.9505 Access to Books and Records – 60-Day Letters (IITA Section 913) (Repealed)  
100.9510 Taxpayer Representation and Practice Requirements  
100.9520 Conduct of Investigations and Hearings (IITA Section 914)  
100.9530 Books and Records

SUBPART DD: JUDICIAL REVIEW

Section

100.9600 Administrative Review Law (IITA Section 1201)

SUBPART EE: DEFINITIONS

Section

100.9700 Unitary Business Group Defined (IITA Section 1501)  
100.9710 Financial Organizations (IITA Section 1501)  
100.9715 Transportation Companies (IITA Section 304(d))  
100.9720 Nexus

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100.9730 Investment Partnerships (IITA Section 1501(a)(11.5))  
100.9750 Corporation, Subchapter S Corporation, Partnership and Trust Defined  
(IITA Section 1501)

SUBPART FF: LETTER RULING PROCEDURES

Section  
100.9800 Letter Ruling Procedures

SUBPART GG: MISCELLANEOUS

Section  
100.9900 Tax Shelter Voluntary Compliance Program  
100.9910 State Tax Preparer Oversight Act [35 ILCS 35]

100.APPENDIX A Business Income Of Persons Other Than Residents (Repealed)  
100.TABLE A Example of Unitary Business Apportionment (Repealed)  
100.TABLE B Example of Unitary Business Apportionment for Groups Which  
Include Members Using Three-Factor and Single-Factor  
Formulas (Repealed)

AUTHORITY: Implementing Section 505 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].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49, p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December

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24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 23, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687, effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 26 Ill. Reg. 192, effective December 20, 2001; amended at 26 Ill. Reg. 1274, effective January 15, 2002; amended at 26 Ill. Reg. 9854, effective June 20, 2002; amended at 26 Ill. Reg. 13237, effective August 23, 2002; amended at 26 Ill. Reg. 15304, effective October 9, 2002; amended at 26 Ill. Reg. 17250, effective November 18, 2002; amended at 27 Ill. Reg. 13536, effective July 28, 2003; amended at 27 Ill. Reg. 18225, effective November 17, 2003; emergency amendment at 27 Ill. Reg. 18464, effective November 20, 2003, for a maximum of 150 days; emergency expired April 17, 2004; amended at 28 Ill. Reg. 1378, effective

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January 12, 2004; amended at 28 Ill. Reg. 5694, effective March 17, 2004; amended at 28 Ill. Reg. 7125, effective April 29, 2004; amended at 28 Ill. Reg. 8881, effective June 11, 2004; emergency amendment at 28 Ill. Reg. 14271, effective October 18, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14868, effective October 26, 2004; emergency amendment at 28 Ill. Reg. 15858, effective November 29, 2004, for a maximum of 150 days; amended at 29 Ill. Reg. 2420, effective January 28, 2005; amended at 29 Ill. Reg. 6986, effective April 26, 2005; amended at 29 Ill. Reg. 13211, effective August 15, 2005; amended at 29 Ill. Reg. 20516, effective December 2, 2005; amended at 30 Ill. Reg. 6389, effective March 30, 2006; amended at 30 Ill. Reg. 10473, effective May 23, 2006; amended by 30 Ill. Reg. 13890, effective August 1, 2006; amended at 30 Ill. Reg. 18739, effective November 20, 2006; amended at 31 Ill. Reg. 16240, effective November 26, 2007; amended at 32 Ill. Reg. 872, effective January 7, 2008; amended at 32 Ill. Reg. 1407, effective January 17, 2008; amended at 32 Ill. Reg. 3400, effective February 25, 2008; amended at 32 Ill. Reg. 6055, effective March 25, 2008; amended at 32 Ill. Reg. 10170, effective June 30, 2008; amended at 32 Ill. Reg. 13223, effective July 24, 2008; amended at 32 Ill. Reg. 17492, effective October 24, 2008; amended at 33 Ill. Reg. 1195, effective December 31, 2008; amended at 33 Ill. Reg. 2306, effective January 23, 2009; amended at 33 Ill. Reg. 14168, effective September 28, 2009; amended at 33 Ill. Reg. 15044, effective October 26, 2009; amended at 34 Ill. Reg. 550, effective December 22, 2009; amended at 34 Ill. Reg. 3886, effective March 12, 2010; amended at 34 Ill. Reg. 12891, effective August 19, 2010; amended at 35 Ill. Reg. 4223, effective February 25, 2011; amended at 35 Ill. Reg. 15092, effective August 24, 2011; amended at 36 Ill. Reg. 2363, effective January 25, 2012; amended at 36 Ill. Reg. 9247, effective June 5, 2012; amended at 37 Ill. Reg. 5823, effective April 19, 2013; amended at 37 Ill. Reg. 20751, effective December 13, 2013; recodified at 38 Ill. Reg. 4527; amended at 38 Ill. Reg. 9550, effective April 21, 2014; amended at 38 Ill. Reg. 13941, effective June 19, 2014; amended at 38 Ill. Reg. 15994, effective July 9, 2014; amended at 38 Ill. Reg. 17043, effective July 23, 2014; amended at 38 Ill. Reg. 18568, effective August 20, 2014; amended at 38 Ill. Reg. 23158, effective November 21, 2014; emergency amendment at 39 Ill. Reg. 483, effective December 23, 2014, for a maximum of 150 days; amended at 39 Ill. Reg. 1768, effective January 7, 2015; amended at 39 Ill. Reg. 5057, effective March 17, 2015; amended at 39 Ill. Reg. 6884, effective April 29, 2015; amended at 39 Ill. Reg. 15594, effective November 18, 2015; amended at 40 Ill. Reg. 1848, effective January 5, 2016; amended at 40 Ill. Reg. 10925, effective July 29, 2016; amended at 40 Ill. Reg. 13432, effective September 7, 2016; amended at 40 Ill. Reg. 14762, effective October 12, 2016; amended at 40 Ill. Reg. 15575, effective November 2, 2016; amended at 41 Ill. Reg. 4193, effective March 27, 2017; amended at 41 Ill. Reg. 6379, effective May 22, 2017; amended at 41 Ill. Reg. 10662, effective August 3, 2017; amended at 41 Ill. Reg. 12608, effective September 21, 2017; amended at 41 Ill. Reg. 14217, effective



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November 7, 2017; emergency amendment at 41 Ill. Reg. 15097, effective November 30, 2017, for a maximum of 150 days; amended at 42 Ill. Reg. 4953, effective February 28, 2018; amended at 42 Ill. Reg. 6451, effective March 21, 2018; recodified Subpart H to Subpart G at 42 Ill. Reg. 7980; amended at 42 Ill. Reg. 17852, effective September 24, 2018; amended at 42 Ill. Reg. 19190, effective October 12, 2018; amended at 43 Ill. Reg. 727, effective December 18, 2018; amended at 43 Ill. Reg. 10124, effective August 27, 2019; amended at 44 Ill. Reg. 2363, effective January 17, 2020; amended at 44 Ill. Reg. 2845, effective January 30, 2020; emergency amendment at 44 Ill. Reg. 4700, effective March 4, 2020, for a maximum of 150 days; emergency expired July 31, 2020; amended at 44 Ill. Reg. 10907, effective June 10, 2020; emergency amendment at 44 Ill. Reg. 11208, effective June 17, 2020, for a maximum of 150 days; emergency expired November 13, 2020; amended at 44 Ill. Reg. 17414, effective October 13, 2020; amended at 45 Ill. Reg. 2006, effective January 29, 2021; amended at 45 Ill. Reg. 5523, effective April 15, 2021; amended at 46 Ill. Reg. 13312, effective July 12, 2022; amended at 46 Ill. Reg. 14550, effective August 2, 2022; amended at 46 Ill. Reg. 15317, effective August 24, 2022; amended at 46 Ill. Reg. 18102, effective October 26, 2022; amended at 47 Ill. Reg. 1402, effective January 10, 2023; amended at 47 Ill. Reg. 2093, effective January 24, 2023; amended at 47 Ill. Reg. 5726, effective April 4, 2023; amended at 47 Ill. Reg. 6030, effective April 12, 2023; amended at 47 Ill. Reg. 13669, effective September 11, 2023; emergency amendment at 47 Ill. Reg. 17214, effective November 6, 2023, for a maximum of 150 days; amended at 48 Ill. Reg. 1677, effective January 10, 2024; amended at 48 Ill. Reg. 2243, effective January 29, 2024; amended at 48 Ill. Reg. 4433, effective March 11, 2024; amended at 48 Ill. Reg. 10281, effective June 25, 2024; amended at 48 Ill. Reg. 10846, effective July 11, 2024; amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: CREDITS

**Section 100.2110 Economic Development for a Growing Economy Credit (IITA Section 211)**~~**Investment Credit; Enterprise Zone and River Edge Redevelopment Zone (IITA Section 201(f))**~~

- a) *For tax years beginning on or after January 1, 1999, a taxpayer who has entered into an Agreement (including for tax years beginning on or after January 1, 2021, a New Construction EDGE Agreement) with the Department of Commerce and Economic Opportunity (DCEO) under the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10] (EDGETCA), shall be allowed a credit against the tax imposed by the Illinois Income Tax Act (IITA) Section 201(a) and (b) in an amount to be determined in the Agreement. (IITA Section 211)*

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- b) The credit shall be computed as follows:
- 1) *The credit allowed shall not exceed the Incremental Income Tax with respect to the project. Additionally, the New Construction EDGE Credit shall not exceed the New Construction EDGE Incremental Income Tax. (IITA Section 211(1)) EDGETCA Section 5-5 defines Incremental Income Tax as the *total amount withheld during the taxable year from the compensation of new employees, and if applicable, retained employees under Article 7 of the IITA arising from employment at a project that is the subject of an Agreement.* EDGETCA Section 5-5 also defines New Construction EDGE Incremental Income Tax as the total amount withheld during the taxable year from the compensation of New Construction EDGE Employees. [35 ILCS 10/5-5]*
  - 2) *The amount of the credit allowed during the tax year plus the sum of all amounts allowed in prior years shall not exceed 100% of the aggregate amount expended by the taxpayer during all prior tax years on approved costs defined by Agreement. (IITA Section 211(2))*
  - 3) Pursuant to IITA Section 211(3), *the amount of credit shall be determined on an annual basis; provided, however, that:*
    - A) *except in the case of a taxpayer described in subsection (b)(3)(B), the credit against any State income tax liability may not be applied in more than extend beyond 10 taxable years ~~after the project is first approved and may not extend beyond the expiration of the Agreement;~~*
    - B) *in the case of a taxpayer certified by DCEO the Department of Commerce and Economic Opportunity (DCEO) under the Corporate Headquarters Relocation Act, the credit may not extend beyond 15 taxable years ~~and may not extend beyond the expiration of the Agreement;~~ provided, that the taxpayer may not claim for any tax year during that period more than 60% of the credit otherwise allowed for that tax year under the EDGETCA (see EDGETCA Section 5-45); and*

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- C) a credit earned within the applicable period specified in subsection (b)(3)(A) or (B) may be carried forward beyond that period pursuant to IITA Section 211(4).
- 4) *The credit may not exceed the amount of taxes imposed pursuant to IITA Section 201(a) and (b). (IITA Section 211(4))*
- 5) In the case of an election under Section 100.7380(a), no credit shall be allowed under IITA Section 211 or this Section for the taxable year of the election.
- c) *Any credit in excess of the tax liability for the taxable year may be carried forward to offset the income tax liability of the taxpayer for the next five years or until it has been fully utilized, whichever occurs first. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 211(4))* In the case of an election under Section 100.7380(a), no credit to which the election applies may be carried forward under IITA Section 211(4) and this Section.
- d) *No credit shall be allowed with respect to any Agreement for any taxable year ending after the Noncompliance Date. Upon receiving notification by the Department of Commerce and Economic Opportunity of the noncompliance of a taxpayer with an Agreement, the Department shall notify the taxpayer that no credit is allowed with respect to that Agreement for any taxable year ending after the Noncompliance Date, as stated in such notification. If any credit has been allowed with respect to an Agreement for a taxable year ending after the Noncompliance Date for that Agreement, any refund paid to the taxpayer for that taxable year shall, to the extent of that credit allowed, be an erroneous refund within the meaning of IITA Section 912. (IITA Section 211(5))* If, during any taxable year, a taxpayer ceases operations at a project location that is the subject of that Agreement with the intent to terminate operations in the State, the tax imposed under subsections (a) and (b) of IITA Section 201 for such taxable year shall be increased by the amount of any credit allowed under the Agreement for that project location prior to the date the taxpayer ceases operations. (IITA Section 211(5)).

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- e) In the case of a credit earned by a partnership or Subchapter S corporation, the credit passes through to the owners for use against their regular income tax liabilities in the same proportion as other items of the taxpayer are passed through to the taxpayer's owners for federal income tax purposes. (See IITA Section 211.)
- 1) 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 5-55 of the EDGETCA.
  - 2) 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.
- f) 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:
    - 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.
- g) *For purposes of this credit, the terms "Agreement", "Incremental Income Tax", "new employees", "New Construction EDGE Incremental Income Tax", "New Construction EDGE Employee", ~~and~~ "Noncompliance Date", and "retained employees" shall have the same meaning as when used in EDGETCA Section 5-5. (IITA Section 211(6))*

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- h) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 211)

(Source: Former Section 100.2110 renumbered to Section 100.2131; New Section 100.2110 renumbered from Section 100.2198 and amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2111 REV Tax Credit (IITA Section 236)**

- a) For tax years beginning on or after January 1, 2025, a taxpayer who has entered into an Agreement with the Department of Commerce and Economic Opportunity (DCEO) under the Reimagining Energy and Vehicles in Illinois Act [20 ILCS 686] (REV Illinois Act) is entitled to a credit against the taxes imposed under the Illinois Income Tax Act (IITA) Section 201 (a) and (b) in an amount to be determined in the Agreement. (IITA Section 236(a))
- b) The credit may be in the form of a REV Illinois Credit, a REV Construction Jobs Credit, or both. (IITA Section 236(b)(1))
- c) Instead of claiming the credit against the taxes imposed under IITA Section 201(a) and (b), with respect to the portion of a REV Illinois Credit that is calculated based on the incremental income tax attributable to new employees and retained employees, the taxpayer may elect, in accordance with the REV Illinois Act, to claim the credit, on or after January 1, 2025, against its obligation to pay over withholding under IITA Section 704A. (IITA Section 236(b)(6)) (See Section 100.7381)
- d) The credit shall be computed as established in this subsection.
- 1) The credit allowed shall not exceed the percentage of incremental income tax and percentage of training costs permitted in the REV Illinois Act and in the Agreement with respect to the project. (IITA Section 236(b)(1))
- 2) The amount of the credit allowed during a tax year plus the sum of all amounts allowed in prior tax years shall not exceed the maximum amount of credit established in the Agreement. (IITA Section 236(b)(2))

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- 3) The amount of the credit shall be determined on an annual basis.
  - 4) The credit may not be applied against any State income tax liability in more than 15 taxable years, except as applied in a carryover year as provided in subsection (f). (IITA Section 236(b)(3))
  - 5) The credit may not exceed the amount of taxes imposed pursuant to IITA Section 201(a) and (b). (IITA Section 236(b)(4))
  - 6) In the case of an election under Section 100.7381, no credit shall be allowed under IITA Section 236 or this Section for the taxable year of the election against the taxes imposed under IITA Section 201(a) and (b). (IITA Section 236(b)(6))
- 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 30 of the REV Illinois Act, except that credits awarded by DCEO prior to January 1, 2025, shall be taken in the first taxable year beginning on or after January 1, 2025.
  - f) Any credit that is unused in the year the credit is computed may be carried forward to and applied to the tax liability of the 5 taxable years following the excess credit year, or until it has been fully utilized, whichever occurs first. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 236(b)(4)) In the case of an election under Section 100.7381, no credit to which the election applies may be carried forward under IITA Section 236(b)(4) and this Section.
  - g) No credit shall be allowed with respect to any Agreement for any taxable year ending after the noncompliance date.
- 1) Upon receiving notification by DCEO of the noncompliance of a taxpayer with an Agreement, the Department shall notify the taxpayer that no credit is allowed with respect to that Agreement for any taxable year ending after the Noncompliance Date, as stated in such notification.

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- 2) *If any credit has been allowed with respect to an Agreement for a taxable year ending after the noncompliance date for that Agreement, any refund paid to the taxpayer for that taxable year shall, to the extent of that credit allowed, be an erroneous refund within the meaning of IITA Section 912. (IITA Section 236(b)(5))*
  
- h) *If, during any taxable year, a taxpayer ceases operations at a project location that is the subject of that Agreement with the intent to terminate operations in the State, the tax imposed under subsections (a) and (b) of IITA Section 201 for such taxable year shall be increased by the amount of any credit allowed under the Agreement for that project location prior to the date the taxpayer ceases operations. (IITA Section 236(b)(5))*
  
- i) Partnerships and Subchapter S Corporations
  - 1) *If the taxpayer is a partnership or a Subchapter S corporation, the credit is allowed to pass through 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 30 of the REV Illinois 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*



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or shareholders in the same manner as a credit earned by the partnership or subchapter S corporation.

- j) 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:
    - 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.
- k) For purposes of this Section, the terms "Agreement," "incremental income tax," "new employee," "noncompliance date," "retained employee," "REV Construction Jobs Credit," "REV Illinois Credit," and "training costs" shall have the same meaning as when used in the REV Illinois Act.
- l) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 236(a))

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

**Section 100.2112 MICRO Tax Credit (IITA Section 238)**

- a) For tax years beginning on or after January 1, 2025, a taxpayer who has entered into an Agreement with the Department of Commerce and Economic Opportunity (DCEO) under the Manufacturing Illinois Chips for Real Opportunity (MICRO) Act [35 ILCS 45] (MICRO Act) is entitled to a credit against the taxes imposed under the Illinois Income Tax Act (IITA) Section 201 (a) and (b) in an amount to be determined in the Agreement. (IITA Section 238(a))



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- b) The credit may be in the form of a MICRO Illinois Credit, a MICRO Construction Jobs Credit, or both. (IITA Section 238(b)(1))
- c) Instead of claiming the credit against the taxes imposed under IITA Section 201(a) and (b), with respect to the portion of a MICRO Illinois Credit that is calculated based on the incremental income tax attributable to new employees and retained employees, the taxpayer may elect, in accordance with the MICRO Act, to claim the credit, on or after January 1, 2025, against its obligation to pay over withholding under IITA Section 704A. (IITA Section 238(b)(6)) (See Section 100.7382)
- d) The credit shall be computed as established in this subsection.
  - 1) The credit allowed shall not exceed the percentage of incremental income tax and percentage of training costs permitted in the MICRO Act and in the Agreement with respect to the project. (IITA Section 238(b)(1))
  - 2) The amount of the credit allowed during a tax year plus the sum of all amounts allowed in prior tax years shall not exceed the maximum amount of credit established in the Agreement. (IITA Section 238(b)(2))
  - 3) The amount of the credit shall be determined on an annual basis.
  - 4) The credit may not be applied against any State income tax liability in more than 15 taxable years, except as applied in a carryover year as provided in subsection (f). (IITA Section 238(b)(3))
  - 5) The credit may not exceed the amount of taxes imposed pursuant to IITA Section 201(a) and (b). (IITA Section 238(b)(4))
  - 6) In the case of an election under Section 100.7382, no credit shall be allowed under IITA Section 238 or this Section for the taxable year of the election against the taxes imposed under IITA Section 201(a) and (b). (IITA Section 238(b)(6))
- 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 110-30 of the MICRO Act, except that credits awarded by DCEO

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prior to January 1, 2025, shall be taken in the first taxable year beginning on or after January 1, 2025.

- f) Any credit that is unused in the year the credit is computed may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year, or until it has been fully utilized, whichever occurs first. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one tax year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 238(b)(4)) In the case of an election under Section 100.7382, no credit to which the election applies may be carried forward under IITA Section 238(b)(4) and this Section.
  
- g) No credit shall be allowed with respect to any Agreement for any taxable year ending after the noncompliance date.
  - 1) Upon receiving notification by DCEO of the noncompliance of a taxpayer with an Agreement, the Department shall notify the taxpayer that no credit is allowed with respect to that Agreement for any taxable year ending after the Noncompliance Date, as stated in such notification.
  
  - 2) If any credit has been allowed with respect to an Agreement for a taxable year ending after the noncompliance date for that Agreement, any refund paid to the taxpayer for that taxable year shall, to the extent of that credit allowed, be an erroneous refund within the meaning of IITA Section 912. (IITA Section 238(b)(5))
  
- h) If, during any taxable year, a taxpayer ceases operations at a project location that is the subject of that Agreement with the intent to terminate operations in the State, the tax imposed under subsections (a) and (b) of IITA Section 201 for such taxable year shall be increased by the amount of any credit allowed under the Agreement for that project location prior to the date the taxpayer ceases operations. (IITA Section 238(b)(5))
  
- i) Partnerships and Subchapter S Corporations
  - 1) If the taxpayer is a partnership or a Subchapter S corporation, the credit is allowed to pass through to the partners or shareholders in accordance with the determination of income and distributive share

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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 110-30 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.
- j) 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:
    - 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.

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- k) For purposes of this Section, the terms "Agreement," "incremental income tax," "new employee," "noncompliance date," "MICRO Construction Jobs Credit," "MICRO Illinois Credit," "retained employee," and "training costs" shall have the same meaning as when used in the MICRO Act.
- l) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 238(a))

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

**Section 100.2131 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 in a partnership 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 0.5% 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.

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- 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; ~~and-~~
    - B) personalty or realty, which may consist of such items as buildings, component parts of buildings, machinery, equipment and vehicles.
    - C) ~~Items~~ ~~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.

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- 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:

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- 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

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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



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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.

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- 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:

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- 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 ( $\$55,000 \times 0.5\%$ ). 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 ( $\$55,000 - \$5,000 \times 0.5\% = \$250$ ). This recomputed credit is subtracted from the enterprise zone Investment Tax Credit actually used in ~~2007~~1985 (~~\$275~~260 - \$250 = ~~\$250~~), 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*

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*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: Section 100.2131 renumbered from Section 100.2110 and amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2135 REV Illinois Investment Tax Credit (IITA Section 237)**

- a) *For tax years beginning on or after November 16, 2021, 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 REV Illinois Project subject to an agreement between the taxpayer and the Department of Commerce and Economic Opportunity (DCEO) pursuant to the Reimagining Energy and Vehicles in Illinois Act~~Reimagining Electric Vehicles in Illinois Act~~ [20 ILCS 686] (REV Illinois Act). (IITA Section 237(a))*
- b) For the purposes of the REV Illinois investment tax credit, "Project" or "REV Illinois Project" shall have the same meaning as when used in Section 10 of the REV Illinois Act.
- c) *The credit shall be 0.5% of the basis for such property.* (IITA Section 237(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 237(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 100 of the REV Illinois 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 237;*
    - 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 REV Illinois 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 REV Illinois Project by the taxpayer; and*
- A) The term "used at the site of the REV Illinois Project" means that the property for which the credit is being claimed is physically located within the boundaries of a REV Illinois Project site certified by DCEO. Storage of property in a REV 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 REV 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 REV Illinois Project site in order to qualify for the credit.
    - i) Removal of such property from the REV 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 REV Illinois Project site.
    - ii) Mobile property is considered to be predominantly used at the REV 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 REV Illinois Project site to deliver goods both in Illinois and out-of-state, then the temporary absence of its trucks from the REV 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 REV 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 237(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 (11/16/21) that established the credit.



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EXAMPLE 1: Corporation A purchases a used pickup truck for use at its REV 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 237(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 REV 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 REV Illinois 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 237(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 237(e))*

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Property is placed in service for purposes of the credit in the earlier of the following taxable years:

- 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 REV Illinois 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 REV 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.

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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 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 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 237(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 2021, taxpayer places qualifying property with a basis of \$55,000 into service at the site of a REV Illinois Project and computes a credit for the year of \$275 ( $\$55,000 \times 0.5\%$ ). Taxpayer's 2021 income tax is \$275. 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 2021 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 2022, taxpayer must recompute its 2021 credit by eliminating the disqualified property ( $(\$55,000 - \$5,000) \times 0.5\% = \$250$ ). This recomputed credit is

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subtracted from the credit actually used in 2021 against the income tax ( $\$275 - \$250 = \$25$ ) and the difference is added to taxpayer's 2022 income tax.

j) Partnerships and Subchapter S Corporations

- 1) *For taxable years ending before December 31, 2023, for*~~For~~*partners, shareholders of Subchapter S corporations, and owners of limited liability companies, if the liability company is treated as a partnership for purposes of federal and State income taxation, there shall be allowed a credit under this Section 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 IRC. (IITA Section 237(a)) Partnership has the meaning prescribed in IITA Section 1501(a)(16). In the case of a credit earned by a partnership or subchapter S corporation, the credit passes through to the owner as provided in the partnership agreement under IRC Section 704(a) or in proportion to their ownership of the stock of the subchapter S corporation under IRC section 1366(a).*
- 2) *For taxable years ending on or after December 31, 2023, if the taxpayer is a partnership or a Subchapter S corporation, then the credit is allowed to pass through to the partners and 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 Section 1501(a)(16). (IITA Section 251)*
- ~~32)~~ 32) 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 100 of the REV Illinois Act.
- ~~43)~~ 43) 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

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corporation ends and may be carried forward to the 5 succeeding taxable years of the owner until used.

**54)** 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:

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 REV Illinois Investment Tax Credit shall not be eligible for the investment tax credits in Section 201(e), (f), or (h) of the IITA. (20 ILCS 686/100)*

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2164 Data Center Construction Employment Tax~~Investment~~ Credit (IITA Section 229)**

a) For taxable years beginning on or after January 1, 2019, a taxpayer who has been awarded a credit by the Department of Commerce and Economic Opportunity (DCEO) under Section 605-1025(b) of the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois [20 ILCS 605] (DCEO Law) is entitled to a credit against the taxes imposed under IITA Section 201 (a) and (b). (IITA Section 229(a))

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- b) Data Center. For the purposes of the data center construction employment tax investment credit, "data center" shall have the same meaning as when used in Section 605-1025(c) of the DCEO Law.
- c) The credit shall be computed as established in this subsection. *The amount of the credit shall be 20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a certified data center if those wages are paid for the construction of a new data center in a geographic area that meets any one of the following criteria:*
- 1) *the area has a poverty rate of at least 20%, according to the U.S. Census Bureau American Community Survey 5-year Estimates latest federal decennial census;*
  - 2) *75% or more of the children in the area participate in the federal free lunch program, according to reported statistics from the State Board of Education;*
  - 3) *20% or more of the households in the area receive assistance under the Supplemental Nutrition Assistance Program (SNAP), according to data from the U.S. Census Bureau American Community Survey 5-year Estimates; or*
  - 4) *the area has an average unemployment rate, as determined by the 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 2 consecutive calendar years preceding the date of the application. (IITA Section 229(a))*
- d) Year in Which Credit is Taken. The credit allowed under this Section shall be taken in the taxable year that includes the date of the tax credit certificate award issued by DCEO under Section 605-1025(b) of the DCEO Law.
- e) Partnerships and Subchapter S Corporations
- 1) *For taxable years ending before December 31, 2023, if the taxpayer is a partnership, a Subchapter S corporation, or a limited*

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liability company that has elected partnership tax treatment, the credit shall be allowed to the partners, shareholders, or members 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, as applicable. (IITA Section 229(a)) Partnership has the meaning prescribed in IITA Section 1501(a)(16). In the case of a credit earned by a partnership or subchapter S corporation, the credit passes through to the owners as provided in the partnership agreement under IRC section 704(a) or in proportion to their ownership of the stock of the subchapter S corporation under IRC section 1366(a).

- 2) For taxable years ending on or after December 31, 2023, if the taxpayer is a partnership or a Subchapter S corporation, then the credit is allowed to pass through to the partners and 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)
- 3) The credit earned by a partnership or 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~~award was issued by DCEO under Section 605-1025(b) of the DCEO Law.
- 4) 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.
- 5) 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.

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- f) *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 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 229(b))
- g) *Revocation. No credit shall be allowed with respect to any certification for any taxable year ending after the revocation of the certification by DCEO. Upon receiving notification by ~~DCEO~~~~DCEO~~ of the revocation of certification, the Department shall notify the taxpayer that no credit is allowed for any taxable year ending after the revocation date, as stated in the notification.* (IITA Section 229(c))
- h) *If any credit has been allowed with respect to a certification for a taxable year ending after the revocation date, any refund paid to the taxpayer for that taxable year shall be, to the extent of that credit allowed, an erroneous refund within the meaning of IITA Section 912.* (IITA Section 229(c))
- i) Documentation of the Credit. A claimant shall attach to its Illinois income tax return:
- 1) a copy of the Tax Credit Certificate and/or 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:
    - 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.
- j) *This Section is exempt from the automatic sunset provisions of IITA Section 250.* (IITA Section 229(a))



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(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 100.2198 Economic Development for a Growing Economy Credit (IITA 211) (Renumbered)**

(Source: Section 100.2198 renumbered to Section 100.2110 at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART G: BASE INCOME OF CORPORATIONS

**Section 100.2655 Subtraction Modification for Enterprise Zone and River Edge Redevelopment Zone Interest (IITA Section 203(b)(2)(M))**

- a) A corporation that is a "financial organization" within the meaning of IITA Section 304(c) may subtract *an amount included in its taxable income as interest income from a loan or loans made by such taxpayer to a borrower, to the extent that such a loan is secured by property which is eligible for the enterprise zone investment credit (IITA Section 203(b)(2)(M)) or the river edge redevelopment zone investment credit under IITA Section 201(f).* The subtraction for interest from loans secured by property eligible for the enterprise zone investment credit is allowed only for interest received or accrued prior to August 7, 2012, the effective date of PA 97-905, which repealed this subtraction.
- b) Eligible Property. For purposes of this Section, "Eligible Property" shall mean:
  - 1) for tax years ending prior to June 8, 1984 (the effective date of PA 83-1114), property for which the borrower had successfully claimed the credit under IITA Section 201(h) (prior to recodification as IITA Section 201(f) by PA 85-731); and
  - 2) for tax years ending on or after June 8, 1984, property that is "qualified property" as defined under IITA Section 203(f)(2) and Section ~~100.2131(e)~~~~100.2110(e)~~ or that would have been qualified property under those provisions if placed in service in an enterprise zone at the time it was new by a taxpayer otherwise eligible to claim the credit under IITA Section 203(f).

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- c) Portion of Loan Secured by Eligible Property. *To determine the portion of a loan that that is secured by Eligible Property, the entire principal amount of the loan between the taxpayer and the borrower should be divided into the basis of the Eligible Property which secures the loan, using for this purpose the original basis of such property on the date it was placed in service in the enterprise zone or the river edge redevelopment zone. The subtraction modification available to the taxpayer in any year under this Section shall be the portion of the total interest paid by the borrower with respect to such loan attributable to the Eligible Property as calculated under the previous sentence. (IITA Section 203(b)(2)(M))* There is no limitation to the length of time for which the subtraction may be taken with respect to a particular loan.
- d) Basis. For purposes of the computation in subsection (c), the basis of Eligible Property shall be its borrower's basis in the Eligible Property for federal income tax purposes, including the costs of any improvements or repairs included in that basis, but without adjustment for depreciation or IRC section 179 deductions claimed with respect to the property.
- e) Examples. This subsection provides examples of various fact situations and the Department's interpretation of how this subtraction would apply:
- 1) EXAMPLE 1. Bank lends \$1,000 to Borrower, secured by Eligible Property with a basis of \$900. The portion of the loan secured by Eligible Property is the \$900 basis of the borrower in Eligible Property divided by the \$1,000 principal amount of the loan, or 90%.
  - 2) EXAMPLE 2. Bank lends \$1,000 to Borrower, secured by Eligible Property with a basis of \$1,000 and by other property with a basis of ~~\$2,000~~\$2000. The portion of the loan secured by Eligible Property is the \$1,000 basis of the borrower in Eligible Property divided by the ~~\$1,000~~\$1000 principal amount of the loan, or 100%. The existence of other property securing the loan is irrelevant.
  - 3) EXAMPLE 3. In 1996, ABC Company built a new warehouse in an enterprise zone at the cost of \$1,000,000 and is able to claim the enterprise zone investment credit under IITA Section 201(f). ABC takes out a \$2,000,000 loan at Bank A, which then places a lien on the property. In 1999, when the warehouse had an adjusted basis

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(after depreciation) of \$900,000 and a fair market value of \$1,300,000, ABC refinanced the loan for the same principal amount, but at a lower interest rate. For both loans, the portion of the loan secured by Eligible Property is the \$1,000,000 original basis in the warehouse divided by the \$2,000,000 principal. Neither the adjusted basis after depreciation nor the fair market value are relevant to the computation for the refinanced amount.

- 4) EXAMPLE 4. The facts are the same as in Example 3, except that, in 2001, ABC Company again refinanced the loan, this time at Bank B (unrelated to Bank A). There was no change in the principal amount. Bank B takes a lien on the warehouse to secure the new loan. The portion of the Bank B loan that qualifies for the subtraction modification is 50% because the principal amount of the loan and ABC Company's original basis in the property remain unchanged.
- 5) EXAMPLE 5. Same facts as in Example 4, except that Bank B purchased the refinanced loan from Bank A. The loan is not refinanced. ABC continues to pay the same amount, but now pays Bank B rather than Bank A. Bank B does not qualify for the subtraction modification, which is allowed only with respect to a loan "made by such taxpayer to a borrower" and Bank B did not make the loan.
- 6) EXAMPLE 6. X Corp., headquartered outside the river edge redevelopment zone, builds a \$100,000,000 warehouse in a river edge redevelopment zone in 2007 and claims the river edge redevelopment zone credit. X takes out a 20-year loan at Bank A in the principal amount of \$1,000,000. In 2017, X takes out a new \$1,750,000 loan at the same bank and uses \$1,000,000 of the proceeds to pay off the old loan and spends the remaining \$750,000 to renovate its corporate headquarters located outside the zone. Bank A takes a lien on the warehouse as security for each loan. Because X Corp.'s \$100,000,000 basis in the warehouse exceeds the principal amount of each loan, Bank A is entitled to subtract the entire amount of interest received from each loan. The portion of the loan whose interest may be subtracted need not be reduced by the \$750,000 portion not spent inside the

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river edge redevelopment zone because use of the borrowed funds is not relevant to the subtraction.

- 7) EXAMPLE 7. The F Church, located in an enterprise zone, decides to borrow \$500,000 in 2003 from Bank A for roof repairs and a new addition. The church cannot claim the enterprise zone credit because it did not have unrelated business taxable income and was not required to file an IL-990-T for 2003. Bank A may claim the subtraction modification. The loan is secured by property that is either qualified property or could be qualified property, and the property has been placed in service within an enterprise zone.

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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

**Section 100.7380 Economic Development for a Growing Economy (EDGE) and Small Business Job Creation Credit (IITA Section 704A(g) and (h))**

- a) EDGE Credit. An eligible taxpayer who makes an election under this subsection (a) shall be allowed a credit against payments required under IITA Section 704A equal to the *credits not previously claimed and allowed to be carried forward under IITA Section 211(4) as provided in Section 5-15(f) of the Economic Development for a Growing Economy Tax Credit Act (EDGETCA)*. (IITA Section 704A(g)) A taxpayer may make an election under this subsection (a) for taxable years ending on and after December 31, 2009. Only an eligible taxpayer, as defined in subsection (a)(2), may make the election.
- 1) Effect of Election. When an election under this subsection (a) is made, the amount of the credit awarded to the taxpayer under EDGETCA Section 5-15 for the taxable year of the election shall be allowed as a credit against payments due under IITA Section 704A for the first quarterly reporting period beginning after the end of the quarterly reporting period *in which the credit is awarded*. (See EDGETCA Section 5-15(f)(2).) No credit awarded in a taxable year for which the election is made shall be allowed under IITA Section 211.

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EXAMPLE: Taxpayer is an eligible taxpayer and makes the election under this subsection (a)(1) for its taxable year ending June 30, 2023. For its taxable year ending June 30, 2023, Taxpayer is awarded a credit under IITA Section 211 of \$10,000. In addition, Taxpayer has credit carryovers under Section 211(4) of \$5000 from 2021, and \$7000 from 2022. Under Section 704A(g) and this subsection (a)(1), Taxpayer is allowed a credit of \$10,000 against withholding payments due under IITA 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 awarded to the Taxpayer. Taxpayer may not claim a credit against the tax imposed under IITA Section 201(a) and (b) for its taxable year ending June 30, 2023, for the \$10,000 credit awarded in that taxable year, but may claim a credit for the amounts carried forward from 2021 and 2022.

- 2) Eligible Taxpayer Defined. The term "eligible taxpayer" means, with respect to the taxable year for which the election under this subsection (a) is otherwise available:
  - A) A taxpayer who is primarily engaged (more than 50%) in one of the following business activities: *water purification and treatment, motor vehicle metal stamping, automobile manufacturing, automobile and light duty motor vehicle manufacturing, motor vehicle manufacturing, light truck and utility vehicle manufacturing, heavy duty truck manufacturing, motor vehicle body manufacturing, cable television infrastructure design or manufacturing, or wireless telecommunication or computing terminal device design or manufacturing for use on public networks* (EDGETCA Section 5-15(f)(1)) and the taxpayer meets one of the following requirements:
    - i) *the taxpayer has an Illinois net loss or net loss deduction under IITA Section 207 for the taxable year, employed no less than 1,000 full-time employees (as defined in 35 ILCS 10/5-5) in Illinois on each day of the taxable year, has an "Agreement" (as defined in 35 ILCS 10/5-5) in effect as of December 14, 2009, and is in compliance with all provisions of that Agreement (see EDGETCA Section 5-15(f)(1)(A));*

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- ii) *the taxpayer has an Illinois net loss or net loss deduction under IITA Section 207 for the taxable year, employed no less than 1,000 full time employees (as defined in 35 ILCS 10/5-5) in Illinois on each day of the taxable year, applied for the "Agreement" (as defined in 35 ILCS 10/5-5) resulting in the credit with respect to which the election is made within 365 days after December 14, 2009 (EDGETCA Section 5-15(f)(1)(B));*
- iii) *the taxpayer had an Illinois net operating loss carryforward under IITA Section 207 in a taxable year ending during calendar year 2008, has applied for an "Agreement" (as defined in 35 ILCS 10/5-5) by November 1, 2010 (150 days after the June 4, 2010 effective date of Public Act 96-905), creates at least 400 new jobs in Illinois, retains at least 2,000 jobs in Illinois that would have been at risk of relocation out of Illinois over a 10-year period, and makes a capital investment of at least \$75,000,000 (EDGETCA Section 5-15(f)(1)(C));*
- iv) *the taxpayer has an Illinois net operating loss carryforward under IITA Section 207 in a taxable year ending during calendar year 2009, has applied for an "Agreement" (as defined in 35 ILCS 10/5-5) by August 1, 2011 (150 days after the March 4, 2011 effective date of Public Act 96-1534), creates at least 150 new jobs, retains at least 1,000 jobs in Illinois that would have been at risk of relocation out of Illinois over a 10-year period, and makes a capital investment of at least \$57,000,000 (EDGETCA Section 5-15(f)(1)(D));*  
or
- v) *the taxpayer employed at least 2,500 full-time employees in the State during the year in which the credit is awarded, commits to make at least \$500,000,000 in combined capital improvements and project costs under the Agreement, applies for an*

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*Agreement between January 1, 2011 and June 30, 2011, executes an "Agreement" (as defined in 35 ILCS 10/5-5) for the credit during calendar year 2011, and was incorporated no more than 5 years before the filing of an application for the Agreement. (EDGETCA Section 5-15(f)(1)(E)); or*

- B) *A taxpayer whose "Agreement" (as defined in 35 ILCS 10/5-5) was executed between January 1, 2011 and June 30, 2011 and who is primarily engaged in the manufacture of inner tubes or tires, or both, from natural and synthetic rubber, employs a minimum of 2,400 full-time employees in Illinois at the time of application, creates at least 350 full-time jobs and retains at least 250 full-time jobs in Illinois that would have been at risk of being created or retained outside of Illinois, and makes a capital investment of at least \$200,000,000 at the project location (EDGETCA Section 5-15(f)(1.5)); or*
- C) *A taxpayer whose "Agreement" (as defined in 35 ILCS 10/5-5) was executed by May 14, 2012 (150 days after the December 16, 2011 effective date of Public Act 97-636), and who is primarily engaged in the operation of a discount department store, maintains its corporate headquarters in Illinois, employs a minimum of 4,250 full-time employees at its corporate headquarters in Illinois at the time of application, retains at least 4,250 full-time jobs in Illinois that would have been at risk of being relocated outside of Illinois, had a minimum of \$40,000,000,000 in total revenue in 2010, and makes a capital investment of at least \$300,000,000 at the project location (EDGETCA Section 5-15(f)(1.6)); or*
- D) *A taxpayer whose "Agreement" (as defined in 35 ILCS 10/5-5) was executed or applied for on or after July 1, 2011 and on or before March 31, 2012, and who is primarily engaged in the manufacture of original and aftermarket filtration parts and products for automobiles, motor vehicles, light duty motor vehicles, light trucks and utility vehicles, and heavy duty trucks, employs a minimum of 1,000 full-time employees in Illinois at the time of application, creates at*

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*least 250 full-time jobs in Illinois, relocates its corporate headquarters to Illinois from another state, and makes a capital investment of at least \$4,000,000 at the project location (EDGETCA Section 5-15(f)(1.7)); or*

- E) *A startup taxpayer whose "Agreement" (as defined in 35 ILCS 10/5-5) was executed on or after April 19, 2022 (the effective date of Public Act 102-0700). Any election under this subsection shall be effective unless and until such startup taxpayer has any Illinois income tax liability. Any election under this subsection shall automatically terminate when the startup taxpayer has any Illinois income tax liability at the end of any taxable year during the term of the Agreement. Thereafter, the startup taxpayer may receive an income tax credit under IITA Section 211 (see Section ~~100.2110~~100.2198), taking into account any benefits previously enjoyed or received by way of the election under this subsection, so long as the startup taxpayer remains in compliance with the terms and conditions of the Agreement (EDGETCA Section 5-15(f)(1.8)). "Startup taxpayer" shall have the same meaning as defined in the EDGETCA.*

EXAMPLE: Taxpayer is an eligible startup taxpayer and makes the election under subsection (a)(1) for its taxable year ending December 31, 2024. The startup taxpayer was allowed a credit against withholding payments due for each quarter in 2024. At the end of 2024, the startup taxpayer determined it will have an Illinois income tax liability for that taxable year. The election will automatically terminate on December 31, 2024 – the end of the startup taxpayer's taxable year. No credits against withholding payments due under IITA 704A(c) will be permitted for this startup taxpayer beginning with the first withholding quarter of 2025. The startup taxpayer may be eligible to claim an income tax credit under IITA Section 211 for its taxable year ending December 31, 2025, for any credits awarded in 2025.

- E) *An applicant's project qualified under EDGETCA Section 5-20(b)(1.7) and whose "Agreement" (as defined in 35 ILCS 10/5 was executed on or after June 26, 2024 (the effective*



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date of Public Act 103-0595). Any election under this subsection shall be effective unless and until such taxpayer has any Illinois income tax liability. Any election under this subsection shall automatically terminate when the taxpayer has any Illinois income tax liability at the end of any taxable year during the term of the Agreement. Thereafter, the taxpayer may receive an income tax credit under IITA Section 211 (see Section 100.2110), taking into account any benefits previously enjoyed or received by way of the election under this subsection, so long as the taxpayer remains in compliance with the terms and conditions of the Agreement (EDGETCA Section 5-15(f)(1.9))

EXAMPLE: Taxpayer is an eligible applicant and makes the election under subsection (a)(1) for its taxable year ending December 31, 2025. The taxpayer was allowed a credit against withholding payments due for each quarter in 2025. At the end of 2025, the taxpayer determined it will have an Illinois income tax liability for that taxable year. The election will automatically terminate on December 31, 2025 – the end of the taxpayer's taxable year. No credits against withholding payments due under IITA 704A(c) will be permitted for this taxpayer beginning with the first withholding quarter of 2026. The taxpayer may be eligible to claim an income tax credit under IITA Section 211 for its taxable year ending December 31, 2026, for any credits awarded in 2026.

- 3) Manner of Making Election. *The election shall be made in the form and manner required by the Department and, once made, shall be irrevocable* (EDGETCA Section 5-15(f)(3)). The election shall be made by claiming the credit on the withholding return due under IITA Section 704A for the first quarterly reporting period of the calendar year beginning after the end of the quarterly reporting period *in which the credit is awarded* (EDGETCA Section 5-15(f)(2)). The election applies to the entire credit awarded for the taxable year under IITA Section 211.
- 4) Partnerships and S Corporations. A partnership or Subchapter S corporation may be an eligible taxpayer and make an election under this subsection (a). When a partnership or S corporation makes an election under this subsection (a), no credit shall pass

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through to the partners or shareholders for the taxable year under IITA Section 211.

- 5) *The credit or credits 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 or credits exceeds the total payments due under Section 704A with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under Section 704A in the 5 succeeding calendar years, as allowed to be carried forward under IITA Section 211(4), or until it has been fully utilized, whichever occurs first. The credit or credits shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one taxable year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 704A(g))*

EXAMPLE: Taxpayer is an eligible taxpayer and makes an election under this subsection (a) for its taxable year ending June 30, 2023. For its taxable year ending June 30, 2023, Taxpayer is awarded a credit certificate under IITA Section 211 of \$10,000 during its withholding quarterly reporting period ending June 30, 2023. Under Section 704A(g) and this subsection (a)(5), Taxpayer is allowed a credit of \$10,000 against withholding payments due under IITA 704A(c) in its quarterly reporting period ending September 30, 2023. Taxpayer withheld tax during its withholding quarter ending September 30, 2023 of \$4,000. Under Section 704(A)(g) and this subsection (a)(5), Taxpayer's credit may not exceed \$4,000. Taxpayer is allowed to carry forward the \$6,000 excess credit to the 5 succeeding calendar years.

- 6) No credit shall be allowed under IITA Section 704A(g) and this subsection with respect to any amount that would be disallowed as a credit under IITA Section 211(5) due to a Noncompliance Date. (See Section ~~100.2110(d)~~100.2198(d).)
- 7) *No credit awarded under the EDGETCA for agreements entered into on or after January 1, 2015, except for credits awarded pursuant to Agreements entered into by a startup taxpayer on or after April 19, 2022, under EDGETCA Section 5-15(f)(1.8), and for credits awarded pursuant to Agreements entered into by a taxpayer*

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on or after June 26, 2024, under EDGETCA Section 5-15(f)(1.9)  
*may be credited against payments due under this Section. (IITA  
Section 704A(g))*

- b) *Small Business Job Creation Credit. A taxpayer may claim a credit against payments due under IITA Section 704A for the first calendar year ending after the date on which a tax credit certificate was issued under Section 35 of the Small Business Job Creation Tax Credit Act (SBJCTCA). The credit shall be equal to the amount shown on the certificate, but may not reduce the taxpayer's obligation for any payment due under Section 704A to less than zero. (IITA Section 704A(h))*
- 1) *If the amount of the credit exceeds the total payments due under Section 704A with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under Section 704A in the 5 succeeding calendar years or until it has been fully utilized, whichever occurs first. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one calendar year that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 704A(h))*
- 2) *No credit shall be allowed under IITA Section 704A(h) and this subsection (b) with respect to any payment due under IITA Section 704A after the date a notice of noncompliance is issued to the Department under Section 45 of the Small Business Job Creation Tax Credit Act, as stated in the notification. If any credit has been allowed for a payment due after the date of notice of noncompliance, any refund paid to the taxpayer for that taxable year shall, to the extent of the credit allowed, be an erroneous refund within the meaning of IITA Section 912.*
- c) *For purposes of this Section, the term "taxpayer" shall include members of the taxpayer's unitary business group. (IITA Section 704A(g) and SBJCTCA Section 10)*
- d) *The credits allowed under this Section are exempt from the sunset provisions of IITA Section 250. (IITA Section 704A(g) and (h))*

(Source: Amended at 49 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 100.7381 REV Tax Credit (IITA Section 704A(g-1))**

- a) On or after January 1, 2025, with respect to the portion of a REV Illinois Credit that is calculated based on the incremental income tax attributable to new employees and retained employees, a taxpayer may elect, in accordance with the Reimagining Energy and Vehicles in Illinois Act (REV Illinois Act) [20 ILCS 686], to claim a REV tax credit against its obligation to pay over withholding under the Illinois Income Tax Act (IITA) Section 704A instead of claiming the credit against the taxes imposed under IITA Section 201(a) and (b). (IITA Section 236(b)(6))
- b) For amounts deducted or withheld after December 31, 2024, a taxpayer who makes an election under the REV Illinois Act and this Section shall be allowed a credit against payments due under IITA Section 704A and this Section for amounts withheld during the first quarterly reporting period beginning after the certificate is issued equal to the portion of the REV Illinois Credit attributable to the incremental income tax attributable to new employees and retained employees as certified by the Department of Commerce and Economic Opportunity (DCEO) pursuant to an agreement with the taxpayer under the REV Illinois Act for the taxable year. (IITA Section 704A(g-1))
- c) The credit may be in the form of a REV Illinois Credit, a REV Construction Jobs Credit, or both. (IITA Section 236(b)(1))
- d) Taxpayer Defined. A taxpayer who meets the definition of "applicant" in Section 10 of the REV Illinois Act, as determined by DCEO, and has been issued a tax credit certificate by DCEO may make the election under this Section. For purposes of this section, the term "taxpayer" shall also include taxpayer and members of the taxpayer's unitary business group as defined in IITA Section 1501(a)(27). (IITA Section 704A(g-1))
- e) Effect of Election. When an election under this Section is made, the amount of the credit awarded to the taxpayer under Section 30 of the REV Illinois Act for the taxable year of the election shall be allowed as a credit against payments due under IITA Section 704A for the first quarterly reporting period beginning after the end of the quarterly reporting period in which the credit is awarded. No credit awarded in a taxable year for which the election is made shall be allowed under IITA Section 236.

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EXAMPLE: Taxpayer makes the election under this Section for its taxable year ending June 30, 2026. For its taxable year ending June 30, 2026, Taxpayer is awarded a credit under IITA Section 236 of \$15,000. In addition, Taxpayer has a credit carryover under IITA Section 236(b)(4) of \$5,000 from 2025. Under IITA Section 704A(g-1) and this subsection, Taxpayer is allowed a credit of \$15,000 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 awarded to the Taxpayer. Taxpayer may not claim a credit against the tax imposed under IITA Section 201(a) and (b) for its taxable year ending June 30, 2026, for the \$15,000 credit awarded in that taxable year, but may claim a credit for the \$5,000 carried forward from 2025.

- f) Manner of Making Election. The election shall be made in the manner prescribed by the Department and once made shall be irrevocable. (REV Illinois Act Section 30(h)) The election shall be made by claiming the credit on the withholding return due under IITA Section 704A for the first quarterly reporting period of the calendar year beginning after the end of the quarterly reporting period in which the tax credit certificate is awarded. The election applies to the entire credit awarded for the taxable year under IITA Section 236.
- g) Partnerships and S Corporations. A partnership or Subchapter S corporation may make an election under this subsection. When a partnership or S corporation makes an election under this subsection, no credit shall pass through to the partners or shareholders for the taxable year under IITA Section 236.
- h) The credit or credits 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 or credits exceeds the total payments 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, as allowed to be carried forward under IITA Section 211(4), or until it has been fully utilized, whichever occurs first. The credit or credits shall be applied to the earliest quarterly reporting period for which there is a tax liability. If there are credits from more than one

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quarterly reporting period that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 704A(g-1))

EXAMPLE: Taxpayer makes an election under this Section for its taxable year ending December 31, 2026. For its taxable year ending December 31, 2026, Taxpayer is awarded a tax credit certificate under IITA Section 236 of \$10,000 during its withholding quarterly reporting period ending June 30, 2026. Under Section 704A(g-1) and this Section, Taxpayer is allowed a credit of \$10,000 against withholding payments due under IITA 704A(c) in its quarterly reporting period ending September 30, 2026. Taxpayer withheld tax during its withholding quarter ending September 30, 2026, of \$4,000. Under Section 704(A)(g-1) and this Section, Taxpayer's credit may not exceed \$4,000. Taxpayer is allowed to carry forward the \$6,000 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, 2026, of \$1,000, then Taxpayer is allowed to carry forward the \$5,000 excess credit to its withholding liability for the March 31, 2027, reporting period.

- i) No credit shall be allowed under IITA Section 704A(g-1) and this Section with respect to any payment due under IITA Section 704A after the date a notice of noncompliance is issued to the Department under Section 70 of the REV Illinois Act, as stated in the notification. If any credit has been allowed for a payment due after the date of the notice of noncompliance, any refund paid to the taxpayer for that taxable year shall, to the extent of the credit allowed, be an erroneous refund within the meaning of IITA Section 912. (IITA Section 236(b)(5))
- j) For purposes of this section, the terms "Agreement," "applicant," "incremental income tax," "new employee," "noncompliance date," "retained employee," "REV Construction Jobs Credit," and "REV Illinois Credit," shall have the same meaning as when used in the REV Illinois Act.
- k) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 704A(g-1))



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NOTICE OF PROPOSED AMENDMENTS

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

**Section 100.7382 MICRO Tax Credit (IITA Section 704A(g-2))**

- a) On or after January 1, 2025, with respect to any portion of a Manufacturing Illinois Chips for Real Opportunity (MICRO) Illinois Credit that is based on the incremental income tax attributable to new employees or retained employees, a taxpayer may elect to claim a MICRO Tax Credit against its obligation to pay over withholding under the Illinois Income Tax Act (IITA) Section 704A instead of claiming the credit against the taxes imposed under IITA Section 201(a) and (b). (35 ILCS 45/110-30(h))
- b) For amounts deducted or withheld after December 31, 2024, a taxpayer who makes an election under the MICRO Act and this Section shall be allowed a credit against payments due under IITA Section 704A and this Section for amounts withheld during the first quarterly reporting period beginning after the certificate is issued equal to the portion of the MICRO Illinois Credit attributable to the incremental income tax attributable to new employees and retained employees as certified by the Department of Commerce and Economic Opportunity (DCEO) pursuant to an agreement with the taxpayer under the MICRO Act for the taxable year. (IITA Section 704A(g-2))
- c) The credit may be in the form of a MICRO Illinois Credit, a MICRO Construction Jobs Credit, or both. (IITA Section 238(b)(1))
- d) Taxpayer Defined. A taxpayer who meets the definition of "applicant" in Section 110-10 of the MICRO Act, as determined by DCEO, and has been issued a tax credit certificate by DCEO may make the election under this Section. For purposes of this section, the term "taxpayer" shall also include taxpayer and members of the taxpayer's unitary business group as defined in IITA Section 1501(a)(27). (IITA Section 704A(g-2))
- e) Effect of Election. When an election under this Section is made, the amount of the credit awarded to the taxpayer under Section 110-30 of the MICRO Act for the taxable year of the election shall be allowed as a credit against payments due under IITA Section 704A for the first quarterly reporting period beginning after the end of the quarterly reporting period in which the credit is awarded. No credit awarded in a taxable year for which the election is made shall be allowed under IITA Section 238.

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EXAMPLE: Taxpayer makes the election under this Section for its taxable year ending June 30, 2026. For its taxable year ending June 30, 2026, Taxpayer is awarded a credit under IITA Section 238 of \$15,000. In addition, Taxpayer has a credit carryover under IITA Section 238(b)(4) of \$5,000 from 2025. Under IITA Section 704A(g-2) and this subsection, Taxpayer is allowed a credit of \$15,000 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 awarded to the Taxpayer. Taxpayer may not claim a credit against the tax imposed under IITA Section 201(a) and (b) for its taxable year ending June 30, 2026, for the \$15,000 credit awarded in that taxable year, but may claim a credit for the \$5,000 carried forward from 2025.

- f) Manner of Making Election. The election shall be made in the manner prescribed by the Department and once made shall be irrevocable. (MICRO Act Section 110-30(h)) The election shall be made by claiming the credit on the withholding return due under IITA Section 704A for the first quarterly reporting period of the calendar year beginning after the end of the quarterly reporting period in which the tax credit certificate is awarded. The election applies to the entire credit awarded for the taxable year under IITA Section 238.
- g) Partnerships and S Corporations. A partnership or Subchapter S corporation may make an election under this subsection. When a partnership or S corporation makes an election under this subsection, no credit shall pass through to the partners or shareholders for the taxable year under IITA Section 238.
- h) The credit or credits 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 or credits exceeds the total payments 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, as allowed to be carried forward under IITA Section 211(4), or until it has been fully utilized, whichever occurs first. The credit or credits shall be applied to the earliest quarterly reporting period for which there is a tax liability. If there are credits from more than one



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quarterly reporting period that are available to offset a liability, the earlier credit shall be applied first. (IITA Section 704A(g-2))

EXAMPLE: Taxpayer makes an election under this Section for its taxable year ending December 31, 2026. For its taxable year ending December 31, 2026, Taxpayer is awarded a tax credit certificate under IITA Section 238 of \$10,000 during its withholding quarterly reporting period ending June 30, 2026. Under Section 704A(g-2) and this Section, Taxpayer is allowed a credit of \$10,000 against withholding payments due under IITA 704A(c) in its quarterly reporting period ending September 30, 2026. Taxpayer withheld tax during its withholding quarter ending September 30, 2026, of \$4,000. Under Section 704(A)(g-2) and this Section, Taxpayer's credit may not exceed \$4,000. Taxpayer is allowed to carry forward the \$6,000 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, 2026, of \$1,000, then Taxpayer is allowed to carry forward the \$5,000 excess credit to its withholding liability for the March 31, 2027, reporting period.

- i) No credit shall be allowed under IITA Section 704A(g-2) and this Section with respect to any payment due under IITA Section 704A after the date a notice of noncompliance is issued to the Department under Section 110-70 of the MICRO Act, as stated in the notification. If any credit has been allowed for a payment due after the date of the notice of noncompliance, any refund paid to the taxpayer for that taxable year shall, to the extent of the credit allowed, be an erroneous refund within the meaning of IITA Section 912. (IITA Section 238(b)(5))
- j) For purposes of this section, the terms "Agreement," "applicant," "incremental income tax," "new employee," "noncompliance date," "retained employee," "MICRO Construction Jobs Credit," and "MICRO Illinois Credit," shall have the same meaning as when used in the MICRO Act.
- k) This credit is exempt from the sunset provisions of IITA Section 250. (IITA Section 704A(g-2))

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