

## Illinois passes credit reforms

### Overview

Recently, Illinois has adopted tax credit reforms under Public Act 101-0009, signed into law on June 5, 2019; Public Act 101-0031, signed into law on June 28, 2019; and Public Act 101-0207, signed into law on August 2, 2019.<sup>1</sup> These various pieces of legislation include the following changes: establishing multiple construction job tax credits, extending the Research and Development tax credit, and creating a new apprenticeship education expense credit. These credit provisions are effective on various dates.

### Blue Collar Jobs Act: Construction Jobs Tax Credits

P.L. 101-0009 establishes the Blue Collar Jobs Act ("Act"), which includes four new income tax credits for qualified capital investments in the construction of new or improved real property. Effective for tax years beginning on or after January 1, 2021, the aggregate credits are limited to \$20 million per fiscal year across all Act credits.<sup>2</sup> To receive an award of credits, taxpayers must apply with the Illinois Department of Commerce and Economic Opportunity. Additionally, each of these credits requires taxpayers, and the contractors or subcontractors performing the construction work, to retain certain records for up to five years following the last payment for work on the construction contract.<sup>3</sup> In addition, certified payroll must be filed monthly during the construction period.<sup>4</sup>

The Act establishes the following four credits, which generally provide:

- **High Impact Business ("HIB") Construction Jobs Credit:** Equals 50% of the "incremental income tax" attributable to qualified construction jobs for a designated HIB taxpayer during the construction period.<sup>5</sup>
- **Enterprise Zone ("EZ") Construction Jobs Credit:** Equals 50% of the incremental income tax attributable to qualified construction jobs for approved capital investments of at least \$10 million located in an EZ during the construction period;<sup>6</sup>
- **River Edge ("RE") Construction Jobs Credit:** Equals 50% of the incremental income tax attributable to qualified construction jobs for approved rehabilitation plan of at least \$1 million located in a RE during the construction period (applicable for tax years beginning on or after January 1, 2021 and ending prior to January 1, 2022);<sup>7</sup> and
- **New Construction EDGE Credit:** Discretionary credit for up to 50% of the incremental income tax attributable to qualified construction jobs during the construction period for approved capital investment projects over \$10 million.<sup>8</sup>

The HIB, EZ and RE Construction Jobs Credits increases to 75% of the incremental income tax if the qualified project is located within an underserved area and the New Construction EDGE Credit increases from up to 50% to up to 75% of the incremental income tax.<sup>9</sup> As defined for the various credits, incremental income tax means the total amount withheld during the taxable year from the compensation of qualified construction

<sup>1</sup> Public Act 101-0009, accessible [here](#); Public Act 101-0031, accessible [here](#); Public Act 101-0207, accessible [here](#).

<sup>2</sup> Public Act 101-0009, Section 20-5 adding 20 ILCS 655/5.5(i).

<sup>3</sup> Public Act 101-0009, Section 20-5 adding 20 ILCS 655/5.5(i) & (j).

<sup>4</sup> Public Act 101-0009, Section 20-5 adding 20 ILCS 655/5.5(i) & (j).

<sup>5</sup> Public Act 101-0009, Section 20-5 adding 20 ILCS 655/5.5(b-7) & (i); Section 20-10 adding 35 ILCS 5/201(h-5).

<sup>6</sup> Public Act 101-0009, Section 20-5 enacting 20 ILCS 655/13; Section 20-10 adding 35 ILCS 5/201(f)(8).

<sup>7</sup> Public Act 101-0009, Section 20-10 adding 35 ILCS 5/221(a-2); Section 20-20 enacting 65 ILCS 115/10-3.3; Section 20-20 amending 65 ILCS 115/10-3.

<sup>8</sup> Public Act 101-0009, Section 20-15 enacting 35 ILCS 10/5-51; Section 20-15 amending 35 ILCS 5/211; Section 20-15 amending 35 ILCS 10/5-5.

<sup>9</sup> Public Act 101-0009, Section 20-5 adding 20 ILCS 655/5.5(i); Section 20-5 adding 20 ILCS 655/13(e); Section 20-20 amending 65 ILCS 115/10-3; Section 20-15 amending 35 ILCS 10/5-5.

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job employees.<sup>10</sup> Further, an underserved area is defined as a geographic area meeting at least one of the following conditions:

- The area has a poverty rate of at least 20% per the latest federal decennial census;
- 75% or more of the children residing in the area participate in federal free lunch programs;
- At least 20% of the households in the area receive SNAP assistance; or
- The area's average unemployment rate is greater than 120% of the national average for at least 2 consecutive calendar years.<sup>11</sup>

The credits under the Act must be applied to the earliest year for which the taxpayer has a tax liability and if credits from multiple tax years are available, the taxpayer must carryforward and apply the credits from the earlier years first to its tax liability. Unused credits may be carried forward for up to 5 years.<sup>12</sup>

Act credits generated by pass-through entities will be distributed to the respective parties, such as partners of partnerships, 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 Illinois income taxation.<sup>13</sup>

### Data Center Construction Employment Tax Credit

Public Act 101-0031 signed into law on June 28, 2019 establishes the Data Center Employment Tax Credit. For tax years beginning on or after January 1, 2019, a Data Center Construction Employment Tax Credit ("Data Center Credit") is available to taxpayers investing at least \$250 million, and creating at least 20 full-time jobs, at a Qualifying Illinois Data Center within a five-year, or 60 month, window.<sup>14</sup> In the case of an existing data center, the investment must either have been made collectively by the data center operator and the tenants of all of its data centers over the 60-month period immediately prior to January 1, 2020, or committed to making the \$250 million investment over a 60-month period beginning prior to January 1, 2020 and ending after January 1, 2020.<sup>15</sup> In both instances, at least 20 new full-time or full-time equivalent jobs must be created by the data center operator and the tenants of the data center, collectively associated with the operation of the data center with a total compensation equal to or greater than 120% of the median wage paid to full-time employees in the county where the data center is located.<sup>16</sup> Tax credit awards shall be made by the Illinois Department of Commerce and Economic Opportunity.<sup>17</sup>

The Data Center Credit is equal to 20% of the wages paid during the taxable year to a full-time or part-time employee of a construction contractor employed by a Qualified Illinois Data Center, as defined, during the construction period.<sup>18</sup> These wages must be paid for the construction of a Qualifying Illinois Data center in a geographic area that meets the qualifications of an underserved area.<sup>19</sup> A Qualifying Illinois Data Center must be carbon neutral or meet certain certifications for green buildings.<sup>20</sup>

Similar to the other credits discussed above, the Data Center Credit is also eligible for carryforward for five years<sup>21</sup> and any credits generated by pass-through entities will pass to partners or shareholders.<sup>22</sup>

### Casino and Riverboat Gambling Facilities Construction Credits

Beginning on the effective date of Public Act 101-0031, two credits are available against the Gambling Privilege Tax, as specified under 230 ILCS 10/12:

- Prior to June 30, 2023, a dollar-for-dollar credit is available to an owner's licensee of a casino or riverboat gambling facility incurring renovation or construction costs. The credit may not exceed \$2

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<sup>10</sup> *Id*

<sup>11</sup> *Id*

<sup>12</sup> Public Act 101-0009, Section 20-10 adding 35 ILCS 5/201(f)(8) & (h-5); Section 20-10 adding 35 ILCS 5/221(a-2).

<sup>13</sup> *Id*

<sup>14</sup> Public Act 101-0031, Section 15-10 enacting 20 ILCS 605/605-1025.

<sup>15</sup> *Id*

<sup>16</sup> *Id*

<sup>17</sup> Public Act 101-0031, Section 15-10 enacting 20 ILCS 605/605-1025(b).

<sup>18</sup> Public Act 101-0031, Section 15-25 enacting 20 ILCS 5/229(a).

<sup>19</sup> Public Act 101-0031, Section 15-25 enacting 20 ILCS 5/229(a).

<sup>20</sup> Public Act 101-0031, Section 15-10 enacting 20 ILCS 605/605-1025.

<sup>21</sup> Public Act 101-0031, Section 15-25 enacting 35 ILCS 5/229(b).

<sup>22</sup> Public Act 101-0031, Section 15-25 enacting 35 ILCS 5/229(a).

million per taxpayer. To be eligible, the owner's licensee must have been conducting gambling operations prior to Jan. 1, 2011.

- Prior to December 31, 2022, a credit is available to an owner's licensee relocating a casino or riverboat gambling facility. The credit equals 8% of the total approved project costs, provided that the new facility is operational by July 1, 2022. Other limitations and eligibility requirements apply, such as the location and number of facilities owned by the owner's licensee.<sup>23</sup>

### Research and Development Credit

Originally set to expire for tax years ending on or after January 1, 2022, the sunset date of Illinois' Research and Development Credit ("R&D credit") has been extended five years through tax years ending prior to Jan. 1, 2027.<sup>24</sup> The credit was extended by Public Act 101-0207, signed into law on August 2, 2019. The R&D credit may not reduce a taxpayer's income tax liability below zero and may be carried forward for up to 5 years.<sup>25</sup> The R&D credit will also be available to partners or shareholders when generated by the entity.<sup>26</sup>

### Apprenticeship Education Expense Credit

For tax years beginning on or after January 1, 2020 and before January 1, 2025, an Apprenticeship Education Expense credit ("Apprenticeship credit") is available to taxpayers on educational expenses incurred in employing certain apprentices in the state of Illinois.<sup>27</sup> To qualify, the apprentice must be an Illinois resident, at least 16 years of age, and enrolled in an apprenticeship program registered with the United States Department of Labor, and employed in Illinois by the taxpayer.<sup>28</sup>

The Apprenticeship credit, as enacted by Public Act 101-0207, equals 100% of the qualified education expenses incurred by the taxpayer on behalf of the qualified apprentice including tuition, book fees, and lab fees at a qualified school or community college in which apprentice is enrolled during the regular school year.<sup>29</sup> The Apprenticeship credit may not exceed \$3,500 annually per qualified apprentice; however, if the apprentice resides in an underserved area, or if the taxpayer's place of business is in an underserved area, an additional credit of \$1,500 may be available.<sup>30</sup>

Taxpayers must apply to the Illinois Department of Commerce and Economic Opportunity to receive an Apprenticeship tax credit certificate, which is required to claim the credit.<sup>31</sup> There is an aggregate credit limit of \$5 million per calendar year for all taxpayers.<sup>32</sup> If applications for amounts exceeding the aggregate limit are received, then credits shall be allowed on a first-come, first-served basis, based on the date on which each properly completed application for a certificate of eligibility is received by the Department.<sup>33</sup>

Partners of partnerships, 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 Illinois income taxation, are allowed a distributive share of credit generated by the entity.<sup>34</sup>

### Considerations

As reflected above, Illinois has expanded its credits, as well as extended certain existing credits such as the R&D credit, with this recent legislation. Due to these updates, taxpayers may want to evaluate if there are potential credit opportunities for current or future tax periods.

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<sup>23</sup> Public Act 101-0031, Section 35-55 adding 230 ILCS 10/13(a-6).

<sup>24</sup> Public Act 101-0207, Section 5 amending 35 ILCS 5/201(k).

<sup>25</sup> 35 ILCS 5/201(k)

<sup>26</sup> *Id*

<sup>27</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(b).

<sup>28</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(a).

<sup>29</sup> *Id*

<sup>30</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(b).

<sup>31</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(c).

<sup>32</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(e).

<sup>33</sup> *Id*

<sup>34</sup> Public Act 101-0207, Section 5 enacting 35 ILCS 5/229(b).

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