

AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

# BDO KNOWS:

## SALT



### ► SUBJECT

## ILLINOIS SENATE BILL 1578, THE SMALL BUSINESS JOB CREATION ACT

### ► SUMMARY

On April 13, 2010, Illinois Governor Pat Quinn signed into law Senate Bill 1578, the Small Business Job Creation Tax Credit Act (the "Act").<sup>1</sup> The Act provides for a credit, not to exceed \$2,500, against a company's employment withholding tax obligation related to certain newly-hired full-time employees, so long as certain eligibility and credit application process requirements are satisfied.

### ► ELIGIBILITY

The tax credit is available for each full-time employee hired by an applicant during the 12-month incentive period that began on July 1, 2010, with respect to which the following general requirements are satisfied:

- The applicant operates a business located within the State of Illinois that is engaged in interstate or intrastate commerce;
- The applicant has no more than 50 full-time employees as of June 30, 2010 (including employees of a unitary business group member and without regard to the location of employment of such employees at the beginning of the incentive period);<sup>2</sup>

► [Read more](#)

### CONTACT:

#### West:

**ROCKY CUMMINGS**, Tax Partner  
408-278-0220 / rcummings@bdo.com

**PAUL MCGOVERN**, Tax Director  
714-913-2592 / pmcgovern@bdo.com

#### Northeast:

**NICK NESI**, Tax Partner  
212-885-8420 / nnesi@bdo.com

#### Southeast:

**MARK SIEGEL**, Tax Senior Manager  
404-979-7188 / msiegel@bdo.com

#### Central:

**RICHARD SPENGLER**, Tax Senior Director  
616-776-3687 / rspengler@bdo.com

**NICK BOEGEL**, Tax Senior Manager  
414-615-6773 / nboegel@bdo.com

**JOE CARR**, Tax Partner  
312-616-3946 / jcarr@bdo.com

#### Southwest:

**GENE HEATLY**, Tax Senior Director  
214-665-0716 / gheatly@bdo.com

<sup>1</sup> Public Law 96-0888.

<sup>2</sup> See generally, PA 096-0888 Sec. 10 Definitions "Applicant" for further discussion.

- The employee is hired for full-time employment (35 hours per week or industry equivalent), and such employment produces a net increase in the business's full-time Illinois employees that is maintained for at least 12 months;<sup>3</sup>
- The employee receives a basic wage that is not less than \$13.75 per hour or the equivalent salary for a new employee.<sup>4</sup>

The net increase in full-time Illinois employees is determined simply by comparing the total number of full-time Illinois employees of the business as of June 30, 2011, with the number of full-time Illinois employees employed as of July 1, 2010. This net increase must be sustained continuously for at least 12 months from the date the employee is hired.<sup>5</sup>

However, eligibility for the credit does not depend on the continued employment of any one individual. Should the new employee's status terminate (through resignation or otherwise) before the completion of the 12-month period, the business may still qualify for the credit if a replacement new employee is hired for the same position within a reasonable time.<sup>6</sup>

## ► CREDIT APPLICATION PROCESS

A small business may apply for a certificate of eligibility with the Illinois Department of Commerce and Economic Opportunity (the "Department") online on or after the date of hire of the new employee during the incentive period. The Department shall issue the business a certificate indicating the business's eligibility for the tax credit.

On or after the conclusion of the 12-month period after the new employee has been hired, the business shall file an application for award of a credit with the Department. The award application may be filed any time after the 12-month period. The Department will then issue a certificate to each business awarded a credit.

The applicant should submit to the Illinois Department of Revenue the (a) certificate of award and (b) certificate of eligibility, along with any other supporting documentation with the first return for which the credit shown on the certificate is claimed.<sup>7</sup>

<sup>3</sup> See generally, PA 096-0888 Sec. 10 Definitions "Full Time Employee" and "New Employee" for further discussion. The Act's definition of "new employee" excludes (a) employees previously employed in Illinois by the applicant or a related member of the applicant's group prior to the onset of the incentive period; and (b) any individual who has a direct or indirect ownership interest of at least five percent in the profits, capital, or value of the applicant or a related member.

<sup>4</sup> See generally, PA 096-0888 Sec. 10 Definitions "Basic Wage" for further discussion.

<sup>5</sup> See generally, PA 096-0888 Sec. 25

<sup>6</sup> Id.

<sup>7</sup> See generally, PA 096-0888 Sec. 35. Under the Act, the maximum amount of credits awarded is limited to \$50 million. An application filed more than 90 days after the earliest date on which it could have been filed will not be awarded any credit if the Department, prior to the date filed, receives applications for credits totaling the Act's maximum credit limit of \$50 million.

The Tax Practice at BDO is among the largest tax advisory practices in the United States. With 39 offices and more than 400 independent alliance firm locations in the United States, BDO has the bench strength and coverage to serve you.

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. As an independent Member Firm of BDO International Limited, BDO serves multinational clients through a global network of 1,138 offices in 115 countries.

BDO USA, LLP, a New York limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information please visit: [www.bdo.com](http://www.bdo.com).

*To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.*

*Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.* Copyright © 2010 BDO USA, LLP [www.bdo.com](http://www.bdo.com)

## ▶ CREDIT CARRY-FORWARD PROVISION

The credit claimed cannot reduce the taxpayer's withholding tax liability below zero. Any credit amounts exceeding the total withholding tax liability for the calendar year may be carried forward to the succeeding five calendar years.

## ▶ OTHER CONSIDERATIONS

Applicants should consider the following when evaluating their eligibility for the Illinois withholding tax credit:

- An applicant should carefully review its full-time employees in accordance with statutory provisions to determine its eligibility. The number of part-time employees or independent contractors should not affect the eligibility calculation.
- An applicant should consider filing for each eligible employee as soon as possible after the close of the 12-month period of sustained employment in order to perfect its place in line within the \$50 million threshold limitation provisions. Prompt filing is important because, if applications exceed the \$50 million threshold, the Department will award credits on first-come, first-served basis, using the date the Department receives the application for award of credit from the applicant.
- Applicants should notice that, if a new hire leaves the company, so long as a replacement hire is made within a reasonable time (*e.g.*, the job is sustained), the applicant should still qualify for the credit under statutory provisions. It is unclear how the Department will define "reasonable time," but best efforts should be made to replace the lost hire as soon as possible. It is recommended that the applicant maintain records of its attempts to hire a replacement to prove it took steps to do so within a reasonable time (*e.g.*, job postings, applications received, interview notes, test copies, etc.).