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Illinois Reinstates and Revises the EDGE Tax Credit

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By: **Christopher Knezevic**

One of Illinois' main economic development incentives is back. On September 18, 2017, Illinois Governor Bruce Rauner signed into law H.B. 162, which reinstates the Economic Development for a Growing Economy (EDGE) Tax Credit Program and extends the sunset date to June 30, 2022. The EDGE Tax Credit is a non-refundable, income tax credit equal to a percentage of the new income tax withholdings generated by qualifying new jobs each year for up to 10 years. In addition to reinstating the EDGE credit, which previously expired on April 30, 2017, the legislation made several significant changes to the program.

To be eligible for the credit, companies with more than 100 employees must invest at least \$2.5 million (previously, the minimum requirement was \$5 million). The number of new employees required for the credit is the lesser of 10% of the company's worldwide full-time headcount, or 50 new employees. For companies with 100 or fewer employees, there is no longer a capital investment requirement (previously, at least a \$1 million capital investment was required), and the number of new employees required for the credit is the lesser of 5% of world-wide full-time headcount, or 50 new employees.

The previous EDGE credit's value could equal up to 100% of incremental personal income tax withholdings generated by new employees in connection with a project. The maximum credit award is now limited to the lesser of 50% of the incremental personal income tax withholdings generated by new employees plus 10% of the training costs related to the new employees, or 100% of the incremental personal income tax withholdings generated by the new employees each year. For projects in "underserved areas," the 50% option above is increased to 75%.

An additional credit of up to 25% of new income tax withholdings for retained employees may be granted to companies that will hire the required number of new employees and provide evidence of existing

multi-state options or an out-of-state alternative.

A new recapture, or clawback, provision has also been established. If the company ceases principal operations with the intent to permanently shut down the project during the term of the project, the entire credit amount awarded is subject to recapture by the Department of Commerce and Economic Opportunity (DCEO).

The new legislation also requires greater transparency regarding the terms of each EDGE agreement entered into between a company and DCEO. DCEO must post the terms of each EDGE agreement within 10 days after entering into the agreement. The information that will be available online includes: (1) the name of the company awarded the credit; (2) the location of the project; (3) the estimated value of the credit; (4) the number of new jobs and, if applicable, retained jobs pledged as a result of the project; and (5) whether the project is located in an underserved area.

Finally, companies with EDGE agreements entered into on or after Jan 1, 2015 are no longer able to elect to use the credit against the company's withholding tax liability.