



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Regular Session - 2019

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO THE IDAHO SMALL EMPLOYER INCENTIVE ACT; AMENDING SECTION 63-4402, IDAHO CODE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-4403, IDAHO CODE, TO EXTEND THE ELIGIBLE PERIOD FOR A CERTAIN CAPITAL INVESTMENT TAX CREDIT; AMENDING SECTION 63-4404, IDAHO CODE, TO EXTEND THE ELIGIBLE PERIOD FOR A CERTAIN REAL PROPERTY IMPROVEMENT TAX CREDIT; AMENDING SECTION 63-4405, IDAHO CODE, TO EXTEND THE ELIGIBLE PERIOD FOR AN ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS; AND AMENDING SECTION 63-4408, IDAHO CODE, TO EXTEND THE ELIGIBLE PERIOD FOR A CERTAIN SALES AND USE TAX INCENTIVE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-4402, Idaho Code, be, and the same is hereby amended to read as follows:

63-4402. DEFINITIONS. (1) The definitions contained in the Idaho income tax act, shall apply to this chapter unless modified in this chapter or unless the context clearly requires another definition.

(2) As used in this chapter:

(a) "Commission" means the Idaho state tax commission.

(b) "New plant and building facilities" means facility or facilities, including related parking facilities, where employees are physically employed.

(c) "Idaho income tax act" means chapter 30, title 63, Idaho Code.

(d) "Investment in new plant" means investment in new plant and building facilities that are:

(i) Qualified investments; or

(ii) Buildings or structural components of buildings.

(e) "New employee":

(i) Means an individual, employed primarily within the project site by the taxpayer, subject to Idaho income tax withholding whether or not any amounts are required to be withheld, covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, and who was eligible to receive employer provided coverage under a health benefit plan as described in section 41-4703, Idaho Code, during the taxable year. A person shall be deemed to be so employed if such person performs duties on a regular full-time basis.

(ii) The number of employees employed primarily within the project site by the taxpayer, during any taxable year for a taxpayer shall be the mathematical average of the number of such employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable

1 year which qualified under paragraph (e)(i) of this subsection
2 (2). In the event the business is in operation for less than the
3 entire taxable year, the number of employees of the taxpayer for
4 the year shall be the average number actually employed during the
5 months of operation, provided that the qualifications of para-
6 graph (e)(i) of this subsection (2) are met.

7 (iii) Existing employees of the taxpayer who obtain new qualify-
8 ing positions within the project site and employees transferred
9 from a related taxpayer or acquired as part of the acquisition of
10 a trade or business from another taxpayer within the prior twelve
11 (12) months are not included in this definition unless the new po-
12 sition or transfer creates a net new job in Idaho.

13 (f) "Project period" means the period of time beginning at a physical
14 change to the project site or the first employment of new employees lo-
15 cated in Idaho who are related to the activities at the project site, and
16 ending when the facilities constituting the project are placed in ser-
17 vice, but no later than December 31, 20230, and no longer than ten (10)
18 years after the beginning.

19 (g) (i) "Project site" means an area or areas at which new plant
20 and building facilities are located and at which the tax incentive
21 criteria have been or will be met and which are either:

22 ~~(i)~~ 1. A single geographic area located in this state at
23 which the new plant and building facilities owned or leased
24 by the taxpayer are located; or

25 ~~(ii)~~ 2. One (1) or more geographic areas located in this
26 state if eighty percent (80%) or more of the investment re-
27 quired by subsection (2)(j)(i) of this section is made at one
28 (1) of the areas.

29 ~~(iii)~~ The project site must be identified and described to the
30 commission by a taxpayer subject to tax under the Idaho income tax
31 act, in the form and manner prescribed by the commission.

32 (h) "Qualified investment" shall be defined as in section 63-3029B,
33 Idaho Code.

34 (i) "Recapture period" means:

35 (i) In the case of credits described in sections 63-4403 and
36 63-4404, Idaho Code, the same period for which a recapture of
37 investment tax credit under section 63-3029B, Idaho Code, is re-
38 quired; or

39 (ii) In the case of credits described in section 63-4405, Idaho
40 Code, five (5) years from the date the project period ends.

41 (j) "Tax incentive criteria" means a taxpayer meeting at a project site
42 the requirements of subparagraphs (i) and (ii) of this paragraph (j).

43 (i) During the project period, making capital investments in new
44 plant of at least five hundred thousand dollars (\$500,000) at the
45 project site.

46 (ii) During a period of time beginning on January 1, 2006, and end-
47 ing at the conclusion of the project period:

48 1. Increasing employment at the project site by at least ten
49 (10) new employees each of whom must earn at least nineteen

1 dollars and twenty-three cents (\$19.23) per hour worked dur-
2 ing the taxpayer's taxable year.

3 2. Employment increases above the ten (10) new employees
4 described in subparagraph (ii)1. of this paragraph (j)
5 at the project site shall on average earn at least fifteen
6 dollars and fifty cents (\$15.50) per hour worked during
7 the taxpayer's taxable year. Calculation of the group
8 average earnings shall not include amounts paid to any em-
9 ployee earning more than forty-eight dollars and eight cents
10 (\$48.08) per hour.

11 3. Earnings calculated pursuant to subparagraph (ii) of
12 this paragraph (j) shall include income upon which Idaho
13 income tax withholding is required under section 63-3035,
14 Idaho Code, but shall not include income such as stock op-
15 tions or restricted stock grants.

16 4. For purposes of determining whether the increased em-
17 ployment threshold has been met, employment at the project
18 site shall be determined by calculating the increase of such
19 new employees reported to the Idaho department of labor for
20 employment security purposes over the employees so reported
21 as of the beginning of the project period or no earlier than
22 January 1, 2006, whichever is larger; and

23 5. Maintaining net increased employment in Idaho required
24 by subparagraph (ii) of this paragraph (j) during the re-
25 mainder of the project period.

26 (k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsec-
27 tion (2), means either:

28 (i) A single taxpayer; or

29 (ii) In the context of a unitary group filing a combined report un-
30 der section 63-3027(t), Idaho Code, all members of a unitary group
31 includable in a combined report for the tax years in which the
32 credit provided for by this chapter may be claimed. For all other
33 purposes, the terms of section 63-3009, Idaho Code, and section
34 63-3027(t)(1), Idaho Code, apply to the meaning of "taxpayer."

35 SECTION 2. That Section 63-4403, Idaho Code, be, and the same is hereby
36 amended to read as follows:

37 63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) For
38 taxable years beginning on or after January 1, 2006, and before December 31,
39 20230, and subject to the limitations of this chapter, a taxpayer who has
40 certified that the tax incentive criteria will be met within a project site
41 during a project period shall, in regard to qualified investments made af-
42 ter the beginning of the project period and before December 31, 20230, in
43 lieu of the investment tax credit provided in section 63-3029B, Idaho Code,
44 be allowed a nonrefundable credit against taxes imposed by sections 63-3024,
45 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one
46 hundredths percent (3.75%) of the amount of qualified investment made during
47 the project period, wherever located within this state.

48 (2) The credit allowed by this section shall not exceed sixty-two and
49 five-tenths percent (62.5%) of the tax liability of the taxpayer.

1 (3) The credit allowed by this section shall not exceed seven hundred
2 fifty thousand dollars (\$750,000) in any one (1) taxable year.

3 SECTION 3. That Section 63-4404, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 63-4404. REAL PROPERTY IMPROVEMENT TAX CREDIT. (1) For taxable years
6 beginning on or after January 1, 2006, and before December 31, 20230, sub-
7 ject to the limitations of this chapter, a taxpayer who has certified that
8 the tax incentive criteria will be met within a project site during a project
9 period shall be allowed a nonrefundable credit against taxes imposed by sec-
10 tions 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and
11 five-tenths percent (2.5%) of the investment in new plant which is incurred
12 during the project period applicable to the project site in which the invest-
13 ment is made.

14 (2) The credit allowed by this section shall not exceed one hundred
15 twenty-five thousand dollars (\$125,000) in any one (1) taxable year.

16 (3) No credit is allowable under this section for a qualified invest-
17 ment in regard to which a credit under section 63-4403, Idaho Code, is avail-
18 able.

19 (4) The credit allowed by this section is limited to buildings and
20 structural components of buildings related to new plant and building facil-
21 ities.

22 SECTION 4. That Section 63-4405, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 63-4405. ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS. (1) Subject to the
25 limitations of this chapter, for taxable years beginning on or after Jan-
26 uary 1, 2006, and before December 31, 20230, a taxpayer who has certified
27 that the tax incentive criteria will be met within a project site during a
28 project period shall, for the number of new employees earning more than a
29 rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu
30 of the credit amount in subsection (3) of section 63-3029F, Idaho Code, be
31 allowed the credit provided by this section. The number of new employees is
32 the increase in the number of employees for the current taxable year over the
33 greater of the following:

34 (a) The number of employees for the prior taxable year; or

35 (b) The average of the number of employees for the three (3) prior tax-
36 able years.

37 (2) The credit provided by this section shall be:

38 (a) One thousand five hundred dollars (\$1,500) for each new employee
39 whose annual salary during the taxable year for which the credit is
40 earned is greater than twenty-four dollars and four cents (\$24.04) per
41 hour worked but equal to or less than an average rate of twenty-eight
42 dollars and eighty-five cents (\$28.85) per hour worked;

43 (b) Two thousand dollars (\$2,000) for each new employee whose annual
44 salary during the taxable year for which the credit is earned is greater
45 than an average rate of twenty-eight dollars and eighty-five cents
46 (\$28.85) per hour worked but equal to or less than an average rate of
47 thirty-six dollars and six cents (\$36.06) per hour worked;

1 (c) Two thousand five hundred dollars (\$2,500) for each new employee
2 whose annual salary during the taxable year for which the credit is
3 earned is greater than an average rate of thirty-six dollars and six
4 cents (\$36.06) per hour worked but equal to or less than an average rate
5 of forty-three dollars and twenty-seven cents (\$43.27) per hour worked;

6 (d) Three thousand dollars (\$3,000) for each new employee whose annual
7 salary during the taxable year for which the credit is earned is greater
8 than an average rate of forty-three dollars and twenty-seven cents
9 (\$43.27) per hour worked.

10 (3) The credit allowed by subsection (1) of this section shall apply
11 only to employment primarily within the project site. No credit shall be
12 earned unless such employee shall have performed such duties for the tax-
13 payer for a minimum of nine (9) months during the taxable year for which the
14 credit is claimed.

15 (4) The credit allowed by this section shall not exceed sixty-two and
16 five-tenths percent (62.5%) of the tax liability of the taxpayer.

17 (5) Employees transferred from a related taxpayer or acquired from an-
18 other taxpayer within the prior twelve (12) months shall not be included in
19 the computation of the credit unless the transfer creates a net new job in
20 Idaho.

21 SECTION 5. That Section 63-4408, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 63-4408. SALES AND USE TAX INCENTIVES -- REBATES -- RECAPTURE. (1)
24 For calendar years beginning on January 1, 2006, and ending on December 31,
25 20230, subject to the limitations of this chapter, a taxpayer who has cer-
26 tified that the tax incentive criteria will be met within the project site
27 shall be entitled to receive a rebate of twenty-five percent (25%) of all
28 sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that
29 the taxpayer or its contractors actually paid in regard to any property con-
30 structed, located or installed within the project site during the project
31 period for that site.

32 (2) Upon filing of a written refund claim by the taxpayer entitled to
33 the rebate, and subject to such reasonable documentation and verification as
34 the commission may require, the rebate shall be paid by the commission as a
35 refund allowable under section 63-3626, Idaho Code. A claim for rebate un-
36 der this section must be filed on or before the last day of the third calendar
37 year following the year in which the taxes sought to be rebated were paid or
38 the right to the rebate is lost.

39 (3) Any rebate paid shall be subject to recapture by the commission:

40 (a) At one hundred percent (100%) in the event that the tax incentive
41 criteria are not met at the project site during the project period; or

42 (b) In the event that the property is not used, stored or otherwise
43 consumed within the project site for a period of sixty (60) consecutive
44 full months after the property was placed in service; or

45 (c) In the event that the employment required in section 63-4402(2)(j),
46 Idaho Code, is not maintained for sixty (60) consecutive full months
47 from the date the project period ends.

1 (d) Any recapture required by ~~subsection (3)~~ paragraph (b) or ~~(3)~~ (c) of
2 this subsection shall be in the same proportion as an amount of credit
3 required to be recaptured under section 63-3029B, Idaho Code.

4 (4) Any recapture amount due under this section shall be a deficiency
5 in tax for the period in which the disqualification first occurs for pur-
6 poses of section 63-3629, Idaho Code, and may be enforced and collected in
7 the manner provided by the Idaho sales tax act, provided however, that in
8 lieu of the provisions of section 63-3633, Idaho Code, the period of time
9 within which the commission may issue a notice under section 63-3629, Idaho
10 Code, in regard to an amount subject to recapture, shall be the later of five
11 (5) years after the end of the taxable year, for income tax purposes, in which
12 the project period ends.

13 (5) The rebate allowed by this section is limited to sales and use taxes
14 actually paid by the taxpayer or its contractors for taxable property re-
15 lated to new plant and building facilities.