

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 510

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005; AMENDING SEC-
2 TION 63-4402, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING SECTION 63-4403, IDAHO CODE, TO REVISE A PROVI-
4 SION REGARDING TAXABLE YEARS; AMENDING SECTION 63-4404, IDAHO CODE, TO
5 REVISE A PROVISION REGARDING TAXABLE YEARS; AMENDING SECTION 63-4405,
6 IDAHO CODE, TO REVISE A PROVISION REGARDING TAXABLE YEARS; AMENDING
7 SECTION 63-4408, IDAHO CODE, TO REVISE A PROVISION REGARDING TAXABLE
8 YEARS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 63-4409,
9 IDAHO CODE, TO PROVIDE FOR WRITTEN NOTICE TO THE DEPARTMENT OF COMMERCE.
10

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

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

14 63-4402. DEFINITIONS. (1) The definitions contained in the Idaho in-
15 come tax act, shall apply to this chapter unless modified in this chapter or
16 unless the context clearly requires another definition.

17 (2) As used in this chapter:

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

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

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

23 (d) "Investment in new plant" means investment in new plant and build-
24 ing facilities that are:

25 (i) Qualified investments; or

26 (ii) Buildings or structural components of buildings.

27 (e) "New employee":

28 (i) Means an individual, employed primarily within the project
29 site by the ~~taxpayer~~ business entity, subject to Idaho income tax
30 withholding whether or not any amounts are required to be with-
31 held, covered for unemployment insurance purposes under chapter
32 13, title 72, Idaho Code, and who was eligible to receive employer
33 provided coverage under a health benefit plan as described in sec-
34 tion 41-4703, Idaho Code, during the taxable year. A person shall
35 be deemed to be so employed if such person performs duties on a reg-
36 ular full-time basis.

37 (ii) The number of employees employed primarily within the
38 project site by the ~~taxpayer~~ business entity, during any taxable
39 year for a ~~taxpayer~~ business entity shall be the mathematical
40 average of the number of such employees reported to the Idaho de-
41 partment of labor for employment security purposes during the
42 twelve (12) months of the taxable year which qualified under para-

graph (e) (i) of this subsection ~~(2)~~. In the event the business is in operation for less than the entire taxable year, the number of employees of the ~~taxpayer~~ business entity for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e) (i) of this subsection ~~(2)~~ are met.

(iii) Existing employees of the ~~taxpayer~~ business entity who obtain new qualifying positions within the project site and employees transferred from a related ~~taxpayer~~ business entity or acquired as part of the acquisition of a trade or business from another ~~taxpayer~~ business entity within the prior twelve (12) months are not included in this definition unless the new position or transfer creates a net new job in Idaho.

(f) "Project period" means the period of time beginning at a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, and ending when the facilities constituting the project are placed in service, but no later than December 31, 202~~30~~30, and no longer than ten (10) years after the beginning.

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

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

(ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required by subsection (2) (j) (i) of this section is made at one (1) of the areas.

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

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

(i) "Recapture period" means:

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

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

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

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

(ii) During a period of time beginning on January 1, 2006, and ending at the conclusion of the project period:

1. Increasing employment at the project site by at least ten (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 business entity's~~ taxable year.

3 2. Employment increases above the ten (10) new employees
 4 described in subparagraph (ii)1. of this paragraph ~~(j)~~ at
 5 the project site shall on average earn at least fifteen dol-
 6 lars and fifty cents (\$15.50) per hour worked during the
 7 ~~taxpayer's business entity's~~ taxable year. Calculation of
 8 the group average earnings shall not include amounts paid to
 9 any employee earning more than forty-eight dollars and eight
 10 cents (\$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 Business entity,~~" for purposes of paragraphs (j) and (e)
 27 of this subsection ~~(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 A single business, a separate division, branch, or identifiable
 36 segment, or a group of businesses related through ownership pur-
 37 suant to section 267 of the Internal Revenue Code. For purposes
 38 of this subsection, a "separate division, branch, or identifiable
 39 segment" shall be deemed to exist if, prior to the date of appli-
 40 cation, the income and expense attributable to such a separate
 41 division, branch, or identifiable segment could be separately as-
 42 certained from the books of accounts and records.

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

45 63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) For
 46 taxable years beginning on or after January 1, 2006, and before December 31,
 47 20230, and subject to the limitations of this chapter, a taxpayer who has
 48 certified that the tax incentive criteria will be met within a project site
 49 during a project period shall, in regard to qualified investments made af-

1 ter the beginning of the project period and before December 31, 202~~3~~0, in
 2 lieu of the investment tax credit provided in section 63-3029B, Idaho Code,
 3 be allowed a nonrefundable credit against taxes imposed by sections 63-3024,
 4 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one
 5 hundredths percent (3.75%) of the amount of qualified investment made during
 6 the project period, wherever located within this state.

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

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

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

13 63-4404. REAL PROPERTY IMPROVEMENT TAX CREDIT. (1) For taxable years
 14 beginning on or after January 1, 2006, and before December 31, 202~~3~~0, sub-
 15 ject to the limitations of this chapter, a taxpayer who has certified that
 16 the tax incentive criteria will be met within a project site during a project
 17 period shall be allowed a nonrefundable credit against taxes imposed by sec-
 18 tions 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and
 19 five-tenths percent (2.5%) of the investment in new plant which is incurred
 20 during the project period applicable to the project site in which the invest-
 21 ment is made.

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

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

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

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

32 63-4405. ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS. (1) Subject to the
 33 limitations of this chapter, for taxable years beginning on or after Jan-
 34 uary 1, 2006, and before December 31, 202~~3~~0, a taxpayer who has certified
 35 that the tax incentive criteria will be met within a project site during a
 36 project period shall, for the number of new employees earning more than a
 37 rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu
 38 of the credit amount in subsection (3) of section 63-3029F, Idaho Code, be
 39 allowed the credit provided by this section. The number of new employees is
 40 the increase in the number of employees for the current taxable year over the
 41 greater of the following:

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

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

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

46 (a) One thousand five hundred dollars (\$1,500) for each new employee
 47 whose annual salary during the taxable year for which the credit is

1 earned is greater than twenty-four dollars and four cents (\$24.04) per
 2 hour worked but equal to or less than an average rate of twenty-eight
 3 dollars and eighty-five cents (\$28.85) per hour worked;

4 (b) Two thousand dollars (\$2,000) for each new employee whose annual
 5 salary during the taxable year for which the credit is earned is greater
 6 than an average rate of twenty-eight dollars and eighty-five cents
 7 (\$28.85) per hour worked but equal to or less than an average rate of
 8 thirty-six dollars and six cents (\$36.06) per hour worked;

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

14 (d) Three thousand dollars (\$3,000) for each new employee whose annual
 15 salary during the taxable year for which the credit is earned is greater
 16 than an average rate of forty-three dollars and twenty-seven cents
 17 (\$43.27) per hour worked.

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

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

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

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

31 63-4408. SALES AND USE TAX INCENTIVES -- REBATES -- RECAPTURE. (1)
 32 For calendar years beginning on January 1, 2006, and ending on December 31,
 33 20230, subject to the limitations of this chapter, a taxpayer who has cer-
 34 tified that the tax incentive criteria will be met within the project site
 35 shall be entitled to receive a rebate of twenty-five percent (25%) of all
 36 sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that
 37 the taxpayer or its contractors actually paid in regard to any property con-
 38 structed, located or installed within the project site during the project
 39 period for that site.

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

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

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

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

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

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

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

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

22 SECTION 6. That Section 63-4409, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

24 63-4409. ADMINISTRATION. (1) The commission shall enforce the pro-
 25 visions of this chapter and may prescribe, adopt, and enforce reasonable
 26 rules relating to the administration and enforcement of those provisions,
 27 including the promulgation of rules relating to information necessary to
 28 certify that the incentive criteria have been or will be met. For the purpose
 29 of carrying out its duties to enforce or administer the provisions of this
 30 chapter, the commission shall have the powers and duties provided by sec-
 31 tions 63-3038, 63-3039, 63-3042 through 63-3067, 63-3068, 63-3071, 63-3074
 32 through 63-3078 and 63-217, Idaho Code.

33 (2) Within thirty (30) days after filing form 89SE with the commission
 34 to notify of the intent to claim credits associated with the provisions of
 35 this chapter, a business entity shall provide a written notice of the filing
 36 to the department of commerce.