



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators TIPPETS, Patrick, Schmidt and,
Representatives HARTGEN, Anderson, King

FROM: Mike Nugent - Division Manager

DATE: July 31, 2014

SUBJECT: Temporary Rule

IDAPA 28.04.01 - Rules Governing the Idaho Reimbursement Incentive Act - Temporary Rule -
Docket No. 28-0401-1401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Mike Nugent at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE
28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT
DOCKET NO. 28-0401-1401 (NEW CHAPTER)
NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The adoption of these temporary rules is necessary to fulfill the requirements of the new Idaho Reimbursement Incentive Act as enacted in House Bill H0546, as amended in the Senate. House Bill H0546 formally established the Idaho Reimbursement Incentive Act, branded by the Idaho Department of Commerce as the Tax Reimbursement Incentive (TRI). These rules are necessary to commence the possible award of a TRI to businesses seeking expansion within the state of Idaho.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The adoption of temporary rules is necessary for compliance with deadlines to governing law and to confer a benefit. Adoption of the temporary rule will permit the agency to proceed with incentivizing businesses to come to Idaho with well paying, full time jobs. The agency intends to gather further feedback from key stakeholders and will file proposed rules by September, 2014.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee or charge being imposed or changed through this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Megan Ronk at megan.ronk@commerce.idaho.gov or (208) 287-3153.

DATED this 7th day of July, 20140401-1401

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 28-0401-1401

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4744, Idaho Code. (7-1-14)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.04.01, “Rules Governing the Idaho Reimbursement Incentive Act.” (7-1-14)T

02. Scope. These rules implement House Bill No. 546, as amended in the Senate, and enacted by the Second Regular Session of the Sixty-second Legislature and signed into law on April 3, 2014. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4737 through 67-4744, Idaho Code. The seven (7) new sections provide rulemaking authority to the Director of the Department of Commerce, a short title and legislative intent, an application and application process, formation of agreements with the applicant, reimbursement to the applicant through an earned tax credit, annual reporting procedure and requirement of an annual report to the Legislature by the Director of the Department of Commerce. (7-1-14)T

002. WRITTEN INTERPRETATIONS.

The Department may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. These documents are available for public inspection at the Department’s office. (7-1-14)T

003. ADMINISTRATIVE APPEALS.

The award of a credit under the Tax Reimbursement Incentive Act is made at the recommendation of the Director of the Department of Commerce and approval of the Economic Advisory Council (Council). In light of the negotiated nature of awarding the Tax Reimbursement Incentive (TRI), there is no administrative appeal under these rules. Nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (7-1-14)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (7-1-14)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The mailing address of the Department for information regarding the Tax Reimbursement Incentive Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through Friday, excluding holidays. (7-1-14)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). (7-1-14)T

007. -- 099. (RESERVED)

100. DEFINITIONS AND ABBREVIATIONS.

Unless defined below, all words shall have the meaning ascribed in Chapter 47, Title 67, Sections 67-4737 through 67-4744, Idaho Code. The statutory definitions can be found here: <http://legislature.idaho.gov/idstat/Title67/T67CH47SECT67-4738.htm>. (7-1-14)T

01. Pre-Application. A form, paper or electronic, that is completed when pertinent details are not fully known for an application. A pre-application necessitates that an application is completed prior to award of a tax credit. (7-1-14)T

02. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. (7-1-14)T

101. -- 129. (RESERVED)

130. PROGRAM INTENT.

The TRI is designed to accelerate the growth of new business opportunities, accelerate the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new corporate income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. (7-1-14)T

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, regional economic impact and return on investment for Idaho, among others. (7-1-14)T

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed agreements between the Department and applicant. (7-1-14)T

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible Applicants. Applicants for the TRI are limited to existing business entities located in Idaho and seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. (7-1-14)T

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. (7-1-14)T

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. (7-1-14)T

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. (7-1-14)T

03. New Jobs. New jobs must exceed the applicant's maximum number of full time jobs in Idaho during the twelve (12) months immediately preceding the date of the application. (7-1-14)T

04. Job Shift. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. (7-1-14)T

152. APPLICATION PROCESS.

01. Inquiry. The business entity may engage an authorized representative from the Department to complete an initial screening process. The screening process will: (7-1-14)T

- a.** Detail the meaningful project; (7-1-14)T
- b.** Detail the number of full-time jobs; (7-1-14)T
- c.** Detail the number of new jobs; (7-1-14)T

- d.** Detail the minimum new jobs; (7-1-14)T
- e.** Detail the rural or urban area under consideration, the industry, the community match and an optional statement of dependency; and (7-1-14)T
- f.** Detail any other information required to determine eligibility. (7-1-14)T
- g.** During the screening process, and in consultation with the Department’s representative, the business entity shall make a determination to proceed with a pre-application or a full application depending on the timeline and other factors associated with the project. (7-1-14)T
- 02. Pre-Application.** After the business entity’s determination to proceed with a pre-application, the business entity will be provided with a pre-application that shall detail the following: (7-1-14)T
- a.** A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (7-1-14)T
- b.** An affidavit explaining whether the project will occur or how it will be altered if the tax credit Application is denied by the council; (7-1-14)T
- c.** A letter from the city and/or county expressing a commitment to supply community match; (7-1-14)T
- d.** A detailed description of the proposed capital investment; (7-1-14)T
- e.** A detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and (7-1-14)T
- f.** A detailed description of the estimated new state tax revenues by tax to be generated by the project. (7-1-14)T
- 03. Pre-Application Commitment Letter.** Upon review and acceptance of a pre-application, the Director may issue a letter of commitment which details the “not less than” estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. (7-1-14)T
- 04. Application.** After the business entity’s determination to proceed with an application they will be given access to the Department’s online application portal to complete a full application. The application will be submitted online via the Department’s portal. The application shall include: (7-1-14)T
- a.** A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (7-1-14)T
- b.** An affidavit explaining whether the project will occur or how it will be altered if the tax credit application is denied by the council; (7-1-14)T
- c.** A letter from the city or county, or both, expressing a commitment to supply community match; (7-1-14)T
- d.** An affidavit from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; (7-1-14)T
- e.** A detailed statement with an estimate of Idaho goods and services to be consumed or purchased by the applicant during the term; (7-1-14)T
- f.** Known or expected detriments to the state or existing industries in the state; (7-1-14)T

- g.** An anticipated project inception date and proposed schedule of progress; (7-1-14)T
- h.** Proposed performance requirements and measurements that must be met prior to issuance of the tax credit; (7-1-14)T
- i.** A detailed description of the proposed capital investment; (7-1-14)T
- j.** A detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and (7-1-14)T
- k.** A detailed description of the estimated new state tax revenues to be generated by the project. (7-1-14)T

05. Award Estimate Letter. Upon review of an application, the Director may issue a letter which details the estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All award letters shall be issued with a “subject to Council approval” contingency clause. (7-1-14)T

06. Technical Review. The Director of the Department and Department staff will complete a technical review and economic analysis of the application and upon satisfaction that all requirements are met, the Director and Department staff shall submit the application to the Council. The technical review shall consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the applicant, as well as the quality, quantity and economic impact of new jobs and new state revenue. (7-1-14)T

07. Economic Advisory Council. The Council shall review the application. Following review the council shall have three (3) options as follows: (7-1-14)T

- a.** Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or (7-1-14)T
- b.** Approve the application and instruct the Director to enter into an agreement with the applicant; or (7-1-14)T
- c.** Reject the application. (7-1-14)T
- d.** An approval or rejection from the council shall not be considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (7-1-14)T

08. Application Schedule. The application is open year round. Review of applications is subject to the meeting schedule of the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. (7-1-14)T

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.

Conflict of Interest is defined by Idaho’s Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person’s household, or a business with which the person or a member of the person’s household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict shall be fully disclosed to the Director and the Council, and that person shall abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member shall fully disclose such conflict to the Director and the Council member shall abstain from voting on the application. (7-1-14)T

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. Reimbursement Incentive Agreement. At the direction of the Council, and in accordance with the criteria established by these rules, the Director shall enter into a reimbursement incentive agreement with the applicant. (7-1-14)T

02. Agreement Terms Defined. The agreement shall contain any terms as approved by the Council, as well as define the following: (7-1-14)T

- a.** Maximum term that shall not exceed fifteen (15) years; (7-1-14)T
- b.** Projected new state revenues to be generated during the term; (7-1-14)T
- c.** Method and recordkeeping requirements to determine projected new state revenue to be generated; (7-1-14)T
- d.** The approved tax credit percentage applied to new state revenue each year the applicant is entitled to receive the reimbursement during the term of the meaningful project; (7-1-14)T
- e.** The projected new jobs; (7-1-14)T
- f.** The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; (7-1-14)T
- g.** The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the applicant must be adequate to demonstrate to the director that all requirements and measurements have been met for the applicant to receive the tax credit; (7-1-14)T
- h.** The consequences of default by the applicant; (7-1-14)T
- i.** The period to be used to determine the taxes paid at the date of application; (7-1-14)T
- j.** Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (7-1-14)T
- k.** The federal employer identification and social security number for each individual or entity included within the definition of business entity and that is included within the filing of the application; and (7-1-14)T
- l.** Identification of the individual or entity that is or will be claiming the refundable credit. (7-1-14)T

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No applicant may claim a tax credit unless the applicant has a tax credit authorization issued by the Department. An applicant may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. The tax credit authorization shall be the lowest approved percentage that will incentivize creation of new jobs and new state revenue. (7-1-14)T

02. Duplicate Copy. The Department shall provide a duplicate copy of any tax credit authorization to the Tax Commission. (7-1-14)T

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY APPLICANT.

Annual required reporting shall be outlined in the agreement and will include, but not be limited to, the following: (7-1-14)T

01. New State Revenues. Supporting documentation of the new state revenues from the applicant's new project that were paid during the preceding calendar year. (7-1-14)T

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding calendar year. (7-1-14)T

03. Known or Expected Detriments. Known or expected detriments to the state or existing industries in the state. (7-1-14)T

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the applicant's returns and other information that may be necessary to verify or otherwise confirm the declared new state revenues. (7-1-14)T

05. Tax Commission Affidavit. An affidavit from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. (7-1-14)T

06. Other Entitle to Rebate. Identification of any individual or entity included within the Application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (7-1-14)T

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the agreement. (7-1-14)T

191. ANNUAL REPORTING BY DEPARTMENT.

The Department shall create an annual written report for the Governor and the Legislature describing the following: (7-1-14)T

01. Successes. The Department's success under this act in attracting new jobs; (7-1-14)T

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; (7-1-14)T

03. Economic Impact to State. The economic impact on the state related to generating new state revenue and providing tax credits under this act; (7-1-14)T

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and (7-1-14)T

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. (7-1-14)T

06. Submittal of Report. The report shall be submitted to the Office of the Governor and the appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. (7-1-14)T

192. -- 199. (RESERVED)

200. AUDIT.

On or before November 1, 2015, and every year thereafter, the Department shall conduct an independent third party audit pursuant to Chapter 47, Title 67, Idaho Code. The Department shall consider any audit recommendations during the applicant's annual review for continuation of the tax credit. (7-1-14)T

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.

During the term of the project for each applicant, the Department shall review the applicant's annual report. Subject to any audit recommendations and provided the applicant provides a reasonable justification for authorizing or continuing a tax credit, the Department shall determine the amount of the tax credit to be granted, issue a tax credit authorization to the applicant, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued shall be the lowest approved percentage that will incentivize creation of new jobs and new state revenue. The TRI shall not be extended beyond the term and length specified in the Agreement. (7-1-14)T

211. TERMINATION OR SUSPENSION OF TAX CREDIT.

During the term of the project for each applicant, the Department shall review the applicant's annual report and if the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department shall: (7-1-14)T

01. Denial of Tax Credit. Deny the tax credit for that tax year; or (7-1-14)T

02. Termination of Agreement. Terminate the agreement for failure to meet the performance standards established; or (7-1-14)T

03. Request for Additional Documentation. Request the applicant to submit additional documentation. (7-1-14)T

212. -- 219. (RESERVED)

220. Suspension Of Idaho Reimbursement Incentive Act.

The Director shall suspend the issuance of all new agreements with applicants upon the occurrence of the following conditions: (7-1-14)T

01. Temporary Spending Reduction. The governor orders a temporary reduction of general fund spending authority, pursuant to section 67-3512A, Idaho Code; and (7-1-14)T

02. Suspension of New Agreements. The governor issues an executive order directing the Department to suspend the issuance of new agreements during the tax year in which the temporary reduction of general fund spending authority has been ordered and the executive order issued. (7-1-14)T

03. Existing Approved Agreements. In the case of suspension all agreements that have been approved by the Council prior to the governor issuing an executive order, as provided in Subsections 026.01 and 026.02 of these rules, shall remain in full force and effect and shall not be modified or impaired as a result of the executive order. (7-1-14)T

04. Support of Existing Agreements. During the period of time that new agreements have been suspended, the Director shall maintain the necessary services required to support all existing agreements and comply with all required reporting and review responsibilities. (7-1-14)T

05. Removal of Suspension. The governor may remove the suspension issued by executive order. (7-1-14)T

221. -- 999. (RESERVED)