

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 546, As Amended in the Senate

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO REIMBURSEMENT INCENTIVE ACT; AMENDING CHAPTER 47,
2 TITLE 67, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 67-4737 THROUGH
3 67-4744, IDAHO CODE, TO PROVIDE A SHORT TITLE AND LEGISLATIVE INTENT,
4 TO PROVIDE DEFINITIONS, TO PROVIDE FOR AN APPLICATION, APPLICATION
5 PROCESS, FORMATION OF AGREEMENTS AND REIMBURSEMENT, TO PROVIDE FOR
6 AGREEMENT WITH THE APPLICANT, TO PROVIDE FOR AN ANNUAL REPORTING PROCE-
7 DURE, TO REQUIRE AN ANNUAL REPORT TO THE LEGISLATURE BY THE DIRECTOR OF
8 THE IDAHO DEPARTMENT OF COMMERCE AND TO PROVIDE FOR RULEMAKING AUTHOR-
9 ITY.
10

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

12 SECTION 1. That Chapter 47, Title 67, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of NEW SECTIONS, to be known and des-
14 ignated as Sections 67-4737 through 67-4744, Idaho Code, and to read as fol-
15 lows:

16 67-4737. IDAHO REIMBURSEMENT INCENTIVE ACT -- SHORT TITLE -- LEGISLA-
17 TIVE INTENT. Sections 67-4737 through 67-4744, Idaho Code, shall be known
18 and may be cited as the "Idaho Reimbursement Incentive Act." The Idaho leg-
19 islature finds that in order to compete more effectively in a national and
20 global marketplace for economic expansion, business retention and job cre-
21 ation, a number of states, including Idaho, have deemed it necessary to cre-
22 ate economic-based incentives for the creation of quality jobs. Further,
23 the Idaho legislature desires to create the Idaho reimbursement incentive
24 act to be a performance-based tax reimbursement mechanism available to ex-
25 isting Idaho businesses and new businesses creating jobs in Idaho when the
26 same are in good standing in the state of Idaho.

27 67-4738. DEFINITIONS. As used in sections 67-4737 through 67-4744,
28 Idaho Code:

29 (1) "Applicant" means a business entity that intends to create new jobs
30 and submits an application for reimbursement to the department in accordance
31 with this act.

32 (2) "Application" means a form approved by the director of the depart-
33 ment containing all information required by the provisions of this act.

34 (3) "Approved percentage" means the amount of new state revenue the ap-
35 plicant is entitled to receive in the form of a tax credit over the term of the
36 project. The approved percentage shall not exceed thirty percent (30%) of
37 the new state revenue over the term of the project subject to the criteria as
38 established by rules.

39 (4) "Business entity" means a single business, a separate division,
40 branch or identifiable segment, or a group of businesses related through
41 ownership pursuant to section 267 of the Internal Revenue Code. For the

1 purpose of this subsection, a "separate division, branch, or identifiable
2 segment" shall be deemed to exist if, prior to the date of application, the
3 income and expense attributable to such "separate division, branch, or iden-
4 tifiable segment" could be separately ascertained from the books of accounts
5 and records.

6 (5) "Community match" means a commitment by the local government that
7 demonstrates its active support of the applicant creating new jobs in its ju-
8 risdiction. Such match may include, but shall not be limited to, a contri-
9 bution of money, fee waivers, in-kind services, the provision of infrastruc-
10 ture or a combination thereof. Such match shall also include a letter of com-
11 mitment by the governing elected officials of the jurisdiction detailing the
12 local government's support that shall be included as part of an application.

13 (6) "Council" means the economic advisory council created pursuant to
14 chapter 47, title 67, Idaho Code.

15 (7) "Department" means the Idaho department of commerce.

16 (8) "Director" means the director of the Idaho department of commerce.

17 (9) "Full-time job" means a job in which an individual is employed by
18 the applicant and performs such duties at least thirty (30) hours per week.

19 (10) "Meaningful project" means an expansion of an existing business
20 located in Idaho or the creation of new business operations in Idaho that
21 generate the minimum required new jobs and otherwise qualify under the pro-
22 visions of this act.

23 (11) "Minimum new jobs" means new jobs created by the applicant that
24 shall be not less than twenty (20) such jobs over the term of the project if
25 created within a rural community, or not less than fifty (50) such jobs over
26 the term of the project if created within an urban community. An applicant
27 will not be eligible for tax credit during the term of the project until the
28 minimum new jobs have been added.

29 (12) "New jobs" means new jobs created in Idaho in accordance with this
30 act that are nonseasonal, full-time jobs that pay annual wages that equal or
31 exceed the average annual county wage where the jobs will be created. For
32 purposes of this act, a job that shifts from one (1) location within the state
33 of Idaho to another location shall not be considered a new job. New jobs must
34 exceed the applicant's maximum number of full-time jobs in Idaho during the
35 twelve (12) months immediately preceding the date of application.

36 (13) "New state revenue" means the Idaho portion of state corporate in-
37 come tax, personal income tax and sales and use tax that is paid by the appli-
38 cant in excess of those taxes paid at the date of application and is attrib-
39 utable only to the new growth upon which the application is based. New state
40 revenue does not include taxes paid during the term that is attributable to
41 those operations that existed prior to the application. New state revenue
42 shall include:

43 (a) Incremental new state sales and use tax revenues as governed by
44 chapter 36, title 63, Idaho Code, that have been paid by the applicant on
45 their own purchases as a result of a meaningful project;

46 (b) Incremental new state income tax, including income tax generated by
47 corporations, pass-through entities, as defined in section 63-3006C,
48 Idaho Code, or proprietorships, pursuant to chapter 30, title 63, Idaho
49 Code, that have been paid by an applicant as a result of a meaningful
50 project;

1 (c) Incremental new state personal income taxes, as governed by chap-
2 ter 30, title 63, Idaho Code, withheld on behalf of the applicant's em-
3 ployees, resulting from new jobs in a meaningful project, as evidenced
4 by payroll withholding records indicating the amount of employee income
5 taxes withheld and transmitted to the tax commission. Incremental new
6 state personal income taxes shall not exceed the maximum allowable per-
7 centage of gross wages paid during a corresponding period that shall be
8 the lesser of seven percent (7%) or the highest incremental state income
9 tax rate.

10 (14) "Rural community" means, at the time of application, a city with a
11 population of less than twenty-five thousand (25,000) persons or an unincor-
12 porated area within a county.

13 (15) "Tax commission" means the Idaho state tax commission.

14 (16) "Tax credit" means a refundable tax credit authorized by the direc-
15 tor of the department. The tax commission shall make a refund to an appli-
16 cant that is granted a tax credit under this section if the amount of the tax
17 credit exceeds the applicant's tax liability for a taxable year. The credit
18 may be used as a credit against the income or franchise tax contained in chap-
19 ter 30, title 63, Idaho Code.

20 (17) "Tax credit amount" means the amount the department authorizes as a
21 tax credit for a taxable year.

22 (18) "Term of project" or "term" means the number of years an applicant
23 is authorized to receive a tax credit under this act that shall not exceed
24 fifteen (15) years subject to the criteria as established by rules.

25 (19) "Urban community" means, at the time of application, a city with
26 a population of at least twenty-five thousand (25,000), provided however,
27 that a city of less than twenty-five thousand (25,000) that is adjoining an
28 urban community shall be considered urban.

29 67-4739. APPLICATION -- PROCESS -- AGREEMENTS -- REIMBURSEMENT. (1) A
30 business entity may claim a refundable tax credit for creating a minimum num-
31 ber of new jobs in the state of Idaho. In order to be considered for partici-
32 pation, an applicant or its designated representative must submit an appli-
33 cation to the director and shall include:

34 (a) A complete description of the proposed project and the economic
35 benefit that will accrue to the state as a result of the project;

36 (b) A description or explanation of whether the project will occur or
37 how it will be altered if the tax credit application is denied by the
38 council;

39 (c) Proof of a community match;

40 (d) An affidavit from the tax commission confirming that the applicant
41 is in good standing in the state of Idaho and is not in unresolved ar-
42 rears in the payment of any state tax or fee administered by the tax com-
43 mission;

44 (e) A detailed statement with an estimate of Idaho goods and services to
45 be consumed or purchased by the applicant during the term;

46 (f) Known or expected detriments to the state or existing industries in
47 the state;

48 (g) An anticipated project inception date and proposed schedule of
49 progress;

1 (h) Proposed performance requirements and measurements that must be
2 met prior to issuance of the tax credit;

3 (i) A detailed description of the proposed capital investment;

4 (j) A detailed description of jobs to be created, an approximation of
5 the number of such jobs to be created and the projected wages to be paid
6 for such jobs; and

7 (k) A detailed description of the estimated new state tax revenues to be
8 generated by the project.

9 (2) Upon satisfaction by the director that all requirements are met
10 pursuant to this chapter, the director shall submit such application to the
11 council. The council shall review the application, may request additional
12 information and shall approve or reject the application. An approval or
13 rejection from the council shall not be considered a contested case pursuant
14 to chapter 52, title 67, Idaho Code; provided, however, that nothing in this
15 section shall prohibit an aggrieved applicant from seeking judicial review
16 as provided in chapter 52, title 67, Idaho Code.

17 (3) If the council approves the application, the council shall instruct
18 the director to enter into an agreement with the applicant with the terms of
19 the council's approval. If the council rejects an application, the appli-
20 cant may reapply with a new application.

21 (4) In the event a member of the council has a conflict of interest on an
22 application that is before the council, the member shall fully disclose it to
23 the council and abstain from any vote on the application.

24 67-4740. AGREEMENT WITH APPLICANT. (1) With instruction from the
25 council, and in accordance with criteria as established by rules, the direc-
26 tor of the department shall enter into a reimbursement incentive agreement
27 with the applicant, provided the agreement defines the following in addition
28 to the terms as approved by the council:

29 (a) The term of the agreement which in no case shall exceed fifteen (15)
30 years;

31 (b) The projected new state revenues to be generated during the term of
32 the project;

33 (c) The method and recordkeeping requirements to be used by the appli-
34 cant to determine the new state revenue paid by the applicant. The ap-
35 proved tax credit percentage applied to new state revenue each year the
36 applicant is entitled to receive the reimbursement during the term of
37 the project;

38 (d) The projected new jobs;

39 (e) The terms and conditions of any and all requirements and measure-
40 ments that must be met prior to the issuance of a tax credit authoriza-
41 tion;

42 (f) The agreed upon and necessary proof of compliance required prior to
43 tax credit issuance. Proof of compliance provided by the applicant must
44 be adequate to demonstrate to the director that all requirements and
45 measurements have been met for the applicant to receive the tax credit;

46 (g) The consequences of default by the applicant;

47 (h) The period to be used to determine the taxes paid at the date of ap-
48 plication;

1 (i) Identification of any individual or entity included within the ap-
2 plication that is entitled to a rebate pursuant to section 63-3641 or
3 63-4408, Idaho Code, or is required to obtain a separate seller's permit
4 pursuant to chapter 36, title 63, Idaho Code.

5 (j) The federal employer identification and social security number for
6 each individual or entity included within the definition of business
7 entity and that is included within the filing of the application; and

8 (k) Identification of the individual or entity that is or will be claim-
9 ing the refundable credit.

10 67-4741. APPLICANT'S ANNUAL REPORTING PROCEDURE. (1) On an annual ba-
11 sis during the term of the project, the applicant shall submit to the depart-
12 ment reporting information outlined in the agreement that shall include, but
13 not be limited to, the following:

14 (a) Supporting documentation of the new state revenues from the appli-
15 cant's new project that were paid during the preceding calendar year;

16 (b) Supporting documentation of the new jobs that were created during
17 the preceding calendar year;

18 (c) Known or expected detriments to the state or existing industries in
19 the state;

20 (d) A document that expressly directs and authorizes the tax commis-
21 sion and department of labor to allow the department access to the ap-
22 plicant's returns and other information that may be necessary to verify
23 or otherwise confirm the declared new state revenues;

24 (e) An affidavit from the tax commission confirming that the applicant
25 is in good standing in the state of Idaho and is not in unresolved ar-
26 rears in the payment of any state tax or fee administered by the tax com-
27 mission;

28 (f) Identification of any individual or entity included within the ap-
29 plication that is entitled to a rebate pursuant to section 63-3641 or
30 63-4408, Idaho Code, or is required to obtain a separate seller's permit
31 pursuant to chapter 36, title 63, Idaho Code; and

32 (g) Supporting documentation that the business entity has satisfied
33 the measurements and requirements outlined in the agreement.

34 (2) If, after review and audit of the information provided by the appli-
35 cant, or after review of the ongoing performance of the applicant, the de-
36 partment determines that the information is inadequate to provide a reason-
37 able justification for authorizing or continuing a tax credit, the depart-
38 ment shall:

39 (a) Deny the tax credit for such tax year;

40 (b) Terminate the agreement for failure to meet the performance stan-
41 dards established in the agreement; or

42 (c) Inform the applicant that the returns or other information are in-
43 adequate and request the applicant to submit additional documentation.

44 (3) If, after review and/or audit of the information provided by the ap-
45 plicant, the department determines that the information provided by the ap-
46 plicant provides reasonable justification for authorizing a tax credit, the
47 department shall, based upon the returns and other information:

1 (a) Determine the amount of the tax credit to be granted to the appli-
 2 cant which amount shall be the lowest approved percentage that will in-
 3 centivize creation of new jobs and new state revenue;

4 (b) Issue a tax credit authorization to the applicant; and

5 (c) Provide a duplicate copy of the tax credit authorization to the tax
 6 commission.

7 (4) No applicant may claim a tax credit unless the applicant has a tax
 8 credit authorization issued by the department. An applicant may claim a tax
 9 credit in the amount listed on the tax credit authorization on its tax re-
 10 turn.

11 67-4742. ANNUAL REPORTING BY DEPARTMENT. (1) The department shall
 12 create an annual written report for the governor and the legislature de-
 13 scribing:

14 (a) The department's success under this act in attracting new jobs;

15 (b) The estimated amount of tax credit commitments made by the depart-
 16 ment and the period of time over which tax credits will be paid;

17 (c) The economic impact on the state related to generating new state
 18 revenue and providing tax credits under this act;

19 (d) The estimated costs and economic benefits of the tax credit commit-
 20 ments that the department made; and

21 (e) The actual costs and economic benefits of the tax credit commit-
 22 ments the department made.

23 (2) On or before November 1, 2015, and every year thereafter, the de-
 24 partment shall:

25 (a) Conduct an independent, third-party audit of the tax credits issued
 26 under this act;

27 (b) Evaluate the tax credits issued under this act and the effective-
 28 ness of the tax credits; and

29 (c) Make recommendations concerning whether the tax credits should be
 30 continued, modified or repealed.

31 (3) The audit as set forth herein shall include an evaluation of:

32 (a) The amount of tax credits granted; and

33 (b) The effectiveness of the department's internal controls within the
 34 application and approval process pursuant to this chapter.

35 (4) The results of such audit and the director's recommendations shall
 36 be forwarded in a timely manner to the office of the governor and to the ap-
 37 propriate legislative committee chairmen.

38 67-4743. SUSPENSION OF IDAHO REIMBURSEMENT INCENTIVE ACT. (1) The di-
 39 rector shall suspend the issuance of all new agreements with applicants upon
 40 the occurrence of the following conditions:

41 (a) The governor orders a temporary reduction of general fund spending
 42 authority, pursuant to section 67-3512A, Idaho Code; and

43 (b) The governor issues an executive order directing the department to
 44 suspend the issuance of new agreements during the tax year in which the
 45 temporary reduction of general fund spending authority has been ordered
 46 and the executive order issued.

47 (2) Pursuant to this chapter, all agreements that have been approved by
 48 the council prior to the governor issuing an executive order as provided by

1 subsection (1) (b) of this section shall remain in full force and effect and
2 shall not be modified or impaired as a result of the executive order.

3 (3) During the period of time that new agreements have been suspended,
4 the director shall maintain the necessary services required pursuant to this
5 chapter to support all existing agreements and comply with all required re-
6 porting and review responsibilities.

7 (4) The governor may, by executive order, remove the suspension issued
8 pursuant to subsection (1) (b) of this section.

9 67-4744. DIRECTOR RULEMAKING AUTHORITY. The director shall promul-
10 gate rules pursuant to chapter 52, title 67, Idaho Code, in the furtherance
11 of the objectives of this act.