

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 242

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE IDAHO SMALL EMPLOYER INCENTIVE ACT; AMENDING SECTION 63-4402, IDAHO CODE, TO REVISE THE DEFINITION OF PROJECT PERIOD; AMENDING SECTION 63-4403, IDAHO CODE, TO EXTEND THE SUNSET DATE; AMENDING SECTION 63-4404, IDAHO CODE, TO EXTEND THE SUNSET DATE; AMENDING SECTION 63-4405, IDAHO CODE, TO EXTEND THE SUNSET DATE; AND AMENDING SECTION 63-4408, IDAHO CODE, TO EXTEND THE SUNSET DATE.

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 year which qualified under paragraph (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 for the year shall be the average number

1 actually employed during the months of operation, provided that the qualifications  
2 of paragraph (e)(i) of this subsection (2) are met.

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

8 (f) "Project period" means the period of time beginning at ~~the earlier of~~ a physical  
9 change to the project site or the first employment of new employees located in Idaho  
10 who are related to the activities at the project site, ~~but no earlier than January 1, 2006,~~  
11 and ending when the facilities constituting the project are placed in service, but no later  
12 than December 31, 2020 and no longer than ten (10) years after the beginning.

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

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

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

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

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

25 (i) "Recapture period" means:

26 (i) In the case of credits described in sections 63-4403 and 63-4404, Idaho  
27 Code, the same period for which a recapture of investment tax credit under section  
28 63-3029B, Idaho Code, is required; or

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

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

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

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

37 1. Increasing employment at the project site by at least ten (10)  
38 new employees each of whom must earn at least nineteen dollars and  
39 twenty-three cents (\$19.23) per hour worked during the taxpayer's taxable  
40 year.

41 2. Employment increases above the ten (10) new employees described in  
42 subparagraph (ii)1. of this paragraph (j) at the project site shall on average  
43 earn at least fifteen dollars and fifty cents (\$15.50) per hour worked during  
44 the taxpayer's taxable year. Calculation of the group average earnings shall  
45 not include amounts paid to any employee earning more than forty-eight  
46 dollars and eight cents (\$48.08) per hour.

1                   3. Earnings calculated pursuant to subparagraph (ii) of this paragraph (j)  
2 shall include income upon which Idaho income tax withholding is required  
3 under section 63-3035, Idaho Code, but shall not include income such as  
4 stock options or restricted stock grants.

5                   4. For purposes of determining whether the increased employment  
6 threshold has been met, employment at the project site shall be determined  
7 by calculating the increase of such new employees reported to the Idaho  
8 department of labor for employment security purposes over the employees  
9 so reported as of the beginning of the project period or no earlier than  
10 January 1, 2006, whichever is larger; and

11                   5. Maintaining net increased employment in Idaho required by  
12 subparagraph (ii) of this paragraph (j) during the remainder of the  
13 project period.

14 (k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsection (2), means  
15 either:

16                   (i) A single taxpayer; or

17                   (ii) In the context of a unitary group filing a combined report under section  
18 63-3027(t), Idaho Code, all members of a unitary group includable in a combined  
19 report for the tax years in which the credit provided for by this chapter may be  
20 claimed. For all other purposes, the terms of section 63-3009, Idaho Code, and  
21 section 63-3027(t)(1), Idaho Code, apply to the meaning of "taxpayer."

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

24                   63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1)  
25 For taxable years beginning on or after January 1, 2006, and before December 31, 20~~+~~20, and  
26 subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive  
27 criteria will be met within a project site during a project period shall, in regard to qualified  
28 investments made after the beginning of the project period and before December 31, 20~~+~~20,  
29 in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a  
30 nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho  
31 Code, in the amount of three and seventy-five one hundredths percent (3.75%) of the amount of  
32 qualified investment made during a taxable year, wherever located within this state.

33                   (2) The credit allowed by this section shall not exceed sixty-two and five-tenths percent  
34 (62.5%) of the tax liability of the taxpayer.

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

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

39                   63-4404. REAL PROPERTY IMPROVEMENT TAX CREDIT. (1) For taxable years  
40 beginning on or after January 1, 2006, and before December 31, 20~~+~~20, subject to the  
41 limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be  
42 met within a project site during a project period shall be allowed a nonrefundable credit against  
43 taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two

1 and five-tenths percent (2.5%) of the investment in new plant which is incurred during the  
2 project period applicable to the project site in which the investment is made.

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

5 (3) No credit is allowable under this section for a qualified investment in regard to which  
6 a credit under section 63-4403, Idaho Code, is available.

7 (4) The credit allowed by this section is limited to buildings and structural components  
8 of buildings related to new plant and building facilities.

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

11 63-4405. ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS. (1) Subject to the  
12 limitations of this chapter, for taxable years beginning on or after January 1, 2006, and before  
13 December 31, 20~~1~~20, a taxpayer who has certified that the tax incentive criteria will be met  
14 within a project site during a project period shall, for the number of new employees earning  
15 more than a rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu of  
16 the credit amount in subsection (2)(a) of section 63-3029F, Idaho Code, be allowed the credit  
17 provided by this section. The number of new employees is the increase in the number of  
18 employees for the current taxable year over the greater of the following:

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

20 (b) The average of the number of employees for the three (3) prior taxable years.

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

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

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

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

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

37 (3) The credit allowed by subsection (1) of this section shall apply only to employment  
38 primarily within the project site. No credit shall be earned unless such employee shall have  
39 performed such duties for the taxpayer for a minimum of nine (9) months during the taxable  
40 year for which the credit is claimed.

41 (4) The credit allowed by this section shall not exceed sixty-two and five-tenths percent  
42 (62.5%) of the tax liability of the taxpayer.

43 (5) Employees transferred from a related taxpayer or acquired from another taxpayer  
44 within the prior twelve (12) months shall not be included in the computation of the credit  
45 unless the transfer creates a net new job in Idaho.

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

3 63-4408. SALES AND USE TAX INCENTIVES – REBATES – RECAPTURE. (1) For  
4 calendar years beginning on January 1, 2006, and ending on December 31, 20~~1~~20, subject to  
5 the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be  
6 met within the project site shall be entitled to receive a rebate of twenty-five percent (25%) of  
7 all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its  
8 contractors actually paid in regard to any property constructed, located or installed within the  
9 project site during the project period for that site.

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

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

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

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

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

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

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

34 (5) The rebate allowed by this section is limited to sales and use taxes actually paid by  
35 the taxpayer or its contractors for taxable property related to new plant and building facilities.