



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

---

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

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

**FROM:** Mike Nugent - Division Manager

**DATE:** September 26, 2014

**SUBJECT:** Temporary Rule

IDAPA 28.04.01 - Rules Governing the Idaho Reimbursement Incentive Act (New Chapter) -  
Amendment to 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

---

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
[www.legislature.idaho.gov](http://www.legislature.idaho.gov)

## 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 - AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** A temporary rule was adopted under this docket number in the August 6, 2014 Idaho Administrative Bulletin, Volume 14-8, and is being amended. The effective date of the amended temporary rule is August 29, 2014.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation and the reasons for amending the previously adopted temporary rule:

The adoption of the temporary rules was 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). Adopting the rule as temporary was necessary to commence the possible award of a TRI to qualifying businesses seeking expansion within the state of Idaho.

This rule is also being promulgated as a proposed rule in this Bulletin under Docket No. 28-0401-1402 and rather than keep the temporary rule as previously adopted, the agency has amended the temporary rule to align it with the language of the proposed rule which accompanies this docket and is being promulgated in this Bulletin under Docket No. 28-0401-1402.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

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 and proposed rule, Megan Ronk at [megan.ronk@commerce.idaho.gov](mailto:megan.ronk@commerce.idaho.gov) or (208) 287-3153.

DATED this 29th Day of August, 2014.

Megan Ronk  
Chief Operating Officer  
Department of Commerce  
700 W State Street  
PO Box 83720  
Boise, ID 83720-0093  
(208) 287-3153 phone  
(208) 334-2631 fax

#### THE FOLLOWING IS THE AMENDED TEMPORARY RULE FOR DOCKET NO. 28-0401-1401

##### 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 pre-application process, formation of agreements with the business entity, reimbursement to the business entity 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~~(8-29-14)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. Incentive Agreement.** A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. (8-29-14)T

~~**01.2. 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 by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit.~~ (7-1-14)T(8-29-14)T

**02.3. 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 encourage 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 business entity 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~~(8-29-14)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, state/regional economic impact and return on investment for Idaho, among others. The credit authorized shall be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. ~~(7-1-14)T~~(8-29-14)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 business entity. (7-1-14)T

**131. -- 149. (RESERVED)**

**150. ELIGIBILITY.**

01. **Eligible Applicants Recipients.** ~~Applicants for~~ Recipients of 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~~(8-29-14)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 business entity's maximum number of full times 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

05. **New Jobs Wages.** New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. (8-29-14)T

**152. APPLICATION PROCESS.**

01. **Inquiry.** The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will ~~assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, shall make a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project.~~ ~~(7-1-14)T~~(8-29-14)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, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic

development or local government representative. A pre-application that shall detail the following:

~~(7-1-14)F~~(8-29-14)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~~ statement of dependency explaining whether the project will occur or how it will be altered if the ~~tax credit~~ A application is denied by the council; ~~(7-1-14)F~~(8-29-14)T

c. A letter from the city ~~and/or~~ county, or both, expressing a commitment to supply community match contribution; ~~(7-1-14)F~~(8-29-14)T

d. ~~A detailed d~~Detailed description of the proposed capital investment; ~~(7-1-14)F~~(8-29-14)T

e. ~~A detailed d~~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)F~~(8-29-14)T

f. ~~A detailed d~~Detailed description of the estimated new state tax revenues by tax to be generated by the project. ~~(7-1-14)F~~(8-29-14)T

**03. Pre-Application Commitment Estimate Letter.** Upon review and acceptance of a pre-application, the Director may issue an estimate letter of commitment to the business entity or its authorized representative, or both, which details describes 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. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. ~~(7-1-14)F~~(8-29-14)T

**04. Application.** After the business entity’s determination to proceed with an application, they business entity 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 which shall include, but not be limited to, the following information: ~~(7-1-14)F~~(8-29-14)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 of criticality explaining whether the project will occur or how it will be altered if the tax credit application is denied by the council that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; ~~(7-1-14)F~~(8-29-14)T

c. A letter from the city or county, or both, expressing a describing their commitment to supply community match contribution, a specific description of the contribution, and the amount of the contribution; ~~(7-1-14)F~~(8-29-14)T

d. ~~An affidavit~~ Business entities currently doing business in Idaho will supply a letter from the Idaho State ~~T~~ax commission confirming that the business entity 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)F~~(8-29-14)T

e. ~~A detailed statement with a~~ An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; ~~(7-1-14)F~~(8-29-14)T

f. Known or expected detriments to the state environment or existing industries in the state; ~~(7-1-14)F~~(8-29-14)T

g. An anticipated project inception date and proposed schedule of progress; (7-1-14)T

h. Any ~~P~~proposed performance requirements and measurements that must be met prior to issuance of the tax credit; ~~(7-1-14)F~~(8-29-14)T

- i. A ~~detailed~~ description of ~~the~~ any proposed capital investment; ~~(7-1-14)F~~(8-29-14)T
- j. A detailed schedule and description of the projected jobs to be created, ~~an approximation of the number of such jobs to be created and~~ the projected wages to be paid for ~~such~~ those jobs, and the anticipated hiring schedule for those jobs; and ~~(7-1-14)F~~(8-29-14)T

- k. ~~A detailed description of~~ The estimated new state tax revenues to be generated by the project. ~~(7-1-14)F~~(8-29-14)T

**05.** ~~Award Estimate~~ Application Recommendation Letter. Upon review of an application, the Director may issue a letter ~~which that~~ details the ~~estimated amount~~ Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All ~~award~~ application recommendation letters shall ~~be issued~~ with contain a "subject to Economic Advisory Council approval" contingency clause. ~~(7-1-14)F~~(8-29-14)T

**06.** Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. ~~(7-1-14)F~~(8-29-14)T

**067.** Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of ~~the each~~ 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~~ will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. ~~(7-1-14)F~~(8-29-14)T

**078.** Economic Advisory Council. The Council shall review the application and the Director recommendations. Following review the council shall have the following three (3) options as follows: ~~(7-1-14)F~~(8-29-14)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 Incentive ~~#~~Agreement with the business entity; or ~~(7-1-14)F~~(8-29-14)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 business entity from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (7-1-14)T

**09.** Pre-Application Schedule. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. ~~(7-1-14)F~~(8-29-14)T

**0810.** Application Schedule. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and 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)F~~(8-29-14)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, and that Council member shall abstain from discussing or voting on the application. ~~(7-1-14)T~~(8-29-14)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 an reimbursement incentive agreement with the business entity. ~~(7-1-14)T~~(8-29-14)T

**02. Agreement Terms Defined.** The agreement shall contain any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as define the following: ~~(7-1-14)T~~(8-29-14)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 business entity 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 business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; (7-1-14)T
- h.** The consequences of default by the business entity; (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~~ or social security number for each individual or entity ~~included within the definition of~~ stated as the business entity ~~and that is included within the filing of the application in the Agreement;~~ and ~~(7-1-14)T~~(8-29-14)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 business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. An business entity 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(8-29-14)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~~ BUSINESS ENTITY.**

~~Required~~ Annual ~~required~~ reporting shall be outlined in the agreement and will include, but not be limited to, the following: (7-1-14)T(8-29-14)T

**01. New State Revenues.** Supporting documentation of the new state revenues from the business entity'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~~ tax year ~~and the corresponding payroll information associated with the new jobs.~~ (7-1-14)T(8-29-14)T

**03. Known or Expected Detriments.** Known or expected detriments to the ~~state environment~~ or existing industries in the state. (7-1-14)T(8-29-14)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 business entity's returns, ~~filings~~ and other information that may be necessary to verify or otherwise confirm the declared new state revenues, ~~the new jobs and the associated payroll information.~~ (7-1-14)T(8-29-14)T

**05. Tax Commission ~~Affidavit~~ Letter.** An ~~affidavit~~ letter from the ~~Idaho State~~ Tax Commission confirming that the business entity 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(8-29-14)T

**06. Other Entitle to Rebate.** Identification of any individual or entity included within the ~~A~~ 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~~ to the state related to generating new state revenue and providing tax credits under this act; (7-1-14)T(8-29-14)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~~ **arrange for** an independent third party audit pursuant to Chapter 47, Title 67, Idaho Code. The Department shall consider any audit recommendations **provided** during the ~~applicant's annual review for continuation of the tax credit~~ **audit and implement changes as necessary of a result of those recommendations.** ~~(7-1-14)T~~ **(8-29-14)T**

**201. -- 209. (RESERVED)**

**210. CONTINUATION OF TAX CREDIT.**

During the term of the project for each business entity, the Department shall review the business entity's annual report. ~~Subject to any audit recommendations and p~~ **Provided** the business entity 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 business entity, 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~~ **in accordance with the credit percentages specified in the Incentive Agreement.** The TRI shall not be extended beyond the term and length specified in the Agreement. ~~(7-1-14)T~~ **(8-29-14)T**

**211. TERMINATION OR SUSPENSION OF TAX CREDIT.**

During the term of the project for each business entity, the Department shall review the business entity'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 **in accordance with the terms outlined in the incentive Agreement;** or ~~(7-1-14)T~~ **(8-29-14)T**

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