

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 172

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE IDAHO REIMBURSEMENT INCENTIVE ACT; AMENDING SECTION
2 67-4738, IDAHO CODE, TO REVISE THE DEFINITION OF "NEW JOBS" AND TO MAKE
3 TECHNICAL CORRECTIONS; AMENDING SECTION 67-4739, IDAHO CODE, TO REVISE
4 APPLICATION REQUIREMENTS; AMENDING SECTION 67-4740, IDAHO CODE, TO
5 REVISE THE AGREEMENT WITH THE APPLICANT AND TO MAKE TECHNICAL CORREC-
6 TIONS; AND AMENDING SECTION 67-4741, IDAHO CODE, TO REVISE APPLICANT
7 REPORTING REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION.
8

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

10 SECTION 1. That Section 67-4738, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 67-4738. DEFINITIONS. As used in sections 67-4737 through 67-4744,
13 Idaho Code:

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

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

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

24 (4) "Business entity" means a single business, a separate division,
25 branch or identifiable segment, or a group of businesses related through
26 ownership pursuant to section 267 of the Internal Revenue Code. For the
27 purpose of this subsection, a "separate division, branch, or identifiable
28 segment" shall be deemed to exist if, prior to the date of application, the
29 income and expense attributable to such "separate division, branch, or iden-
30 tifiable segment" could be separately ascertained from the books of accounts
31 and records.

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

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

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

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

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

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

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

13 (12) "New jobs" means new jobs created in Idaho in accordance with this
14 act that are nonseasonal, full-time jobs that collectively pay an average
15 annual wages that equals or exceeds the average annual county wage ~~where the~~
16 ~~jobs will be created~~ of the county with jurisdiction over the local govern-
17 ment providing the applicant's community match. For purposes of this act, a
18 job that shifts from one (1) location within the state of Idaho to another
19 location shall not be considered a new job. New jobs must exceed the ap-
20 plicant's maximum number of full-time jobs in Idaho during the twelve (12)
21 months immediately preceding the date of application.

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

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

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

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

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

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

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

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

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

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

16 SECTION 2. That Section 67-4739, Idaho Code, be, and the same is hereby
 17 amended to read as follows:

18 67-4739. APPLICATION -- PROCESS -- AGREEMENTS -- REIMBURSEMENT. (1) A
 19 business entity may claim a refundable tax credit for creating a minimum num-
 20 ber of new jobs in the state of Idaho. In order to be considered for partici-
 21 pation, an applicant or its designated representative must submit an appli-
 22 cation to the director and shall include:

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

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

28 (c) Proof of a community match;

29 (d) ~~An affidavit~~ A letter from the tax commission confirming that the
 30 applicant is in good standing in the state of Idaho and is not in unre-
 31 solved arrears in the payment of any state tax or fee administered by the
 32 tax commission;

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

35 (f) Known or expected detriments to the state or existing industries in
 36 the state;

37 (g) An anticipated project inception date and proposed schedule of
 38 progress;

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

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

42 (j) A detailed description of jobs to be created, an approximation of
 43 the number of such jobs to be created and the projected average wages to
 44 be paid for such jobs; ~~and~~

45 (k) A detailed description of the estimated new state tax revenues to be
 46 generated by the project;

47 (l) Identification of any individual or entity included within the ap-
 48 plication that is entitled to a rebate pursuant to section 63-3641 or

1 63-4408, Idaho Code, or is required to obtain a separate seller's permit
 2 pursuant to chapter 36, title 63, Idaho Code; and

3 (m) The federal employer identification or social security number for
 4 each individual or entity stated as the business entity in the agree-
 5 ment.

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

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

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

21 SECTION 3. That Section 67-4740, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 67-4740. AGREEMENT WITH APPLICANT. ~~(1)~~ With instruction from the
 24 council, and in accordance with criteria as established by rules, the direc-
 25 tor of the department shall enter into a reimbursement incentive agreement
 26 with the applicant, provided the agreement defines the following in addition
 27 to the terms as approved by the council:

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

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

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

37 (d) The projected new jobs;

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

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

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

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

48 ~~(i) Identification of any individual or entity included within the ap-~~
 49 ~~plication that is entitled to a rebate pursuant to section 63-3641 or~~

1 ~~63-4408, Idaho Code, or is required to obtain a separate seller's permit~~
 2 ~~pursuant to chapter 36, title 63, Idaho Code.~~

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

6 ~~(k) Identification of the individual or entity that is or will be claim-~~
 7 ~~ing the refundable credit.~~

8 SECTION 4. That Section 67-4741, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

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 ap-
 15 plicant's new project that were paid during the preceding ~~calendar~~ tax
 16 year;

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

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

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

25 ~~(e)~~ An affidavit A letter from the tax commission confirming that the
 26 applicant is in good standing in the state of Idaho and is not in unre-
 27 solved arrears in the payment of any state tax or fee administered by the
 28 tax commission;

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

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

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

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

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

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

45 (3) If, after review and/or audit of the information provided by the ap-
 46 plicant, the department determines that the information provided by the ap-
 47 plicant provides reasonable justification for authorizing a tax credit, the
 48 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.