TITLE 63
REVENUE AND TAXATION

CHAPTER 44
THE IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005

63-4401. SHORT TITLE. This chapter shall be known and may be cited as "The Idaho Small Employer Incentive Act of 2005."

[63-4401, added 2005, ch. 370, sec. 1, p. 1178; am. 2008, ch. 390, sec. 3, p. 1073.]

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 business entity, 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 business entity, during any taxable year for a business entity 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. In the event the business is in operation for less than the entire taxable year, the number of employees of the business entity for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e)(i) of this subsection are met.

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

(f) "Project period" means the period of time beginning at a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, and ending when the facilities constituting the project are placed in service, but no later than December 31, 2030, and no longer than ten (10) years after the beginning.

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

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

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

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

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

(i) "Recapture period" means:

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

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

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

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

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

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

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

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

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

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

(k) "Business entity," for purposes of paragraphs (j) and (e) of this subsection, means either:

(i) A single taxpayer; or

(ii) A single business, a separate division, branch, or identifiable segment, or a group of businesses related through ownership pursuant to section 267 of the Internal Revenue Code. For purposes of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to the date of application, the income and expense attributable to such a separate division, branch, or identifiable segment could be separately ascertained from the books of accounts and records.

[63-4402, added 2005, ch. 370, sec. 1, p. 1179; am. 2006, ch. 314, sec. 1, p. 974; am. 2007, ch. 360, sec. 25, p. 1087; am. 2008, ch. 90, sec. 1, p. 250; am. 2009, ch. 191, sec. 1, p. 622; am. 2020, ch. 243, sec. 1, p. 710.]

63-4403. ADDITIONAL INCOME TAX CREDIT FOR CAPITAL INVESTMENT. (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2030, and subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, in regard to qualified investments made after the beginning of the project period and before December 31, 2030, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one hundredths percent (3.75%) of the amount of qualified investment made during the project period, wherever located within this state.

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

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

[63-4403, added 2005, ch. 370, sec. 1, p. 1181; am. 2006, ch. 314, sec. 2, p. 977; am. 2009, ch. 191, sec. 2, p. 623; am. 2010, ch. 44, sec. 3, p. 82; am. 2020, ch. 243, sec. 2, p. 713.]

63-4404. REAL PROPERTY IMPROVEMENT TAX CREDIT. (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2030, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and five-tenths percent (2.5%) of the investment in new plant which is incurred

during the project period applicable to the project site in which the investment is made.

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

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

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

[63-4404, added 2005, ch. 370, sec. 1, p. 1181; am. 2006, ch. 314, sec. 3, p. 977; am. 2009, ch. 191, sec. 3, p. 624; am. 2020, ch. 243, sec. 3, p. 713.]

63-4405. ADDITIONAL INCOME TAX CREDIT FOR NEW JOBS. (1) Subject to the limitations of this chapter, for taxable years beginning on or after January 1, 2006, and before December 31, 2030, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, for the number of new employees earning more than a rate of twenty-four dollars and four cents ($24.04) per hour worked, in lieu of the credit amount in subsection (3) of section 63-3029F, Idaho Code, be allowed the credit provided by this section. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following:

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

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

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

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

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

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

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

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

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

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

[63-4405, added 2005, ch. 370, sec. 1, p. 1182; am. 2006, ch. 314, sec. 4, p. 978; am. 2009, ch. 191, sec. 4, p. 624; am. 2011, ch. 318, sec. 4, p. 928; am. 2020, ch. 243, sec. 4, p. 713.]

63-4406. LIMITATIONS, AND OTHER PROVISIONS ON CREDITS AGAINST INCOME TAXES. (1) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts, or estates, a method of attributing a credit under this chapter to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust, or estate; and

(b) The method by which the carryover of credits and the duty to recapture credits shall survive and be transferred in the event of reorganizations, mergers or liquidations.

(2) In the case of a unitary group of corporations filing a combined report under section 63-3027(22), Idaho Code, credits against income tax provided by sections 63-4403, 63-4404, and 63-4405, Idaho Code, earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the limitation in subsection (3) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member or members who earned the credit are no longer included in the combined group.

(3) The total of all credits allowed by sections 63-4403, 63-4404, and 63-4405, Idaho Code, together with any credits carried forward under subsection (4) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025, and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter and the Idaho income tax act.

(4) If the credits exceed the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed:

(a) The next fourteen (14) taxable years, in the case of credits allowed by sections 63-4403 and 63-4404, Idaho Code; or

(b) The next ten (10) taxable years, in the case of credits allowed by section 63-4405, Idaho Code.

[63-4406, added 2005, ch. 370, sec. 1, p. 1182; am. 2006, ch. 195, sec. 7, p. 609; am. 2008, ch. 390, sec. 4, p. 1073; am. 2022, ch. 52, sec. 5, p. 172.]

63-4407. RECAPTURE. (1) In the event that any person to whom a tax credit allowed by section 63-4403, 63-4404 or 63-4405, Idaho Code, fails to meet the tax incentive criteria, the full amount of the credit shall be subject to recapture by the commission.

(2) If, during any taxable year, an investment in new plant is disposed of, or otherwise ceases to qualify with respect to the taxpayer, prior to the close of the recapture period, recapture of the credit allowed by sections 63-4403 and 63-4404, Idaho Code, shall be determined for such taxable year in

the same proportion and subject to the same provisions as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(3) In the event that the employment level for which the credit allowed in section 63-4405, Idaho Code, is not maintained for the entire recapture period, recapture of the credit allowed in section 63-4405, Idaho Code, shall be determined for such taxable year in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code. This subsection shall not be construed to require that the required level of employment must be met by the same individual employees.

(4) Any amount subject to recapture is a deficiency in tax for the amount of the credit in the taxable year in which the disqualification first occurs and may be enforced and collected in the manner provided by the Idaho income tax act, provided however, that in lieu of the provisions of section 63-3068(a), Idaho Code, the period of time within which the commission may issue a notice under section 63-3045, Idaho Code, in regard to an amount subject to recapture shall be the later of five (5) years after the end of the taxable year in which the project period ends or three (3) years after the end of the taxable year in which any amounts carried forward under section 63-4406, Idaho Code, expire.

[63-4407, added 2005, ch. 370, sec. 1, p. 1183; am. 2007, ch. 10, sec. 5, p. 18.]

63-4408. SALES AND USE TAX INCENTIVES -- REBATES -- RECAPTURE. (1) For calendar years beginning on January 1, 2006, and ending on December 31, 2030, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within the project site shall be entitled to receive a rebate of twenty-five percent (25%) of all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its contractors actually paid in regard to any property constructed, located or installed within the project site during the project period for that site.

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

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

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

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

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

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

(4) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in

lieu of the provisions of section 63-3633, Idaho Code, the period of time within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture, shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends.

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

[63-4408, added 2005, ch. 370, sec. 1, p. 1184; am. 2006, ch. 314, sec. 5, p. 979; am. 2009, ch. 191, sec. 5, p. 625; am. 2020, ch. 243, sec. 5, p. 714.]

63-4409. ADMINISTRATION. (1) The commission shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of those provisions, including the promulgation of rules relating to information necessary to certify that the incentive criteria have been or will be met. For the purpose of carrying out its duties to enforce or administer the provisions of this chapter, the commission shall have the powers and duties provided by sections 63-3038, 63-3039, 63-3042 through 63-3067, 63-3068, 63-3071, 63-3074 through 63-3078 and 63-217, Idaho Code.

(2) Within thirty (30) days after filing form 89SE with the commission to notify of the intent to claim credits associated with the provisions of this chapter, a business entity shall provide a written notice of the filing to the department of commerce.

[63-4409, added 2005, ch. 370, sec. 1, p. 1184; am. 2020, ch. 243, sec. 6, p. 715.]