



twenty-dollar (\$20) minimum tax and the ten-dollar (\$10) permanent building fund (PBF) tax for the subsidiaries included in Petitioner's combined returns and issued a Notice.

Petitioner timely protested, specifically disagreeing with the Bureau's denial of the SE ITC and the SE Jobs Credit. The Bureau acknowledged the protest and referred the matter to the Tax Commission's Appeals Unit (Appeals) for administrative review.

Appeals reviewed the case and sent Petitioner a letter explaining the options for redetermining a Notice. Petitioner responded but did not request an informal hearing. Instead, Appeals discussed the Bureau's denial of the SE ITC and the SE Jobs Credit with Petitioner. As a result of this discussion, Petitioner provided additional information for the Tax Commission's consideration. Since Petitioner did not protest the \$20 minimum tax and \$10 PBF tax, the Tax Commission does not address these issues any further in its decision. The Tax Commission, having reviewed the additional documentation, decides the matter as follows.

### **ISSUE**

The primary issue on this case is whether Petitioner has met or will meet the criteria for the Idaho tax incentives, specifically, the requirement to make a capital investment of at least \$500,000 at their project site.

### **LAW AND ANALYSIS**

Idaho Code section 63-4402(j) defines the "Tax incentive criteria" that a business entity must meet at a project site to qualify for the Small Employer Tax Incentives. The business entity must certify that they have met or will meet all the following criteria<sup>1</sup> at the project site during the project period:

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<sup>1</sup> Idaho Code section 63-4402(j)

- (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.

The business entity must certify they've met, or it is their intent to meet, the criteria within the project period by signing an Idaho Form 89SE Certification for Idaho's Small Employer Tax Incentives. The business entity may file the certified Form 89SE with its Idaho income tax return or claim the credits on an amended return before expiration of the statute of limitations<sup>2</sup>.

In the present case, Petitioner was originally headquartered in \_\_\_\_\_ and expanded its corporate headquarters to Idaho by leasing an office building located in \_\_\_\_\_

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<sup>2</sup> Idaho Code sections 63-3068 and 63-3072

Idaho. Petitioner claimed the SE ITC for their investments made in the leased office building at the project site.

Idaho Code section 63-4402(2)(g) defines “Project site” as an area at which new plant and/or business facilities are located and at which the tax incentive criteria have been or will be met within the project period. The project site includes “a single geographic area located in this state at which the ...building facilities... **leased** by the taxpayer are located<sup>3</sup>.” (emphasis added) If the business entity has “one (1) or more geographical areas located in this state if eighty percent (80%) or more of the investment required by subsection (2)(j)(i)<sup>4</sup> of this section is made at one (1) of the areas.<sup>5</sup>” Petitioner had two plants in Idaho, but Petitioner clarified that these plants had nothing to do with the project at their site. Petitioner’s newly **leased** office building is the project site where they must have made at least \$500,000 capital investment to meet one of the criteria. The question now is whether Petitioner’s capital investments at the project site met the criteria.

“Capital investment” includes, but is not limited to, the assets acquired by an entity for use in furthering their long-term business goals and objectives. “Basis” of an asset is generally the amount of a taxpayer’s capital investment in property for tax purposes. In most situations, the basis of an asset is its cost, and it is used to calculate depreciation, any gain or loss on the sale, exchange, or disposition of the property. Appeals received Petitioner’s federal depreciation schedule, reconciling to the depreciation amount reported in their federal return, as well as a list of the asset identification (ID) number for each investment claimed for the SE ITC. Appeals verified that

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<sup>3</sup> Idaho Code section 63-4402(2)(g)(i)

<sup>4</sup> Idaho Code section 63-4402(2)(j)(i) “During the project period, making capital investments in new plant of at least five hundred thousand dollars (\$500,000) at the project site.”

<sup>5</sup> Idaho Code section 63-4402(2)(g)(ii)

Petitioner's federal depreciation schedule listed each of the investments claimed for the SE ITC as capitalized and depreciated over the asset life for federal purposes; therefore, the investments claimed for the SE ITC are indeed "capital investments". Petitioner's SE ITC schedule shows that they made more than \$500,000 in capital investments at the \_\_\_\_\_ project site. Although Petitioner met the requirement to make at least \$500,000 capital investments, the capital investments are not necessarily qualifying assets for the SE ITC. Petitioner must still prove that the capital investments qualify for the credit.

To define the "Qualified investments"<sup>6</sup>, Idaho Code section 63-4402(2)(h) refers to section 63-3029B, Idaho Code. Although Idaho Code section 63-3029B provides the definition of qualified investment for so-called "regular" Idaho investment tax credit, the same definition is applicable to the SE ITC. The Tax Commission finds that Petitioner's capital investments claimed for the SE ITC are "qualified investments" as defined by Idaho Code sections 63-3029B and 63-4402(2)(h).

The Notice did not address any criteria for the credit other than the at-least \$500,000 capital investments at the project site. However, during the administrative review, Appeals reviewed Petitioner's detailed calculation of the increase in new employment at the \_\_\_\_\_ project site and for the new employment increases above the ten (10) new employees, the average wages of the additional new employees is at least \$15.50 per hour worked. Appeals confirmed that Petitioner indeed met the other criteria for the Idaho tax incentives.

Once the business entity meets the criteria, the business entity can claim the SE ITC "at three and seventy-five one hundredths percent (3.75%) of the amount of qualified investment made

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<sup>6</sup> Idaho Code section 63-4402(2)(d)(i)

during the project period, **wherever located within this state.**” (emphasis added), as provided in Idaho Code section 63-4403. Therefore, the SE ITC Petitioner claimed for the assets located in \_\_\_\_\_ and \_\_\_\_\_ Idaho, is allowable.

The SE ITC allowed by Idaho Code section 63-4403 should not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer<sup>7</sup>, and/or seven hundred fifty thousand dollars (\$750,000) in any one (1) taxable year<sup>8</sup>. Petitioner calculated the SE ITC without exceeding these thresholds.

As for the SE Jobs Credit, Appeals found that Petitioner properly identified the qualifying new employees at the \_\_\_\_\_ project site. The credit allowed by Idaho Code section 63-4405 should not exceed sixty-two and five-tenth percent (62.5%) of the tax liability of the taxpayer. Petitioner calculated the SE Jobs Credit without exceeding this threshold.

### CONCLUSION

Petitioner made more than \$500,000 capital investments in the leased office building at their \_\_\_\_\_ project site, where they hired more than 10 employees whose average wages are at least \$15.50 per hour. The Tax Commission finds that Petitioner met the criteria for the Idaho Small Employer Incentives; therefore, the SE ITC and SE Jobs Credit should be allowed as claimed by Petitioner.

The Tax Commission offset the SE ITC and SE Jobs Credit with the additional Idaho income tax based on the 2019 federal adjustments, the minimum tax liability, and the PBF. Accordingly, the Tax Commission modifies the Notice.

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<sup>7</sup> Idaho Code section 63-4403(2)

<sup>8</sup> Idaho Code section 63-4403(3)

THEREFORE, the Tax Commission hereby MODIFIED the Notice dated October 6, 2023,  
directed to Petitioner.

<u>YEAR</u>	<u>REFUND</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2017	\$(152,570)			\$(152,570)
2018	(298,057)			(298,057)
2019	(8,375)			<u>(8,375)</u>
			TOTAL REFUND	<u>\$(459,002)</u>

There is no DEMAND for payment.

An explanation of Petitioner's right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

IDAHO STATE TAX COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
a copy of the within and foregoing DECISION was served by sending the same by United States  
mail, postage prepaid, in an envelope addressed to:

Receipt No.

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