

By Senator Gibson

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20121434

1 A bill to be entitled
2 An act relating to the tax refund program for
3 qualified target industry businesses; amending s.
4 288.106, F.S.; permitting a business that fails to
5 satisfy the terms of its agreement with the Department
6 of Economic Opportunity to apply for a prorated tax
7 refund; providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. Subsections (5) and (6) of section 288.106,
12 Florida Statutes, are amended to read:

13 288.106 Tax refund program for qualified target industry
14 businesses.—

15 (5) TAX REFUND AGREEMENT.—

16 (a) Each qualified target industry business must enter into
17 a written agreement with the department that specifies, at a
18 minimum:

19 1. The total number of full-time equivalent jobs in this
20 state that will be dedicated to the project, the average wage of
21 those jobs, the definitions that will apply for measuring the
22 achievement of these terms during the pendency of the agreement,
23 and a time schedule or plan for when such jobs will be in place
24 and active in this state.

25 2. The maximum amount of tax refunds that the qualified
26 target industry business is eligible to receive on the project
27 and the maximum amount of a tax refund that the qualified target
28 industry business is eligible to receive for each fiscal year,
29 based on the job creation and maintenance schedule specified in

1-01206-12

20121434

30 subparagraph 1.

31 3. That the department may review and verify the financial
32 and personnel records of the qualified target industry business
33 to ascertain whether that business is in compliance with this
34 section.

35 4. The date by which, in each fiscal year, the qualified
36 target industry business may file a claim under subsection (6)
37 to be considered to receive a tax refund in the following fiscal
38 year.

39 5. That local financial support will be annually available
40 and will be paid to the account. The department may not enter
41 into a written agreement with a qualified target industry
42 business if the local financial support resolution is not passed
43 by the local governing body within 90 days after the department
44 has issued the letter of certification under subsection (4).

45 6. That the department may conduct a review of the business
46 to evaluate whether the business is continuing to contribute to
47 the area's or state's economy.

48 7. That in the event the business does not complete the
49 agreement, the business will provide the department with the
50 reasons the business was unable to complete the agreement.

51 (b) Compliance with the terms and conditions of the
52 agreement is a condition precedent for the receipt of a tax
53 refund each year. The failure to comply with the terms and
54 conditions of the tax refund agreement results in the loss of
55 eligibility for receipt of all tax refunds previously authorized
56 under this section and the revocation by the department of the
57 certification of the business entity as a qualified target
58 industry business, unless the business is eligible to receive

1-01206-12

20121434

59 and elects to accept a prorated refund under paragraph (6) (e),
60 the department grants the business a prorated refund under
61 paragraph (6) (f), or the department grants the business an
62 economic recovery extension.

63 1. A qualified target industry business may submit a
64 request to the department for a prorated refund under paragraph
65 (6) (f) or for an economic recovery extension. The request must
66 provide quantitative evidence demonstrating how negative
67 economic conditions in the business's industry, the effects of a
68 named hurricane or tropical storm, or specific acts of terrorism
69 affecting the qualified target industry business have prevented
70 the business from complying with the terms and conditions of its
71 tax refund agreement.

72 2. Upon receipt of a request under subparagraph 1., the
73 department has 45 days to notify the requesting business, in
74 writing, whether its request ~~extension~~ has been granted or
75 denied. In determining whether a request ~~an extension~~ should be
76 granted, the department shall consider the extent to which
77 negative economic conditions in the requesting business's
78 industry have occurred in the state or the effects of a named
79 hurricane or tropical storm or specific acts of terrorism
80 affecting the qualified target industry business have prevented
81 the business from complying with the terms and conditions of its
82 tax refund agreement. The department shall consider current
83 employment statistics for this state by industry, including
84 whether the business's industry had substantial job loss during
85 the prior year, when determining whether a request ~~an extension~~
86 shall be granted.

87 3. As a condition for receiving a prorated refund under

1-01206-12

20121434

88 paragraph (6) (e) or paragraph (6) (f) or an economic recovery
89 extension under this paragraph, a qualified target industry
90 business must agree to renegotiate its tax refund agreement with
91 the department to, at a minimum, ensure that the terms of the
92 agreement comply with current law and the department's
93 procedures governing application for and award of tax refunds.
94 Upon approving the award of a prorated refund or granting an
95 economic recovery extension, the department shall renegotiate
96 the tax refund agreement with the business as required by this
97 subparagraph. When amending the agreement of a business
98 receiving an economic recovery extension, the department may
99 extend the duration of the agreement for a period not to exceed
100 2 years.

101 4. A qualified target industry business may submit a
102 request for an economic recovery extension to the department in
103 lieu of any tax refund claim scheduled to be submitted after
104 January 1, 2009, but before July 1, 2012.

105 5. A qualified target industry business that receives an
106 economic recovery extension may not receive a tax refund for the
107 period covered by the extension.

108 (c) The agreement must be signed by the executive director
109 and by an authorized officer of the qualified target industry
110 business within 120 days after the issuance of the letter of
111 certification under subsection (4), but not before passage and
112 receipt of the resolution of local financial support. The
113 department may grant an extension of this period at the written
114 request of the qualified target industry business.

115 (d) The agreement must contain the following legend,
116 clearly printed on its face in bold type of not less than 10

1-01206-12

20121434

117 points in size: "This agreement is not a general obligation of
118 the State of Florida, nor is it backed by the full faith and
119 credit of the State of Florida. Payment of tax refunds is
120 conditioned on and subject to specific annual appropriations by
121 the Florida Legislature sufficient to pay amounts authorized in
122 section 288.106, Florida Statutes."

123 (6) ANNUAL CLAIM FOR REFUND.—

124 (a) To be eligible to claim any scheduled tax refund, a
125 qualified target industry business that has entered into a tax
126 refund agreement with the department under subsection (5) must
127 apply by January 31 of each fiscal year to the department for
128 the tax refund scheduled to be paid from the appropriation for
129 the fiscal year that begins on July 1 following the January 31
130 claims-submission date. The department may, upon written
131 request, grant a 30-day extension of the filing date.

132 (b) The claim for refund by the qualified target industry
133 business must include a copy of all receipts pertaining to the
134 payment of taxes for which the refund is sought and data related
135 to achievement of each performance item specified in the tax
136 refund agreement. The amount requested as a tax refund may not
137 exceed the amount specified for the relevant fiscal year in that
138 agreement.

139 (c) The department may waive the requirement for proof of
140 taxes paid in future years for a qualified target industry
141 business that provides the Department of Economic Opportunity
142 ~~office~~ with proof that, in a single year, the business has paid
143 an amount of state taxes from the categories in paragraph (3)(d)
144 which ~~that~~ is at least equal to the total amount of tax refunds
145 that the business may receive through successful completion of

1-01206-12

20121434

146 its tax refund agreement.

147 (d) A tax refund may not be approved for a qualified target
148 industry business unless the required local financial support
149 has been paid into the account for that refund. If the local
150 financial support provided is less than 20 percent of the
151 approved tax refund, the tax refund must be reduced. In no event
152 may the tax refund exceed an amount that is equal to 5 times the
153 amount of the local financial support received. Further, funding
154 from local sources includes any tax abatement granted to that
155 business under s. 196.1995 or the appraised market value of
156 municipal or county land conveyed or provided at a discount to
157 that business. The amount of any tax refund for such business
158 approved under this section must be reduced by the amount of any
159 such tax abatement granted or the value of the land granted, and
160 the limitations in subsection (3) and paragraph (4)(e) must be
161 reduced by the amount of any such tax abatement or the value of
162 the land granted. A report listing all sources of the local
163 financial support shall be provided to the Department of
164 Economic Opportunity ~~office~~ when such support is paid to the
165 account.

166 (e) A prorated tax refund, less a 5 percent ~~5-percent~~
167 penalty, shall be approved for a qualified target industry
168 business if all other applicable requirements have been
169 satisfied and the business proves to the satisfaction of the
170 Department of Economic Opportunity ~~office~~ that:

171 1. It has achieved at least 80 percent of its projected
172 employment; and

173 2. The average wage paid by the business is at least 90
174 percent of the average wage specified in the tax refund

1-01206-12

20121434

175 agreement, but in no case less than 115 percent of the average
176 private sector wage in the area available at the time of
177 certification, or 150 percent or 200 percent of the average
178 private sector wage if the business requested the additional
179 per-job tax refund authorized in paragraph (3) (b) for wages
180 above those levels. The prorated tax refund shall be calculated
181 by multiplying the tax refund amount for which the qualified
182 target industry business would have been eligible, if all
183 applicable requirements had been satisfied, by the percentage of
184 the average employment specified in the tax refund agreement
185 which was achieved, and by the percentage of the average wages
186 specified in the tax refund agreement which was achieved.

187 (f) A prorated tax refund, less a 10 percent penalty, may
188 be approved for a qualified target industry business if all
189 other applicable requirements have been satisfied and the
190 business proves to the satisfaction of the department that:

191 1. The business's project has resulted in the creation of
192 at least 10 jobs; and

193 2. The average wage paid by the business is at least 90
194 percent of the average wage specified in the tax refund
195 agreement, but in no case less than 115 percent of the average
196 private sector wage in the area available at the time of
197 certification, or 150 percent or 200 percent of the average
198 private sector wage if the business requested the additional
199 per-job tax refund authorized in paragraph (3) (b) for wages
200 above those levels. The prorated tax refund shall be calculated
201 by multiplying the tax refund amount for which the qualified
202 target industry business would have been eligible, if all
203 applicable requirements had been satisfied, by the percentage of

1-01206-12

20121434

204 the average employment specified in the tax refund agreement
205 which was achieved, and by the percentage of the average wages
206 specified in the tax refund agreement which was achieved.

207 (g)~~(f)~~ The department, with such assistance as may be
208 required from the Department of Revenue, shall, by June 30
209 following the scheduled date for submission of the tax refund
210 claim, specify by written order the approval or disapproval of
211 the tax refund claim and, if approved, the amount of the tax
212 refund that is authorized to be paid to the qualified target
213 industry business for the annual tax refund. The department may
214 grant an extension of this date on the request of the qualified
215 target industry business for the purpose of filing additional
216 information in support of the claim.

217 (h)~~(g)~~ The total amount of tax refund claims approved by
218 the department under this section in any fiscal year must not
219 exceed the amount authorized under s. 288.095(3).

220 (i)~~(h)~~ This section does not create a presumption that a
221 tax refund claim will be approved and paid.

222 (j)~~(i)~~ Upon approval of the tax refund under paragraphs
223 (d), (e), (f), and (g) ~~(f)~~, the Chief Financial Officer shall
224 issue a warrant for the amount specified in the written order.
225 If the written order is appealed, the Chief Financial Officer
226 may not issue a warrant for a refund to the qualified target
227 industry business until the conclusion of all appeals of that
228 order.

229 Section 2. This act shall take effect July 1, 2012.