

House Bill No. 1483

An act relating to tax refund programs for qualified defense contractors and target industry businesses; amending s. 288.095, F.S.; specifying an order of payment of claims for certain tax refunds; providing duties of the Office of Tourism, Trade, and Economic Development in paying certain tax refunds from appropriations; deleting a provision for the office to determine proportions of certain refunds under circumstances of insufficient appropriations; revising certain reporting requirements for Enterprise Florida, Inc.; amending s. 288.1045, F.S.; revising the definition of the term “jobs”; including state communications services taxes under qualified defense contractor tax refund program provisions; specifying nonapplication to certain taxes; providing for retroactive effect; authorizing the office to make supplemental tax refund payments for certain purposes; revising certification application requirements; permitting a qualified applicant to seek an economic-stimulus exemption due to the effects of the impact of a named hurricane or tropical storm; extending the period of the exemption; changing the exemption application deadline; clarifying the cap on tax refunds; providing for a waiver of the local financial support requirement in certain circumstances and for a limited time; revising the program expiration date; amending s. 288.106, F.S.; including state communications services taxes under qualified target industry business tax refund program provisions; specifying nonapplication to certain taxes; providing for retroactive effect; authorizing the office to make supplemental tax refund payments for certain purposes; revising application requirements; permitting a business to seek an economic-stimulus exemption due to the effects of the impact of a named hurricane or tropical storm; extending the period of the exemption; changing the exemption application deadline; providing for a waiver of the local financial support requirement in certain circumstances and for a limited time; revising the program expiration date; requiring the office to attempt to amend certain existing tax refund agreements; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (3) of section 288.095, Florida Statutes, are amended to read:

288.095 Economic Development Trust Fund.—

(3)

(b) The total amount of tax refund claims approved for payment by the Office of Tourism, Trade, and Economic Development based on actual project performance may not exceed the amount appropriated to the Economic Development Incentives Account for such purposes for the fiscal year. Claims for tax refunds under ss. 288.1045 and 288.106 shall be paid in the

~~order the claims are approved by the Office of Tourism, Trade, and Economic Development. In the event the Legislature does not appropriate an amount sufficient to satisfy the estimates by the office for tax refunds under ss. 288.1045 and 288.106 in a fiscal year, the Office of Tourism, Trade, and Economic Development shall pay the tax refunds from the appropriation for the following fiscal year. By March 1 of each year, the Office of Tourism, Trade, and Economic Development shall notify the legislative appropriations committees of the Senate and House of Representatives of any anticipated shortfall in the amount of funds needed to satisfy claims for tax refunds from the appropriation for the current fiscal year, not later than July 15 of such year, determine the proportion of each refund claim which shall be paid by dividing the amount appropriated for tax refunds for the fiscal year by the estimated total of refund claims for the fiscal year. The amount of each claim for a tax refund shall be multiplied by the resulting quotient. If, after the payment of all such refund claims, funds remain in the Economic Development Incentives Account for tax refunds, the office shall recalculate the proportion for each refund claim and adjust the amount of each claim accordingly.~~

(c) By December 31 of each year, Enterprise Florida, Inc., shall submit a complete and detailed report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the director of the Office of Tourism, Trade, and Economic Development of all applications received, recommendations made to the Office of Tourism, Trade, and Economic Development, final decisions issued, tax refund agreements executed, and tax refunds paid or other payments made under all programs funded out of the Economic Development Incentives Account, including analyses of benefits and costs, types of projects supported, and employment and investment created. Enterprise Florida, Inc., shall also include a separate analysis of the impact of such tax refunds on state enterprise zones designated pursuant to s. 290.0065, rural communities, brownfield areas, and distressed urban communities. The report must also discuss the efforts made by the Office of Tourism, Trade, and Economic Development to amend tax refund agreements to require tax refund claims to be submitted by January 31 for the net new full-time equivalent jobs in this state as of December 31 of the preceding calendar year. The report must also list the name and tax refund amount for each business that has received a tax refund under s. 288.1045 or s. 288.106 during the preceding fiscal year whether the authority and moneys appropriated by the Legislature to the Economic Development Incentives Account were managed and expended in a prudent, fiducially sound manner. The Office of Tourism, Trade, and Economic Development shall assist Enterprise Florida, Inc., in the collection of data related to business performance and incentive payments.

Section 2. Paragraph (g) of subsection (1), paragraph (f) of subsection (2), paragraphs (b), (c), and (d) of subsection (3), paragraph (b) of subsection (4), and paragraph (e) of subsection (5) of section 288.1045, Florida Statutes, are amended, subsection (7) is renumbered as subsection (8) and amended, and a new subsection (7) is added to said section, to read:

288.1045 Qualified defense contractor tax refund program.—

(1) DEFINITIONS.—As used in this section:

(g) “Jobs” means full-time equivalent positions, consistent with the use of such terms by the Agency for Workforce Innovation for the purpose of unemployment compensation tax, ~~created or retained as a direct result of resulting directly from~~ a project in this state. This number does not include temporary construction jobs involved with the construction of facilities for the project.

(2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

(f) After entering into a tax refund agreement pursuant to subsection (4), a qualified applicant may receive refunds from the Economic Development Trust Fund for the following taxes due and paid by the qualified applicant beginning with the applicant’s first taxable year that begins after entering into the agreement:

1. Taxes on sales, use, and other transactions paid pursuant to chapter 212.
2. Corporate income taxes paid pursuant to chapter 220.
3. Intangible personal property taxes paid pursuant to chapter 199.
4. Emergency excise taxes paid pursuant to chapter 221.
5. Excise taxes paid on documents pursuant to chapter 201.
6. Ad valorem taxes paid, as defined in s. 220.03(1)(a) on June 1, 1996.
7. State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

However, a qualified applicant may not receive a tax refund pursuant to this section for any amount of credit, refund, or exemption granted such contractor for any of such taxes. If a refund for such taxes is provided by the office, which taxes are subsequently adjusted by the application of any credit, refund, or exemption granted to the qualified applicant other than that provided in this section, the qualified applicant shall reimburse the Economic Development Trust Fund for the amount of such credit, refund, or exemption. A qualified applicant must notify and tender payment to the office within 20 days after receiving a credit, refund, or exemption, other than that provided in this section. The addition of communications services taxes administered under chapter 202 is remedial in nature and retroactive to October 1, 2001. The office may make supplemental tax refund payments to allow for tax refunds for communications services taxes paid by an eligible qualified defense contractor after October 1, 2001.

(3) APPLICATION PROCESS; REQUIREMENTS; AGENCY DETERMINATION.—

(b) Applications for certification based on the consolidation of a Department of Defense contract or a new Department of Defense contract must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's federal employer identification number, the applicant's Florida sales tax registration number, and a notarized signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The Department of Defense contract numbers of the contract to be consolidated, the new Department of Defense contract number, or the "RFP" number of a proposed Department of Defense contract.

4. The date the contract was executed or is expected to be executed, and the date the contract is due to expire or is expected to expire.

5. The commencement date for project operations under the contract in this state.

6. The number of net new full-time equivalent Florida jobs included in the project as of December 31 of each year and the average wage of such jobs.

7. The total number of full-time equivalent employees employed by the applicant in this state.

8. The percentage of the applicant's gross receipts derived from Department of Defense contracts during the 5 taxable years immediately preceding the date the application is submitted.

9. The number of full-time equivalent jobs in this state to be retained by the project amount of:

~~a. Taxes on sales, use, and other transactions paid pursuant to chapter 212;~~

~~b. Corporate income taxes paid pursuant to chapter 220;~~

~~c. Intangible personal property taxes paid pursuant to chapter 199;~~

~~d. Emergency excise taxes paid pursuant to chapter 221;~~

~~e. Excise taxes paid on documents pursuant to chapter 201; and~~

~~f. Ad valorem taxes paid~~

~~during the 5 fiscal years immediately preceding the date of the application, and the projected amounts of such taxes to be due in the 3 fiscal years immediately following the date of the application.~~

10. The estimated amount of tax refunds to be claimed for each fiscal year.

11. A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

12. A resolution adopted by the county commissioners of the county in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

13. Any additional information requested by the office.

(c) Applications for certification based on the conversion of defense production jobs to nondefense production jobs must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's federal employer identification number, the applicant's Florida sales tax registration number, and a notarized signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The Department of Defense contract numbers of the contract under which the defense production jobs will be converted to nondefense production jobs.

4. The date the contract was executed, and the date the contract is due to expire or is expected to expire, or was canceled.

5. The commencement date for the nondefense production operations in this state.

6. The number of net new full-time equivalent Florida jobs included in the nondefense production project as of December 31 of each year and the average wage of such jobs.

7. The total number of full-time equivalent employees employed by the applicant in this state.

8. The percentage of the applicant's gross receipts derived from Department of Defense contracts during the 5 taxable years immediately preceding the date the application is submitted.

9. The number of full-time equivalent jobs in this state to be retained by the project ~~amount of:~~

- ~~a. Taxes on sales, use, and other transactions paid pursuant to chapter 212;~~
- ~~b. Corporate income taxes paid pursuant to chapter 220;~~
- ~~c. Intangible personal property taxes paid pursuant to chapter 199;~~
- ~~d. Emergency excise taxes paid pursuant to chapter 221;~~
- ~~e. Excise taxes paid on documents pursuant to chapter 201; and~~
- ~~f. Ad valorem taxes paid~~

~~during the 5 fiscal years immediately preceding the date of the application, and the projected amounts of such taxes to be due in the 3 fiscal years immediately following the date of the application.~~

10. The estimated amount of tax refunds to be claimed for each fiscal year.

11. A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

12. A resolution adopted by the county commissioners of the county in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

13. Any additional information requested by the office.

(d) Applications for certification based on a contract for reuse of a defense-related facility must be submitted to the office as prescribed by the office and must include, but are not limited to, the following information:

1. The applicant's Florida sales tax registration number and a notarized signature of an officer of the applicant.

2. The permanent location of the manufacturing, assembling, fabricating, research, development, or design facility in this state at which the project is or is to be located.

3. The business entity holding a valid Department of Defense contract or branch of the Armed Forces of the United States that previously occupied the facility, and the date such entity last occupied the facility.

4. A copy of the contract to reuse the facility, or such alternative proof as may be prescribed by the office that the applicant is seeking to contract for the reuse of such facility.

5. The date the contract to reuse the facility was executed or is expected to be executed, and the date the contract is due to expire or is expected to expire.

6. The commencement date for project operations under the contract in this state.

7. The number of net new full-time equivalent Florida jobs included in the project as of December 31 of each year and the average wage of such jobs.

8. The total number of full-time equivalent employees employed by the applicant in this state.

9. The number of full-time equivalent jobs in this state to be retained by the project amount of:

~~a. Taxes on sales, use, and other transactions paid pursuant to chapter 212.~~

~~b. Corporate income taxes paid pursuant to chapter 220.~~

~~c. Intangible personal property taxes paid pursuant to chapter 199.~~

~~d. Emergency excise taxes paid pursuant to chapter 221.~~

~~e. Excise taxes paid on documents pursuant to chapter 201.~~

~~f. Ad valorem taxes paid during the 5 fiscal years immediately preceding the date of the application, and the projected amounts of such taxes to be due in the 3 fiscal years immediately following the date of the application.~~

10. The estimated amount of tax refunds to be claimed for each fiscal year.

11. A brief statement concerning the applicant's need for tax refunds, and the proposed uses of such refunds by the applicant.

12. A resolution adopted by the county commissioners of the county in which the project will be located, which recommends the applicant be approved as a qualified applicant, and which indicates that the necessary commitments of local financial support for the applicant exist. Prior to the adoption of the resolution, the county commission may review the proposed public or private sources of such support and determine whether the proposed sources of local financial support can be provided or, for any applicant whose project is located in a county designated by the Rural Economic Development Initiative, a resolution adopted by the county commissioners of such county requesting that the applicant's project be exempt from the local financial support requirement.

13. Any additional information requested by the office.

(4) QUALIFIED DEFENSE CONTRACTOR TAX REFUND AGREEMENT.—

(b) Compliance with the terms and conditions of the agreement is a condition precedent for receipt of tax refunds each year. The failure to comply with the terms and conditions of the agreement shall result in the loss of eligibility for receipt of all tax refunds previously authorized pursuant to this section, and the revocation of the certification as a qualified applicant by the director, unless the qualified applicant is eligible to receive and elects to accept a prorated refund under paragraph (5)(g) or the office grants the qualified applicant an economic-stimulus exemption.

1. A qualified applicant may submit, in writing, a request to the office for an economic-stimulus exemption. The request must provide quantitative evidence demonstrating how negative economic conditions in the qualified applicant's industry, the effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified applicant, have prevented the qualified applicant from complying with the terms and conditions of its tax refund agreement.

2. Upon receipt of a request under subparagraph 1., the director shall have 45 days to notify the requesting qualified applicant, in writing, if its exemption has been granted or denied. In determining if an exemption should be granted, the director shall consider the extent to which negative economic conditions in the requesting qualified applicant's industry, the effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified applicant, have prevented the qualified applicant from complying with the terms and conditions of its tax refund agreement.

3. As a condition for receiving a prorated refund under paragraph (5)(g) or an economic-stimulus exemption under this paragraph, a qualified applicant must agree to renegotiate its tax refund agreement with the office to, at a minimum, ensure that the terms of the agreement comply with current law and office procedures governing application for and award of tax refunds. Upon approving the award of a prorated refund or granting an economic-stimulus exemption, the office shall renegotiate the tax refund agreement with the qualified applicant as required by this subparagraph. When amending the agreement of a qualified applicant receiving an economic-stimulus exemption, the office may extend the duration of the agreement for a period not to exceed 2 years ~~1-year~~.

4. A qualified applicant may submit a request for an economic-stimulus exemption to the office in lieu of any tax refund claim scheduled to be submitted after January 1, 2005 ~~2004~~, but before July 1, 2006 ~~2003~~.

5. A qualified applicant that receives an economic-stimulus exemption may not receive a tax refund for the period covered by the exemption.

(5) ANNUAL CLAIM FOR REFUND FROM A QUALIFIED DEFENSE CONTRACTOR.—

(e) The total amount of tax refunds approved by the director under this section in any fiscal year may not exceed the amount authorized under s. 288.095(3) ~~appropriated to the Economic Development Trust Fund for such purposes for the fiscal year~~. If the Legislature does not appropriate an

amount sufficient to satisfy projections by the office for tax refunds in a fiscal year, the director shall, not later than July 15 of such year, determine the proportion of each refund claim which shall be paid by dividing the amount appropriated for tax refunds for the fiscal year by the projected total amount of refund claims for the fiscal year. The amount of each claim for a tax refund shall be multiplied by the resulting quotient. If, after the payment of all such refund claims, funds remain in the Economic Development Trust Fund for tax refunds, the director shall recalculate the proportion for each refund claim and adjust the amount of each claim accordingly.

(7) Notwithstanding paragraphs (4)(a) and (5)(c), the office may approve a waiver of the local financial support requirement for a business located in any of the following counties in which businesses received emergency loans administered by the office in response to the named hurricanes of 2004: Bay, Brevard, Charlotte, DeSoto, Escambia, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Seminole, St. Lucie, Volusia, and Walton. A waiver may be granted only if the office determines that the local financial support cannot be provided or that doing so would effect a demonstrable hardship on the unit of local government providing the local financial support. If the office grants a waiver of the local financial support requirement, the state shall pay 100 percent of the refund due to an eligible business. The waiver shall apply for tax refund applications made for fiscal years 2004-2005, 2005-2006, and 2006-2007.

(8)(7) EXPIRATION.—An applicant may not be certified as qualified under this section after June 30, 2010 2005. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.

Section 3. Paragraph (c) of subsection (2) and paragraph (b) of subsection (4) of section 288.106, Florida Statutes, are amended, subsection (7) is renumbered as subsection (8) and amended, and a new subsection (7) is added to said section, to read:

288.106 Tax refund program for qualified target industry businesses.—

(2) TAX REFUND; ELIGIBLE AMOUNTS.—

(c) After entering into a tax refund agreement under subsection (4), a qualified target industry business may:

1. Receive refunds from the account for the following taxes due and paid by that business beginning with the first taxable year of the business which begins after entering into the agreement:

- a. Corporate income taxes under chapter 220.
- b. Insurance premium tax under s. 624.509.

2. Receive refunds from the account for the following taxes due and paid by that business after entering into the agreement:

- a. Taxes on sales, use, and other transactions under chapter 212.

- b. Intangible personal property taxes under chapter 199.
- c. Emergency excise taxes under chapter 221.
- d. Excise taxes on documents under chapter 201.
- e. Ad valorem taxes paid, as defined in s. 220.03(1).

f. State communications services taxes administered under chapter 202. This provision does not apply to the gross receipts tax imposed under chapter 203 and administered under chapter 202 or the local communications services tax authorized under s. 202.19.

The addition of state communications services taxes administered under chapter 202 is remedial in nature and retroactive to October 1, 2001. The office may make supplemental tax refund payments to allow for tax refunds for communications services taxes paid by an eligible qualified target industry business after October 1, 2001.

(4) TAX REFUND AGREEMENT.—

(b) Compliance with the terms and conditions of the agreement is a condition precedent for the receipt of a tax refund each year. The failure to comply with the terms and conditions of the tax refund agreement results in the loss of eligibility for receipt of all tax refunds previously authorized under this section and the revocation by the director of the certification of the business entity as a qualified target industry business, unless the business is eligible to receive and elects to accept a prorated refund under paragraph (5)(d) or the office grants the business an economic-stimulus exemption.

1. A qualified target industry business may submit, in writing, a request to the office for an economic-stimulus exemption. The request must provide quantitative evidence demonstrating how negative economic conditions in the business's industry, the effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified target industry business, have prevented the business from complying with the terms and conditions of its tax refund agreement.

2. Upon receipt of a request under subparagraph 1., the director shall have 45 days to notify the requesting business, in writing, if its exemption has been granted or denied. In determining if an exemption should be granted, the director shall consider the extent to which negative economic conditions in the requesting business's industry, the effects of the impact of a named hurricane or tropical storm, or specific acts of terrorism affecting the qualified target industry business, have prevented the business from complying with the terms and conditions of its tax refund agreement.

3. As a condition for receiving a prorated refund under paragraph (5)(d) or an economic-stimulus exemption under this paragraph, a qualified target industry business must agree to renegotiate its tax refund agreement with the office to, at a minimum, ensure that the terms of the agreement comply with current law and office procedures governing application for and award

of tax refunds. Upon approving the award of a prorated refund or granting an economic-stimulus exemption, the office shall renegotiate the tax refund agreement with the business as required by this subparagraph. When amending the agreement of a business receiving an economic-stimulus exemption, the office may extend the duration of the agreement for a period not to exceed 2 years ~~1 year~~.

4. A qualified target industry business may submit a request for an economic-stimulus exemption to the office in lieu of any tax refund claim scheduled to be submitted after January 1, 2005 ~~2001~~, but before July 1, 2006 ~~June 30, 2004~~.

5. A qualified target industry business that receives an economic-stimulus exemption may not receive a tax refund for the period covered by the exemption.

(7) Notwithstanding paragraphs (4)(a) and (5)(c), the office may approve a waiver of the local financial support requirement for a business located in any of the following counties in which businesses received emergency loans administered by the office in response to the named hurricanes of 2004: Bay, Brevard, Charlotte, DeSoto, Escambia, Flagler, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Martin, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Seminole, St. Lucie, Volusia and Walton. A waiver may be granted only if the office determines that the local financial support cannot be provided or that doing so would effect a demonstrable hardship on the unit of local government providing the local financial support. If the office grants a waiver of the local financial support requirement, the state shall pay 100 percent of the refund due to an eligible business. The waiver shall apply for tax refund applications made for fiscal years 2004-2005, 2005-2006, and 2006-2007.

(8)(7) EXPIRATION.—An applicant may not be certified as qualified under this section after ~~This section expires~~ June 30, 2005 ~~2010~~. A tax refund agreement existing on that date shall continue in effect in accordance with its terms.

Section 4. The Office of Tourism, Trade, and Economic Development shall attempt to amend existing tax refund agreements created under s. 288.106, Florida Statutes, to require tax refund claims to be submitted by January 31 for the net new full-time equivalent jobs in this state as of December 31 of the preceding calendar year.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 20, 2005.

Filed in Office Secretary of State June 20, 2005.