

Revenue Ruling 29-87-3 Economic Development Tax Incentives

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Economic Development Tax Incentives – Amendment of Agreements. THE REQUIRED LEVELS OF EMPLOYMENT AND INVESTMENT IN AN AGREEMENT WILL ONLY BE AMENDED AS CONTAINED IN THIS RULING.

Advice has been requested as to whether the Tax Commissioner will agree to a change in the required levels of employment and investment in a signed agreement for the purposes of the Employment and Investment Growth Act (Act).

The Act does not specifically prohibit the amendment of agreements. The Tax Commissioner has determined that in the absence of such a prohibition, an amendment will be allowed only in two very limited situations. First, where the possibility of an amendment of an agreement will encourage taxpayers to make an initial commitment to increase employment, and second, where amending the agreement will accelerate the repayment of incentives received that will be recaptured under the existing agreement.

The Tax Commissioner has determined that to allow other changes in the required levels of employment and investment would not act as an incentive to encourage the taxpayer to make a commitment to hire new employees, or would be contrary to specific language in the Act. In addition, such other changes would greatly complicate the computation and administration of the credits, the use of the credits, and the recapture provisions.

Any taxpayer whose expectations regarding the project have significantly increased can apply for additional agreements. The newly planned investment and employment can be defined as a new project which may overlap other projects as to location, time or both.

The Tax Commissioner will allow the amendment of the required levels of employment and investment in agreements only for the situations contained in this ruling. All other changes in the required levels of employment and investment will not be agreed to by the Tax Commissioner.

An agreement that requires the employment of at least thirty new employees and the investment of at least three million dollars may be amended to an agreement requiring an investment of at least twenty million dollars. The taxpayer must request the change, and make payment of all amounts of refunds received or taxes not paid through the use of any credits that have been earned. The payment must include interest from the date the refund was paid, or the due date of the tax not paid, through the date of the payment.

An agreement that requires the employment of at least one hundred new employees and the investment of at least ten million dollars may be changed to an agreement requiring the employment of at least thirty new employees and the investment of at least three million dollars. The taxpayer must request the change, and make payment to the

appropriate counties of all amounts of property tax, with interest, that have not been previously paid under the terms of the agreement.

After the benefits received have been repaid, an amended agreement will be signed and will be considered as the agreement. The required levels of employment and investment, as amended, will be used to compute, or recompute, the incentives and any recapture for the entire life of the agreement.

An agreement that has been amended may be amended again only if specifically allowed by this ruling. Once amended, the original required levels of employment and investment cannot be reestablished.

APPROVED:

Donald S. Leuenberger
State Tax Commissioner

September 4, 1987
