

## Chapter 35

### INCENTIVES FOR BUSINESSES TO CREATE NEW JOBS

#### Articles:

1. **General Provisions**
2. **Property Tax Rebate for Businesses Creating New Jobs**

#### Article 1. General Provisions

#### Sections:

- 35-1.1 **Definitions.**
- 35-1.2 **Administration.**
- 35-1.3 **Qualification for incentives.**
- 35-1.4 **Incentives for qualified businesses.**
- 35-1.5 **Penalties.**

#### Sec. 35-1.1 **Definitions.**

(a) As used in this chapter:

"City" means the City and County of Honolulu.

"Eligible business" means any corporation, partnership, or sole proprietorship authorized to do business in the state which is:

- (1) Subject to the state corporate or individual income tax under HRS Chapter 235; and
- (2) (A) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in HRS Section 237-4, or a service business; or  
(B) Engaged in producing agricultural products where the business is a producer as defined in HRS Section 237-5.

"Full-time employee" means an individual employed by a qualified business who works more than twenty hours a week during the business's payroll period.

"Qualified business" means a business certified as such pursuant to Section 35-1.3.

"Service business" means the same as defined in HRS Section 209E-2.

"Wholesale" means the same as defined in HRS Section 237-4.

(b) As used in this article, "director" means the director of the department of budget and fiscal services.

(Added by Ord. 98-54)

#### Sec. 35-1.2 **Administration.**

The director shall be responsible for the implementation and administration of the provisions of this chapter. The director may adopt rules as deemed necessary to accomplish the purposes of this chapter in accordance with HRS Chapter 91. (Added by Ord. 98-54)

#### Sec. 35-1.3 **Qualification for incentives.**

(a) Any business in the city may be certified a qualified business by the director for purposes of this chapter if the business:

- (1) Meets the definition of "eligible business" in Section 35-1.1;
- (2) Begins operations after May 1, 1997 at a particular site. The date on which a business begins operations at a particular site shall be deemed to be the date on which the business begins to provide, at the site, the service, or to manufacture, grow, or sell wholesale the product which the business was established to provide, manufacture, grow or sell; provided that acquiring or renovating the property and other preparations necessary in order to provide the service or to manufacture, grow, or sell wholesale the product to be used in the business shall not constitute beginning operations for purposes of qualifying under this chapter; and
- (3) Creates and fills at the beginning of operations at the site, new jobs for one hundred or more full-time employees. A job shall not be deemed a "new job" if, at the time the business begins operations at the site, it is an existing job with an existing business that is sold to another business, reincorporates under a new name, merely changes its name, or creates a subsidiary corporation. A job filled by an employee of a business who is relocated from another site of operations of the business within the city shall be deemed not to be a new job.

- (b) A business in the city may also be certified a qualified business by the director for purposes of this chapter if the business:
- (1) Meets the definition of "eligible business" in Section 35-1.1;
  - (2) Is operating at a particular site; and
  - (3) Creates and fills in any tax year, other than the tax year in which it begins operations, 50 new jobs at the site for 50 or more new full-time employees in addition to the number of full-time jobs at the site one year prior to the date of the application. A job shall not be deemed a "new job" if, at the beginning of the tax year for which it is claimed 50 or more new jobs have been created, it is an existing job with an existing business that is sold to another business, reincorporates under a new name, merely changes its name, or creates a subsidiary corporation. A job filled by an employee of a business who is relocated from another site of operations of the business within the city shall be deemed not to be a new job.
- (c) No business which has received incentives or been allowed regulatory flexibility pursuant to the enterprise zone ordinance, Chapter 31, shall receive incentives or be allowed regulatory flexibility under this chapter.  
(Added by Ord. 98-54)

**Sec. 35-1.4 Incentives for qualified businesses.**

The city shall provide the following incentives to qualified businesses:

- (1) Real property tax rebate; and
- (2) Waiver of permit fees.

(Added by Ord. 98-54)

**Sec. 35-1.5 Penalties.**

Any person who files a fraudulent claim or attests to any false statement with intent to defraud the city or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the city with respect to qualification for the incentives, shall:

- (1) Be fined not more than \$2,000.00, imprisoned for not more than one year, or both; and
- (2) Pay the city the value of all rebated taxes and all fees which were waived as a result of the certification of the business as qualified for benefits under this chapter.

(Added by Ord. 98-54)

**Article 2. Property Tax Rebate for Businesses  
Creating New Jobs**

**Sections:**

- 35-2.1 Definitions.**
- 35-2.2 Real property tax rebate established.**
- 35-2.3 Administration.**
- 35-2.4 Appeal.**
- 35-2.5 Rules.**

**Sec. 35-2.1 Definitions.**

As used in this article:

"Director," means the director of the department of budget and fiscal services.

"Property owner" means the same as the definition of that term contained in Section 8-6.3, modified as follows:

- (1) "Property owner" includes a lessee holding real property, as defined in Section 8-1.2, for a stated term of three years or more, provided the lease:
  - (A) Has been duly entered into and recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court, and
  - (B) Provides that the lessee shall pay all taxes levied on the property during the term of the lease.
- (2) "Property owner" excludes a lessee under a government lease whose stated term is less than three years.

"Tax year" means the same as the definition of that term contained in Section 8-6.2.

(Added by Ord. 98-54)

**Sec. 35-2.2 Real property tax rebate established.**

- (a) Upon proper application, any owner of a qualified business who owned the improvements utilized by that business on the date of the business's first qualification pursuant to Section 35-1.3 and continues to own the improvements during the tax year shall be eligible for a rebate from the city, for a period of three consecutive years, of the lesser of:
    - (1) All real property taxes paid on improvements at the site qualifying under Section 35-1.3(a) or (b) by the business which are in excess of the real property taxes paid upon the improvements at the site immediately preceding the date of the business's first qualification; or
    - (2) \$100,000.00.

The rebate shall apply only in those years in which the business continues to employ the number of full-time employees required by Section 35-1.3. In the event the improvements are transferred after taxes have been paid, only the qualified business that paid the taxes shall be eligible for the rebate.
  - (b) A claim for a real property tax rebate may be filed for excess taxes paid during a tax year at any time during the succeeding tax year only; provided that for a business first qualifying prior to August 20, 1998,\* a claim may be filed within one year of August 20, 1998.\* The first claim for a rebate shall be made during the tax year when the business first qualifies for a rebate or, for a business first qualifying prior to August 20, 1998,\* within one year of August 20, 1998.\* [**Editor's Note:** "August 20, 1998" is substituted for "the effective date of this ordinance."]
  - (c) The rebate shall apply to improvements which are held by the qualified business and which are used by the qualified business.
- (Added by Ord. 98-54)

**Sec. 35-2.3 Administration.**

- (a) The director shall prescribe the appropriate form or forms for rebate claims. For each tax year in which a claim is filed, the director shall require proof of the applicant's status as a property owner as of the date of determination of qualification. The director shall request such proof as the director shall deem necessary to verify the applicant's eligibility for the rebate, including but not limited to proof that the improvements for which the claim for rebate of taxes is made are used by the qualified business, and that the applicant paid the taxes for which the claim for rebate is made.
- (b) The applicant may refuse to provide any such proof requested by the director; provided that the director may deny the claim for rebate based upon such refusal. Notwithstanding any other provision to the contrary, there shall be no appeal from the director's denial of the claim due to such refusal of the applicant.
- (c) Where the applicant is eligible for rebate of only a portion of the taxes paid for improvements to a tax map key parcel, the sum rebated shall be the lesser of either:
  - (1) The taxes actually paid by the applicant on the improvements in excess of the taxes paid on the improvements for the tax year prior to the tax year when the applicant initially qualified for the rebate, or
  - (2) An allocation made by the director of the excess taxes attributable to the floor space of improvements held and used by the eligible business, including its portion of any common areas of the improvements where only a portion of an improvement is, or only some of the improvements on a parcel of land are, held and used by the qualified business.
- (d) Upon review and verification of each claim, the director shall determine eligibility for rebate within 45 days of the director's receipt of a duly submitted claim. If an applicant is found ineligible, the director shall notify the applicant within 45 days after the applicant has been found ineligible by the director. If an applicant's claim is approved, the rebate shall be made by check in the name of the applicant and shall be issued within 45 days after the applicant has been found eligible by the director. All checks issued shall be subject to audit.

(Added by Ord. 98-54; Am. Ord. 00-53)

**Sec. 35-2.4 Appeal.**

- (a) An applicant may appeal the director's denial of a claim for a rebate to the director. The director or a hearings officer appointed by the director shall hear the appeal. The appeal shall be filed within 30 days of the applicant's receipt of the notification of denial from the director. The director shall establish the procedure for an appeal.
- (b) This section shall not be construed as superior to Section 35-2.3(b). A claim denied under that subsection shall not be appealable under this section.

(Added by Ord. 98-54; Am. Ord. 00-53)

**Sec. 35-2.5 Rules.**

In accordance with HRS Chapter 91, the director may adopt rules having the force and effect of law for the

implementation, administration, and enforcement of this article. (Added by Ord. 98-54; Am. Ord. 00-53)