

CHAPTER 68
HIGH QUALITY JOB CREATION PROGRAM

261—68.1(81GA,HF868) Definitions.

“Act” means Iowa Code section 15.332 and 2005 Iowa Code Supplement sections 15.326 to 15.331 and 15.333 to 15.336.

“*Annual base rent*” means the business’s annual lease payment minus taxes, insurance and operating or maintenance expenses.

“*Average county wage*” means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“*Benefits*” means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

“*Biotechnology-related processes*” means the use of cellular and biomolecular processes to solve problems or make products. For purposes of this definition, farming activities shall not be included.

“*Board*” means the Iowa department of economic development board.

“*Community*” means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

“*Community base jobs*” means the total number of full-time jobs the business employs at the time of application for tax incentives and assistance less any retained jobs.

“*Created jobs*” means the new full-time jobs the business will create over and above the number of community base jobs or retained jobs or both.

“*Department*” means the Iowa department of economic development.

“*Full-time*” means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“*High quality jobs*” means created jobs that, at minimum, have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage or the wage established by the board as a result of the wage waiver process.

“*Job creation goal*” means the number of new created jobs, which includes a specified number of high quality jobs, which the business pledged to create in its application.

“*Program*” means the high quality job creation program.

“*Project*” means the activity, or set of activities, proposed in the application by the business which will result in accomplishing the goals of the program and for which the business is requesting tax incentives and assistance. A project shall include the start-up, location, expansion, or modernization of a business.

“*Project completion*” means:

1. For new manufacturing facilities, the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility.

2. For all other projects, the date of completion of all improvements necessary for the start-up, location, expansion or modernization of a business.

“*Project initiation*” means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business’s project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

“*Qualifying investment*” means a capital investment in:

1. Real property including the purchase price of land and existing buildings and structures.
2. Site preparation.
3. Improvements to real property.
4. Building construction.
5. Long-term lease costs.
6. Depreciable assets.

“*Retained jobs*” means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

“*Value-added agricultural products*” means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—68.2(81GA,HF868) Eligibility requirements.

68.2(1) *Community approval.* If the qualifying investment is \$10 million or more, the community in which the business’s project is or will be located shall approve by ordinance or resolution the start-up, location, expansion, or modernization of the business for purposes of receiving tax incentives and assistance under this program.

68.2(2) *Closures or relocations.* The business shall not close or substantially reduce its operation in one area of the state and relocate substantially the same operation in the community. This subrule does not prohibit the business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

68.2(3) *No retail or service businesses.* The business shall not be a retail or service business. For purposes of this subrule, a service business is a business providing services to a local consumer market which does not have a significant proportion of its sales coming from outside the state.

68.2(4) *Required elements.* The business shall meet at least four of the following required elements in order to be eligible for tax incentives and assistance under this program:

a. The business shall offer a pension or profit-sharing plan to all full-time employees. For purposes of this requirement, a retirement program offered by the business, such as a 401(k) plan, and to which the business makes a monetary contribution shall be considered the equivalent of a pension plan.

b. The business shall produce or manufacture high value-added goods or services or be engaged in one of the following industries:

- (1) Value-added agricultural products.
- (2) Insurance and financial services.
- (3) Plastics.
- (4) Metals.
- (5) Printing paper or packaging products.
- (6) Drugs and pharmaceuticals.
- (7) Software development.

- (8) Instruments and measuring devices and medical instruments.
- (9) Recycling and waste management.
- (10) Telecommunications.
- (11) Trucking and warehousing.

c. The business shall provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new qualifying investment occurs. For purposes of this requirement, the department will consider single or employee-only medical and dental coverage in determining if the business meets this required element.

d. The business shall make child care services available to its employees. The business shall satisfy this required element if it provides on-site child care services at the facility in which the project will occur or if it subsidizes 50 percent or more of off-site child care services costs incurred by an employee.

e. The business shall invest annually no less than 1 percent of pretax profits, from the facility located to Iowa or expanded or modernized under the program, in research and development in Iowa. The business must be able to demonstrate, using generally accepted accounting principles, the facility's history of pretax profits or a reasonable expectation of pretax profits from the facility in order to utilize this element.

f. The business shall invest annually no less than 1 percent of pretax profits, from the facility located to Iowa or expanded or modernized under the program, in worker training and skills enhancement. The business must be able to demonstrate, using generally accepted accounting principles, the facility's history of pretax profits or a reasonable expectation of pretax profits from the facility in order to utilize this element.

g. The business shall have an active productivity and safety improvement program(s). The program(s) will involve both management and workers and have benchmarks for gauging compliance.

h. The business shall purchase and occupy an existing facility that includes at least one vacant building which is at least 20,000 square feet.

68.2(5) *Violations of law.* If the department finds that a business has a record of violations of law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the business shall not qualify for tax incentives and assistance under this program, unless the department finds that the violations did not seriously affect public health or safety, or the environment, or if the department did find that the violations seriously affected public health or safety, or the environment, that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for tax incentives and assistance under this program, the department shall be exempt from Iowa Code chapter 17A.

68.2(6) *Waiver of eligibility requirements.* The department may waive any of the requirements listed above when good cause is shown.

a. Good cause includes:

(1) The community in which the project will be located can demonstrate economic distress based on a combination of factors including but not limited to:

- 1. A county family poverty rate significantly higher than the state average.
- 2. A county unemployment rate significantly higher than the state average.
- 3. A unique opportunity to use existing unutilized facilities in the community.
- 4. A significant downsizing or closure by one of the community's major employers.
- 5. An immediate threat posed to the community's workforce due to downsizing or closure of a business.

(2) The proposed project meets all of the following criteria:

1. The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.

2. All jobs created as a result of the project will have a starting wage, not including benefits, equal to or greater than 100 percent of the average county wage.

3. The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business's being headquartered in Iowa, the project has unique aspects which will assist the department in meeting one or more of the department's strategic objectives.

b. Requests to waive an eligibility requirement must be submitted in writing to the department when the business's application is submitted. The waiver request shall include documentation from other sources confirming the statistical data cited in the request. The waiver request will be reviewed as part of the application review process and acted upon by the board or the director subject to the decision-making guidelines in paragraph 68.3(1)"e." If the request for a waiver is approved, the board or the director may proceed with a final decision on the application.

68.2(7) *Competition.* The department shall consider the impact of the proposed project on other Iowa businesses in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business that is seeking tax incentives and assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will negatively impact other existing Iowa businesses including but not limited to displacing employees of the existing business.

68.2(8) *Other benefits.* A business may seek benefits and assistance for its project from other applicable federal, state, and local programs in addition to those provided in this program. However, a business which has received assistance for its project from the wage-benefit tax credit program or the enterprise zone program shall not be eligible for tax incentives and assistance under this program. A business which has received assistance for its project from the new jobs and income program or the new capital investment program shall not be eligible for tax incentives and assistance under this program for the same project. However, the business may receive tax incentives and assistance under this program for subsequent projects.

68.2(9) *Ineligibility—no high quality jobs created.* If a project is creating jobs, but none are high quality jobs, then the project is not eligible to receive benefits and assistance under this program.

261—68.3(81GA,HF868) Application process and review.

68.3(1) *Application.* The department shall develop a standardized application and make it available to a business applying for tax incentives and assistance. The application procedures are as follows:

a. The business is encouraged to apply prior to project initiation; however, an application may be submitted at any time up to 12 months following project completion.

b. A signature from the appropriate community official shall be required on the application as indication that the community is aware of and supports the project. For a project with a qualifying investment of \$10 million or more, the community ordinance or resolution approving the project shall accompany the application.

c. Each application will be reviewed by the department. The department may request additional information from the business that is applying for tax incentives and assistance or may use other resources to obtain the needed information.

d. If the business meets the eligibility requirements, the department staff will prepare a report which includes a summary of the project and a recommendation on the amount of tax incentives and assistance to be offered to the business.

e. Decision making on applications.

(1) Applications which involve 50 or more created jobs and a qualifying investment of \$10 million or more shall be referred to the board. The board will make the final decision to approve, defer or deny the application.

(2) For all other applications, department staff will present their recommendation to the director. The director will make the final decision to approve, defer, or deny the application. The director shall report to the board, at its regularly scheduled meetings, all actions taken by the director under this subparagraph.

(3) Applications involving a wage waiver request shall be referred to the board.

68.3(2) Wage waiver.

a. A community on behalf of the business requesting tax incentives and assistance may apply to the board for a waiver of the average wage calculation used to determine the amount of tax incentives and assistance the business may receive. A request to waive the average wage calculation must be submitted in writing to the department when the business's application is submitted. The waiver request will include documentation from other sources confirming the statistical data cited in the request. The board may grant a waiver of this nature for a specific project based on good cause as defined in subrule 68.2(6).

b. The board will give extra consideration to wage waiver requests when the request is for a value-added agricultural products and processes financial assistance program (VAAPFAP) project or for a project located in an economic enterprise area. An "economic enterprise area" means an area that consists of at least one county containing no city with a population of more than 23,500 and shall meet at least three of the following criteria:

- (1) A per capita income of 80 percent or less than the national average.
- (2) A household median income of 80 percent or less than the national average.
- (3) Twenty-five percent or more of the population of the economic enterprise area with an income level of 150 percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.
- (4) A population density in the economic enterprise area of less than ten people per square mile.
- (5) A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.
- (6) An unemployment rate greater than the national rate of unemployment.
- (7) More than 20 percent of the population of the economic enterprise area consisting of people over the age of 65.

c. The board may elect to use one of the following wage criteria in lieu of the average county wage:

- (1) The average county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.
- (2) The average regional wage calculated without wage data from up to two adjacent counties.
- (3) The average county wage calculated without wage data from the largest city in the county.
- (4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

68.3(3) Benefit values. For purposes of calculating the starting wage of each created job, the department shall place a value on each benefit the business makes available to all full-time employees as described below:

a. *Medical, dental, or vision insurance plans.* Starting on July 1, 2006, the department shall use the greater of the business's portion of the annual premium for: (1) employee-only or single coverage, or (2) family coverage in the wage calculation. If the business's plan is self-insured, the department will look at the amount paid by the business for costs associated with the plan during the past three years and determine the average annual contribution per employee for that three-year period when determining the value of the medical, dental, or vision plan for the wage calculation.

b. Pension and profit-sharing plans. A retirement program offered by the business, such as a 401(k) plan, and to which the business makes a monetary contribution shall be considered the equivalent of a pension plan.

(1) For a pension plan, the department shall use the same calculation used by the business to determine the annual contribution per employee. The annual contribution per employee will be used in determining the value for the wage calculation.

(2) For a 401(k) plan or similar retirement program, the department shall use the average percentage of salary matched or contributed annually by the business on a per-employee basis in determining the value for the wage calculation.

(3) For profit-sharing plans, the department shall look at the amount paid out over the past three years and determine the average annual bonus or contribution per employee for that three-year period when determining the value for the wage calculation.

c. Child care services. Child care services include on-site child care services at the facility in which the project will occur or off-site child care services subsidized by the business at the rate of 50 percent or more of the child care services costs incurred by an employee. The child care services valuation will be based on contributions made by the business for that service, as determined by the department, less any employee-paid costs for that service. The department may consider comparable costs in the local child care market in determining the value of the contribution made by the business. With respect to the wage calculation, the value of this benefit will be applied using the same percentage as the percentage of employees utilizing the business's child care benefit.

d. Life insurance and disability coverage. The portion of the annual premium or cost paid by the business for life insurance and disability coverage will be used in determining the value for the wage calculation. Life insurance premiums paid by the business for dependent coverage will not be included.

68.3(4) Negotiations. The department reserves the right to enter into negotiations with the business regarding the amount of tax incentives and assistance the business shall receive. All forms of tax incentives and assistance available under the program may be subject to negotiations. The department shall consider all of the following factors with respect to entering into negotiations with the business:

a. Level of need. The three general justifiable reasons for assistance are as follows:

(1) The business can raise only a portion of the debt and equity necessary to complete the project. A gap between sources and uses exists and state or federal funds or both are needed to fill the gap.

(2) The business can raise sufficient debt and equity to complete the project, but the returns are inadequate to motivate a company decision maker to proceed with the project. Project risks outweigh the rewards.

(3) The business is deciding between a site in Iowa (site A) and a site in another state (site B) for its project. The business argues that the project will cost less at site B and will require a subsidy to equalize costs in order to locate at site A. The objective is to quantify the cost differential between site A and site B.

Projects that have already been initiated will be considered as having minimal need.

b. Quality of the jobs. The department shall place greater emphasis on projects involving created or retained jobs that:

(1) Have a higher wage scale. Businesses that have wage scales substantially higher than those of existing Iowa businesses in that industry shall be considered as providing the highest quality of jobs.

(2) Have a lower turnover rate.

(3) Are full-time or career-type positions.

(4) Provide comprehensive health benefits. For purposes of this subparagraph, “comprehensive health benefits” means a standard medical insurance plan provided by the business and for which the business pays 80 percent of the premiums for employee-only coverage. The department shall determine what constitutes a standard medical insurance plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include dental insurance, vision insurance, prescription drug coverage and health promotion programs. Safety-related equipment and programs shall not be considered a health benefit for purposes of this subparagraph. Businesses that provide comprehensive health benefits shall be considered as providing the highest quality of jobs.

c. Percentage of created jobs defined as high quality jobs. The department will consider the number of high quality jobs to be created versus the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

d. Economic impact. The department will consider the economic costs and benefits to the state in determining what amount of tax incentives and assistance to offer the business.

261—68.4(81GA,HF868) Tax incentives and assistance.

68.4(1) Sales and use tax refund. Pursuant to Iowa Code section 15.331A, the approved business may be entitled to a refund of the sales and use taxes paid under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

a. Filing a claim. To receive the refund, the approved business shall file a claim with the department of revenue as follows:

(1) The contractor or subcontractor shall state under oath, on forms provided by the department of revenue, the amount of sales or goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the approved business before final settlement is made.

(2) The approved business shall, not more than 12 months following project completion, make application to the department of revenue for any refund of the amount of the sales and use taxes paid pursuant to Iowa Code chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services.

b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

68.4(2) Corporate tax credit for certain sales taxes paid by third-party developer. Pursuant to Iowa Code section 15.331C, the approved business may claim a corporate tax credit up to an amount equal to the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

a. Filing a claim. To receive the tax credit, the approved business shall file a claim with the department as follows:

(1) The third-party developer shall state under oath, on forms provided by the department of revenue, the amount of sales and use taxes paid and submit the forms to the approved business.

(2) The approved business shall, not more than 12 months following project completion, submit the completed forms to the department.

(3) In consultation with the department of revenue, the department shall issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes paid by a third-party developer under Iowa Code chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the approved business.

(4) The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may claim a corporate tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a tax credit. The application must include the tax credit amount being requested and documentation from the third-party developer such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will confirm the tax credit amount and issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

68.4(3) Value-added property tax exemption. Pursuant to Iowa Code section 15.332, the community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the approved business and used in the operations of the approved business. The exemption may be allowed for a period not to exceed 20 years beginning the year the improvements are first assessed for taxation. For purposes of this subrule, improvements include new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located. The community shall provide the department and the local assessor with a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the authorized exemption.

68.4(4) Investment tax credit.

a. Claiming the investment tax credit. Pursuant to Iowa Code section 15.333, the approved business may claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the start-up, location, expansion, or modernization of the approved business under the program. The tax credit shall be earned when the qualifying asset is placed in service.

(1) Five-year amortization period. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the approved business, define. The five-year amortization period will be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II, III, or V and against the moneys and credits tax imposed in Iowa Code section 533.24.

(2) Flow-through of tax credits. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 or 501A and filing as a partnership for federal tax purposes, or estate or trust.

(3) Seven-year carryforward. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to new jobs created by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs "e" and "j," purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

c. *Refunds.*

(1) Refund of unused tax credit. Subject to prior approval by the department, in consultation with the department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund of all or a portion of an unused tax credit.

(2) IRS Section 521. For purposes of this paragraph, an approved business includes a cooperative, described in Section 521 of the Internal Revenue Code, that is not required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol.

(3) Refund of unused tax credit procedures. For application to receive a refund of all or a portion of an unused tax credit, the following procedures apply:

1. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

2. Application for a tax credit certificate. The approved business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have been issued final award documentation pursuant to subrule 68.4(9) before the May 1 filing date may apply for a tax credit certificate.

The department shall require the cooperative, as described in Section 521 of the Internal Revenue Code, to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. For each cooperative member approved for a tax credit certificate, the computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

(4) Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the high quality job creation program, the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000 (\$4 million / \$8 million = 50% × \$1 million = \$500,000). The department will issue tax credit certificates within a reasonable period of time following the May 15 application deadline.

(5) Claiming the tax credit certificate. Tax credit certificates shall not be valid until the tax year following the date the final award documentation was issued. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed.

(6) **Carryforward.** An approved business may apply for a tax credit certificate once each year for up to seven years after the final award documentation is issued or until the approved business's unused tax credit is depleted, whichever occurs first. For example, an approved business which receives its final award documentation in October 2005 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2006. If, because of proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 up to seven years or until the credit is depleted, whichever occurs first.

68.4(5) Insurance premium tax credit. Pursuant to Iowa Code section 15.333A, the approved business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to new jobs created by the start-up, location, expansion, or modernization of the approved business under the program.

a. Claiming the tax credit. The tax credit shall be earned when the qualifying asset is placed in service. The tax credit shall be amortized equally over a five-year period which the department will, in consultation with the eligible business, define. The five-year amortization period shall be specified in the agreement referenced in subrule 68.5(1). The tax credit shall be allowed against taxes imposed under Iowa Code chapter 432. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to new jobs created by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1, subsection 1, paragraphs "e" and "j," purchased for use in the operation of the approved business.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the approved business.

(4) The annual base rent paid to a third-party developer by an approved business for a period equal to the term of the lease agreement but not to exceed the maximum term of the agreement referenced in subrule 68.5(1), provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer's costs to build or renovate the building for the approved business. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years.

Pursuant to subrule 68.4(9), the approved business shall not claim a tax credit above the amount defined in the final award documentation.

68.4(6) Research activities credit. Pursuant to Iowa Code section 15.335, the approved business may claim a corporate tax credit for increasing research activities in Iowa during the period the approved business is participating in the program.

a. Calculation. The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. *Alternate calculation.* In lieu of the credit amount computed in subparagraph 68.4(6) “a”(1), the approved business may elect to compute the credit amount for qualified research expenses incurred in Iowa in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under subrule 68.4(6) is for the tax year and the taxpayer may use either the method outlined in paragraph “a” or in this paragraph for any subsequent year.

For purposes of this alternate credit computation method, the credit percentages applicable to the qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

c. *Additional research activities credit.* The credit allowed in this subrule is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33(5). However, if the alternative credit computation method is used in Iowa Code section 422.10 or 422.33(5), the credit allowed in this subrule shall also be computed using that method.

d. *Flow-through of tax credits.* If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, S corporation, limited liability company, or estate or trust.

e. *Definitions.* For purposes of this subrule, “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code except that, for the alternative incremental credit, such amounts are for research conducted within Iowa. For purposes of this subrule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 31, 2005.

f. *Refunds.* Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

g. *Renewable energy generation components.* For purposes of this subrule, “research activities” includes the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. A renewable energy generation component will no longer be considered innovative when more than 200 megawatts of installed effective nameplate capacity has been achieved. Research activities credits awarded under this program and the enterprise zone program for innovative renewable energy generation components shall not exceed \$1 million.

68.4(7) Maximum tax incentives available. Tax incentives and assistance awarded under this program are based upon the number of new high quality jobs created by the approved business and the amount of qualifying investment. The maximum possible award is based on the following schedule:

a. “High quality jobs” means created jobs with a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage or the wage established by the board as a result of the wage waiver process.

(1) No high quality jobs are created but economic activity is furthered by the qualifying investment. For purposes of this subparagraph, “economic activity” means a modernization project which will result in increased skills and wages for the current employees or a project involving retained jobs.

1. Less than \$100,000 in qualifying investment.

- Investment tax credit or insurance premium tax credit of up to 1 percent.

2. \$100,000 to \$499,999 in qualifying investment.

- Investment tax credit or insurance premium tax credit of up to 1 percent.

- Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. \$500,000 or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 1 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
- (2) 1 to 5 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 2 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 2 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 2 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
- (3) 6 to 10 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 3 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 3 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 3 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
- (4) 11 to 15 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 4 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 4 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 4 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
- (5) 16 or more high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. \$500,000 or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
- b. "High quality jobs" means created jobs with a starting wage, including benefits, equal to or greater than 160 percent of the average county wage or the wage established by the board as a result of the wage waiver process.
 - (1) 21 to 30 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 to \$9,999,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 4. \$10 million or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 6 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 - Value-added property tax exemption.
 - (2) 31 to 40 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 to \$9,999,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 4. \$10 million or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 7 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 - Value-added property tax exemption.
 - (3) 41 to 50 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.

2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
3. \$500,000 to \$9,999,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
4. \$10 million or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 8 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 - Value-added property tax exemption.
- (4) 51 to 60 high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 to \$9,999,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 4. \$10 million or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 9 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 - Value-added property tax exemption.
- (5) 61 or more high quality jobs are created.
 1. Less than \$100,000 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. \$100,000 to \$499,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 3. \$500,000 to \$9,999,999 in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 5 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - Research activities credit.
 4. \$10 million or more in qualifying investment.
 - Investment tax credit or insurance premium tax credit of up to 10 percent.
 - Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

- Research activities credit.
- Value-added property tax exemption.

68.4(8) Award limitations. Each calendar year, the department shall not approve more than \$3.6 million worth of investment tax credits and insurance premium tax credits for projects with qualifying investments of less than \$1 million. Tax credits subject to this limitation will be awarded on a first-come, first-served basis.

68.4(9) Final award amounts. The approved business shall, upon attainment of project completion and the job creation goal, submit to the department information on the final created jobs, including starting wages and benefit values, and the final qualifying investment. This submission must be in writing on the form provided by the department and must be received by the department within 12 months of completion of the project and the creation of the jobs. Upon receipt of the completed form, the department shall review and confirm the information and shall prepare the final award amounts based on the final results. Final award amounts may still be subject to certain limitations put in place when the initial award was made.

If, upon receipt of the final award amount from the department, the department of revenue determines that the approved business has claimed tax incentives and assistance in amounts that exceed the amounts stipulated in the final award, the approved business shall be required to repay any tax credits and refunds it received in excess of the final award amounts. The department of revenue shall have the authority to collect the amount to be repaid to the state including interest and penalties.

261—68.5(81GA,HF868) Agreement, compliance and repayment provisions.

68.5(1) Agreement. After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

- a. Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;
- b. Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;
- c. The amount or level of tax benefits the approved business shall receive as negotiated by the department; and
- d. The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within 180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

68.5(2) Performance and maintenance periods. An approved business planning to create 15 or fewer high quality jobs shall have up to three years to complete the project and shall be required to maintain all the created jobs for an additional two years. An approved business planning to create 16 or more high quality jobs shall have up to five years to complete a project and shall be required to maintain all the created jobs for an additional two years.

68.5(3) Annual certification. An approved business shall certify annually to the department and, when applicable, to the community, that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

68.5(4) On-site monitoring. The approved business shall, upon prior reasonable notice and at any time during normal business hours, permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

68.5(5) Repayment of benefits. If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business shall repay all or a portion of the tax incentives and assistance that it has received. The repayment shall be calculated as follows:

a. Job maintenance. If the approved business fails to maintain the required number of created or retained jobs or both as defined in the agreement and the final award documentation, the business shall repay a percentage of the tax incentives and assistance that it has received. The repayment percentage will be equal to the percentage of jobs that the approved business failed to maintain.

b. Required elements. If the approved business fails to meet the four required elements as defined in the agreement in any one year, the business must meet that requirement in the following year or repay all the tax incentives and assistance that it has received.

c. Selling, disposing, or razing of property. If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed, the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed if the property ceases to be approved for the tax credit within five full years after being placed in service.

68.5(6) Layoffs or closures. If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the tax incentives and assistance, the department may reduce or eliminate all or a portion of the tax incentives and assistance. If an approved business experiences a layoff within the state or closes any of its facilities within the state after receiving tax incentives and assistance, the business may be subject to repayment of all or a portion of the tax incentives and assistance that it has received.

68.5(7) Extensions. If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in completing the project was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed project can be achieved; or

b. The project does not fit under paragraph "a" and the approved business has demonstrated to the department's satisfaction the existence of special circumstances.

These rules are intended to implement 2005 Iowa Acts, House File 868.

[Filed emergency 7/7/05—published 8/3/05, effective 7/7/05]

[Filed 10/21/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

[Filed emergency 7/19/06—published 8/16/06, effective 7/19/06]

[Filed 9/22/06, Notice 8/16/06—published 10/11/06, effective 11/15/06]