

Title 6: Economic Development

Part 9: Economic Development Division

Part 9 Chapter 3: Mississippi Flexible Tax Incentive Program – mFLEX

Rule 3.1 Program Objective. Pursuant to Miss. Code Ann. § 57-114-1 *et seq.*, the Mississippi Flexible Tax Incentive Program assists companies locating or expanding into Mississippi by providing a tax credit which can be taken to offset state taxes incurred during the establishment of the project. mFLEX was created with the goal of simplifying the tax incentive process for potential site locations and expansions as well as increasing the value of tax incentives in the state by providing flexibility in the utilization of the incentive. This incentive is intended to replace many of the existing tax incentives which each have a separate application and approval process and provide the state with no means of determining the utilization of the credit by the user.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.2 Program Description. Through the Mississippi Flexible Tax Incentive Program, a taxpayer credit is provided to a new or expanding industry based on investment, job creation and average wages of the created jobs. This credit can be used to offset income, franchise, sales, use, and payroll withholding taxes of the industry as well as specific identified affiliates.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.3 Eligible Applicants. MDA will invite applications from eligible industries planning to locate or expand in the state. To qualify, the applicant must commit to creating a minimum of 10 new full-time jobs paying a minimum of seventy-five percent (75%) of the average state or county wage **or** investing a minimum of two million, five hundred dollars (\$2,500,000). The following industries are eligible:

- Manufacturing, remanufacturing, assembly, processing, and/or refining enterprise
- Warehouse and/or distribution enterprise
- Research or research and development enterprise
- Regional or national headquarters
- Air transportation and/or maintenance enterprise
- Data and information processing enterprise
- Technology intensive enterprise
- Data center enterprise

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.4 Eligibility Criteria. MDA will evaluate potential projects and will invite eligible project applications based on the results of that evaluation. Application evaluation will include the review of available information, including:

- A. Capital investment

- B. Job creation
- C. Average annual wages
- D. Benefits, and
- E. Current compliance with all state tax laws, ordinances, permits and approvals.

MDA may utilize information from other state and local agencies to verify that all statutory requirements are met. It is the statutory intent that all eligible projects requesting certification be awarded this credit in lieu of the existing standard tax incentives that are statutorily awarded.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.5 Funding Availability. The mFLEX program is not limited by funding availability, so all applications that meet statutory requirements may be approved by the agency. Certified credit amounts can be taken upon certification as a credit on all tax returns filed by the applicant or its identified affiliates after the certification date. A limit of twenty percent (20%) of the total credit awarded may be applied to withholding tax liability for any given year. Credits may not be used to offset tax liability incurred prior to the certification date.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.6 Statutory Requirements. State statute provides that Mississippi Flexible Tax Incentive credits be used to offset income, franchise, sales, use, and payroll withholding taxes of the industry or specific identified affiliates. Certified credit amounts can be taken upon certification as a credit on all tax returns filed by the applicant or its identified affiliates after the certification date. A limit of twenty percent (20%) of the total credit awarded may be applied to payroll withholding tax liability per year. Credits may not be used to offset tax liability incurred prior to the certification date.

To ensure that the credit awarded is based on the actual investment, job creation, and payroll of the company, the certified applicant will be required to submit annual reports to the MDA that provide the progress of the project to date. Credit amounts may be adjusted based on these reports and an updated credit certificate will be issued to the company as well as the Department of Revenue to validate those credits are commensurate with the actual project results.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.7 Project Certification. Upon evaluation of the project, if all requirements are met, the applicant will be presented to the MDA board for approval. If approved, the applicant will be required to enter into an agreement that documents the following:

- A. The obligation of the industry to provide an annual report that includes actual investment, job creation, and payroll in a manner prescribed by the MDA.
- B. The obligation to update estimated investment and job creation for the remainder of the project.
- C. The obligation of the industry to provide health insurance coverage funded at least fifty percent (50%) by the certified business.

- D. The obligation to provide a summary of the tax credits taken for the reporting year by the applicant as well as the credits taken by each identified affiliate.
- E. Acknowledgement that if the applicant is awarded an mFLEX certification, specific statutory tax incentives will not be available to the applicant.
- F. Acknowledgement that the certified credit amount will be adjusted annually based on actual investment and job creation, as well as updated estimates for the project.
- G. Acknowledgement that failure to comply with required reporting may result in the suspension or revocation of all or a portion of the mFLEX credits awarded.
- H. Acknowledgement that in the event that credits that have been taken and are later reduced through recalculation based on company reporting or revocation due to failure to file the annual report will be recaptured by the Department of Revenue as a tax liability.

Once the applicant signs and returns the agreement, a certification will be issued that documents the mFLEX credit available to the applicant. A copy of the certification will also be provided to the Department of Revenue for administrative oversight.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.8 Calculation of mFLEX Credits. MDA will calculate the initial credit amount based on the following formula:

- Reported Capitalized Manufacturing Equipment Expenditures multiplied by 1.5%
- +
- Reported Capitalized Non-Manufacturing Equipment, Furniture, and Fixtures multiplied by 7%
- +
- Total construction contract(s) multiplied by 2%
- +
- Wages multiplied by number of jobs multiplied by 15%

This calculation results in the **base mFLEX credit**. If the applicant creates 25 jobs and pays an average annual salary of 125% of the average state or county wage (or is a manufacturer, invests \$20,000,000 and creates a minimum of 50 jobs), the credit is increased by the following premium for high paying jobs:

Payroll multiplied by number of jobs multiplied by 30%

In the event that the applicant elects to utilize industrial revenue bonds issued by the Mississippi Business Finance Corporation, the calculation will be limited as follows:

Payroll multiplied by number of jobs multiplied by 15%

This calculation results in the **IRB (Industrial Revenue Bond) base mFLEX credit**. If the applicant creates 25 jobs and pays an average annual salary of 125% of the average state or county wage (or is a manufacturer, invests \$20,000,000 and creates a minimum of 50 jobs), the credit is increased by the following premium for high paying jobs:

Payroll multiplied by number of jobs multiplied by 30%

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.9 mFLEX Credit Utilization. Upon receipt of the certification by the applicant, certified credit amounts can be taken as a credit on all Department of Revenue tax returns filed by the applicant or its identified affiliates after the certification date. A limit of twenty percent (20%) of the total credit awarded may be applied to payroll withholding tax liability for any given year. Credits may not be used to offset tax liability incurred prior to the certification date.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.10 Applicant Reporting Requirements. Each applicant that is awarded a certification will be required to complete and submit an annual report by the last business day of the month following the end of the quarter during which the annual anniversary of the project certification was issued. This report, along with any required attachments, must be submitted to MDA in their prescribed format. This report will require the following information:

- Company name and FEIN
- Total investment for the year, for the project to date, and the anticipated total investment
- The total number of initial full-time jobs (for expansions), the total jobs created for the reporting year, the total jobs created to date, and the total anticipated jobs
- The average wages paid for new jobs created
- The percentage and number of employees who are offered health insurance coverage, funded at least 50% by the employer
- A listing of affiliates, including legal entity name and FEIN, that may utilize the mFLEX credit awarded.
- A summary of the tax credits taken for the reporting year and to date by the applicant as well as the credits taken by each identified affiliate.

Any approved or awarded applicant that fails to comply will be notified by MDA and will be given 30 days to submit the required reporting. Failure to comply with required reporting may result in the suspension or revocation of all or a portion of the mFLEX credits awarded. This decision is at the discretion of the MDA.

The informational report must be filed annually for a minimum of seven years, but if the applicant has not utilized all available credits, then annual reports must be filed until all credits have been used or the credits expire, 10 years after the date of the certificate.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.11 mFLEX Credit Adjustment and Certification. Based on the information provided in the entity's annual report, MDA will identify any adjustment to the initial estimates provided by the applicant. Adjustments to the certification may include:

- Updates to the demographic and contact information of the company
- Updates to the approved affiliates
- Updates to the mFLEX credit available.

mFLEX credit updates may cause the total credit amount to increase or decrease and may occur for the following reasons:

- Updates to the project estimates (jobs, wages and investment)
- Updates to the actual investment made
- Updates to the actual jobs created.

Once the project is completed, no additional updates can be made to the investment estimate. A copy of the updated certification will be provided to the Department of Revenue to ensure that the correct credit amount is being utilized.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.12 MDA Reporting Requirements for mFLEX. All mFLEX applications and annual reports are exempt from the Freedom of Information Act. MDA is statutorily required to provide copies of each mFLEX agreement, mFLEX certification, and mFLEX certification amendment to the Governor, Lieutenant Governor, and Speaker of the House the calendar quarter following the quarter the document is certified. This information will be documented as confidential and will not be released to the public.

MDA will include mFLEX incentives in their annual incentive report, but each company certified will include only summary data.

Source: Miss. Code Ann. § 57-114-1 *et seq.*; Miss Code Ann Section 57-1-14

Rule 3.13 Changes in Project Scope or Budget. If a project's scope changes at any point after certification, the mFLEX credit recipient must provide an update using the annual update form and include the project name, requested change, reasons for requesting the change, and any alterations in investment and/or job creation and wages. If the completed project cost is higher than the approved project cost, the mFLEX credit will be increased to accommodate the change. Likewise, reductions in investment, jobs, and/or wages could result in a decrease in the mFLEX credit.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Rule 3.14 Compliance with Federal Immigration Laws and Mississippi Employment Protection Act. The company is required to ensure compliance with the Mississippi Employment Protection Act ("MEPA"), Miss. Code. Ann. § 71-11-3 *et seq.*, and must ensure that the entity registers and participates in the status verification system for all newly hired employees. Under MEPA, the term "employee" means any person that is hired to perform work within the State of Mississippi. As used in MEPA, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The company must maintain records of such compliance and, upon request of the State of Mississippi and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each

such verification to the State. Any person assigned to perform services must meet the employment eligibility requirements of all federal and state immigration laws. Any breach may subject the company to the following: (a) termination of the Agreement and ineligibility for any assistance, grant or state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the company by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, the Company is also liable for any additional costs incurred by the State.

Source: Miss. Code Ann. § 71-11-3; Miss. Code Ann. § 57-1-371; Miss. Code Ann. § 57-1-373.

Rule 3.15 Waiver. These rules and regulations may be amended by MDA at any time. MDA, in its discretion, may temporarily waive any requirement of the rules and regulations to the extent that the result of such waiver is to promote the public purpose of the statute and is not prohibited by State law.

Source: Miss. Code Ann. § 57-114-1 *et seq.*

Inquiries should be directed to:

Mississippi Development Authority
Attn: Business Incentives Division
P.O. Box 849
Jackson, MS 39205

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