VERMONT
VERMONT ECONOMIC PROGRESS COUNCIL

VERMONT EMPLOYMENT GROWTH INCENTIVE
VEGI ANNUAL PERFORMANCE REQUIREMENTS

The VEGI program is performance-based. No incentive is paid when the incentives are authorized. The authorization determines eligibility and sets the level of incentive based on the economic activity that is projected to occur. The applicant sets its own annual performance requirements with the data submitted in a Final Application.

DEFINITION OF "MEETING PERFORMANCE REQUIREMENTS":
If a Final Application is approved and incentives are authorized, the VEGI incentive can only be earned for each year authorized if:

1) Base full-time payroll (full-time payroll as of the Activity Commencement Date as reported by the applicant) is maintained or increased; ***and***
2) The New Qualifying Payroll performance requirement is met; ***and***
3) ***Either*** the New Qualifying Employment ***or*** the New Qualifying Capital Investment performance requirement is met.

BASIC EXAMPLE:
Using the VEGI Incentive Calculation example available on our website, the example company would be authorized with the following performance requirements based on their Final Application data:

Base Full-time Payroll: $3,879,000 **[Note: NQ = New Qualifying]**

	NQ Payroll:	NQ Employees:	NQ Capital Investments:
Year 1:	$439,000	9	$8,000,000
Year 2:	$491,000	9	$1,000,000
Year 3:	$712,000	16	$900,000
Year 4:	$865,000	18	$100,000
Year 5:	$897,000	18	$0

The performance requirements for this example company would be met each year under the following conditions:

1) **Base payroll ($3,879,000) is maintained or increased:**
   Base payroll is the payroll level for all full-time employees (both Qualifying and Non-Qualifying), as stated on the company's Final Application, as of the Activity Commencement Date, and that level plus the New Qualifying Payroll to be added each year for subsequent years.

   AND…

2) **New Qualifying Payroll ($439,000 for Year 1) performance requirement is met.**
The New Qualifying Payroll performance requirement is the amount of new, qualifying payroll as stated by the company on their Final Application, to be created each year. The New Qualifying Payroll is the aggregate annualized payroll of the New Qualifying Employees hired during the target year.

AND ONE OF EITHER OF THE FOLLOWING PERFORMANCE REQUIREMENTS ARE MET:

3) **New Qualifying Employment (9 for Year 1) performance requirement.**
The New Qualifying Employment performance requirement is the number of new qualified employees, as stated by the company on their Final Application, to be added each year. Only new employees who are new, employed in Vermont, and meet the new qualified employee definition can be counted.

4) **Qualifying Capital Investment performance requirement**.
The Qualifying Capital Investment performance requirement is the level of qualifying capital investments, as stated by the company on their Final Application, to be made each year. Only investments that meet the definition of new qualifying capital investments can be counted.

FURTHER PERFORMANCE REQUIREMENT STIPULATIONS:

- No incentive is earned unless performance requirements, as defined above, are met ***in full*** each year. There is no prorated payment based on partially met performance requirements.
- Performance requirements are defined by the applicant company in their Final Application and are absolute. Performance requirements will not be deemed to have been met even if missed by only the smallest of margins (e.g. missing a Jobs Target by 1 job or missing a Payroll Target by $1.) Applicants are advised to take this into account when completing their Final Applications.
- Performance requirements cannot be adjusted after a Final Application is approved.
- In addition to the annual performance requirements that must be met to earn the incentive, statute also requires a reconciliation when the claim is filed for Year 5 to determine if all capital investments were made during the Authorization Period and the total capital investment performance requirement was met. As you can see from the information above, incentives can be earned each year by meeting payroll and employment performance requirements only each year. But the tax revenues generated by the projected capital investments have a substantial impact on the incentive percentage authorized for the company. Therefore, statute requires that if the total of all annual Qualifying Capital Investment Performance Requirements are not met by the end of the project, there must be an adjustment to reduce the remaining incentives to be earned and/or incentive installments remaining to be paid by the same percentage as the capital investment shortfall. For example, if the company projects a total of $3,000,000 in capital investments over a five-year authorization period, but by the end of the authorization period has only made $2,500,000 in capital investments, which is a 16.67% reduction in capital investments, the total incentives to be paid out will be reduced by 16.67% by either reducing the final incentive earned or reducing the remaining incentive installments.

WHAT IFS?

What if the company fails to meet Performance Requirements?

Statute allows a company to miss performance requirements but still earn the incentive, but no incentive is earned until the requirements for the target year are met. This allows for delays such as an inability to find qualified employees or permitting. For Year 1 through Year 3, the company has a grace period of 24 months from the annual Performance Requirement deadline (December 31 of each year) to meet the Performance Requirements and still earn the incentive. For Year 4, the grace period is 12 months. Year 5 has no grace period.

Incentive claims are filed annually by the last day in April. If a company does not meet the Performance Requirements, the claim will be placed in "Claim Delay. If Performance Requirements are met sometime within the grace period, the incentive would be earned when the next claim is filed. If by the end of any grace period the Performance Requirements are not met, the incentive for the target year can never be earned and any remaining incentives are terminated. Incentive installments would continue to be paid for any incentive that had previously been earned as long as the Performance Requirements are maintained.

Examples using the VEGI Incentive Calculation example available on our website:

Company has the following Performance Requirements for Year 1 (2010):

- New Qualifying Payroll: $439,000
- New Qualifying Employment: 9
- New Qualifying Capital Investments: $8,000,000

When the first claim is filed in 2011, it shows that by December 31 of 2010 (Year 1), the company had accomplished the following:

- Base Full-time Payroll: Maintained
- New Qualifying Payroll: $400,000
- New Qualifying Employment: 8
- New Qualifying Capital Investments: $8,000,000

The company did not meet Performance Requirements for Year 1 and the claim would be put in "Claim Delayed" status. But in January of 2011, the company hired another qualifying employee at $39,000 and by the end of 2011 hired another 9 new qualifying employees and added another $491,000 in new qualifying payroll, for a total of $530,000 in new qualifying payroll and 10 new qualifying employees in 2011. When the claim for 2011 is filed in 2012, the company will earn both the 2010 and 2011 incentives, totaling $293,258 and the installments will pay out simultaneously between 2012 and 2016.

If, when the company files the claim for 2011 in 2012, only 5 new qualifying jobs were added and a total of $450,000 in new qualifying payroll was added in 2011, then only the 2010 performance requirements would be met. The 2010 incentive installment payments would begin and the 2011 claim would be put in "delayed" status.

If the company had met the Performance requirements for 2010, and then when the company files the claim for 2011 in 2012, no new jobs or payroll were added during 2011 and payroll or employment dropped below the base (i.e some of the new payroll or employment added in 2010 was lost) then the 2011 claim and the remaining 2010 installment would be put in delayed status.

What if the company exceeds Performance Requirements?

If a company exceeds performance requirements in any given year, the incentive is calculated using the performance requirement for that year and any excess is counted toward the performance requirements for the next year.

Examples using the VEGI Incentive Calculation example available on our website:

Company has the following performance requirements for Year 1 (2010):

- New Qualifying Payroll: $439,000
- New Qualifying Employment: 9
- New Qualifying Capital Investments: $8,000,000

If our example company creates $450,000 in new qualifying payroll and creates 12 new qualifying jobs in Year 1 (2010), the incentive earned remains $137,755, but 3 jobs and $11,000 in new qualifying payroll are already created toward 2012.

If the company created $930,000 in new qualifying payroll and 18 new qualifying jobs in Year 1 (2010), the Year 1 incentive of $137,755 would pay out from 2011-2015 and the incentive for Year 2 would be earned but the installments would pay out from 2012-2016 as scheduled.

Is there any further relief if performance requirements are not met by the end of the grace period?

Yes. In 2015, the Vermont General Assembly gave the VEPC Board the discretion to review the circumstances for a delay in meeting Year 1 and Year 2 performance requirements and extending the grace period under certain circumstances, as follows:

- If a company has not met performance requirements, when the claim is examined Tax will notify VEPC and the claim will be placed in "Claim Delay."
- VEPC staff will remind the company of the potential to extend the grace period.
- If the company reaches the end of the first 24 month period and has not yet reached the performance requirements staff will again remind the company of the extension potential and that they are responsible for making the determination that the performance requirements will not be met by the end of the grace period.
- If a company determines that they may not reach performance requirements for either Year 1 or Year 2 during the 24 month grace period, the business must:
  - Notify VEPC, in writing (including email), and include:
    - Statement that the company has determined that it may not reach the performance requirements for the target year before the end of the grace period due to circumstances beyond its control;
    - Information on the circumstances causing the company to fall short of performance requirements and why those circumstances were beyond the control of the company;

        - Information and data comparing the performance requirements for the target year with current new qualifying employment, payroll, and capital investments.
        - Information indicating how and when the gap between the performance requirements and current status will be closed.
    - The notification must be filed during the second year of the grace period for the target year, but no later than the application due date for the last VEPC Board meeting for the target year (usually mid-November with the Board meeting occurring in early December).
- VEPC staff will review the request and:
    - Consult with Tax Department staff regarding maintaining employment and payroll base and status of employment, payroll, and capital investment compared to performance requirements for the target year;
    - Determine if consideration of the request is warranted based on:
        - Circumstances for the causing the delay, which must show that he circumstances were beyond the company’s control;
        - The gap between performance requirements and actual employment, payroll and capital investment, which must be possible to close during the extension period;
        - Likelihood the company can meet performance requirements by the end of the extension period.
    - Invite a company representative to attend the next Board meeting.
    - Summarize the request and supporting data and make a recommendation to the Board.
- The VEPC Board will, at the next scheduled Board meeting:
    - Examine the data, facts and circumstances;
    - Hear from a company representative during the Board meeting;
    - Determine if the business failed to meets its targets due to facts or circumstances beyond the control of the business and that there is a reasonable likelihood the business will meet the award period targets within the extension period.
- If the extension granted is during the third year of Target Year 1, the extension will be through the end of the end of the fourth year of Target Year 1.
- A VEGI claim must still be filed by April 30 of the fourth year for activity that occurred during the third year.
- If the performance requirements are met during the fourth year of Target Year 1, as determined by an examination by the Tax Department of a claim filed by April 30 of the fifth year, VEPC will recalculate the value of the incentive using the cost-benefit model and the actual activity on the timeline that it occurred and notify the Tax Department of the adjusted incentive amount.
- If during the fourth year of Target Year 1 the company determines that the performance requirements for Target Year 1 will not be met by the end of the extension period, the company must notify VEPC during the fourth year using the same process in place for the original notification and the same review and consideration process will be followed.
- If a second extension is granted during the fourth year of Target Year 1, the extension will be through the end of the fifth year of Target Year 1.
- If the performance requirements are met during the fifth year of Target Year 1, as determined by an examination by the Tax Department of a claim filed by April 30 of the sixth year, VEPC will recalculate the value of the incentive using the cost-benefit model and the actual activity on the timeline that it occurred and notify the Tax Department of the adjusted incentive amount.

- If the performance requirements are not met by the end of the fifth year of target Year 1, no incentives are earned for target Year 1 and no incentives can be earned for any subsequent authorization years.
- If Year 1 performance requirements are met on time, but the company determines that they may not reach performance requirements for Target Year 2 during the 24 month grace period, the business must follow the same procedures indicated above with the exception that only one twelve-month extension may be granted.

SEE ILLUSTRATION OF GRACE PERIODS AND EXTENSIONS BELOW

	VEGI GRACE PERIOD AND POTENTIAL EXTENSIONS					
	TARGET YEAR 1	TARGET YEAR 2	TARGET YEAR 3	TARGET YEAR 4	TARGET YEAR 5	YEAR 6
Year 1	Year 1 -Meet PRs by Dce 31	Grace Period - 1st 12 Months	Grace Period - 2nd 12 Months	Potential Grace Period Extension - 1st 12 Months	Potential Grace Period Extension - 2nd 12 Months	
Year 2		Year 2 - Meet PRs by Dec. 31	Grace Period - 1st 12 Months	Grace Period - 2nd 12 Months	Potential Grace Period Extension - 1st 12 Months	
Year 3			Year 3 - Meet PRs by Dec. 31	Grace Period - 1st 12 Months	Grace Period - 2nd 12 Months	
Year 4				Year 4 - Meet PRs by Dec. 31	Grace Period - Only 12 Months	
Year 5					Year 5- Meet PRs by Dec 31	
Claims:		April 30 - File Claim for Year 1	April 30 - File Claim for Year 2	April 30 - File Claim for Year 3	April 30 - File Claim for Year 4	April 30 - File Claim for Year 5
Ext Requests			No later than Nov - file 1st GP extension request for Year 1	No later than Nov - file 2nd GP extension request for Year 1		
				No later than Nov - file 1st GP extension request for Year 2		

(blue)	**Modeling and authorization period**		
(peach)	**Target Year**		**PR = Performance Requirements**
(yellow)	**Grace Period**		**GP = Grace Period**
(green)	**Potential Grace Period Extensions**		