

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H2/12/99

A Bill

Act 575 of 1999
HOUSE BILL 1468

5 By: Representative Bush
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7

For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT ACT
10 OF 1995 TO REDEFINE THE SCOPE OF ELIGIBLE BUSINESSES
11 WHICH MAY QUALIFY FOR BENEFITS UNDER THIS ACT; TO
12 SPECIFY TIME LIMITATIONS FOR FILING CLAIMS FOR TAX
13 REFUNDS; TO CLARIFY THE DEFINITION OF 'AVERAGE HOURLY
14 WAGE'; TO CLARIFY THE DEFINITION OF 'NET NEW FULL-TIME
15 PERMANENT EMPLOYEE'; TO DECLARE AN EMERGENCY; AND FOR
16 OTHER PURPOSES.
17

Subtitle

18 "TO AMEND THE ARKANSAS ECONOMIC
19 DEVELOPMENT ACT OF 1995."
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1: Arkansas Code Title 15, Chapter 4, Subchapter 19 is amended
26 to read as follows:

27 "15-4-1902. Definitions.

28 As used in this subchapter:

29 (1) 'Average hourly wage' means the average wage of the net new full-
30 time permanent employees based on payroll for the most recent quarter reported
31 to the Employment Security Department, and is computed by using the total of
32 the net new full-time permanent employees' reported taxable earnings,
33 including overtime pay, divided by the number of weeks worked, divided by the
34 average hours worked per week per net new full-time permanent employee; One
35 quarter of the new employee's annual bonus amount may be added to the reported
36 taxable earnings;

1 (2) 'Corporate headquarters' means the home or center of operations,
2 including research and development, of a national or multinational
3 corporation;

4 (3) 'Department' means the Department of Economic Development;

5 (4) 'Director' means the director of the department;

6 (5) 'Distribution center' means a facility for the reception, storage,
7 or shipping of a business' own products or products which the business
8 wholesales to retail businesses or ships to its own retail outlets;

9 (6) 'Financial incentive plan' means an agreement entered into by a
10 business and the department to provide the business an incentive to locate a
11 new facility or expand an existing facility in Arkansas;

12 (7) 'Governing authority' means the quorum court of a county or the
13 governing body of a municipality;

14 (8) 'High unemployment' means an unemployment rate in excess of ten
15 percent (10%), or more than three percent (3%) above the state's average
16 unemployment rate, for the preceding calendar year as specified by statewide
17 annual labor force statistics compiled by the Arkansas Employment Security
18 Department;

19 (9)(A) 'Net new full-time permanent employee' means a position or job
20 which was created as a result of a project, and which is filled by one (1) or
21 more employees or contractual employees who were Arkansas taxpayers during the
22 year in which the tax credits or incentives were earned ~~or claimed~~;

23 ~~(B)~~ (A) The position or job held by such employee or employees
24 must have ~~had someone working in it~~ been filled for at least twenty-six (26)
25 consecutive weeks, with an average of at least thirty (30) hours per week;

26 ~~(C)~~ (B) Provided, however, in order to qualify for the provisions
27 of this subchapter, a contractual employee must be offered a benefits package
28 comparable to a direct employee of the business seeking incentives under this
29 subchapter;

30 (10)(A) 'Office sector business' means control centers that influence
31 the environment in which data processing, customer service, credit accounting,
32 telemarketing, claims processing, and other administrative functions that act
33 as production centers;

34 ~~(B) 'Office sector business' is also referred to as 'back~~
35 ~~office industry'~~;

36 (11) 'Program' means this subchapter; and

1 (12)(A) 'Project' means the construction or expansion of ~~a plant or~~
2 ~~facility~~ an eligible business as defined in paragraph 17 below in Arkansas
3 costing at least five million dollars (\$5,000,000), including the cost of
4 land, buildings, and equipment used in the construction or expansion, which
5 has been approved by the department as a construction or expansion qualifying
6 for tax benefits under this subchapter.

7 (B) The project cost shall include:

8 (i) All activities and costs associated with the
9 construction of a new plant or facility;

10 (ii) All activities and costs associated with the expansion
11 of an established plant or facility by adding to the building or production
12 equipment or support infrastructure, or both;

13 (iii) All activities and costs associated with the
14 replacement of production or processing equipment or support infrastructure,
15 or both.

16 ~~(13) [As enacted by Act 1997, No. 807, § 15]~~ 'Regional headquarters'
17 means the center of operations for a specific geographical area.

18 ~~(13) [As enacted by Acts 1997, No. 807, § 23]~~ (14) The sales factor of a
19 project plant or facility is a fraction, the numerator of which is the total
20 sales of the project plant or facility in this state during the tax period,
21 and the denominator of which is the total sales of the taxpayer's Arkansas
22 operations during the tax period.

23 ~~(14)~~(15) The payroll factor of a project plant or facility is a
24 fraction, the numerator of which is the total amount paid in this state during
25 the tax period by the project plant or facility for compensation to employees
26 working in the plant or facility, and the denominator of which is the total
27 compensation paid in the taxpayer's Arkansas operations during the tax period.

28 ~~(15)~~(16) The property factor of a project plant or facility is a
29 fraction, the numerator of which is the average value of the taxpayer's real
30 and tangible personal property owned or rented and used at the project plant
31 or facility during the tax period and the denominator of which is the average
32 value of all the taxpayer's real and tangible personal property owned or
33 rented and used during the tax period in Arkansas.

34 (17) 'Eligible business' is defined as one or more of the following:

35 (A) Manufacturers classified in Federal Standard Industrial
36 Classification (SIC) codes 20-39, including semiconductor and microelectronic

1 manufacturers;

2 (B) Computer businesses primarily engaged in providing computer
3 programming services; the design and development of prepackaged software;
4 businesses engaged in digital content production and preservation; computer
5 processing and data preparation services; information retrieval services;
6 computer and data processing consultants and developers. All businesses in
7 this group must derive at least 60% of their revenue from out of state sales
8 and have no retail sales to the general public;

9 (C) Businesses primarily engaged in commercial physical and
10 biological research as classified by SIC code 8731;

11 (D) Businesses primarily engaged in motion picture productions.
12 All businesses in this group must derive at least 60% of their revenue from
13 out of state sales and have no retail sales to the general public;

14 (E) A distribution center, with no retail sales to the general
15 public;

16 (F) An office sector business, with no retail sales to the
17 general public; and

18 (G) A corporate or regional headquarters with no retail sales to
19 the general public."

20
21 SECTION 2. Arkansas Code 15-4-1903 is amended to read as follows:

22 "15-4-1903. Powers and duties of the department. The department shall
23 administer the provisions of this subchapter and shall have the following
24 powers and duties in addition to those mentioned in this subchapter and in
25 other laws of this state:

26 (1) To promulgate rules and regulations in accordance with the Arkansas
27 Administrative Procedure Act, as amended, § 25-15-201 et seq., necessary to
28 carry out the provisions of this subchapter;

29 (2)(A) To negotiate proposals on behalf of the state with prospective
30 businesses which are considering locating a new facility, or expanding an
31 existing facility, that would employ at least one hundred (100) net new full-
32 time permanent employees and expend at least five million dollars (\$5,000,000)
33 on the project.

34 (B)(i) The department is authorized to negotiate with a business
35 a financial incentive plan granting an income tax credit based upon the
36 business' annual amount of debt service, principal and interest, paid to a

1 lender in connection with the project financing.

2 (ii) The amount of credit that may be claimed each year
3 will depend on the average hourly wage of the net new full-time permanent
4 employees.

5 (iii) The amount of the income tax credit that may be
6 claimed each year shall be negotiated in accordance with the following:

Average Hourly Wage	Annual Income Tax Credit
Less than \$7.00 per hour	None
\$7.00 to \$7.99 per hour	Up to 70% of the income tax liability
\$8.00 to \$8.99 per hour	Up to 85% of the income tax liability
\$9.00 per hour and above	Up to 100% of the income tax liability

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13 (a) When the average hourly wage of the net new
14 fulltime permanent employee is between one hundred and twenty-five percent
15 (125%) and one hundred and forty nine percent (149%) of the lesser of the
16 county or state annual average weekly wage per employee, the employer shall
17 receive an annual income tax credit in the amount of fifty percent (50%) of
18 the employer's state income tax liability;

19 (b) When the average hourly wage of the net new
20 fulltime permanent employee is between one hundred and fifty percent (150%)
21 and one hundred and seventy four percent (174%) of the lesser of the county or
22 state annual average weekly wage per employee, the employer shall receive an
23 annual income tax credit in the amount of seventy-five percent (75%) of the
24 employer's state income tax liability;

25 (c) When the average hourly wage of the net new
26 fulltime permanent employee is one hundred and seventy-five percent (175%) or
27 more of the lesser of the county or state annual average weekly wage per
28 employee, the employer shall receive an annual income tax credit in the amount
29 of one hundred percent (100%) of the employer's state income tax liability;

30 (d) If the average hourly wage of the net new
31 fulltime permanent employee is less than one hundred and twenty-five percent
32 (125%) of the lesser of the county or state annual average weekly wage per
33 employee the employer shall receive no tax credit under this section.

34 (iv) If the project is located in a high unemployment area and the
35 average hourly wage exceeds seven dollars (\$7.00) per hour, the director of
36 the department will consider all the factors of the project and negotiate with

1 ~~may authorize~~ the business an ~~to claim the~~ income tax credit in an amount up
2 to one hundred percent (100%) of the state income tax liability;

3 (3)(A) To provide the Department of Finance and Administration with a
4 copy of each financial incentive plan entered into by the department with each
5 of the qualifying businesses, so that the Department of Finance and
6 Administration will know the maximum amount of income tax credit the qualified
7 business may claim during the term of the agreement.

8 (B) The financial incentive plan shall specify the annual amount
9 of payments, including principal and interest, the business will make to the
10 lender in connection with the project financing, and attach copies of the
11 business' loan documents which reflect the amount of the annual payments; and

12 (4) To collect a one-time fee of two thousand five hundred dollars
13 (\$2,500) for the department's administrative and legal fees associated with
14 the preparation of the financial incentive plan."
15

16 SECTION 3. Arkansas Code 15-4-1904 is amended to read as follows:

17 "15-4-1904. Qualifications.

18 To qualify for the benefits of this subchapter, the business must:

19 (1) Be ~~either~~ an eligible business as defined in §15-4-1902:

20 ~~(A) An industry that comes within the standard industrial~~
21 ~~classification numbers 20-39, 7375, or 7376; or~~

22 ~~(B) An office sector business, corporate headquarters, regional~~
23 ~~headquarters, or distribution center which will not make retail sales to the~~
24 ~~general public;~~

25 (2) Hire at least one hundred (100) net new full-time permanent
26 employees within twenty-four (24) months of the date the financial incentive
27 plan was signed by the department and the business;

28 (3) Expend at least five million dollars (\$5,000,000) on the project
29 covered by the financial incentive plan;

30 (4) Agree to certify to the Department of Finance and Administration
31 the number of net new full-time permanent employees and the average hourly
32 wage of the net new full-time permanent employees once the number of net new
33 full-time permanent employees reaches one hundred (100); and

34 (5) Agree to certify to the Department of Finance and Administration
35 within thirty (30) days after the number of net new full-time permanent
36 employees falls below one hundred (100) or the average hourly wage falls below

1 the amount specified in the financial incentive plan."

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3 SECTION 4. Arkansas Code 15-4-1906 is amended to read as follows:

4 "15-4-1906. Refund of sales and use tax - Income tax credit.

5 (a) The Revenue Division of the Department of Finance and
6 Administration shall authorize a refund of sales and use taxes imposed by the
7 state and a municipality or county, if the municipality or county authorized
8 the refund of its local tax, on the purchases of the material used in the
9 construction of a building or buildings, or any addition or improvement
10 thereon, for housing any legitimate business enterprise, and machinery and
11 equipment to be located in or in connection with such building.

12 (b)(1) A sales and use tax refund as provided for in subsection (a) of
13 this section shall be authorized, provided that:

14 (A) ~~The qualified business is an industry. The company is a~~
15 ~~business as defined in §15-4-1902 that fits into Standard Industrial~~
16 ~~Classification numbers 20-39, 7375, or 7376, or is a distribution center,~~
17 ~~corporate headquarters, regional headquarters, or office sector business~~
18 ~~located within Arkansas;~~

19 (B) The business and its contractors give preference and
20 priority to Arkansas manufacturers, suppliers, contractors, and labor, except
21 where it is not reasonably possible to do so without added expense,
22 substantial inconvenience, or sacrifice in operational efficiency; and

23 (C)(i) The business:

24 (a) Files an endorsement resolution with the
25 department and the Department of Finance and Administration; and

26 (b) Files with the Department of Finance and
27 Administration a copy of the financial incentive plan the business entered
28 into with the department.

29 (ii) The endorsement resolution must be approved by
30 the governing body of a municipality or county in whose jurisdiction the
31 facility is located and must:

32 (a) Approve the specific entity's participation
33 in the program; and

34 (b)(1) Specifically state whether the
35 municipality or county authorizes the Department of Finance and Administration
36 to refund local sales and use taxes to the entity under the program.

1 (2) A municipality or county can
2 authorize the refund of all or part of a tax levied by it, but cannot
3 authorize the refund of any tax not levied by it.

4 ~~(2) For an office sector business, a corporate headquarters,~~
5 ~~regional headquarters, or a distribution center to qualify for the benefits of~~
6 ~~this subchapter, it must not make retail sales to the general public.~~

7 ~~(3)~~ (2)(A) The requisite number of net new full-time permanent
8 employees must be employed by the business within twenty-four (24) months ~~of~~
9 following the date the financial incentive plan was signed.

10 (B) In the event that the requisite number of net new full-
11 time permanent employees cannot be employed within the twenty-four-month
12 period, the business can file a written application with the department
13 explaining why additional time is necessary. The business can be afforded up
14 to twenty-four (24) more months to hire the requisite number of employees if
15 the director and the Chief Fiscal Officer of the State determine that the need
16 for additional time is due to:

17 (i) Unanticipated and unavoidable delay in the
18 construction of a facility that must be completed before the employees can be
19 hired;

20 (ii) The project as originally planned will require
21 more than twenty-four (24) months to complete; or

22 (iii) A change in the business ownership or business
23 structure due to a merger or acquisition.

24 (c)(1)(A) The Revenue Division of the Department of Finance and
25 Administration shall authorize an income tax credit for the project debt
26 service payments made by the business during that tax year.

27 (B) The amount of income tax credit taken during any tax
28 year shall not exceed the Arkansas income tax liability resulting from the
29 project plant or facility. The income tax liability of the project plant or
30 facility shall be determined by adding the sales factor, payroll factor and
31 property factor of the plant or facility and dividing the sum by three (3) to
32 arrive at the project apportionment percentage. The total Arkansas corporate
33 income tax liability of the corporation shall be multiplied by the project
34 apportionment percentage to arrive at the income tax liability arising from
35 the project. The income tax credit available may then be used to offset the
36 income tax liability arising from the project as agreed ~~for~~ upon in the

1 financial incentive plan.

2 (2) However, if the entire credit cannot be used in the year
3 earned, the remainder may be applied against the income tax for the succeeding
4 nine (9) tax years, or until the financial incentive plan expires, whichever
5 occurs first.

6 (d) An income tax credit as provided for in subsection (c) of this
7 section shall be authorized provided that:

8 (1) The request for such credit is accompanied by an endorsement
9 resolution approved by the governing body of the appropriate municipality or
10 county in whose jurisdiction the establishment is to be located and a copy of
11 the financial incentive plan the business entered into with the department;
12 and

13 (2) All of the net new full-time permanent employees are employed
14 at the facility.

15 (3) Benefits for the same project are not being claimed under the
16 Arkansas Economic Development Incentive Act of 1993, as amended.

17 (e)(1)(A) If the number of net new full-time permanent employees drops
18 below one hundred (100) after twenty-four (24) months from the date the
19 financial incentive plan is signed, all benefits under the financial incentive
20 plan will be terminated, unless the Chief Fiscal Officer of the State approves
21 a written request filed by the business explaining why the number of net new
22 full-time permanent employees fell below one hundred (100).

23 (B) The Chief Fiscal Officer of the State may grant the
24 business up to twenty-four (24) months to bring the number of net new full-
25 time permanent employees back up to at least one hundred (100), and may
26 approve the continuation of the benefits during that period.

27 (2) In the event that a business fails to notify the Department
28 of Finance and Administration that the number of employees has fallen below
29 one hundred (100), or that the average hourly wage has fallen below the amount
30 specified in the financial incentive plan, the business will be liable for the
31 repayment of all benefits which were received by the business, plus penalty
32 and interest.

33 (f)(1) Any business receiving benefits under this program shall be
34 liable for the repayment of any benefits received, plus penalty and interest,
35 if it does not comply with:

36 (A) The terms of the financial incentive plan;

1 (B) The requirements of this subchapter; or
2 (C) Any rule or regulation promulgated pursuant to this
3 subchapter.

4 (2) The Chief Fiscal Officer of the State may bring any lawful
5 action to recover any amount for which the recipient is liable.”
6

7 SECTION 5. All provisions of this act of a general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.
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11 SECTION 6. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.
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17 SECTION 7. All laws and parts of laws in conflict with this act are
18 hereby repealed.
19

20 SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the
21 Eighty-second General Assembly that existing Arkansas businesses must remain
22 competitive in today's global economy; that the tax incentive provided by this
23 act is necessary to provide businesses with the incentive to invest in
24 Arkansas and hire Arkansans; that other states compete with Arkansas for the
25 location or expansion of business activity and this incentive is also
26 necessary to offer the companies a business environment compatible with other
27 states; and that without this incentive companies considering locations or
28 expansions of their businesses may choose to locate in another state,
29 depriving Arkansans of these jobs and the economic benefit that the jobs bring
30 to the state. Therefore, an emergency is declared to exist and this act being
31 immediately necessary for the preservation of the public peace, health and
32 safety shall become effective on the date of its approval by the Governor. If
33 the bill is neither approved nor vetoed by the Governor, it shall become
34 effective on the expiration of the period of time during which the Governor
35 may veto the bill. If the bill is vetoed by the Governor and the veto is
36 overridden, it shall become effective on the date the last house overrides the

1 veto.

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/s/ Bush

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APPROVED: 3/15/1999

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