Act 1296 of the Regular Session

State of Arkansas *As Engrossed: S2/24/05 S3/2/05*

85th General Assembly

A Bill

Regular Session, 2005 SENATE BILL 417

By: Senators Wooldridge, Altes, Baker, Bisbee, J. Bookout, Broadway, Bryles, Capps, Higginbothom, Hill, Horn, J. Jeffress, Malone, Trusty

By: Representatives Dunn, Dangeau, Edwards, George, J. Hutchinson, T. Hutchinson, Maxwell, Rosenbaum, Thompson, Wells

For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE CONSOLIDATED INCENTIVE ACT OF 2003, TO ADD DEFINITIONS TO AND TO CLARIFY THE TAX INCENTIVE PROGRAM UNDER THE CONSOLIDATED INCENTIVE ACT OF 2003; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT OF 2003.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-4-2703 is amended to read as follows:

15-4-2703. Definitions.

As used in this subchapter:

(1) "Applied research" means any activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue;

(2) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company-paid benefits, of all new full-time permanent employees hired after the date of the signed financial incentive agreement, <u>divided by the number of new full-time permanent employees,</u> divided by forty (40);

(3) "Basic research" means any original investigation for the advancement of scientific or technological knowledge;

(4) "Contractual employee" means an employee who:

(A) May be included in the payroll calculations of a business qualifying for benefits under this subchapter and is under the direct supervision of the business receiving benefits under this subchapter but is an employee of a business other than the one receiving benefits under this subchapter;

(B) Otherwise meets the requirements of a new full-time permanent employee of the business receiving benefits under this subchapter; and

(C) Receives a benefits package comparable to direct employees of the business receiving benefits under this subchapter;

(5)(A) "Corporate headquarters" means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or national basis.

(B) A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;

(6)(A) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and countywide, as calculated by the Arkansas Employment Security Department in *its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40)*.

(B) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement;

(7) "Department" means the Department of Economic Development;

(8) "Director" means the Director of the Department of Economic Development;

(9) "Distribution center" means a facility for the reception, storage, ~~or~~ and shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues of the product owner are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(10) "Eligible businesses" means nonretail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter and fall into one (1) or more of the following categories:

(A) Manufacturers classified in sectors 31-33 in the North American Industrial Classification System, as in effect January 1, 2003;

(B)(i) Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from ~~out-of-state sales~~ out of state;

(C)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from ~~out-of-state sales~~ out of state;

(D) Distribution centers or intermodal facilities;

(E) Office sector businesses;

(F) National or regional corporate headquarters, North American Industrial Classification System Code 551114, as in effect January 1, 2005;

(G) Firms primarily engaged in commercial, physical, and biological research as classified in the North American Industrial Classification System Code 541710, as in effect ~~January 1, 2003~~ January 1, 2005; ~~and~~

(H)(i) Scientific and technical services businesses.

(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from ~~out-of-state sales~~ out of state.

(b)(1) The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(2) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement; and

(I) The director may classify a nonretail business as an eligible business if the following conditions exist:

(i) The business receives at least seventy-five percent (75%) of its sales revenue from out of state; and

(ii) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less;

(11) "Equity investment" means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency's award of a Small Business Innovative Research grant or a Small Business Technology Transfer grant;

(12)(A) "Existing employees" means those employees hired by the business before the date the financial incentive agreement was signed.

(B) Existing employees may be considered new full-time permanent employees only if:

(i) The position or job filled by the existing employee was created in accordance with the signed financial incentive agreement; and

(ii) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring that classification;

(13) "Facility" means a single physical location at which the eligible business is conducting its operations;

~~(13)~~(14) "Financial incentive agreement" means an agreement entered into by an eligible business and the department to provide the business an incentive to locate a new business or expand an existing business in Arkansas;

~~(14)~~(15) "Fund" means the Economic Development Incentive Fund;

~~(15)~~(16) "Governing authority" means the quorum court of a county or the governing body of a municipality;

~~(16)(A)(i)~~(17)(A)(i) "In-house research" means applied research supported by the business through the purchase of supplies for research activities and payment of wages and usual fringe benefits for employees of the business who conduct research activities in research facilities:

(a) Dedicated to the conduct of research activities;

(b) Operated by the business; and

(c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice or to advance a concept or idea or improvement thereon to the point of practical application.

(ii) "In-house research" includes experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas.

(B) "In-house research" does not include tests or inspections of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;

~~(17)~~(18) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;

(19) “Intermodal facility” means a facility with more than one (1) mode of interconnected movement of freight, commerce, or passengers;

(20) “Investment threshold” means the minimum amount of investment in project costs that must be incurred in order to qualify for eligibility;

(21) “Invests” or “Investment” means money expended by or on behalf of an approved eligible business that seeks to begin or expand operations in Arkansas and, without this infusion of capital, the location or expansion may not take place;

(22) “Lease” means a right to possession of real property for a

specific term in return for consideration, as determined in a lease agreement by both parties;

~~(18)(A)~~(23)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in machinery or equipment, or both.

(B) "Modernization" does not include costs for routine maintenance or the installation of equipment that does not improve efficiency or productivity except for expenditures for pollution control equipment mandated by state or federal laws or regulations;

~~(19)~~(24) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

~~(20)(A)(i)~~(25)(A)(i) "New full-time permanent employee" means a position or job that was created pursuant to the signed financial incentive agreement and that is filled by one (1) or more employees or contractual employees who ~~were~~:

(a) Were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

(b) Work at the facility identified in the *financial incentive agreement; and*

(c) Are not existing employees, except as allowed under § 15-4-2703(12).

(ii) The position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(B) However, to qualify under this subchapter, a contractual employee shall be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

~~(21)~~(26) "Nonretail business" means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

~~(22)(A)~~(27)(A) "Office sector business" means business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions.

(B) All businesses in this group must be nonretail businesses and derive at least seventy-five percent (75%) of their sales revenue from ~~out-of-state sales~~ out of state;

~~(23)~~(28) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full-time permanent employees hired after the date of the signed financial incentive agreement;

~~(24)(A)~~(29)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" includes:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(30) "Preconstruction costs" means the cost of eligible items incurred before the start of construction, including:

(A) Project planning costs;

(B) Architectural and engineering fees;

(C) Right-of-way purchases;

(D) Utility extensions;

(E) Site preparations;

(F) Purchase of mineral rights;

(G) Building demolition;

(H) Builders risk insurance;

(I) Capitalized start-up costs;

(J) Deposits and process payments on eligible machinery and equipment; and

(K) Other costs necessary to prepare for the start of construction;

~~(25)(A) "Project" means, if costs are incurred within four (4) years from the date a financial incentive agreement was signed by the department:~~

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

~~(ii) The expansion of an established plant or~~

~~facility by adding to the building, production equipment, or support infrastructure; or~~

~~(iii) Modernization through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.~~

~~(B) "Project" does not include:~~

~~(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion; or~~

~~(ii) Routine operating expenditures;~~

(31)(A) "Project" means costs associated with the:

(i) Construction of a new plant or facility including, but not limited to land, building, production equipment, or support infrastructure;

(ii) Expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless:

(a) There is sufficient documentation that the existing business was closed; and

(b) The purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure.

(C) Eligible project costs must be incurred within four (4) years from the date a financial incentive agreement was signed by the department;

~~(26)~~(32) "Project plan" means a plan:

(A) Submitted to the department containing such information as may be required by the director to determine eligibility for benefits; and

(B) That if approved is a supplement to the financial incentive agreement;

~~(27)~~(33) "Qualified business" means an eligible business that:

(A) Has met the qualifications for one (1) or more economic development incentives authorized by this subchapter; and

(B) Has signed a financial incentive agreement with the department or is involved in a research and development program administered by the Arkansas Science and Technology Authority;

~~(28)~~(34) "Qualified research expenditures" means the sum of any amounts which are paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules and regulations promulgated by the department;

~~(29)~~(35) "Region" or "regional" means a geographic area comprising two (2) or more states, including this state;

~~(30)~~(36) "Regional corporate headquarters" means a site that:

(A) Is the sole corporate headquarters within the region; and

(B) Handles headquarters-related functions on a regional basis;

~~(31)~~(37) "Research and development programs of the Arkansas Science and Technology Authority" means statutory programs operated by the Arkansas Science and Technology Authority under § 15-3-101 et seq.;

~~(32)~~(38) "Research area of strategic value" means research in fields having long-term economic or commercial value to the state and that have been identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

~~(33)~~(39) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

(iii) Scientific research and development in the physical, biological, and engineering sciences;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent on worker skills;

(D) Deriving at least seventy-five percent (75%) of its sales revenue from ~~out-of-state sales~~ out of state; and

(E) Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;

~~(34)~~(40) "Start of construction" means any activity that causes a physical change to the building, ~~or~~ property, or both, identified as the site of the approved project but excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site;

~~(35)~~(41) "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

~~(36)~~(42) "Support infrastructure" means physical assets necessary for the business to operate, including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and communication infrastructure;

~~(37)(A)~~(43)(A) "Targeted businesses" means a grouping of growing business sectors, not to exceed six (6), that include the following:

(i) Advanced materials and manufacturing systems;

(ii) Agriculture, food, and environmental sciences;

(iii) Biotechnology, bioengineering, and life sciences;

(iv) Information technology;

(v) Transportation logistics; and

(vi) Bio-based products.

(B) In order to receive benefits as a targeted business, the business must:

(i) Have been operating in the state for less than five (5) years;

(ii) Pay not less than one hundred fifty percent (150%) of the lesser of the county or state average wage; and

(iii) Have been selected to receive special benefits; and

~~(38)~~(44) "Tiers" means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of benefits.

SECTION 2. Arkansas Code § 15-4-2704(e) and (f), concerning the tier system under the Consolidated Incentive Act, are amended to read as follows:

~~(e) For a project located in multiple tiers, the eligible business shall:~~

~~(1) Receive the benefit of the county with the lower benefits; or~~

~~(2) Submit separate applications, each of which shall meet the incentive requirements of the county in which the project is located.~~

~~(f)~~(e)(1) A county that has experienced a sudden and severe period of economic distress caused by the closing of a business entity that results in the loss of a minimum of five percent (5%) of the employed labor force, as determined by the most recent Labor Market Information publication published by the Arkansas Employment Security Department, may be moved up one (1) tier upon submitting a request to and being approved by the Arkansas Economic Development Commission.

(2) If the commission approves a county's move to a higher tier, any qualified business having signed a financial incentive agreement with the Department of Economic Development dated before the commission's action shall receive the benefits for the duration of the term of the agreement that were assigned to the county to which it located at the time the financial incentive agreement was signed by the Department of Economic Development regardless of any subsequent change to the tier in which the county is assigned.

SECTION 3. Arkansas Code § 15-4-2705 is amended to read as follows:

15-4-2705. Job-creation tax credit.

(a) There is established a job-creation tax credit to encourage:

(1) The creation of new jobs; and

(2) Business growth and expansion.

~~(b) After receiving an approved financial incentive agreement from the Department of Economic Development, the Revenue Division of the Department of Finance and Administration shall authorize an income tax credit for tax years beginning after December 31, 2002, as follows:~~

~~(1)(A) For tier 1 counties, qualified businesses are eligible to receive a tax credit equal to one percent (1%) of the payroll for new full-time permanent employees of the business for each of the first sixty (60) months following the date of the approved financial incentive agreement.~~

~~(B) The tax credits may offset fifty percent (50%) of the business's tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.~~

~~(C) To qualify for this tax credit, a business must have a payroll for new full-time permanent employees in excess of two hundred thousand dollars ($200,000) annually;~~

~~(2)(A) For tier 2 counties, qualified businesses are eligible to receive a tax credit equal to two percent (2%) of the payroll for new full-time permanent employees of the business for each of the first sixty (60) months following the date of the approved financial incentive agreement.~~

~~(B) The tax credits may offset fifty percent (50%) of the business's tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.~~

~~(C) To qualify for this tax credit, a business must have a payroll for new full-time permanent employees in excess of one hundred fifty thousand dollars ($150,000) annually;~~

~~(3)(A) For tier 3 counties, qualified businesses are eligible to receive a tax credit equal to three percent (3%) of the payroll for new full-time permanent employees of the business for each of the first sixty (60) months following the date of the approved financial incentive agreement.~~

~~(B) The tax credits may offset fifty percent (50%) of the business's tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.~~

~~(C) To qualify for this tax credit, a business must have a payroll for new full-time permanent employees in excess of one hundred~~

~~twenty-five thousand dollars ($125,000) annually; and~~

~~(4)(A) For tier 4 counties, qualified businesses are eligible to receive a tax credit equal to four percent (4%) of the payroll for new full-time permanent employees of the business for each of the first sixty (60) months following the date of the approved financial incentive agreement.~~

~~(B) The tax credits may offset fifty percent (50%) of the business's tax liability in any one (1) year, and any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned.~~

~~(C) To qualify for this tax credit, a business must have a payroll for new full-time permanent employees in excess of one hundred thousand dollars ($100,000) annually.~~

(b) An application for the income tax credit under this section shall be submitted to the Department of Economic Development.

(c) To qualify for this credit, an eligible business shall have an annual payroll for new full-time permanent employees in excess of the payroll threshold for the county tier in which the project is located, as follows:

(1) For tier 1 counties, the annual payroll threshold is one hundred twenty-five thousand dollars ($125,000);

(2) For tier 2 counties, the annual payroll threshold is one hundred thousand dollars ($100,000);

(3) For tier 3 counties, the annual payroll threshold is seventy-five thousand dollars ($75,000); and

(4) For tier 4 counties, the annual payroll threshold is fifty thousand dollars ($50,000).

(d)(1) The credit earned under this section is a percentage of the payroll of the new full-time permanent employees hired following the date of the approved financial incentive agreement.

(2) The percentage shall be determined by the county tier in which the project is located, as follows:

(A) For tier 1 counties, the credit is one percent (1%) of the payroll for the new full-time permanent employees of the business;

(B) For tier 2 counties, the credit is two percent (2%) of the payroll for the new full-time permanent employees of the business;

(C) For tier 3 counties, the credit is three percent (3%) of the payroll for the new full-time permanent employees of the business; and

(D) For tier 4 counties, the credit is four percent (4%) of the payroll for the new full-time permanent employees of the business.

(e) The term of the financial incentive agreement shall be for a period of sixty (60) months, beginning on the date of the approved financial incentive agreement.

(f)(1) After receiving an approved financial incentive agreement from the Department of Economic Development, the qualified business shall certify to the Revenue Division of the Department of Finance and Administration the payroll of the new full-time permanent employees annually at the end of each tax year during the term of the agreement.

(2) Upon verification of the reported payroll amounts, the Revenue Division of the Department of Finance and Administration shall authorize the appropriate income tax credit.

(g)(1) The tax credits earned under this section may offset fifty percent (50%) of the business's tax liability in any one (1) year.

(2) Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever event occurs first.

~~(c)(1)~~(h)(1) If a business fails to meet the payroll threshold within two (2) years after the signing of the financial incentive agreement or within the time period established by an extension approved by the Director of the Department of Finance and Administration and the Director of the Department of Economic Development, that business will be liable for repayment of all benefits previously received by the business.

(2) After a business has failed to reach the payroll threshold of this section in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

SECTION 4. Arkansas Code § 15-4-2706 is amended to read as follows:

15-4-2706. Investment tax incentives.

(a) There are established investment tax incentives to:

(1) Encourage capital investment for the long-term viability of businesses in the state; and

(2) Create new jobs.

(b)(1)~~(A) An application for an income tax credit under this subsection shall be submitted to the Department of Economic Development.~~

~~(B) An~~ The award of this ~~credit~~ incentive shall be at the discretion of the Director of the Department of Economic Development.

(2) ~~The director may offer this incentive if a business meets at least one (1) of the following criteria:~~ If offered, an application for an income tax credit under this section shall be submitted to the Department of Economic Development.

(3) Eligibility for this incentive is dependent upon the tier in which the project is located, as follows:

(A) For tier 1 counties, the business ~~invests~~ shall invest five million dollars ($5,000,000) or more and ~~has~~ have an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000);

(B) For tier 2 counties, the business ~~invests four million dollars ($4,000,000)~~ shall invest three million seven hundred fifty thousand dollars ($3,750,000) or more and ~~has~~ have an annual payroll for new full-time permanent employees in excess of one million five hundred thousand dollars ($1,500,000);

(C) For tier 3 counties, the business ~~invests~~ shall invest three million dollars ($3,000,000) or more and ~~has~~ have an annual payroll for new full-time permanent employees in excess of ~~one million two hundred fifty thousand dollars ($1,250,000)~~ one million two hundred thousand dollars ($1,200,000); or

(D) For tier 4 counties, the business ~~invests~~ shall invest two million dollars ($2,000,000) or more and ~~has~~ have an annual payroll for new full-time permanent employees in excess of ~~one million dollars ($1,000,000)~~ eight hundred thousand dollars ($800,000).

~~(3)~~(4) ~~If the director offers this credit,~~ Upon approval by the department, the director shall transmit an approved financial incentive agreement to the approved company and the Revenue Division of the Department of Finance and Administration.

~~(4)~~(5) ~~If the director offers this credit, a~~ The qualified business ~~must~~ shall reach the investment threshold within four (4) years from the date of the signing of the financial incentive agreement, except for *lease payments* authorized by subdivision (b)(6)(D) of this section or subdivision (c)(6) of this section.

~~(5)(A)~~(6)(A)(i) After receiving an approved financial incentive agreement from the Department of Economic Development, the approved company shall certify eligible project costs annually at the end of each calendar year for the term of the agreement to the Revenue Division of the Department of Finance and Administration.

(ii) Upon verification of eligible project costs, the Revenue Division of the Department of Finance and Administration shall authorize an income tax credit of ten percent (10%) based on the total investment in land, buildings, equipment, and costs related to licensing and protecting intellectual property.

(B) The amount of credit taken during any tax year shall not exceed fifty percent (50%) of the business's income tax liability resulting from the project or facility.

(C) Unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned.

(D) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

(c)(1)(A) An application for a retention tax credit under this subsection shall be submitted to the Department of Economic Development.

(B)(i) The application ~~must~~ shall be ~~accompanied by a project plan at least thirty (30) days before the start of construction~~ submitted to the Department of Economic Development before incurring any project costs.

(ii) With the exception of preconstruction costs, only those costs incurred after the department's approval are eligible for the tax credit.

(2) The tax credit against the qualified business' sales and use tax liability is available only to Arkansas businesses that:

(A) Have been in continuous operation in the state for at least two (2) years;

(B) Invest a minimum of five million dollars ($5,000,000) in a project, including land, buildings, and equipment used in the construction, expansion, or modernization; and

(C) Hold a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration before submitting an application for benefits.

(3)(A) If allowed, the credit shall be a percentage of the eligible project costs.

(B) The amount of the credit shall be one-half percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the Department of Economic Development.

(C) In any one (1) year following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct pay sales and use tax liability of the business for taxable purchases.

(D) Unused credits may be carried forward for a period of up to five (5) years beyond the year in which the credit was first earned.

(4)(A) Upon determination by the Director of the Department of Economic Development that the project qualifies for credit under this subsection, the Director of the Department of Economic Development shall certify to the Director of the Department of Finance and Administration that the project qualifies and shall transmit with his or her certification the documents or copies of the documents upon which the certification was based.

(B) The Director of the Department of Finance and Administration shall provide forms to the qualified business on which to claim the credit.

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified business shall certify on the form provided by the Director of the Department of Finance and Administration the amount of expenditures on the project during the preceding calendar year.

(D) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

(E) The credit against <u>the qualified business'</u> sales and use tax liability shall be a percentage of the eligible project costs equal to one-half percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement was signed by the Department of

Economic Development.

(5) If a business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2705, the financial incentive agreement under § 15-4-2705 must be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

<u>(6) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.</u>

(d)(1)(A) An application for a <u>state and local</u> sales and use tax refund ~~from~~ <u>for</u> a new and expanding eligible business ~~shall include~~ <u>shall be filed with the department contingent upon the approval of</u> an endorsement *resolution from the governing authority of a municipality or county<u>, or both</u> in whose* jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)<u>(a)</u> Specify <u>that the Department of Finance and Administration is authorized to refund local sales taxes to the qualified business.</u>

<u>*(b)*</u> ~~*whether the*~~ <u>*A*</u> *municipality or county<u>, or</u> <u>both</u>* ~~authorizes~~ <u>may authorize</u> the refund of ~~all or part of~~ any sales <u>or use</u> tax levied by the municipality or county <u>but may not authorize the refund of any sales or use tax not levied by the municipality or county in which the qualified business is located</u>.

<u>(C) Any eligible business that applies for a sales and use tax refund under this subsection shall invest in excess of one hundred thousand dollars ($100,000) in order to qualify for the sales and use tax refund.</u>

(2)(A)<u>(i)</u> A sales and use tax refund <u>of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund, created in § 19-5-1227, and the Conservation Tax Fund, as authorized by § 19-6-484,</u> on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration ~~and a refund of sales and use taxes imposed by a municipality or a county if the municipality or county has authorized the refund in an endorsement resolution that was submitted along with the application to the Department of Economic Development~~.

(ii) The local sales and use tax may be refunded *only from the municipality or county, or both in which the qualified business is* located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacements of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(3) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the Department of Economic Development.

(4) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(5)(A) In order to be eligible for the benefits under this subsection, a business shall sign a job creation financial incentive agreement under § 15-4-2705, § 15-4-2707, or subsection (b) of this section and comply with the eligibility requirements of the incentive agreements.

(B) The financial incentive agreement under § 15-4-2705, § 15-4-2707, or subsection (b) of this section shall be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

~~(6) To qualify for the sales and use tax refund authorized by this subsection, the eligible business must meet the following criteria:~~

~~(A) For tier 1 counties, the business must have an annual payroll for new full-time permanent employees of two hundred thousand dollars ($200,000) or more and invest in excess of one hundred thousand dollars~~

~~($100,000);~~

~~(B) For tier 2 counties, the business must have an annual payroll for new full-time permanent employees of one hundred fifty thousand dollars ($150,000) or more and invest in excess of one hundred thousand dollars ($100,000);~~

~~(C) For tier 3 counties, the business must have an annual payroll of new full-time permanent employees of one hundred twenty-five thousand dollars ($125,000) or more and invest in excess of one hundred thousand dollars ($100,000); and~~

~~(D) For tier 4 counties, the business must have an annual payroll for new full-time permanent employees of one hundred thousand dollars ($100,000) or more and invest in excess of one hundred thousand dollars ($100,000).~~

(e)(1) A new targeted business shall be eligible for a refund of state and local sales and use taxes for qualified expenditures identified in the project plan if:

(A) The annual payroll of the business for Arkansas taxpayers is greater than ~~two hundred thousand dollars ($200,000)~~ one hundred thousand dollars ($100,000); and

(B) The business shows proof of an equity investment of at least ~~five hundred thousand dollars ($500,000)~~ four hundred thousand dollars ($400,000).

(2)(A) An application for the targeted business state and local sales and use tax refund program ~~from~~ for a new targeted business ~~shall include~~ shall be filed with the Department of Economic Development contingent upon the approval of an endorsement resolution from the governing *authority of a municipality or county, or both in whose jurisdiction the business will* be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)(a) Specify that the Department of Finance and Administration is authorized to refund local sales and use taxes to the targeted business.

(b) ~~*whether the*~~ *A municipality or county, or both can* ~~authorizes~~ authorize the refund of ~~all or part of~~ any sales tax

levied by the municipality or county but cannot authorize the refund of any sales or use tax not levied by the municipality or county in which the targeted business is located.

(3) After the Director of the Department of Economic Development has determined that the project is eligible for the sales and use tax refund, this determination, accompanied by the financial incentive agreement and any other pertinent documentation, shall be forwarded to the Director of the Department of Finance and Administration.

(4)(A)(i) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund, as authorized by § 26-57-1002(d)(1)(A)(ii)(a) and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration~~ and a refund of sales and use taxes imposed by a municipality or a county if the municipality or county has authorized the refund in an endorsement resolution that was submitted along with the application to the Department of Economic Development~~.

(ii) The local sales and use tax may be refunded *only from the municipality or county, or both in which the qualified business is* located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of ~~replacements of items previously purchased as part of a project~~ replacement items under this subsection unless the items ~~previously purchased~~ are necessary for the implementation or completion of the project.

(5) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the Department of Economic Development.

(6) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years after the

date of the qualified purchase or purchases.

(7) If a targeted business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2709, the financial incentive agreement under § 15-4-2709 must be signed within twenty-four (24) months of signing the financial incentive agreement under this subsection and comply with the eligibility requirements of the agreements.

~~(8) The Revenue Division of the Department of Finance and Administration shall authorize a refund for all eligible expenditures if the Director of the Department of Economic Development approves the project and if the project provides at least one (1) of the following:~~

~~(A) For tier 1 counties, average hourly wages in excess of one hundred eighty percent (180%) of the county or state average hourly wage, whichever is less;~~

~~(B) For tier 2 counties, average hourly wages in excess of one hundred seventy percent (170%) of the county or state average hourly wage, whichever is less;~~

~~(C) For tier 3 counties, average hourly wages in excess of one hundred sixty percent (160%) of the county or state average hourly wage, whichever is less; and~~

~~(D) For tier 4 counties, average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.~~

SECTION 5. Arkansas Code § 15-4-2707(d), concerning payroll rebates under the Consolidated Incentive Act, is amended to read as follows:

(d)(1) The award of this incentive is at the discretion of the Director of the Department of Economic Development and may be offered for a period of up to ten (10) years.

(2) Benefits are conditioned upon the hiring of new full-time permanent employees with an annual payroll threshold of two million dollars ($2,000,000) and certifying to the Department of Finance and Administration that the requisite payroll ~~thresholds have~~ threshold has been met.

(3) Payments are subject to the following conditions:

(A)~~(i)~~ For tier 1 counties, ~~for qualified businesses with an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000),~~ the benefit is three and nine-tenths percent

(3.9%) of the annual payroll of new full-time permanent employees~~.~~

~~(ii) The director may authorize this benefit for up to ten (10) years~~;

(B)~~(i)~~ For tier 2 counties, ~~for qualified businesses with an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000),~~ the benefit is four and one-quarter percent (4.25%) of the annual payroll of new full-time permanent employees~~.~~

~~(ii) The director may authorize this benefit for up to ten (10) years~~;

(C)~~(i)~~ For tier 3 counties, ~~for qualified businesses with an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000),~~ the benefit is four and one-half percent (4.5%) of the annual payroll of new full-time permanent employees~~.~~;

~~(ii) The director may authorize this benefit for up to ten (10) years; and~~

(D)~~(i)~~ For tier 4 counties, ~~for qualified businesses with an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000),~~ the benefit is five percent (5%) of the annual payroll of new full-time permanent employees~~.~~; and

~~(ii) The director may authorize this benefit for up to ten (10) years.~~

(E) The director may authorize benefits to a prospective eligible business up to five percent (5%) of the payroll of new full-time permanent employees if the following conditions exist:

(i) The prospective eligible business is considering a location in another state;

(ii) The prospective eligible business receives at least seventy-five percent (75%) of its sales revenues from out of state; and

(iii) The prospective eligible business is proposing to pay wages in excess of one hundred percent (100%) of the county average wage of the county in which it locates.

SECTION 6. Arkansas Code § 15-4-2708(a)-(d), concerning research and development tax credits under the Consolidated Incentive Act, are amended to read as follows:

(a) A taxpayer who contracts with one (1) or more Arkansas colleges or universities in performing basic or applied research may qualify for the tax credit established under § 26-51-1102(b) for qualified research expenditures, subject to the limitations established under § 26-51-1103 and the documentation requirements of § 26-51-1104.

(b)(1) Eligible businesses that conduct in-house research in a research facility operated by the business may qualify for an income tax credit equal to ten percent (10%) of the amount spent on in-house research, subject to the limitations established under § 26-51-1103.

(2) However, the maximum tax credit for in-house research for each qualified business shall not exceed ten thousand dollars ($10,000) per year.

(3) A business claiming tax credits earned under this subsection may not receive the credit granted by § 26-51-1102(b) for the same expenditures.

(4)(A) The term of the financial incentive agreement for in-house research authorized by this subsection shall be for a period not to exceed five (5) years.

(B) The financial incentive agreement may be renewed for a period not to exceed five (5) years upon the submittal and approval of a new application and project plan for benefits under this subsection.

(C) The business claiming a tax credit under this subsection shall certify annually to the department the amount expended on in-house research.

(c)(1) Targeted businesses may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on in-house research per year for the first five (5) tax years following the business's signing a financial incentive agreement with the Department of Economic Development, subject to the limitations established under § ~~26-51-1103~~ § 15-4-2709(d)(3).

(2) The credits earned by targeted businesses may be sold as authorized in § 15-4-2709.

(d)(1) An Arkansas taxpayer may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on the research for the first five (5) tax years following the business's signing a financial incentive agreement with the Department of Economic Development, subject to the limitations established under § *26-51-1103*(a) and (c) if the taxpayer invests in:

(A) In-house research in a strategic research area; or

(B) Projects under the research and development programs of the Arkansas Science and Technology Authority when the projects directly involve an Arkansas business and are approved by the Board of Directors of the Arkansas Science and Technology Authority under rules promulgated by the authority for those programs.

(2) However, the maximum tax credit for ~~businesses~~ a qualified business engaged in a research area of strategic value or involved in research and development programs sponsored by the authority shall not exceed fifty thousand dollars ($50,000) per year.

(3) A business claiming tax credits earned under this subsection shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

(4)(A) A business claiming tax credits earned under this subsection (d) may offset fifty percent (50%) of the business' tax liability in any one (1) year.

(B) Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever event occurs first.

SECTION 7. Arkansas Code § 15-4-2709(a) and (b), concerning targeted business special incentives under the Consolidated Incentive Act, are amended to read as follows:

(a) A special incentive based on the payroll of the ~~for job creation by~~ new targeted businesses in the state is established to:

(1) Encourage the development of jobs that pay significantly more than the county average wage in the county in which the business locates or the state average wage if the state average wage is less than the county average wage; and

(2) Provide an incentive to assist with the start-up of businesses targeted for growth.

(b) In order to qualify for the special incentive provided by subsection (c) of this section, a new business shall:

(1) Be identified by the Department of Economic Development as being one of those business sectors targeted for growth under § 15-4-2703;

(2) Have an annual payroll of the business for Arkansas

taxpayers of not less than ~~two hundred thousand dollars ($200,000)~~ one hundred thousand dollars ($100,000) or more than one million dollars ($1,000,000);

(3) Show proof of an equity investment of ~~five hundred thousand dollars ($500,000)~~ four hundred thousand dollars ($400,000) or more; and

(4) Pay average hourly wages ~~as follows:~~ in excess of one hundred fifty percent (150%) of the county or state average wage, whichever is less.

~~(A) For tier 1 counties, average hourly wages in excess of one hundred eighty percent (180%) of the county or state average hourly wage, whichever is less;~~

~~(B) For tier 2 counties, average hourly wages in excess of one hundred seventy percent (170%) of the county or state average hourly wage, whichever is less;~~

~~(C) For tier 3 counties, average hourly wages in excess of one hundred sixty percent (160%) of the county or state average hourly wage, whichever is less; and~~

~~(D) For tier 4 counties, average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.~~

SECTION 8. Arkansas Code 15-4-2709(d), concerning targeted business special incentives under the Consolidated Incentive Act, is amended to read as follows:

(d)(1) In order to sell income tax credits earned through incentives authorized by this subchapter, the new targeted business must apply to the department and furnish information necessary to facilitate the sale of income tax credits.

(2) The income tax credit ~~shall be sold within one (1) year of issuance and~~ may be sold only one (1) time.

(3)(A) ~~The limitations established in § 26-51-1103 shall apply to the tax credits sold by targeted businesses under this section or § 15-4-2708.~~ *Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever occurs first.*

(B) The ultimate recipient of the tax credits shall be subject to the same ~~provisions for carry forward~~ carry-forward provisions as the targeted business that earned the credits.

(C) The purchase of the tax credits will not establish a new ~~carry forward~~ carry-forward period for the ultimate recipient.

SECTION 9. Arkansas Code § 15-4-2711(g) -- (i), concerning administration of the Consolidated Incentive Act, are amended to read as follows:

(g)(1) If the annual payroll of the business applying for benefits under this subchapter ~~does not reach the payroll threshold necessary to qualify for benefits authorized under this subchapter~~ is not met within twenty-four (24) months after the signing of the financial incentive agreement, the ~~applicant~~ business may request in writing for an extension of time to reach the required payroll threshold.

(2)(A) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the ~~applicant's~~ approved business has presented compelling reasons for an extension of time, the Director of the Department of Economic Development may grant an extension of time not to exceed forty-eight (48) months.

(B) However, the extension on projects applying for benefits under § 15-4-2705 is limited to a twenty-four (24) - month extension.

(3)(A) If a business fails to reach the annual payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the business will be liable for the repayment of all benefits previously received by the business.

(B) After a business has failed to reach the annual payroll threshold in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(h)(1) If a business fails to reach the investment threshold before the expiration of the four-year time limit, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to reach the investment threshold of this subchapter in a timely manner, the Department of Finance

and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(i)(1) If the annual payroll of a business receiving benefits under this subchapter falls below the payroll threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the business files a written application for an extension of benefits with the Department of Economic Development explaining why the payroll has fallen below the level required for qualification.

(2) The Director of the Department of Economic Development and the Director of the Department of Finance and Administration may approve the request for extension of time, ~~benefits~~ not to exceed twenty-four (24) months, ~~and may authorize an extension of time~~ for the business to ~~meet the payroll requirements of the incentive received~~ bring the payroll back up to the requisite threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3) If a business fails to reach the payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the business shall be liable for the repayment of all benefits previously received by the business.

(B) After a business has failed to reach the payroll threshold in a timely manner, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

SECTION 10. Arkansas Code § 15-4-2711(k) and (l), concerning administration of the Consolidated Incentive Act, are amended to read as follows:

(k)(1) If a business fails to meet the nonretail business requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to meet the nonretail business requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

(l)(1) Eligible businesses whose qualification depends on receiving seventy-five percent (75%) of their sales revenue from out-of-state customers shall meet this requirement within three (3) years from the date of their financial incentive agreement.

(2)(A) If the requirement is not met within three (3) years of the signed financial incentive agreement, the ~~applicant~~ business may request in writing an extension of time to reach the required sales threshold.

(B) If the Director of the Department of Economic Development finds that the ~~applicant~~ business has presented compelling reasons for an extension of time, the Director of the Department of Economic Development may grant an extension of time not to exceed twenty-four (24) months.

SECTION 11. Arkansas Code § 15-4-2711(n)(1), concerning administration of the Consolidated Incentive Act, is amended to read as follows:

(n)(1) If a business fails to notify the Department of Finance and Administration that the annual payroll of the business has fallen below the payroll threshold for qualification for and retention of any incentive authorized by this subchapter, the business will be liable for the repayment of all benefits that were paid to the business after it no longer qualified for the benefits.

SECTION 12. Arkansas Code § 15-4-2711(r)(1), concerning administration of the Consolidated Incentive Act, is amended to read as follows:

(r)(1) If a business fails to satisfy or maintain any other requirement or threshold of this subchapter, the business will be liable for the repayment of all benefits ~~previously received by the business~~ that were paid to the business after it no longer qualified.

SECTION 13. Arkansas Code § 15-4-2713 is repealed.

~~15-4-2713. Industrial development compacts.~~

~~(a) If four (4) or more contiguous counties establish an industrial development compact as authorized by Arkansas Constitution, Amendment 62, § 9, counties participating in the compact may be eligible for special benefits under this subchapter.~~

~~(b) Each of the four (4) or more contiguous counties that enter into~~

~~an industrial development compact in accordance with Arkansas Constitution, Amendment 62, may apply the benefits of the tier of the most impoverished county participating in the compact.~~

~~(c)(1) For the counties within a compact to share property tax revenues from new business locations or expansions, the businesses shall qualify for and receive benefits from one (1) or more of the incentives offered under this subchapter.~~

~~(2) A business subject to the benefits of this subsection may not be offered Act No. 9 bond financing as a means to abate any portion of the property taxes that would otherwise apply unless the property tax abatement agreement is approved by each of the parties participating in the compact.~~

~~(d) A county may not be a member of more than one (1) regional compact under this section.~~

SECTION 14. Effective Date.

The benefits afforded by this act shall only apply to the qualified businesses approved by the Department of Economic Development with a signed financial incentive agreement dated on or after July 1, 2005.

SECTION 11. Emergency Clause. It is found and determined by the General Assembly that this act is designed to bring new jobs to this state; that current financial conditions dictate that unless industries can take advantage of the provisions of this act they may be forced to locate in another state; that unless this bill takes effect on the prescribed date significant numbers of jobs will be lost to this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.

/s/ Wooldridge

APPROVED: 3/29/2005