

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1854**

**Bill Subtitle: TO CREATE A TAX CREDIT FOR GRAPE AND WINE PRODUCERS.**

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### **Basic Change :**

**Sponsor: Representative Capp**

HB1854 creates a tax credit for grape and wine producers of an amount equal to 25% of the purchase price of new equipment and materials used directly in the growing of grapes or the production of wine in this state. An application shall be made to the Arkansas Economic Development Commission (AEDC) who certifies the amount of credit to the Department of Finance and Administration (DFA). Any unused credit can be carried forward for up to 5 tax years. The bill is effective for tax years beginning on and after January 1, 2017.

### **Revenue Impact :**

**FY2017 \$500,000** Reduction to General Revenue

**FY2018 and after \$2,000,000** Reduction to General Revenue

### **Taxpayer Impact :**

Taxpayers who receive certification from AEDC may claim an income tax credit equal to 25% of new equipment or materials purchased used directly in the production of wine or in the growing of grapes. Unused credits may be carried forward 5 years.

### **Resources Required :**

Forms and instructions along with system programming will need to be updated.

### **Time Required :**

Adequate time is provided to implement this bill.

### **Procedural Changes :**

None.

### **Other Comments :**

None.

### **Legal Analysis :**

As written, this bill creates a number of significant issues for the Department of Finance and Administration ("DFA"). HB1854 creates an income tax credit for grape growers and wine producers of 25% of any new equipment and materials used directly in the growing of grapes or production of wine in the state of Arkansas. To obtain the credit, the grape grower or wine producer has to certify its expenses to the Arkansas Economic Development Commission ("AEDC"). The AEDC then certifies to the DFA the amount of tax credit the wine grower or wine producer is entitled to. If credit cannot be used in its entirety, the grape grower or wine producer can carry the credit forward for five years.

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First, the bill provides no definition for "grape growers" or "wine producers." It is unclear if this bill is intended for those engaged in grape growing and wine producing as a hobby or as a commercial business. It is also unclear if it would apply to all grape growers, or only those engaged the production of grape for use in wine. The bill also does not provide a definition for "equipment," "materials," or "used directly." These terms can have a wide range of meaning and, without proper definition, allow taxpayers to claim credit on items not contemplated by the bill drafter. In the absence of clear legislative guidance, the provisions of HB1854 are difficult to determine.

Second, this provision potentially creates an anomaly with regard to other income tax provisions. Existing Income Tax laws allow for deduction of farm expenses for a commercial farming activity. This deduction, however, does not apply to 'hobby' farmers who are not engaged in commercial farm production. This tax credit could be applied by 'hobby' famers who are not entitled to the income tax deduction but would be authorized to receive this credit.

Finally, the involvement of AEDC does not appear to be administratively necessary and may inhibit the Department's ability to properly administer the program. Directing the grape growers and wine producers to report these expenses to AEDC diminishes DFA's ability to recover credits that were erroneously given. For example, DFA may audit items claimed for a credit that were not used "directly" in the grape growing or wine production, but may have no mechanism to recover the amount. The determination of whether items are "equipment" or "materials" used "directly" in grape growing and wine producing is more properly vested with the Department. This determination is similar to other sales and use tax audit requirements undertaken by DFA and is not within AEDC's area of expertise.

HB1854 contains a drafting error on page 1, line 35. The bill currently states "for a maximum of five (%) consecutive tax years." This should state "for a maximum of five (5) consecutive tax years."