

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representatives Mullenix, Murphy, Hogue, Baker, King, Goodwin, Northeutt,**

5 **Purdom, Schexnayder, and Fairchild**

6

7

For An Act To Be Entitled

8 "AN ACT TO CREATE THE ARKANSAS ENTERPRISE ZONE ACT OF

9 1993; AND FOR OTHER PURPOSES."

10

11

Subtitle

12 "TO CREATE THE ARKANSAS ENTERPRISE ZONE ACT OF 1993."

13

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

15

16 SECTION 1. This subchapter may be referred to and cited as the

17 "Arkansas Enterprise Zone Act of 1993."

18

19 SECTION 2. Definitions.

20 As hereinafter used in this subchapter:

21 (1) "Commission" means the Arkansas Industrial Development Commission;

22 (2) "Corporate headquarters" means the home or center of operations,

23 including research and development, of a national or multi-national

24 corporation;

25 (3) "Department" means the Department of Industrial Development;

26 (4) "Director" is the director of the department;

27 (5) "Governing authority" means the quorum court of a county or the

28 governing body of a municipality;

29 (6) "Office sector business" means control centers that influence the

30 environment in which data processing, customer service, credit accounting,

31 telemarketing, claims processing, and other administrative functions that act

32 as production centers. Also referred to as "back office industry";

33 (7) "New permanent employee" means an employee who is an Arkansas

34 resident when hired and who was hired as a result of the project and has

35 worked an average of at least thirty (30) hours per week for at least twenty-

1 six (26) consecutive weeks;

2 (8) "Program" means the Arkansas Enterprise Zone Act of 1993;

3 (9) "Project" means:

4 (A) All activities and costs associated with the construction of
5 a new plant or facility; or

6 (B) The expansion of an established plant or facility by adding
7 to the building or production equipment or support infrastructure, or both; or

8 (C) The replacement of production or processing equipment
9 or support infrastructure, or both;

10 (10) "Trucking sector business" means a business that comes within the
11 Standard Industrial Classification (SIC) number 4231;

12 (11) "Average hourly wage" means the average wage of the net new
13 permanent employees based on payroll for the most recent quarter reported to
14 the Employment Security Division, and is computed by using the total of the
15 net new permanent employees_ reported taxable earnings, including overtime
16 pay, divided by the number of weeks worked, divided by the average hours
17 worked per week per net new permanent employee;

18 (12) "Net new permanent employee" means a new permanent employee who
19 was not employed by the taxpayer during the preceding taxable year.

20

21 SECTION 3. Powers and duties of department.

22 The department shall administer the provisions of this Act and shall
23 have the following powers and duties, in addition to those mentioned in this
24 Act and in other laws of this state:

25 (1) To monitor the implementation and operation of this Act and conduct
26 a continuing evaluation of the progress made;

27 (2) To assist the governing authority in obtaining assistance from any
28 other department of state government, including assistance in providing
29 training and technical assistance to new businesses and industries ;

30 (3) To assist any employer or prospective employer with a qualifying
31 project in obtaining the benefits of any incentive or inducement program
32 authorized by state law;

33 (4) To act as liaison between other state agencies and businesses and
34 industries to assure that both the spirit and the intent of this Act are met;

35 (5) To submit an annual written report, evaluating the effectiveness

1 of the program and presenting any suggestions for improving the program, to be
2 submitted to the Governor no later than March 1 of each year;

3 (6) To promulgate rules and regulations, in accordance with the
4 Administrative Procedure Act, as amended, §25-15-201 et seq., necessary to
5 carry out the provisions of the Act.

6

7 SECTION 4. Refund of sales and use tax - Tax credit.

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

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

17 (A) The qualified business is an industry that fits into
18 Standard Industrial Classification (SIC) numbers 20 through 39, 7375, or 7376,
19 is a distribution center, corporate headquarters, office sector business or
20 trucking sector business located within Arkansas;

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

25 (C) The firm files an endorsement resolution with the
26 Commission and the Department of Finance and Administration. The endorsement
27 resolution must be approved by the governing body of a municipality or county
28 in whose jurisdiction the facility is located and must:

29 (i) approve the specific entity's participation in the
30 program, and

31 (ii) specifically state whether the municipality or
32 county authorizes the Department of Finance and Administration to refund local
33 sales and use taxes to the entity under the program. A municipality or county
34 can authorize the refund of all or part of a tax levied by it, but cannot
35 authorize the refund of any tax not levied by it.

1 (D) In the event it is found that any business receiving the
2 benefits contained in subsection (a) of this section has failed to comply with
3 the conditions contained in this subsection, that business will be liable for
4 the payment of all sales and use taxes which were refunded under subsection
5 (a) of this section.

6 (2) (A) The term "distribution center" shall mean a facility for
7 the reception, storage, or shipping of a business' own products or products
8 which the business wholesales to retail businesses or ships to its own retail
9 outlets.

10 (B) For a distribution center to qualify for the benefits
11 provided in this section, it must meet the following requirements:

12 (i) The distribution center must not make retail
13 sales to the general public; and

14 (ii) The distribution center must employ twenty-five
15 (25) or more new permanent employees.

16 (3) If a distribution center, office sector business, corporate
17 headquarters, or trucking sector business does not meet the requirements of
18 subsections (b) (1) through (7), then that business will automatically be
19 disqualified from receiving any benefits under this section and will be
20 required to repay any tax benefits already received under this Act plus
21 penalty and interest as allowed by law.

22 (4) For an office sector business to qualify for the benefits of
23 this section it must employ one hundred (100) or more new permanent employees
24 and must not make retail sales to the general public;

25 (5) For a corporate headquarters to qualify for the benefits of
26 this section it must employ fifty (50) or more new permanent employees and
27 must not make retail sales to the general public;

28 (6) For a trucking sector business to qualify for the benefits of
29 this section it must employ one hundred (100) or more new permanent employees
30 and must not make retail sales to the general public.

31 (7) (A) The requisite number of new permanent employees must be
32 employed by the industry, distribution center, corporate headquarters, office
33 sector business or trucking sector business within twenty-four (24) months of
34 the date the endorsement resolution was adopted or passed by the governing
35 body approving the business_ participation in the program.

1 (B) In the event that the requisite number of new permanent
2 employees cannot be employed within the twenty-four (24) month period, the
3 business can file a written application with the Commision explaining why
4 additional time is necessary. The business can be afforded up to twenty-four
5 (24) more months to hire the requisite number of employees if the Director and
6 the Chief Fiscal Officer of the state determine that the need for additional
7 time is due to :

8 (i) unanticipated and unavoidable delay in the
9 construction of a facility that must be completed before the employees can be
10 hired; or

11 (ii) the project as originally planned will require
12 more than twenty-four (24) months to complete; or

13 (iii) a change in the business ownership or business
14 structure due to a merger or aquisition.

15 (c) The Revenue Division of the Department of Finance and
16 Administration shall authorize an income tax credit equal to one hundred (100)
17 times the average hourly wage paid with a maximum of two thousand dollars
18 (\$2,000) per net new permanent employee of a business' qualifying under
19 subsection (b) of this section. This tax credit shall be used for the taxable
20 year in which the net new permanent employee was hired. However, if the
21 entire credit cannot be used in the year earned, the remainder may be applied
22 against the income tax for the succeeding four (4) years, or until the credit
23 is entirely used, whichever occurs first. The credit allowed under this
24 section shall increase by a factor of two (2) with a maximum credit of two
25 thousand dollars (\$2,000) if the business is located in a county that had an
26 unemployment rate in excess of ten percent (10%) or in excess of three percent
27 (3%) of the state's average unemployment rate for the preceding calendar year.

28 (d) (1) An income tax credit as provided for in subsection (c) of this
29 section shall be authorized provided that:

30 (A) The request for such credit is accompanied by an
31 endorsement resolution approved by the governing body of the appropriate
32 municipality or county in whose jurisdiction the establishment is to be
33 located;

34 (B) All of the net new employees are employed at the
35 facility.

1 (2) In the event it is found that any business receiving the
2 benefits contained in subsection (c) of this section has failed to comply with
3 the conditions contained in this subsection, that business shall be liable for
4 the payment of such additional income taxes as may be due after the income tax
5 credits provided for in subsection (c) are disallowed, plus penalty and
6 interest.

7 (e) To be counted as a new permanent employee for the purpose of
8 qualifying for the tax credits and incentives provided in this section, the
9 employee must have been an Arkansas resident during the year in which the tax
10 credits or incentives were earned.

11

12 SECTION 5. Projects under Manufacturer's Investment Sales and Use Tax
13 Credit Act of 1985.

14 (a) No person or entity may file for benefits under this Act if an
15 application for benefits has been filed and approved under the Manufacturer's
16 Investment Sales and Use Tax Credit Act of 1985, §26-52-701 et seq., for the
17 same project. Provided, however, that an application for benefits under §26-
18 52-701 et seq. may be withdrawn if no tax credits have been taken under that
19 subchapter.

20 (b) (1) When a project has been approved under the Manufacturer's
21 Investment Sales and Use Tax Credit Act of 1985, §26-52-701 et seq., no
22 application for a project under this Act will be accepted until the expiration
23 of one (1) year after the date of approval of the application under §26-52-701
24 et seq.

25 (2) When a project has been approved under this Act, no
26 application for projects under the Manufacturer's Investment Sales and Use Tax
27 Credit Act of 1985, §26-52-701 et seq., shall be accepted until the expiration
28 of one (1) year after the date of approval of the application under this Act.

29

30 SECTION 6. Transition Period.

31 (a) On and after the effective date of this Act, until June 30, 1995, a
32 business beginning a new project may elect to qualify the project for the
33 benefits of the Enterprise Zone Act of 1989, Ark. Code Ann. §15-4-801 et seq.,
34 or for the benefits of this Act. Whichever Act the business elects, the
35 project must meet the requirements of the Act chosen.

1 (b) When a business seeks the approval of a zone project, the business
2 must specify whether it seeks the benefits of this Act or the Enterprise Zone
3 Act of 1989. A business can only receive the benefits of one Act for a
4 project, even if the project would qualify under both Acts.

5 (c) After June 30, 1995, businesses will no longer be able to elect
6 between the Acts. All projects must qualify under this Act.

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8 SECTION 7. For businesses which have a project which qualified under
9 the Enterprise Zone Act of 1989, the benefits allowed for that project shall
10 be determined by the Enterprise Zone Act of 1989. For businesses which have a
11 project which qualified under this Act, the benefits allowed for that project
12 shall be determined by this Act.

13

14 SECTION 8. The income tax provisions of this Act shall be in full force
15 and effect for all taxable years beginning on and after January 1, 1993.

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17 SECTION 9. The sales tax provisions of this Act shall be in full force
18 and effect on July 1, 1993.

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20 SECTION 10. The provisions of this Act will expire on June 30, 1999.

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22 SECTION 11. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

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26 SECTION 12. If any provision of this act or the application thereof to
27 any person or circumstance is held invalid, such invalidity shall not affect
28 other provisions or applications of the act which can be given effect without
29 the invalid provision or application, and to this end the provisions of this
30 act are declared to be severable.

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32 SECTION 13. All laws and parts of laws in conflict with this Act are
33 hereby repealed.

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35 SECTION 14. It is hereby found and determined by the General Assembly

1 of this State that unemployment and economic underdevelopment has reached
2 intolerable levels in certain portions of this state, and that the
3 establishment of tax incentives afforded by this Act are critical to the
4 development and expansion of job opportunities in those areas. Therefore, an
5 emergency is declared to exist and this Act, being necessary for the
6 preservation of the public peace, health and safety, shall be in full force
7 and effect on July 1, 1993.

8 /s/Ted E. Mullenix, et al