

As Engrossed: 3/9/93

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Wilson**

A Bill

ACT 654 OF 1993
SENATE BILL 449

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 26, CHAPTER 51,
9 SUBCHAPTER 5 TO CLARIFY ELIGIBILITY FOR THE ARKANSAS
10 INCOME TAX CREDIT FOR THE PURCHASE OF WASTE REDUCTION,
11 REUSE OR RECYCLING EQUIPMENT; TO ENCOURAGE THE USE OF
12 ARKANSAS POST-CONSUMER WASTE FOR THOSE RECEIVING THE
13 CREDIT; TO REQUIRE REFUND OF THE CREDIT IN CERTAIN
14 INSTANCES AND FOR OTHER PURPOSES."

Subtitle

17 "AN ACT CONCERNING THE ARKANSAS INCOME TAX CREDIT FOR THE
18 PURCHASE OF WASTE REDUCTION, REUSE OR RECYCLING
19 EQUIPMENT."

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

23 SECTION 1. Arkansas Code §26-51-506 is amended to read as follows:

24 "26-51-506 (a) For the purposes of this section:

25 (1) *'Cost' in the case of a transfer of title or a finance lease means*
26 *the amount of the purchase price, and in the case of a lease which is not a*
27 *finance lease but which otherwise qualifies as a purchase under this Act means*
28 *the amount of the lease payments due to be paid during the term of the lease*
29 *after deducting any portion of the lease payments attributable to interest,*
30 *insurance and taxes;*

31 (2) *_Equipment to service waste reduction, reuse, or recycling*
32 *equipment_ means expenditures, machinery, or equipment that keeps existing*
33 *machinery or equipment in running order by providing repair, maintenance,*
34 *adjustment, inspection, or supplies;*

35 (3) *'Finance lease' means a lease agreement which is treated as a*
36 *purchase by a lessee for Arkansas income tax purposes;*

1 (4) Home scrap means materials or by-products generated from and
2 commonly reused within an original manufacturing process;

3 (5) Maintenance means expenditures, machinery, or equipment used to
4 keep existing machinery or equipment in a condition that approaches or equates
5 to its original condition;

6 (6) Motor vehicle means a vehicle or trailer that is licensed, or that
7 normally would be licensed, for use on highways in Arkansas;

8 (7) Post-consumer waste means products or other materials, generated
9 by a business, governmental entity, or a consumer, which have served their
10 intended end use and have been recovered from or otherwise diverted from the
11 solid waste stream for the purpose of recycling;

12 (8) Pre-consumer material means material generated during any step in
13 the production of a product and recovered or otherwise diverted from the solid
14 waste stream for the purpose of recycling, but does not include home scrap;

15 (9) Purchase means a transaction under which title to an item is
16 transferred for consideration, or a lease contract for a period of at least
17 three (3) years regardless of whether title to the item is transferred at the
18 end of such period;

19 (10) Recovered materials means those materials which have been
20 separated, diverted, or removed from the waste stream for the purpose of
21 recycling, and includes pre-consumer materials and post-consumer waste but not
22 home scrap;

23 (11) Recycling means the systematic collection, sorting,
24 decontaminating and returning of waste materials to commerce as commodities
25 for use or exchange;

26 (12) Repair means expenditures, machinery, or equipment used to
27 restore existing machinery or equipment to original or similar condition and
28 capacity after damage or after deterioration from use;

29 (13) Solid waste means all putrescible and nonputrescible wastes in
30 solid or semisolid form, including but not limited to yard or food waste,
31 waste glass, waste metals, waste plastics, waste papers, waste paperboard, and
32 all other solid or semisolid wastes resulting from industrial, commercial,
33 agricultural, community, and residential activities; and

34 (13) (A) Waste reduction, reuse, or recycling equipment means new or
35 used machinery or equipment located in Arkansas on the last day of the taxable

1 year, which is operated or used exclusively in Arkansas to collect, separate,
2 process, modify, convert, or treat solid waste so that the resulting product
3 may be used as a raw material or for productive use or to manufacture products
4 containing recovered materials. The term also includes devices which are
5 directly connected with or are an integral and necessary part of such
6 machinery or equipment and are necessary for such collection, separation,
7 processing, modification, conversion, treatment, or manufacturing.

8 (B) Waste reduction, reuse or recycling equipment does not
9 include motor vehicles.

10 (b) The intent and purpose of this section is to increase capacity in
11 the State of Arkansas for the use of recovered materials.

12 (c) There shall be allowed a credit against the tax imposed by the
13 Arkansas Income Tax Act, as amended, §26-51-101 et seq., an amount as
14 determined in subsection (e) of this section, for any taxpayer engaged in the
15 business of reducing, reusing or recycling solid waste for commercial purposes
16 who purchases waste reduction, reuse or recycling equipment used exclusively
17 for the purpose of reducing, reusing or recycling solid waste.

18 (d) To claim the benefits of this section, a taxpayer must obtain a
19 certification from the Director of the Arkansas Department of Pollution
20 Control and Ecology certifying to the Revenue Division of the Department of
21 Finance and Administration that:

22 (1) the taxpayer is engaged in the business of reducing,
23 reusing or recycling solid waste material for commercial purposes,
24 whether or not for profit;

25 (2) the machinery or equipment purchased is waste reduction, reuse
26 or recycling equipment;

27 (3) the machinery or equipment is being used in the collection,
28 separation, processing, modification, conversion, treatment, or manufacturing
29 of products containing at least fifty percent (50%) recovered materials,
30 provided that at least ten percent (10%) of the recovered materials shall be
31 *post consumer waste*; and (4) *the taxpayer has filed a statement with the*
32 *Director of the Arkansas Department of Pollution Control and Ecology*
33 *acknowledging that the taxpayer shall make a good faith effort to utilize*
34 *post-consumer waste generated in Arkansas as at least ten percent (10%) of the*
35 *post-consumer waste being used in the equipment, to the extent available at a*

1 competitive price.

2 (e) (1) The amount of the credit allowed under subsection (c) of this
3 section shall be equal to thirty percent (30%) of the cost of waste reduction,
4 reuse or recycling equipment including the cost of installation.

5 (2) The cost of installation shall not include the cost of:

6 (i) Feasibility studies;

7 (ii) Engineering costs of a building to house the equipment
8 and related machinery; or

9 (iii) Equipment used to service the waste reduction, reuse
10 or recycling equipment.

11 (3) The cost of replacement parts which serve only to keep
12 existing waste reduction, reuse, or recycling equipment in its ordinary
13 efficient operating condition shall not be included in determining the amount
14 of the credit. The cost of replacement of existing waste reduction, reuse, or
15 recycling equipment shall not be included in determining the amount of the
16 credit unless the replacement provides greater capacity for recycling or
17 provides the capability to collect, separate, process, modify, convert, treat,
18 or manufacture additional or a different type of solid waste.

19 (4) The cost of service contracts, sales tax, maintenance, and
20 repair shall not be included in determining the amount of the credit.

21 (f) (1) The taxpayer shall refund the amount of the tax credit determined
22 by subdivision (f) (2) if, within three (3) years of the taxable year for which
23 a credit is allowed:

24 (A) the waste reduction, reuse, or recycling equipment is
25 removed from Arkansas, is disposed of, is transferred to another person, or
26 otherwise ceases to use the required materials or operate in the manner
27 required by this section;

28 (B) *the Director of the Arkansas Department of Pollution*
29 *Control and Ecology finds that the taxpayer has demonstrated a pattern of*
30 *intentional failure to comply with final administrative or judicial orders,*
31 *which clearly indicates a disregard for environmental regulation or a pattern*
32 *of prohibited conduct which could reasonably be expected to result in adverse*
33 *environmental impact.*

34 (2) If the provisions of subdivision (f) (1) apply, the taxpayer
35 shall refund the amount of the tax credit which was deducted from income tax

1 liability which exceeds the following amounts:

2 (A) within the first year, zero dollars;

3 (B) within the second year, an amount equal to thirty-three
4 percent (33%) of the amount of credit allowed;

5 (C) within the third year, an amount equal to sixty-seven
6 percent (67%) of the credit allowed.

7 (3) Any refund required by subdivision (f) (1) (A) of this section
8 shall apply only to the credit given for the particular waste reduction,
9 reuse, or recycling equipment to which that subdivision applies.

10 (4) Any taxpayer who is required to refund part of a credit
11 pursuant to this subsection shall no longer be eligible to carry forward any
12 amount of that credit which had not been used as of the date such refund is
13 required.

14 (5) *This subsection (f) shall apply to all credits which are*
15 *certified as a result of applications for certification filed with the*
16 *Arkansas Department of Pollution Control and Ecology on or after July 1, 1993.*
17 *Subsection (f) shall not apply to credits which are certified as a result of*
18 *applications for certification filed with the Arkansas Department of Pollution*
19 *Control and Ecology prior to July 1, 1993. Taxpayers who file written notice*
20 *and a project plan with the Arkansas Department of Pollution Control and*
21 *Ecology prior to July 1, 1993 shall be deemed to have filed an application for*
22 *certification for purposes of this subdivision provided that all the*
23 *information necessary to complete the application for certification is*
24 *provided to the Department on or before December 31, 1993.*

25 (g) Waste reduction, reuse, or recycling equipment shall only be
26 eligible for one tax credit. The sale or transfer of such equipment shall not
27 recreate the eligibility for a tax credit.

28 (h) (1) In the case of a proprietorship or partnership engaged in the
29 business of waste reduction, reuse or recycling of solid waste, the amount of
30 the credit determined under this section for any taxable year shall be
31 apportioned to each proprietor or partner in proportion to the amount of
32 income from the entity which the proprietor or partner is required to include
33 as gross income.

34 (2) In the case of a Subchapter S corporation, as allowed by §26-
35 51-409, the amount of the credit determined under this section for any taxable

1 year shall be apportioned among the persons who are shareholders of the
2 corporation on the last day of the taxable year based on each person's
3 percentage of ownership.

4 (3) In the case of an estate or trust:

5 (A) the amount of the credit determined under this section
6 for any taxable year shall be apportioned between the estate or trust and the
7 beneficiaries on the basis of the income of the estate or trust allocable to
8 each; and

9 (B) any beneficiary to whom any amount has been apportioned
10 under this subsection shall be allowed, subject to limitations contained in
11 this section, a credit under this section for the amount.

12 (i) The amount of the credit that may be used by a taxpayer for a
13 taxable year may not exceed the amount of state, individual or corporate
14 income tax otherwise due. Any unused credit may be carried over for a maximum
15 of three (3) consecutive years following the taxable year in which the credit
16 originated.

17 (j) A taxpayer who receives a credit under this section shall not be
18 entitled to claim any other state or local tax credit or deduction based on
19 the purchase of the machinery or equipment, except for the deduction for
20 normal depreciation.

21 (k) The Arkansas Department of Pollution Control and Ecology and the
22 Revenue Division of the Department of Finance and Administration shall
23 promulgate rules or regulations as necessary to administer this section.
24 These rules or regulations may include but are not limited to the
25 establishment of technical specifications and of requirements for information
26 and documentation for taxpayers seeking a credit under this section and shall
27 encourage but not require the use of Arkansas contractors and post-consumer
28 waste generated in Arkansas in recycling projects which qualify for credits
29 provided by this section. In order to determine eligibility for the credit or
30 to insure that the machinery or equipment is being utilized in the required
31 manner, each agency shall have the right to inspect facilities and records of
32 a taxpayer requesting or receiving a credit under this section.

33 (l) any person or legal entity aggrieved by a decision of the Director
34 of the Arkansas Department of Pollution control and Ecology under subsections
35 26-51-506(d) or 26-51-506(f) (1) (B) may appeal to the Commission on Pollution

1 Control and Ecology through administrative procedures adopted by the
2 Commission and to the courts in the manner provided in sections 8-4-222 - 8-4-
3 229.

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5 SECTION 2. All provisions of this Act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.

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9 SECTION 3. If any provision of this Act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the Act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 Act are declared to be severable.

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15 SECTION 4. All laws or parts of laws in conflict with this Act are
16 hereby repealed.

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18 SECTION 5. EMERGENCY. It is hereby found and determined by the General
19 Assembly of the State of Arkansas that clarification of the law for the tax
20 credit for waste reduction, reuse, or recycling equipment is necessary; that
21 the use of Arkansas post-consumer waste should be encouraged by means of this
22 credit; that the credit should be refunded or disallowed under certain
23 circumstances; and that for the effective administration of this act, the act
24 should become effective immediately. Therefore, an emergency is hereby
25 declared to exist and this act being necessary for the immediate preservation
26 of the public peace, health and safety shall be in full force and effect from
27 and after its passage and approval.

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29 /s/Senator Wilson

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31 APPROVED: 3/24/93

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