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4

As Engrossed: S2/23/17

A Bill

SENATE BILL 362

5 By: Senators L. Eads, Bledsoe, J. Dismang, J. English, J. Hendren, Hester, Irvin, B. Johnson, Standridge
6 By: Representatives Davis, Ballinger, Bentley, Bragg, Coleman, Collins, Dotson, D. Douglas, Gonzales,
7 Holcomb, Maddox, Richmond, Tucker, J. Williams, *Eaves*

For An Act To Be Entitled

10 AN ACT CONCERNING ECONOMIC INCENTIVES FOR CERTAIN
11 BUSINESSES AND INDUSTRIES; TO SUNSET THE RETENTION
12 TAX CREDIT; TO SUNSET THE TAX REFUND FOR MAJOR
13 MAINTENANCE AND IMPROVEMENT PROJECTS; TO CLARIFY THE
14 EXISTING PROCEDURE FOR CLAIMING A REFUND OF TAX PAID
15 ON PURCHASES RELATED TO THE REPAIR AND PARTIAL
16 REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT
17 AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR MAKING
18 SUCH CLAIMS; TO INCREASE THE REFUND AVAILABLE FOR
19 TAXES PAID ON PURCHASES RELATED TO THE REPAIR AND
20 PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND
21 EQUIPMENT; TO PHASE IN AN EXEMPTION FROM TAX FOR
22 PURCHASES RELATED TO THE REPAIR AND PARTIAL
23 REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT;
24 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

28 TO SUNSET CERTAIN TAX INCENTIVES; TO
29 AMEND THE LAW CONCERNING THE SALES AND
30 USE TAX REFUND FOR THE REPAIR AND PARTIAL
31 REPLACEMENT OF MANUFACTURING MACHINERY
32 AND EQUIPMENT; AND TO DECLARE AN
33 EMERGENCY.

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



1
2 SECTION 1. Arkansas Code § 15-4-2706(c), concerning investment tax
3 credits under the Consolidated Incentive Act of 2003, is amended to add an
4 additional subdivision to read as follows:

5 (7)(A) A qualified business may apply for the retention tax
6 credit under this subsection through June 30, 2017.

7 (B)(i) An application for the retention tax credit under
8 this subsection shall not be accepted on or after July 1, 2017.

9 (ii) However, projects that qualify for a retention
10 tax credit based on an application filed through June 30, 2017, shall
11 continue to earn credits as provided in this section.

12 (iii) Retention tax credits issued on a project that
13 qualifies for retention tax credits based on an application filed through
14 June 30, 2017, shall remain in effect and shall be taken and carried forward
15 as otherwise provide in this section.

16
17 SECTION 2. Arkansas Code § 15-4-3501, concerning the increased tax
18 refund for major maintenance and improvement projects, is amended to add an
19 additional subsection to read as follows:

20 (i)(1) A taxpayer may apply for an increased refund for major
21 maintenance and improvement projects under this section through June 30,
22 2022.

23 (2) An application for an increased refund for major maintenance
24 and improvement projects under this section shall not be accepted on or after
25 July 1, 2022.

26
27 SECTION 3. Arkansas Code § 26-52-447(b), concerning the sales tax
28 refund for partial replacement and repair of certain machinery and equipment,
29 is amended to read as follows:

30 (b)(1) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and
31 26-52-302 that are subject to a refund under this section are the taxes in
32 excess of four and seven-eighths percent (4.875%).

33 (2) The taxes levied under §§ 26-52-301 and 26-52-302 that are
34 subject to a refund under this section are the taxes in excess of the
35 following rates:

36 (A) Beginning July 1, 2018, three and seven-eighths

1 percent (3.875%);

2 (B) Beginning July 1, 2019, two and seven-eighths percent
 3 (2.875%);

4 (C) Beginning July 1, 2020, one and seven-eighths percent
 5 (1.875%); and

6 (D) Beginning July 1, 2021, seven-eighths percent
 7 (0.875%).

8 (3) Beginning July 1, 2022, sales qualifying for the tax refund
 9 under this section are exempt from the taxes levied under this chapter.

10
 11 SECTION 4. Arkansas Code § 26-52-447(f) and (g), concerning the sales
 12 tax refund for partial replacement and repair of certain machinery and
 13 equipment, are amended to read as follows:

14 (f) ~~To~~ A taxpayer may claim the benefit of the tax refund under this
 15 section, a taxpayer shall hold only by using one (1) of the following
 16 methods:

17 (1)(A) Both:

18 (i) Obtaining a direct pay or a limited direct pay
 19 sales and use tax permit from the Department of Finance and Administration;
 20 and shall claim the tax refund under the direct pay or limited direct pay
 21 permit.

22 (ii) Self-refunding:

23 (a) At the time the taxpayer files his or her
 24 original sales and use tax report; or

25 (b) By later filing an amended sales or use
 26 tax report with the department.

27 (B) The statutes of limitation stated in § 26-18-306 apply
 28 to claims made under this subdivision (f)(1).

29 (C) Interest shall not accrue or be paid on a refund
 30 claimed under this subdivision (f)(1); or

31 (2)(A) Beginning July 1, 2018, for a taxpayer that does not hold
 32 a direct pay or limited direct pay permit, holds an active Arkansas sales and
 33 use tax permit, and files sales and use tax reports with the department,
 34 filing a claim for a credit or rebate with the department.

35 (B)(i) The credit or rebate authorized under this
 36 subdivision (f)(2) shall be obtained only by offsetting the amount of the

1 claimed credit or rebate against the state tax to be remitted with the
2 taxpayer's sales and use tax reports.

3 (ii) If the total amount of the credit or rebate
4 authorized under this subdivision (f)(2) is greater than the amount of the
5 state tax to be remitted with the taxpayer's sales and use tax reports, the
6 taxpayer is entitled to a refund of the difference between the amount of the
7 tax owed and the amount of the credit or rebate authorized under this
8 subdivision (f)(2).

9 (C) A taxpayer claiming a credit or rebate under this
10 subdivision (f)(2) shall electronically file all sales and use tax reports.

11 (D) A claim for credit or rebate under this subdivision
12 (f)(2) shall not be paid for a claim filed more than one (1) year following
13 the date of the qualifying sale or more than one (1) year following the date
14 of payment, whichever is later.

15 (E) Interest shall not accrue or be paid on an amount
16 subject to a claim for a credit or rebate under this subdivision (f)(2).

17 (g) A claim for a credit or rebate shall not be paid under subsection
18 (f)(2) of this section for a sale made before July 1, 2018.

19 (h) A taxpayer shall not claim the benefit of the refund under this
20 section by filing a verified claim for refund with the department.

21 ~~(g)~~(i) The following provisions of the Arkansas Tax Procedure Act, §
22 26-18-101 et seq., apply to claims for a refund under this section:

23 (1) The time limitations that apply to claims for a refund of an
24 overpayment of state tax; and

25 (2) The procedures that apply to the disallowance or proposed
26 disallowance of claims for a refund.

27
28 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 7, is
29 repealed.

30 ~~Subchapter — Economic Investment Tax Credit Act~~

31
32 ~~26-52-701. Title.~~

33 ~~This subchapter may be referred to and cited as the "Economic~~
34 ~~Investment Tax Credit Act".~~

35
36 ~~26-52-702. Definitions.~~

1 ~~As used in this subchapter:~~

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

5 ~~(2) "Defense industry project" means an investment of at least~~
6 ~~five million dollars (\$5,000,000) and an increase in employment of at least~~
7 ~~two hundred fifty (250) full-time permanent employees by a company which~~
8 ~~manufactures components for the defense industry and whose unit cost exceeds~~
9 ~~five hundred thousand dollars (\$500,000);~~

10 ~~(3) "Distribution center" means a facility for the reception,~~
11 ~~storage, or shipping of:~~

12 ~~(A) A business' own products which the business wholesales~~
13 ~~to retail businesses or ships to its own retail outlets;~~

14 ~~(B) Products owned by other companies with which the~~
15 ~~business has contracts for storage and shipping if seventy-five percent (75%)~~
16 ~~of the sales revenue is from out-of-state customers; or~~

17 ~~(C) Products for sale to the general public if seventy-~~
18 ~~five percent (75%) of the sales revenue is from out-of-state customers;~~

19 ~~(4) "Eligible business" means a business eligible for sales and~~
20 ~~use tax credits under the provisions of this subchapter that has been in~~
21 ~~continuous operation in Arkansas for at least two (2) years prior to the~~
22 ~~initial application to the Director of the Arkansas Economic Development~~
23 ~~Commission, has obtained a direct-pay sales and use tax permit from the~~
24 ~~Revenue Division of the Department of Finance and Administration under the~~
25 ~~provisions of § 26-52-509, and is classified as one (1) or more of the~~
26 ~~following types of businesses:~~

27 ~~(A) Manufacturers classified in federal Standard~~
28 ~~Industrial Classification codes 20-39, including semiconductor and~~
29 ~~microelectronic manufacturers;~~

30 ~~(B)(i) Computer businesses primarily engaged in providing~~
31 ~~computer programming services, the design and development of prepackaged~~
32 ~~software, businesses engaged in digital content production and preservation,~~
33 ~~computer processing and data preparation services, information retrieval~~
34 ~~services, and computer and data processing consultants and developers;~~

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

1 ~~have no retail sales to the public;~~

2 ~~(C)(i) Businesses primarily engaged in motion picture~~
3 ~~production.~~

4 ~~(ii) All businesses in this group must derive at~~
5 ~~least seventy five percent (75%) of their revenue from out-of-state sales and~~
6 ~~have no retail sales to the public;~~

7 ~~(D) Businesses primarily engaged in commercial physical~~
8 ~~and biological research as classified by Standard Industrial Classification~~
9 ~~code 8731;~~

10 ~~(E) A distribution center with no retail sales to the~~
11 ~~general public, unless seventy five percent (75%) of the sales revenue is~~
12 ~~from out-of-state customers;~~

13 ~~(F) An office sector business with no retail sales to the~~
14 ~~general public;~~

15 ~~(G) A corporate or regional headquarters with no retail~~
16 ~~sales to the general public; and~~

17 ~~(H) A coal mining operation that employs twenty five (25)~~
18 ~~or more net full-time permanent positions;~~

19 ~~(5) "Modernization" means to increase efficiency or to increase~~
20 ~~productivity of the business through investment in machinery or equipment, or~~
21 ~~both, and shall not include costs for routine maintenance;~~

22 ~~(6) "Office sector" means control centers that influence the~~
23 ~~environment in which data processing, customer service, credit accounting,~~
24 ~~telemarketing, claims processing, and other administrative functions that act~~
25 ~~as production centers;~~

26 ~~(7) "Person" means a person as defined by § 26-18-104;~~

27 ~~(8)(A) "Project" means any construction, expansion, or~~
28 ~~modernization in Arkansas by an eligible business.~~

29 ~~(B) The investment must exceed five million dollars~~
30 ~~(\$5,000,000) or six million dollars (\$6,000,000) for projects involving~~
31 ~~multiple locations within the State of Arkansas, including the cost of the~~
32 ~~land, buildings, and equipment used in the construction, expansion, or~~
33 ~~modernization and which construction, expansion, or modernization has been~~
34 ~~approved by the Arkansas Economic Development Commission as a construction,~~
35 ~~expansion, or modernization project which qualifies for the credit under the~~
36 ~~provisions of this subchapter;~~

1 ~~(9) "Regional headquarters" means the center of operations for a~~
2 ~~specific geographic area; and~~

3 ~~(10) "Routine maintenance" means the replacement of existing~~
4 ~~machinery parts with like parts.~~

5
6 ~~26-52-703. Precluded provisions supplemental.~~

7 ~~(a) A recipient of benefits under this subchapter is precluded from~~
8 ~~receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-~~
9 ~~1701 et seq., for the same project.~~

10 ~~(b) A recipient of benefits under this subchapter is precluded from~~
11 ~~receiving benefits under the Manufacturer's Investment Tax Credit Act, § 26-~~
12 ~~51-2001 et seq., for the same project.~~

13
14 ~~26-52-704. Credit granted.~~

15 ~~There is granted a credit against the state sales and use tax liability~~
16 ~~of an eligible business of seven percent (7%) of the amount of the total~~
17 ~~project cost of any project, subject to the limit set out in § 26-52-705.~~

18
19 ~~26-52-705. Qualification and determination of credit.~~

20 ~~(a)(1) In order to qualify for and receive the credits afforded by~~
21 ~~this subchapter, any eligible business undertaking a project shall submit a~~
22 ~~project plan to the Director of the Arkansas Economic Development Commission~~
23 ~~thirty (30) days prior to the start of construction.~~

24 ~~(2) The plan submitted to the Arkansas Economic Development~~
25 ~~Commission shall contain such information as may be required by the Director~~
26 ~~of the Arkansas Economic Development Commission to determine eligibility.~~

27 ~~(b)(1) Upon determination by the Director of the Arkansas Economic~~
28 ~~Development Commission that the project qualifies for credit under this~~
29 ~~subchapter, the Director of the Arkansas Economic Development Commission~~
30 ~~shall certify to the Director of the Department of Finance and Administration~~
31 ~~that the project is qualified and transmit with his or her certification the~~
32 ~~documents upon which the certification was based or copies of the documents.~~

33 ~~(2) Upon receipt by the Director of the Department of Finance~~
34 ~~and Administration of a certification from the Director of the Arkansas~~
35 ~~Economic Development Commission that an eligible business as defined by § 26-~~
36 ~~52-702 is entitled to credit under this subchapter, the Director of the~~

1 ~~Department of Finance and Administration shall provide forms to the eligible~~
2 ~~business on which to claim the credit.~~

3 ~~(c)(1) At the end of the calendar year in which the application was~~
4 ~~made to the Director of the Arkansas Economic Development Commission and at~~
5 ~~the end of each calendar year thereafter until the project is completed, the~~
6 ~~eligible business shall certify, on the form provided by the Director of the~~
7 ~~Department of Finance and Administration, the amount of expenditures on the~~
8 ~~project during the preceding calendar year.~~

9 ~~(2)(A) Upon receipt of the form certifying expenditures, the~~
10 ~~Director of the Department of Finance and Administration shall determine the~~
11 ~~amount due as a credit for the preceding calendar year and issue a memorandum~~
12 ~~of credit to the eligible business in the amount of seven percent (7%) of the~~
13 ~~expenditure.~~

14 ~~(B)(i)(a)(1) The credit shall then be applied against the~~
15 ~~eligible business' state sales or use tax liability in the year following the~~
16 ~~year of the expenditure.~~

17 ~~(2) However, if the credit is not used~~
18 ~~in the calendar year following the expenditure, it may be carried over to the~~
19 ~~next succeeding calendar year for a total period of six (6) years following~~
20 ~~the year in which the credit was first available for use or until the credit~~
21 ~~is exhausted, whichever occurs first.~~

22 ~~(b) For eligible defense projects, if the~~
23 ~~credit is not used in the calendar year following the expenditure, the credit~~
24 ~~may be carried over to the next succeeding calendar year for a total of nine~~
25 ~~(9) years following the year in which the credit was first available for use~~
26 ~~or until the credit is exhausted, whichever occurs first.~~

27 ~~(ii)(a) The credit shall be used by the eligible~~
28 ~~business as a credit against the regular direct pay sales or use tax return~~
29 ~~of the business.~~

30 ~~(b) In no event shall the credit used on any~~
31 ~~regular return be more than fifty percent (50%) of the eligible business'~~
32 ~~total state sales or use tax liability for the reporting period, except that~~
33 ~~a company with an eligible defense industry project may claim a credit for~~
34 ~~one hundred percent (100%) of the sales and use tax liability for the~~
35 ~~reporting period.~~

36 ~~(iii) The Director of the Department of Finance and~~

1 ~~Administration may require proof of these expenditures.~~

2 ~~(iv)(a) The Director of the Department of Finance~~
3 ~~and Administration may examine those records necessary and specific to the~~
4 ~~project to determine credit eligibility.~~

5 ~~(b) Any credits disallowed will be subject to~~
6 ~~payment in full.~~

7 ~~(d) For all projects approved after July 1, 1997, in order to receive~~
8 ~~credit for project costs, the project costs must be incurred within five (5)~~
9 ~~years from the date of certification of the project plan by the Director of~~
10 ~~the Arkansas Economic Development Commission.~~

11 ~~(e)(1) If project costs exceed the initial project cost estimate~~
12 ~~included in the financial incentive plan, the business shall amend the~~
13 ~~financial incentive plan to include updated cost figures.~~

14 ~~(2) Amendments that exceed fifty percent (50%) of the original~~
15 ~~financial incentive plan estimate shall be submitted as a new project.~~

16 ~~(3) An amendment shall not change the start date of the original~~
17 ~~project.~~

18
19 ~~26-52-706. Administration.~~

20 ~~(a) A person claiming credit under a provision of this subchapter is a~~
21 ~~"taxpayer" within the meaning of § 26-18-104 and shall be subject to all~~
22 ~~applicable provisions of § 26-18-104.~~

23 ~~(b) Administration of the provisions of this subchapter shall be under~~
24 ~~the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

25 ~~(c) The Director of the Arkansas Economic Development Commission may~~
26 ~~promulgate such rules and regulations as are necessary to carry out the~~
27 ~~intent and purposes of this subchapter.~~

28
29 SECTION 6. Arkansas Code § 26-53-149(b), concerning the use tax refund
30 for partial replacement and repair of certain machinery and equipment, is
31 amended to read as follows:

32 (b)(1) Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and
33 26-53-107 that are subject to a refund under this section are the taxes in
34 excess of four and seven-eighths percent (4.875%).

35 (2) The taxes levied under §§ 26-53-106 and 26-53-107 that are
36 subject to a refund under this section are the taxes in excess of the

1 following rates:

2 (A) Beginning July 1, 2018, three and seven-eighths
3 percent (3.875%);

4 (B) Beginning July 1, 2019, two and seven-eighths percent
5 (2.875%);

6 (C) Beginning July 1, 2020, one and seven-eighths percent
7 (1.875%); and

8 (D) Beginning July 1, 2021, seven-eighths percent
9 (0.875%).

10 (3) Beginning July 1, 2022, purchases qualifying for the tax
11 refund under this section are exempt from the taxes levied under this
12 chapter.

13
14 SECTION 7. Arkansas Code § 26-53-149(f) and (g), concerning the use
15 tax refund for partial replacement and repair of certain machinery and
16 equipment, are amended to read as follows:

17 (f) ~~To~~ A taxpayer may claim the benefit of the tax refund under this
18 ~~section, a taxpayer shall hold~~ only by using one (1) of the following
19 methods:

20 (1)(A) Both:

21 (i) Obtaining a direct pay or a limited direct pay
22 sales and use tax permit from the Department of Finance and Administration;
23 ~~and shall claim the tax refund under the direct pay or limited direct pay~~
24 ~~permit.~~

25 (ii) Self-refunding:

26 (a) At the time the taxpayer files his or her
27 original sales and use tax report; or

28 (b) By later filing an amended sales or use
29 tax report with the department.

30 (B) The statutes of limitation stated in § 26-18-306 apply
31 to claims made under this subdivision (f)(1).

32 (C) Interest shall not accrue or be paid on a refund
33 claimed under this subdivision (f)(1); or

34 (2)(A) Beginning July 1, 2018, for a taxpayer that does not hold
35 a direct pay or limited direct pay permit, holds an active Arkansas sales and
36 use tax permit, and files sales and use tax reports with the department,

1 filing a claim for the credit or rebate with the department.

2 (B)(i) The credit or rebate authorized under this
3 subdivision (f)(2) shall be obtained only by offsetting the amount of the
4 claimed credit or rebate against the state tax to be remitted with the
5 taxpayer's sales and use tax reports.

6 (ii) If the total amount of the credit or rebate
7 authorized under this subdivision (f)(2) is greater than the amount of the
8 state tax to be remitted with the taxpayer's sales and use tax reports, the
9 taxpayer is entitled to a refund of the difference between the amount of the
10 tax owed and the amount of the credit or rebate authorized under this
11 subdivision (f)(2).

12 (C) A taxpayer claiming a credit or rebate under this
13 subdivision (f)(2) shall electronically file all sales and use tax reports.

14 (D) A claim for credit or rebate under this subdivision
15 (f)(2) shall not be paid for a claim filed more than one (1) year following
16 the date of the qualifying purchase or more than one (1) year following the
17 date of payment, whichever is later.

18 (E) Interest shall not accrue or be paid on an amount
19 subject to a claim for a credit or rebate under this subdivision (f)(2).

20 (g) A claim for a credit or rebate shall not be paid under subsection
21 (f)(2) of this section for a purchase made before July 1, 2018.

22 (h) A taxpayer shall not claim the benefit of the refund under this
23 section by filing a verified claim for refund with the department.

24 ~~(g)~~(i) The following provisions of the Arkansas Tax Procedure Act, §
25 26-18-101 et seq., apply to claims for a refund under this section:

26 (1) The time limitations that apply to claims for a refund of an
27 overpayment of state tax; and

28 (2) The procedures that apply to the disallowance or proposed
29 disallowance of claims for a refund.

30
31 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
32 General Assembly of the State of Arkansas that most states exempt from sales
33 and use tax the sale of property and labor associated with the modification,
34 partial replacement, and repair of manufacturing machinery and equipment;
35 that other states apply a reduced tax rate to the sale of property and labor
36 associated with the modification, partial replacement, and repair of

1 manufacturing machinery and equipment; that Arkansas taxes the sale of
2 property and labor associated with the modification, partial replacement, and
3 repair of manufacturing machinery and equipment at a tax rate of four and
4 seven-eighths percent (4.875%) after application of the refund of tax paid
5 for property and labor associated with the modification, partial replacement,
6 and repair of manufacturing machinery and equipment; that the Arkansas
7 Business and Economic Development Incentives Study conducted by Fluor Global
8 Location Strategies and presented to the Bureau of Legislative Research in
9 2006 classified Arkansas as the worst of the twelve states in the southeast
10 region on the taxation of sales of industrial materials used in
11 manufacturing; that Alabama, Mississippi, North Carolina, and other states
12 have phased in exemptions for sales of property and labor associated with the
13 modification, partial replacement, and repair of manufacturing machinery and
14 equipment over time; that under the Streamlined Sales and Use Tax Agreement
15 to which Arkansas is a party, reductions in sales and use tax must be
16 implemented through a refund or rebate mechanism until a complete exemption
17 is achieved; and that this act is immediately necessary because Arkansas, in
18 imposing an effective tax rate of four and seven-eighths percent (4.875%)
19 after application of the refund of tax paid for property and labor associated
20 with the modification, partial replacement, and repair of manufacturing
21 machinery and equipment, is not competitive with surrounding states and
22 states in the southeast region, which costs the state present and future
23 jobs. Therefore, an emergency is declared to exist, and this act being
24 immediately necessary for the preservation of the public peace, health, and
25 safety shall become effective on:

26 (1) The date of its approval by the Governor;

27 (2) If the bill is neither approved nor vetoed by the Governor,
28 the expiration of the period of time during which the Governor may veto the
29 bill; or

30 (3) If the bill is vetoed by the Governor and the veto is
31 overridden, the date the last house overrides the veto.

32
33 */s/L. Eads*

34
35 **APPROVED: 03/13/2017**