State of Arkansas *As Engrossed: S3/14/17 S3/23/17*
91st General Assembly
A Bill
Regular Session, 2017 SENATE BILL 688

By: Senator D. Wallace
By: Representative M. Hodges

For An Act To Be Entitled

AN ACT TO AMEND CERTAIN TAX INCENTIVES; TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; TO CLARIFY THE DISTRIBUTION OF INCOME TAX CREDITS FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Legislative findings.
The General Assembly finds that:

(1) Arkansas is one (1) of the leading producers of steel in the United States, and Mississippi County, Arkansas, is ranked as one (1) of the top two (2) highest steel-producing counties in the United States;

(2) The steel industry in the United States is highly competitive, and there are presently rising prices and a high level of demand for raw materials in the domestic market;

(3) The current national political and economic climate lends itself to an influx in the reshoring of well-paying manufacturing jobs, and Arkansas has an unprecedented opportunity to utilize existing incentive programs that are intended to encourage investment in this state to

capitalize on this trend;

(4) When considering where to place new American manufacturing jobs, companies will consider the availability of incentives and credits; and

(5) In order to continue to attract well-paying manufacturing jobs to the State of Arkansas and encourage continuing capital investment by steel producers in this state, adjustments in the recycling tax credit are appropriate to allow the tax credit to be utilized more fully to accomplish the purposes for which the tax credit is intended.

SECTION 2. Arkansas Code § 26-51-506(b), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to add additional subdivisions to read as follows:

(15) "Qualified expansion project" means an expansion of a taxpayer's facility that:

(A) Is commenced on or after January 1, 2017;

(B) Is conducted on the site of a qualified manufacturer of steel, as defined in §§ 26-51-1211, 26-52-901, 26-52-911, Acts 2013, No. 1084, or Acts 2013, No. 1476;

(C) Has a total investment of at least one billion dollars ($1,000,000,000);

(D) Is undertaken by a taxpayer that has entered into an agreement with the State of Arkansas in which the taxpayer made a commitment to create at least five hundred (500) net new direct positions and independent direct positions as those terms are defined in Acts 2013, No. 1084, § 8, with an average annual wage of at least seventy-five thousand dollars ($75,000);

(E) Provides a positive cost-benefit analysis to the state as determined by the Arkansas Economic Development Commission and the Office of Economic Analysis and Tax Research of the Department of Finance and Administration before an incentive agreement between the state and the taxpayer is executed;

(F) Is certified as having a closing date before July 1, 2018, by which the taxpayer has certified and the state has verified that necessary capital acquisition and borrowing for the qualified expansion project has occurred to:

(i) Secure a site;

(ii) Obtain engineering services;

(iii) Purchase equipment; and

(iv) Commence initial construction; and

(G) Is undertaken by a taxpayer that has elected by agreement with the State of Arkansas for the expansion of the taxpayer's facility to be classified as a qualified expansion project under this section; and

(16) "Qualified steel specialty products manufacturing facility" means a facility:

(A) For which the taxpayer commenced construction on or after January 1, 2017;

(B) That is located in Arkansas;

(C) That melts scrap steel in an electric arc furnace to produce one (1) or more specialty steel products, including without limitation billets, structural shapes, reinforcing bars, coiled reinforcing bars, wire rods, and merchant bars;

(D) In which the taxpayer has a total investment in excess of two hundred million dollars ($200,000,000);

(E) That is undertaken by a taxpayer that has entered into an agreement with the State of Arkansas in which the taxpayer made a commitment to create at least one hundred fifty (150) net new direct positions and independent direct positions as those terms are defined in Acts 2013, No. 1084, § 8, with an average annual wage of at least seventy-five thousand dollars ($75,000);

(F) That provides a positive cost-benefit analysis to the state as determined by the Arkansas Economic Development Commission and the Office of Economic Analysis and Tax Research of the Department of Finance and Administration before an incentive agreement between the state and the taxpayer is executed;

(G) That is certified as having a closing date before July 1, 2018, by which the taxpayer has certified and the state has verified that necessary capital acquisition and borrowing for the qualified steel specialty products manufacturing facility has occurred to:

(i) Secure a site;

(ii) Obtain engineering services;

(iii) Purchase equipment; and

(iv) Commence initial construction; and

(H) That is undertaken by a taxpayer that has elected by agreement with the State of Arkansas for the facility to be classified as a qualified steel specialty products manufacturing facility under this section.

SECTION 3. Arkansas Code § 26-51-506(c), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to add an additional subdivision to read as follows:

(3)(A) Up to eleven million dollars ($11,000,000) of credit against tax or an amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., whichever is less, issued to the taxpayer making the purchases of waste reduction, reuse, or recycling equipment under subdivision (c)(1) of this section may be claimed each tax year if the tax credits are allowed with respect to a qualified expansion project:

(i) Of a taxpayer that at the time of the agreement described in subdivision (b)(15)(D) of this section is a proprietorship, partnership, limited liability company, or other business organization treated as a proprietorship or partnership for tax purposes; and

(ii) That, as of the end of the taxable year in which such tax credits are first allowed, does not have a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder.

(B) Up to the following amounts of credit against tax or an amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., whichever is less, issued to the taxpayer making the purchases of waste reduction, reuse, or recycling equipment under subdivision (c)(1) of this section may be claimed each tax year if the tax credits are allowed with respect to a qualified steel specialty products manufacturing facility that is owned by a taxpayer that, at the time of the agreement described in subdivision (b)(16)(E) of this section is a proprietorship, partnership, limited liability company, or other business organization treated as a proprietorship or partnership for tax purposes, and that, as of the end of the taxable year in which such tax credits are first allowed, does not have a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder:

(i) For a total investment in the qualified steel

specialty products manufacturing facility of at least two hundred million dollars ($200,000,000) but less than two hundred seventy-five million dollars ($275,000,000), four million dollars ($4,000,000);

(ii) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred seventy-five million dollars ($275,000,000) but less than three hundred fifty million dollars ($350,000,000), five million dollars ($5,000,000); and

(iii) For a total investment in the qualified steel specialty products manufacturing facility of at least three hundred fifty million dollars ($350,000,000), six million five hundred thousand dollars ($6,500,000).

(C) Any unused tax credit that cannot be claimed in a tax year by operation of subdivision (c)(3)(A) of this section or subdivision (c)(3)(B) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(3)(A) of this section or subdivision (c)(3)(B) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the taxpayer to apply the unused tax credit to future tax liability.

(D)(i) If tax credits are allowed under this section with respect to a qualified expansion project or a qualified steel specialty products manufacturing facility of a taxpayer that, at the time of the agreement described in subdivision (b)(15)(D) of this section for a qualified expansion project or subdivision (b)(16)(E) of this section for a qualified specialty steel products manufacturing facility, is a proprietorship, partnership, limited liability company or other business organization treated as a proprietorship or partnership for tax purposes, and any portion of the tax credits under this section would be apportioned to a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder of the taxpayer, the public retirement system shall have the possession and control of all tax credits, including any such tax credits otherwise apportioned to the other proprietors, partners, members, shareholders, or beneficiaries allowed under this section.

(ii) The possession and control of the tax credits by the public retirement system under this subdivision (c)(3)(D) shall be confirmed in writing by a legal opinion issued by the Department of Finance

and Administration under the rules promulgated by the Department of Finance and Administration.

(iii)(a) The public retirement system shall sell or transfer for value the tax credits allowed under this section to the State of Arkansas for eighty percent (80%) of the face value, in lieu of the right of a proprietor, partner, member, shareholder, or beneficiary of the qualified expansion project or the qualified steel specialty products manufacturing facility to claim the tax credits as allowed pursuant to applicable state law.

(b) Subject to the total recycling tax credit certification for a qualified expansion project, the maximum amount of tax credits allowed under the agreement between the taxpayer and the state, and the annual transfer by the Arkansas Economic Development Commission as agreed by the state and the taxpayer, no more than eleven million dollars ($11,000,000) of the tax credits in possession and control of the public retirement system with respect to a qualified expansion project under subdivision (c)(3)(D)(i) of this section may be sold or transferred each year.

(c) No more than the following amounts of the tax credits in possession and control of the public retirement system with respect to a qualified expansion project pursuant to subdivision (c)(3)(D)(i) of this section may be sold or transferred each year:

(1) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred million dollars ($200,000,000) but less than two hundred seventy-five million dollars ($275,000,000), four million dollars ($4,000,000);

(2) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred seventy-five million dollars ($275,000,000) but less than three hundred fifty million dollars ($350,000,000), five million dollars ($5,000,000); and

(3) For a total investment in the qualified steel specialty products manufacturing facility of at least three hundred fifty million dollars ($350,000,000), six million five hundred thousand dollars ($6,500,000).

(iv) Any unused tax credit that cannot be sold or

transferred in a tax year by the operation of subdivision (c)(3)(D)(iii) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(3)(D)(iii) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the public retirement system to sell or transfer all unused tax credits in future years.

(v) Beginning July 1, 2020, by July 15 of each year, the public retirement system with possession and control of the tax credits under this subdivision (c)(3)(D) shall provide notice to the Department of Finance and Administration of the amount of tax credits, including tax credits expected to receive certification during the fiscal year by the Arkansas Department of Environmental Quality, subject to the limitations in subdivision (c)(3)(D)(iii) of this section, to be sold or transferred for value.

(vi) The State of Arkansas shall pay the purchase price equal to eighty percent (80%) of the face value of all of the tax credits included in the notice required in subdivision (c)(3)(D)(v) of this section on or before June 30 of the calendar year following the calendar year in which the notice was provided for all tax credits certified by the Arkansas Department of Environmental Quality by June 30 of the calendar year following the calendar year in which the notice was provided by warrant from the Economic Development Incentive Fund funded by a transfer from general revenue.

(vii)(a) Tax credits under this section sold or transferred for value to the State of Arkansas are extinguished upon payment of the purchase price as if claimed against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.

(b)(1) In the event the State of Arkansas fails to timely pay the purchase price, as required in subdivision (c)(3)(D)(vi) of this section, for the tax credits included in the notice required in subdivision (c)(3)(D)(v) of this section, the public retirement system may, before the end of the taxable year following the taxable year in which a failure to pay occurs, sell or transfer for value such tax credits to one (1) or more persons. Such person or persons may claim such tax credits in accordance with applicable law, provided however, any tax credits sold or

transferred for value to such person or persons under this subdivision (c)(3)(D)(vii)(b) shall not expire before the later of the end of:

(A) The carry-forward period for such tax credits under applicable law; or

(B) The third taxable year following the year in which such tax credits were sold or transferred for value pursuant to this section.

(2) The sale or transfer of tax credits under this subdivision (c)(3)(D)(vii)(b) shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration under the rules promulgated by the Department of Finance and Administration.

(E) An expansion project or a manufacturing facility that does not meet the requirements to be a qualified expansion project or a qualified steel specialty products manufacturing facility is not subject to this subdivision (c)(3) and is eligible to receive the tax credits otherwise provided in this section and § 26-51-1215.

(F)(i)(a) A tax credit under this subdivision (c)(3) shall not be authorized without:

(1) A cost-benefit analysis, including an analysis of any other incentives offered by the State of Arkansas with request to the project subject to the tax credit, as certified by the Executive Director of the Arkansas Economic Development Commission in consultation with the Chief Fiscal Officer of the State; and

(2) The performance and claw back agreement required under subdivision (c)(3)(F)(ii) of this section.

(b) The total amount of tax credits that may be authorized under this subdivision (c)(3) shall not exceed the amount determined by the cost-benefit analysis required under this section.

(ii)(a)(1) A tax credit authorized under this subdivision (c)(3) shall be subject to a performance and claw back agreement between the taxpayer and the Arkansas Economic Development Commission.

(2)(A) The performance and claw back agreement required under this subdivision (c)(3)(F)(ii) shall be subject to the approval of the Chief Fiscal Officer of the State to ensure that the cost-benefit analysis required under this section is met and maintained for a test period of the longer of the life of the tax credits or fourteen (14)

years.

(B) However, the test period described in this subdivision (c)(3)(F)(ii) shall not be longer than fifteen (15) years.

(b) The performance and claw back agreement required under this subdivision (c)(3)(F)(ii) shall include without limitation the:

(1) Capital investment for the project;

(2) New full-time direct positions and independent direct positions as those terms are defined in Acts 2013, No. 1084, § 8, created by the project;

(3) Annual salary requirements for the new full-time direct positions and independent direct positions as those terms are defined in Acts 2013, No. 1084, § 8, created by the project;

(4) Timeline for fulfilling the investment of job creation targets stated in the performance and claw back agreement; and

(5) Conditions for the claw back provisions, which shall be triggered if, during the test period stated in this subdivision (c)(3)(F)(ii), the taxpayer:

(A) Does not meet the required targets of the project related to capital investment, job creation, timeline, or annual salary amounts; or

(B) Fails to maintain a positive cost-benefit analysis.

SECTION 4. Arkansas Code § 19-6-301(181), concerning the enumeration of special revenues, is amended to read as follows:

(181) Arkansas Economic Development Incentive Act of 1993 transfers from general revenues for financial incentive plans, § 15-4-1607, ~~and~~ § 26-51-506(c)(2)(B)(vii), and § 26-51-506(c)(3)(D)(vi);

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the tax credit allocations for waste reduction, reuse, or recycling equipment should be modified to ensure that the expansion of major projects utilizing the tax *credit does not endanger the ability of the state to provide essential services or to provide the full value of the tax credits earned by the applicable businesses; that further investment for the tax credit allocations for waste reduction, reuse, or recycling equipment will increase the number of applicable tax credits in existence; and that the state must maintain a balanced budget necessary to deliver essential services to its citizens; and that this act is immediately necessary because, without this change, the ability of the State of Arkansas to ensure the delivery of essential services to citizens will be imperiled and could endanger the economic health of the 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:*

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

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

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

/s/D. Wallace