Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas *As Engrossed: H2/18/99 S3/19/99*
82nd General Assembly **Act 1130 of 1999**
Regular Session, 1999 HOUSE BILL 1556

A Bill

By: Representatives Ferguson, Dees, Angel, G. Jeffress, Wood, Laverty, House, Willis, Davis, White, Eason, Shoffner, Hathorn, Gullett, King, Glover, French
By: Senators Mahony, *K. Smith, B. Lewellen, Everett, Scott, Wilson*

For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS ENTERPRISE ZONE ACT OF 1993 TO REDEFINE THE SCOPE OF ELIGIBLE BUSINESSES WHICH MAY QUALIFY FOR BENEFITS UNDER THIS ACT; TO SPECIFY TIME LIMITATIONS FOR FILING CLAIMS FOR SALES TAX REFUNDS; TO CLARIFY THE DEFINITION OF 'NET NEW FULL-TIME PERMANENT EMPLOYEE'; TO CLARIFY THE DEFINITION OF 'AVERAGE HOURLY WAGE'; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

Subtitle

"TO AMEND THE ARKANSAS ENTERPRISE ZONE ACT OF 1993."

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

SECTION 1. Arkansas Code 15-4-1701 is amended to read as follows:

"15-4-1701. Title. ~~[Expires June 30, 1999.]~~

This subchapter may be referred to and cited as the 'Arkansas Enterprise Zone Act of 1993'".

SECTION 2. Arkansas Code 15-4-1702 is amended to read as follows:

"15-4-1702. Definitions. ~~[Expires June 30, 2001.]~~

As hereinafter used in this subchapter:

(1) 'Average hourly wage' means the average wage of the net new <u>full-time</u> permanent employees based on payroll for the most recent quarter reported

to the Arkansas Employment Security Department, and is computed by using the total of the net new full-time permanent employees' reported taxable earnings, including overtime pay, divided by the number of weeks worked, divided by the average hours worked per week per net new full-time permanent employee. Twenty-five percent (25%) of the net new full-time permanent employees' annual bonus may be added to the reported taxable earnings; ~~and~~

~~(2) 'Commission' means the Arkansas Economic Development Commission;~~

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

~~(4)~~(3) 'Department' means the Department of Economic Development;

~~(5)~~(4) 'Director' is the Director of the Department of Economic Development;

~~(6)~~(5) 'Governing authority' means the quorum court of a county or the governing body of a municipality;

~~(7)(A)~~(6)(A)(i) 'Net new full-time permanent employee' ~~means a new permanent employee which could not have been claimed for tax credits or incentives under this subchapter during the preceding taxable year~~ means a position or job which was created pursuant to the signed financial incentive plan and which is filled by one (1) of more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

~~(B) The number of net new permanent employees shall be equal to the total number of new permanent employees for the current year minus the total number of new permanent employees for the previous tax year; and~~

(ii) The position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week;

(B) Provided, however, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(C) Employees could not have been claimed for tax credits or incentives under this subchapter during the preceding taxable year;

~~(B)~~(D) The number of net new full-time permanent employees shall be equal to the total number of new full-time permanent employees for the current year minus the total number of new full-time permanent employees for the previous tax year; ~~and~~

~~(8)(A)(i) 'New permanent employee' means a position or job which was created as a result of a project and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.~~

~~(ii) The position or job held by such employee or employees must have had someone working in it for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.~~

~~(B) Provided, however, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;~~

(7) 'Existing employees' means those employees hired by the business prior to the date of the financial incentive plan. Existing employees may be considered 'net new full-time permanent employees' only if:

(A) The position or job filled by the existing employee was created as a result of the project; and

(B) The position vacated by the existing employee was either filled by a subsequent employee or no subsequent employee will be hired because the business no longer conducts the particular business activity requiring such classification;

(8) 'Financial incentive plan' means an agreement entered into by a business and the department to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas;

(9) 'Office sector business' means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that *act as production centers* *are performed.* ~~'Office sector business' is also referred to as 'back office industry'~~;

(10) 'Program' means the Arkansas Enterprise Zone Act of 1993;

(11) 'Project' means:

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

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

~~(C)~~(iii) ~~The~~ Modernization through the replacement of production or processing equipment or support infrastructure, or both;

(B) Expenditures for routine repair and maintenance that do not result in new construction or expansion are ineligible for benefits under this act.

(C) In order to receive credit for project costs, such costs must be incurred within four (4) years from the date the endorsement resolution was received by the department;

(12) ‘Regional headquarters’ means the center of operations for a specific geographical area~~.~~;

(13) ‘~~Research, development, testing business’ means a business engaged in research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology and comes within Standard Industrial Classification number 8731.~~ ‘Routine maintenance’ is the replacement of existing machinery parts with like parts;

~~(14) ‘Steel service centers’ means a business that comes within Standard Industrial Classification number 5051.~~

~~(15)~~(14) ‘Trucking sector business’ means a business that ~~comes~~ is classified within the Federal Standard Industrial Classification Code number 4231~~.~~;

(15) The term ‘distribution center’ shall mean a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets;

(16) ‘Modernization’ means to increase efficiency or to increase productivity of the business through investment in machinery and/or equipment and shall not include costs for routine maintenance.”

SECTION 3. Arkansas Code 15-4-1703 is amended to read as follows:

“15-4-1703. Powers and duties of department. ~~[Expires June 30, 2001.]~~

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

(1) To monitor the implementation and operation of this subchapter and

conduct a continuing evaluation of the progress made;

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

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

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

(5) To submit an annual written report, evaluating the effectiveness of the program and presenting any suggestions for improving the program, to be submitted to the Governor no later than March 1 of each year; and

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

SECTION 4. Arkansas Code 15-4-1704 is amended to read as follows:

"15-4-1704. Refund of sales and use tax - Tax credit. ~~[Expires June 30, 2001.]~~

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

(b)~~(1)~~ A sales and use tax refund as provided for in subsection (a) of this section shall be authorized, provided that~~:~~ <u>the business is classified as one of the following types of businesses:</u>

~~(A) The qualified business is an industry whose operations fit into Standard Industrial Classification numbers 20-39, 7375, 7376, 4231, 8731, 5051, continuously and throughout the project term, or a distribution center, corporate headquarters, regional headquarters, office sector business, trucking sector business, or a research, development, testing business, as defined in § 15-4-1702, and located within Arkansas;~~

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

(1) Manufacturers classified in Federal Standard Industrial Classification (SIC) codes 20-39, including semiconductor and microelectronic manufacturers, that create one (1) or more net new full-time permanent jobs.

(2) Computer businesses primarily engaged in providing computer programming services; the design and development of prepackaged software; businesses engaged in digital content production and digital preservation; computer processing and data preparation services; information retrieval services; computer and data processing consultants and developers. All businesses in this group must create twenty-five (25) or more net new full-time permanent jobs, derive at least sixty percent (60%) of their revenue from out of state sales and have no retail sales to the general public.

(3) Businesses primarily engaged in commercial physical and biological research as classified by SIC code 8731 that create one (1) or more net new full-time permanent jobs.

(4) Businesses primarily engaged in motion picture production which will create twenty-five (25) or more net new full-time permanent jobs. All businesses in this group must derive at least 60% of their revenue from out of state sales and have no retail sales to the general public.

(5) A distribution center, with no retail sales to the general public that creates twenty-five (25) or more net new full-time permanent jobs.

(6) An office sector business, with no retail sales to the general public that creates twenty-five (25) or more net new full-time permanent jobs.

(7) A corporate or regional headquarters with no retail sales to the general public, that creates twenty-five (25) or more net new full-time permanent jobs.

(8) A trucking/distribution terminal, as classified by SIC code 4231, with no retail sales to the general public, that creates twenty-five (25) or more net new full-time permanent jobs.

~~(C)~~(c) The ~~firm files~~ business shall file an endorsement resolution with the ~~commission and the~~ Arkansas Department of Economic Development and the Department of Finance and Administration. The endorsement resolution must be approved by the governing body of a municipality or county in whose jurisdiction the facility is located and must:

(i) Approve the specific entity's participation in the program; and

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

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

~~(3)(A) The term 'distribution center' shall mean a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets.~~

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

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

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

~~(4)~~(e) If the business does not continuously and throughout the project term meet the requirements of subdivisions (b)(1)-(8) of this section, then that business will automatically be disqualified from receiving any benefits under this section and will be required to repay any tax benefits already received under this subchapter plus penalty and interest as allowed by law.

(f) In the event that a business fails to notify the Department of Finance and Administration that the number of employees has fallen below the required number to continue to receive benefits under this act, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits. Interest shall also be due at the rate of ten percent (10%) per annum.

~~(5) For an office sector business to qualify for the benefits of this section, it must employ fifty (50) or more new permanent employees and~~

~~must not make retail sales to the general public.~~

~~(6) For a corporate headquarters to qualify for the benefits of this section, it must employ fifty (50) or more new permanent employees and must not make retail sales to the general public.~~

~~(7) For a trucking sector business to qualify for the benefits of this section, it must employ one hundred (100) or more new permanent employees and must not make retail sales to the general public.~~

~~(8)(A)~~(g)(1) The requisite number of net new full-time permanent employees must be employed by the ~~industry, distribution center, corporate headquarters, office sector business, trucking sector business, regional headquarters, or steel service center~~ business within twenty-four (24) months ~~of~~ following the date the financial incentive plan was signed. ~~endorsement resolution was adopted or passed by the governing body approving the business' participation in the program.~~

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

~~(i)~~(A) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired; or

~~(ii)~~(B) The project as originally planned will require more than twenty-four (24) months to complete; or

~~(iii)~~(C) A change in the business ownership or business structure due to a merger or acquisition.

~~(9) For a regional headquarters to qualify for the benefits of this section it must employ fifty (50) or more new permanent employees and must not make retail sales to the general public.~~

~~(10) For a steel service center to qualify for the benefits of this section it must employ fifty (50) or more new permanent employees and must not make retail sales to the general public.~~

~~(c)~~(h)(1) The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit equal to one hundred (100) times the average hourly wage paid, with a maximum of ~~two thousand dollars ($2,000)~~ three thousand dollars ($3,000) per net new full-time permanent employee of a business qualifying under subsection (b) of this section.

(2)(A) This tax credit shall be used for the taxable year in which the net new full-time permanent employee was hired.

(B) However, with respect to projects approved prior to March 25, 1997, if the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding four (4) years or until the credit is entirely used, whichever occurs first. For projects approved on or after March 25, 1997, the credit may be applied against income tax for the succeeding nine (9) years or until the credit is entirely used, whichever occurs first.

(3) The credit allowed under this section shall increase by a factor of ~~two (2)~~four (4) with a maximum credit of ~~two thousand dollars ($2,000)~~ six thousand dollars ($6,000) if the business is located in a county that had an unemployment rate equal to or in excess of ~~ten percent (10%) or in excess of three percent (3%)~~ one hundred fifty percent (150%) of the state's average unemployment rate for the preceding calendar year~~.~~ as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department.

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

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

(B) All of the net new full-time permanent employees are employed at the facility.

(2) In the event it is found that any business receiving the benefits contained in subsection ~~(c)~~(h) of this section has failed to comply with the conditions contained in this section, that business shall be disqualified from receiving any further benefits under the program and shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in subsection ~~(c)~~(h) of this section are disallowed~~, plus penalty and interest~~. Interest shall also be due at the rate of ten percent (10% per annum).

~~(e)~~(j) To be counted as a net new full-time permanent employee for the purpose of qualifying for the tax credits and incentives provided in this section, the employee in the position or job must have been an Arkansas taxpayer during the year in which the tax credits or incentives were earned.

~~(f) If the Department of Finance and Administration determines that a business is no longer qualified to participate in the program, it shall decertify the business. Any business so decertified shall not receive any benefits under the program.~~"

SECTION 5. Arkansas Code 15-4-1705 is amended to read as follows:

"15-4-1705. Projects under Manufacturer's Investment Sales and Use Tax Credit Act of 1985. ~~[Expires June 30, 2001.]~~

(a)(1) No person or entity may file for benefits under this subchapter if an application for benefits has been filed and approved under the Manufacturer's Investment Sales and Use Tax Credit Act of 1985, § 26-52-701 et seq., for the same project.

(2) Provided, however, that an application for benefits under § 26-52-701 et seq. may be withdrawn if no tax credits have been taken under that subchapter.

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

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

SECTION 6. Arkansas Code 15-4-1706, 15-4-1707, and 15-4-1708 are repealed.

~~15-4-1706. Transition period. [Expires June 30, 2001.]~~

~~(a)(1) On and after July 1, 1993, until June 30, 1995, a business beginning a new project may elect to qualify the project for the benefits of the Arkansas Enterprise Zone Act of 1989, § 15-4-801 et seq., or for the~~

~~benefits of this subchapter. Whichever subchapter the business elects, the project must meet the requirements of the subchapter chosen.~~

~~(2) When a business seeks the approval of a zone project, the business must specify whether it seeks the benefits of this subchapter or the Arkansas Enterprise Zone Act of 1989, § 15-4-801 et seq. A business can only receive the benefits of one (1) subchapter for a project, even if the project would qualify under both subchapters.~~

~~(3) After June 30, 1995, businesses will no longer be able to elect between the subchapters. All projects must qualify under this subchapter.~~

~~(b)(1) For businesses which have a project which qualified under the Enterprise Zone Act of 1989, § 15-4-801 et seq., the benefits allowed for that project shall be determined by the Enterprise Zone Act of 1989, § 15-4-801 et seq.~~

~~(2) For businesses which have a project which qualified under this subchapter, the benefits allowed for that project shall be determined by this subchapter.~~

~~15-4-1707. Effective dates. [Expires June 30, 2001.]~~

~~(a) The income tax provisions of this subchapter shall be in full force and effect for all taxable years beginning on and after January 1, 1993.~~

~~(b) The sales tax provisions of this subchapter shall be in full force and effect on July 1, 1993.~~

~~15-4-1708. Expiration. [Expires June 30, 2001.]~~

~~The provisions of this subchapter will expire on June 30, 2001.~~

SECTION 7. The additional benefits provided by this act shall only apply to those financial incentive plans signed after the effective date of this act.

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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

SECTION 10. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 11. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this Act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Ferguson

APPROVED: 4/6/1999