Act 1596 of the Regular Session

State of Arkansas *As Engrossed: H3/12/07 H3/15/07 H3/28/07*
86th General Assembly
A Bill
Regular Session, 2007 HOUSE BILL 2521

By: Representative Dunn

For An Act To Be Entitled

AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT TO PROVIDE FOR EXISTING EMPLOYEES TO BE CLASSIFIED AS NEW EMPLOYEES; TO ALLOW FOR FLEXIBILITY IN THE USE OF EARNED TAX CREDITS; TO ALLOW TECHNOLOGY BASED ENTERPRISES TO QUALIFY FOR PAYROLL REBATES AND INVESTMENT TAX CREDITS; TO REVISE THE RESEARCH AND DEVELOPMENT TAX CREDIT FOR EXISTING BUSINESSES; TO MAKE TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT TO ADAPT TO A CHANGING ECONOMY.

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

"SECTION 1. Arkansas Code § 15-4-2703 is amended to read as follows:

15-4-2703. Definitions.

As used in this subchapter:

(1) "Applied research" means any activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue;

(2) "Average hourly wage" means the weekly earnings, excluding overtime, bonuses, and company-paid benefits, of all new full-time permanent

employees hired after the date of the signed financial incentive agreement, divided by the number of new full-time permanent employees, divided by forty (40);

(3) "Basic research" means any original investigation for the advancement of scientific or technological knowledge;

(4) "Contractual employee" means an employee who:

(A) May be included in the payroll calculations of a business qualifying for benefits under this subchapter and is under the direct supervision of the business receiving benefits under this subchapter, but is an employee of a business other than the one receiving benefits under this subchapter;

(B) Otherwise meets the requirements of a new full-time permanent employee of the business receiving benefits under this subchapter; and

(C) Receives a benefits package comparable to direct employees of the business receiving benefits under this subchapter;

(5)(A) "Corporate headquarters" means the facility or portion of a facility where corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or a national basis.

(B) A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;

(6)(A) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and countywide, as calculated by the Department of Workforce Services in its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40).

(B) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement;

(7) "Department" means the Department of Economic Development;

(8) "Director" means the Director of the Department of Economic Development;

(9) "Distribution center" means a facility for the reception, storage, and shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets~~;~~ if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(B) Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues of the product owner are from out-of-state customers; or

(C) Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;

(10) "Eligible businesses" means nonretail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter and fall into one (1) or more of the following categories:

(A) Manufacturers classified in sectors 31-33 in the North American Industry Classification System, as in effect January 1, 2003;

(B)(i) Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(C)(i) Businesses primarily engaged in motion picture productions.

(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

(D) Distribution centers or intermodal facilities;

(E) Office sector businesses;

(F) National or regional corporate headquarters, North American Industry Classification System Code 551114, as in effect January 1, 2005;

(G) Firms primarily engaged in commercial, physical, and biological research as classified in the North American Industry Classification System Code 541710, as in effect January 1, 2005;

(H)(i) Scientific and technical services businesses.

(ii)(a) All businesses in this group shall derive at

least seventy-five percent (75%) of their sales revenue from out of state.

The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(2) The average hourly wage threshold determined at the signing date of the financial incentive agreement shall be the threshold for the term of the agreement; and

(I) The director may classify a nonretail business as an eligible business if the following conditions exist:

(i) The business receives at least seventy-five percent (75%) of its sales revenue from out of state; and

(ii) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average hourly *wage, whichever is less;*

(11) "Equity investment" means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency's award of a Small Business Innovative Research grant or a Small Business Technology Transfer grant;

(12)(A) "Existing employees" means those employees hired by the business before the date the financial incentive agreement was signed.

(B) Existing employees may be considered new full-time permanent employees only if:

(i) The position or job filled by the existing employee was created in accordance with the signed financial incentive agreement; and

(ii) 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 that classification~~;~~.

(C) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that a significant impairment of Arkansas job opportunities for existing employees will otherwise occur, they may jointly authorize the counting of existing employees as new full-time permanent employees;

(13) "Facility" means a single physical location at which the eligible business is conducting its operations;

(14) "Financial incentive agreement" means an agreement entered into by an eligible business and the department to provide the business an incentive to locate a new business or to expand an existing business in Arkansas;

(15) "Fund" means the Economic Development Incentive Fund;

(16) "Governing authority" means the quorum court of a county or the governing body of a municipality;

(17)(A)(i) "In-house research" means applied research supported by the business through the purchase of supplies for research activities and payment of wages and usual fringe benefits for employees of the business who conduct research activities in research facilities:

(a) Dedicated to the conduct of research activities;

(b) Operated by the business; and

(c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice or to advance a concept or idea or improvement thereon to the point of practical application.

(ii) "In-house research" includes experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas.

(B) "In-house research" does not include tests or inspections of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;

(18) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;

(19) "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight, commerce, or passengers;

(20) "Investment threshold" means the minimum amount of investment in project costs that must be incurred in order to qualify for

eligibility;

(21) "Invests" or "investment" means money expended by or on behalf of an approved eligible business that seeks to begin or expand operations in Arkansas, and without this infusion of capital, the location or expansion may not take place;

(22) "Lease" means a right to possession of real property for a specific term in return for consideration, as determined in a lease agreement by both parties;

(23)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in machinery or equipment, or both.

(B) "Modernization" does not include costs for routine maintenance or the installation of equipment that does not improve efficiency or productivity, except for expenditures for pollution control equipment mandated by state or federal laws or regulations;

(24) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

(25)(A)(i) "New full-time permanent employee" means a position or job that was created pursuant to the signed financial incentive agreement and that is filled by one (1) or more employees or contractual employees who:

(a) Were Arkansas taxpayers during the year in which the tax credits or incentives were earned;

(b) Work at the facility identified in the financial incentive agreement; and

(c) Are not existing employees, except as allowed under subdivision (12) of this section.

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

(B) However, to qualify under this subchapter, a contractual employee shall be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(26) "Nonretail business" means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;

(27)(A) "Office sector business" means business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions.

(B) All businesses in this group must be nonretail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;

(28) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full-time permanent employees hired after the date of the signed financial incentive agreement;

(29)(A) "Person" means an individual, trust, estate, fiduciary, firm, partnership, limited liability company, or corporation.

(B) "Person" includes:

(i) The directors, officers, agents, and employees of any person;

(ii) Beneficiaries, members, managers, and partners; and

(iii) Any county or municipal subdivision of the state;

(30) "Preconstruction costs" means the cost of eligible items incurred before the start of construction, including:

(A) Project planning costs;

(B) Architectural and engineering fees;

(C) Right-of-way purchases;

(D) Utility extensions;

(E) Site preparations;

(F) Purchase of mineral rights;

(G) Building demolition;

(H) Builders risk insurance;

(I) Capitalized start-up costs;

(J) Deposits and process payments on eligible machinery and equipment; and

(K) Other costs necessary to prepare for the start of construction;

(31)(A) "Project" means costs associated with the:

(i) Construction of a new plant or facility including, but not limited to, land, building, production equipment, or support infrastructure;

(ii) Expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(B) "Project" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

(iv) The purchase or acquisition of an existing business unless:

(a) There is sufficient documentation that the existing business was closed; and

(b) The purchase of the existing business will result in the retention of the jobs that would have been lost due to the closure.

(C) Eligible project costs must be incurred within four (4) years from the date a financial incentive agreement was signed by the department;

(32) "Project plan" means a plan:

(A) Submitted to the department containing such information as may be required by the director to determine eligibility for benefits; and

(B) That if approved is a supplement to the financial incentive agreement;

(33) "Qualified business" means an eligible business that:

(A) Has met the qualifications for one (1) or more economic development incentives authorized by this subchapter; and

(B) Has signed a financial incentive agreement with the department or is involved in a research and development program administered

by the Arkansas Science and Technology Authority;

(34) "Qualified research expenditures" means the sum of any amounts which are paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules and regulations promulgated by the department;

(35) "Region" or "regional" means a geographic area comprising two (2) or more states, including this state;

(36) "Regional corporate headquarters" means a site that:

(A) Is the sole corporate headquarters within the region; and

(B) Handles headquarters-related functions on a regional basis;

(37) "Research and development programs of the Arkansas Science and Technology Authority" means statutory programs operated by the Arkansas Science and Technology Authority under § 15-3-101 et seq.;

(38) "Research area of strategic value" means research in fields having long-term economic or commercial value to the state and that have been identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(39) "Scientific and technical services business" means a business:

(A) Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

(iii) Scientific research and development in the physical, biological, and engineering sciences;

(B) Selling expertise;

(C) Having production processes that are almost wholly dependent on worker skills;

(D) Deriving at least seventy-five percent (75%) of its sales revenue from out of state; and

(E) Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;

(40) "Start of construction" means any activity that causes a physical change to the building or property, or both, identified as the site of the approved project, but excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site;

(41) "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved from time to time by the Board of Directors of the Arkansas Science and Technology Authority;

(42) "Support infrastructure" means physical assets necessary for the business to operate, including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and communication infrastructure;

(43)(A) "Targeted businesses" means a grouping of growing business sectors, not to exceed six (6), that include the following:

(i) Advanced materials and manufacturing systems;

(ii) Agriculture, food, and environmental sciences;

(iii) Biotechnology, bioengineering, and life sciences;

(iv) Information technology;

(v) Transportation logistics; and

(vi) Bio-based products.

(B) In order to receive benefits as a targeted business, the business must:

(i) Have been operating in the state for less than five (5) years;

(ii) Pay not less than one hundred fifty percent (150%) of the lesser of the county or state average <u>hourly</u> wage; and

(iii) Have been selected to receive special benefits; and

(44) "Tiers" means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of benefits.

SECTION 2. Arkansas Code § 15-4-2706 is amended to read as follows:

15-4-2706. Investment tax incentives.

(a) There are established investment tax incentives to:

(1) Encourage capital investment for the long-term viability of businesses in the state; and

(2) Create new jobs.

(b)(1) The award of this incentive shall be at the discretion of the Director of the Department of Economic Development.

(2) If offered, an application for an income tax credit under this section shall be submitted to the Department of Economic Development.

(3) Eligibility for this incentive is dependent upon the tier in which the project is located, as follows:

(A) For tier 1 counties, the business shall invest five million dollars ($5,000,000) or more and have an annual payroll for new full-time permanent employees in excess of two million dollars ($2,000,000);

(B) For tier 2 counties, the business shall invest three million seven hundred fifty thousand dollars ($3,750,000) or more and have an annual payroll for new full-time permanent employees in excess of one million five hundred thousand dollars ($1,500,000);

(C) For tier 3 counties, the business shall invest three million dollars ($3,000,000) or more and have an annual payroll for new full-time permanent employees in excess of one million two hundred thousand dollars ($1,200,000); or

(D) For tier 4 counties, the business shall invest two million dollars ($2,000,000) or more and have an annual payroll for new full-time permanent employees in excess of eight hundred thousand dollars ($800,000).

(4) Upon approval by the department, the director shall transmit an approved financial incentive agreement to the approved company and the Revenue Division of the Department of Finance and Administration.

(5) The qualified business shall reach the investment threshold within four (4) years from the date of the signing of the financial incentive agreement, except for lease payments authorized by subdivision (b)(6)(D) of this section or subdivision (c)(6) of this section.

(6)(A)(i) After receiving an approved financial incentive agreement from the Department of Economic Development, the approved company shall certify eligible project costs annually at the end of each calendar year for the term of the agreement to the Revenue Division.

(ii) Upon verification of eligible project costs,

the Revenue Division shall authorize an income tax credit of ten percent (10%) based on the total investment in land, buildings, equipment, and costs related to licensing and protecting intellectual property.

(B) The amount of income tax credit taken during any tax year shall not exceed fifty percent (50%) of the business's income tax liability resulting from the project or facility.

(C) Unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned.

(D) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

(7) Technology-based enterprises, as defined by § 14-164-203(12), may earn, at the discretion of the Director of the Department of Economic Development, an income tax credit or sales and use tax credit, based on new investment, provided that the technology-based enterprise:

(A) Creates a new payroll of at least two hundred fifty thousand dollars ($250,000); and

(B) Pays wages that are at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less.

(8)(A) The income tax credit or sales and use tax credit that may be earned by a technology-based enterprise shall be based on the level of investment as follows:

(i) The income tax credit or sales and use tax credit will be equal to two percent (2%) of the investment for an investment that is between two hundred fifty thousand dollars ($250,000) and five hundred thousand dollars ($500,000);

(ii) The income tax credit or sales and use tax credit will be equal to four percent (4%) of the investment for that part of the investment that is over five hundred thousand dollars ($500,000) and less than one million dollars ($1,000,000);

(iii) The income tax credit or sales and use tax credit will be equal to six percent (6%) of the investment for that part of the investment that is over one million dollars ($1,000,000) and less than two million dollars ($2,000,000); and

(iv) The income tax credit or sales and use tax

credit will be equal to eight percent (8%) of the investment for that part of the investment that is over two million dollars ($2,000,000).

(B) The percentage of the investment used to determine the amount of credit earned shall be established based upon the project cost estimate at the time of signing the financial incentive agreement.

(9) All investments by a technology-based enterprise must be made within four (4) years of the date of the signed financial incentive agreement.

(10) Prior to execution of the financial incentive agreement, the approved company shall elect to receive the tax credits as either:

(i) A sales and use tax credit; or

(ii) An income tax credit.

(11)(A) The income tax credit or sales and use tax credit earned by a technology-based enterprise may offset income tax liabilities or sales and use tax liabilities as follows:

(i) A technology-based enterprise that pays at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less, may offset fifty percent (50%) of its income tax liability or sales and use tax liability;

(ii) A technology-based enterprise that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its income tax liability or sales and use tax liability; and

(iii) A technology-based enterprise that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its income tax liability or sales and use tax liability.

(B) The average hourly wage proposed to be paid by the approved company as provided in the signed financial incentive agreement shall be the average hourly wage to determine the percentage of credit that may be used against the approved company's tax liability for the term of the financial incentive agreement.

(12) After receiving an approved financial incentive agreement from the Department of Economic Development, the approved company shall certify eligible project costs annually at the end of each tax year for the term of the financial incentive agreement to the Revenue Division of the

Department of Finance and Administration.

(13) Unused income tax credits or sales and use tax credits may be carried forward for a period not to exceed nine (9) years after the year in which the credit was first earned.

(c)(1)(A) An application for a retention tax credit under this subsection shall be submitted to the Department of Economic Development.

(B)(i) The application shall be submitted to the Department of Economic Development before incurring any project costs.

(ii) With the exception of preconstruction costs, only those costs incurred after the Department of Economic Development's approval are eligible for the tax credit.

(2) The tax credit against the qualified business' sales and use tax liability is available only to Arkansas businesses that:

(A) Have been in continuous operation in the state for at least two (2) years;

(B) Invest a minimum of five million dollars ($5,000,000) in a project, including land, buildings, and equipment used in the construction, expansion, or modernization; and

(C) Hold a direct-pay sales and use tax permit from the Revenue Division before submitting an application for benefits.

(3)(A) If allowed, the credit shall be a percentage of the eligible project costs.

(B) The amount of the credit shall be one-half percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the Department of Economic Development.

(C) In any one (1) year following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct pay sales and use tax liability of the business for taxable purchases.

(D) Unused credits may be carried forward for a period of up to five (5) years beyond the year in which the credit was first earned.

(4)(A) Upon determination by the Director of the Department of Economic Development that the project qualifies for credit under this subsection, the Director of the Department of Economic Development shall certify to the Director of the Department of Finance and Administration that the project qualifies and shall transmit with his or her certification the

documents or copies of the documents upon which the certification was based.

(B) The Director of the Department of Finance and Administration shall provide forms to the qualified business on which to claim the credit.

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified business shall certify on the form provided by the Director of the Department of Finance and Administration the amount of expenditures on the project during the preceding calendar year.

(D) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

(E) The credit against the qualified business' sales and use tax liability shall be a percentage of the eligible project costs equal to one-half percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement was signed by the Department of Economic Development.

(5) If a business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2705, the financial incentive agreement under § 15-4-2705 must be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

(6) A qualified business that enters into a lease for a building or equipment for a period in excess of five (5) years may count the lease payments for five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

(d)(1)(A) An application for a state and local sales and use tax refund for a new and expanding eligible business shall be filed with the department contingent upon the approval of an endorsement resolution from the governing authority of a municipality or county, or both, in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)(a) Specify that the Department of Finance and

Administration is authorized to refund local sales taxes to the qualified business.

(b) A municipality or county, or both, may authorize the refund of any sales or use tax levied by the municipality or county but may not authorize the refund of any sales or use tax not levied by the municipality or county in which the qualified business is located.

(C) Any eligible business that applies for a sales and use tax refund under this subsection shall invest in excess of one hundred thousand dollars ($100,000) in order to qualify for the sales and use tax refund.

(2)(A)(i) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund created in § 19-5-1227 and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration.

(ii) The local sales and use tax may be refunded only from the municipality or county, or both, in which the qualified business is located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacements of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(3) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the Department of Economic Development.

(4) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(5)(A) In order to be eligible for the benefits under this subsection, a business shall sign a job creation financial incentive agreement under § 15-4-2705, § 15-4-2707, or subsection (b) of this section and comply with the eligibility requirements of the incentive agreements.

(B) The financial incentive agreement under § 15-4-2705, § 15-4-2707, or subsection (b) of this section shall be signed within twenty-four (24) months after signing the financial incentive agreement under this subsection.

(e)(1) A new targeted business shall be eligible for a refund of state and local sales and use taxes for qualified expenditures identified in the project plan if:

(A) The annual payroll of the business for Arkansas taxpayers is greater than one hundred thousand dollars ($100,000); and

(B) The business shows proof of an equity investment of at least four hundred thousand dollars ($400,000).

(2)(A) An application for the targeted business state and local sales and use tax refund program for a new targeted business shall be filed with the Department of Economic Development contingent upon the approval of an endorsement resolution from the governing authority of a municipality or county, or both, in whose jurisdiction the business will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii)(a) Specify that the Department of Finance and Administration is authorized to refund local sales and use taxes to the targeted business.

(b) A municipality or county, or both, can authorize the refund of any sales tax levied by the municipality or county but cannot authorize the refund of any sales or use tax not levied by the municipality or county in which the targeted business is located.

(3) After the Director of the Department of Economic Development has determined that the project is eligible for the sales and use tax refund, this determination accompanied by the financial incentive agreement and any other pertinent documentation shall be forwarded to the Director of the Department of Finance and Administration.

(4)(A)(i) A sales and use tax refund of state and local sales

and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund as authorized by § 26-57-1002(d)(1)(A)(ii)(a) and the Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building shall be authorized by the Director of the Department of Finance and Administration.

(ii) The local sales and use tax may be refunded only from the municipality or county, or both, in which the qualified business is located.

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacement items under this subsection unless the items are necessary for the implementation or completion of the project.

(5) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the Department of Economic Development.

(6) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years after the date of the qualified purchase or purchases.

(7) If a targeted business plans to apply for benefits under this subsection and also plans to apply for benefits under § 15-4-2709, the financial incentive agreement under § 15-4-2709 must be signed within twenty-four (24) months of signing the financial incentive agreement under this subsection and comply with the eligibility requirements of the agreements.

SECTION 3. Arkansas Code § 15-4-2707 is amended to read as follows:

15-4-2707. Payroll rebate.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Economic Development Incentive Fund" of the Department of Economic Development.

(b) The fund shall consist of revenues designated for this fund by the Revenue Division of the Department of Finance and Administration pursuant to agreements entered into by the Department of Economic Development with eligible businesses.

(c) After the Department of Finance and Administration has received the certification of the payrolls of the businesses that have entered into financial incentive agreements with the Department of Economic Development for the payroll rebate authorized by this section, the Department of Finance and Administration shall transfer the appropriate amount of money designated by the financial incentive agreements out of general revenues into a special account designated as special revenue for the fund.

(d)(1) The award of this incentive is at the discretion of the Director of the Department of Economic Development and may be offered for a period of up to ten (10) years.

(2) Benefits are conditioned upon the hiring of new full-time permanent employees with an annual payroll threshold of two million dollars ($2,000,000) and certifying to the Department of Finance and Administration that the requisite payroll threshold has been met.

(A) The eligible business receiving benefits under this subsection (d) must certify annually to the Department of Finance and Administration that the requisite payroll threshold has been met.

(B) Failure to certify payroll thresholds annually may result in:

(i) A denial in payment of benefits; or

(ii) A delay in the payment of benefits.

(3) Payments are subject to the following conditions:

(A) For tier 1 counties, the benefit is three and nine-tenths percent (3.9%) of the annual payroll of new full-time permanent employees;

(B) For tier 2 counties, the benefit is four and one-quarter percent (4.25%) of the annual payroll of new full-time permanent employees;

(C) For tier 3 counties, the benefit is four and one-half percent (4.5%) of the annual payroll of new full-time permanent employees;

(D) For tier 4 counties, the benefit is five percent (5%) of the annual payroll of new full-time permanent employees; and

(E) The director may authorize benefits to a prospective eligible business up to five percent (5%) of the payroll of new full-time permanent employees if the following conditions exist:

(i) The prospective eligible business is considering a location in another state;

(ii) The prospective eligible business receives at least seventy-five percent (75%) of its sales revenues from out of state; and

(iii) The prospective eligible business is proposing to pay wages in excess of one hundred percent (100%) of the county average hourly wage of the county in which it locates.

(e)(1) Technology-based enterprises, as defined in § 14-164-203(11), may earn, at the discretion of the Director of the Department of Economic Development, a payroll rebate equal to five percent (5%) of the payroll for new full-time permanent employees for a period not to exceed ten (10) years.

(2) In order to qualify for the payroll rebate:

(A) The average hourly wage of the payroll for new full-time permanent employees must be at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less, for the county in which the technology-based enterprise locates or expands;

(B) The payroll for new full-time permanent employees must exceed two hundred fifty thousand dollars ($250,000); and

(C) The payroll rebate authorized by this subsection (e) may not be used in combination with the income tax credit based on payroll authorized by § 15-4-2709.

SECTION 4. Arkansas Code § 15-4-2708 is amended to read as follows:

15-4-2708. Research and development tax credits.

(a) A taxpayer who contracts with one (1) or more Arkansas colleges or universities in performing basic or applied research may qualify for the tax credit established under § 26-51-1102(b) for qualified research expenditures, subject to the limitations established under § 26-51-1103 and the documentation requirements of § 26-51-1104.

(b)(1) New ~~Eligible~~ eligible businesses that conduct in-house research in a research facility operated by the business and that qualify for federal research and development tax credits may qualify for an income tax credit equal to ~~ten percent (10%)~~ twenty percent (20%) of the amount spent on in-

house research *that exceeds the base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years*, *subject to the limitations established under § 26-51-1103.*

(A) For a new research facility, the base year is zero (0). Therefore, in the first three (3) years following the date of the financial incentive agreement, all eligible expenditures will qualify for the credit.

(B) Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year.

(C) Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year.

~~*(2) However, the maximum tax credit for in-house research for each qualified business shall not exceed ten thousand dollars ($10,000) per year.*~~

(2) Existing eligible businesses that conduct in-house research in a research facility operated by the business and that qualify for federal research and development tax credits may qualify for an income tax credit equal to twenty percent (20%) of the amount spent on in-house research that exceeds the base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years, subject to the limitations established under § 26-51-1103.

(A) For an existing research facility, the base year amount shall be the amount of eligible research and development expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the department.

(B) Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year.

(C) Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year.

(3) The income tax credit may be used to offset one hundred percent (100%) of an eligible business's annual income tax liability.

(4) Unused credits may be carried forward for a period not to exceed nine (9) years.

~~(3)~~(5) A business claiming tax credits earned under this subsection may not receive the credit granted by § 26-51-1102(b) for the same expenditures.

~~(4)~~(6)(A) The term of the financial incentive agreement for in-house research authorized by this subsection shall be for a period not to exceed five (5) years.

(B) The financial incentive agreement may be renewed for a period not to exceed five (5) years upon the submittal and approval of a new application and project plan for benefits under this subsection.

(C) The business claiming a tax credit under this subsection shall certify annually to the department the amount expended on in-house research.

(c)(1) Targeted businesses may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on in-house research per year for the first five (5) tax years following the business' signing a financial incentive agreement with the Department of Economic Development, subject to the limitations established under § 15-4-2709(d)(3).

(2) The credits earned by targeted businesses may be sold as authorized in § 15-4-2709.

(d)(1) An Arkansas taxpayer may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on the research for the first five (5) tax years following the business' signing a financial incentive agreement with the Department of Economic Development, subject to the limitations established under § 26-51-1103(a) and (c) if the taxpayer invests in:

(A) In-house research in a strategic research area; or

(B) Projects under the research and development programs of the Arkansas Science and Technology Authority when the projects directly involve an Arkansas business and are approved by the Board of Directors of the Arkansas Science and Technology Authority under rules promulgated by the authority for those programs.

(2) However, the maximum tax credit for a qualified business engaged in a research area of strategic value or involved in research and development programs sponsored by the authority shall not exceed fifty

thousand dollars ($50,000) per year.

(3) A business claiming tax credits earned under this subsection shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

(4)(A) A business claiming tax credits earned under this subsection may offset fifty percent (50%) of the business's Arkansas income tax liability in any one (1) year.

(B) Any unused income tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever event occurs first.

(e) To claim the credit granted under subsections (b)-(d) of this section, the taxpayer shall file with his or her return, as an attachment to the form prescribed by the Director of the Department of Finance and Administration, copies of documentation to show that the authority has approved the research expenditure as a part of a qualified in-house research program or under the research and development programs of the authority.

SECTION 5. Arkansas Code § 15-4-2709 is amended to read as follows:

15-4-2709. Targeted business special incentive.

(a) A special incentive based on the payroll of the new targeted businesses in the state is established to:

(1) Encourage the development of jobs that pay significantly more than the county average <u>*hourly*</u> *wage in the county in which the business locates or the state average* <u>*hourly*</u> *wage if the state average* <u>*hourly*</u> *wage is less than the county average* <u>*hourly*</u> *wage; and*

(2) Provide an incentive to assist with the start-up of businesses targeted for growth.

(b) In order to qualify for the special incentive provided by subsection (c) of this section, a new business shall:

(1) Be identified by the Department of Economic Development as being one of those business sectors targeted for growth under § 15-4-2703;

(2) Have an annual payroll of the business for Arkansas taxpayers of not less than one hundred thousand dollars ($100,000) or more than one million dollars ($1,000,000);

(3) Show proof of an equity investment of four hundred thousand dollars ($400,000) or more; and

(4) Pay average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

(c)(1) A new targeted business may earn an income tax credit equal to ten percent (10%) of its annual payroll, with the maximum payroll credit not to exceed one hundred thousand dollars ($100,000) in any year during the term of the financial incentive agreement.

(2)(A) The term of the financial incentive agreement shall be established by the Director of the Department of Economic Development for a period not to exceed five (5) years.

(B) The term of the financial incentive agreement for new targeted businesses earning a tax credit under this subsection (c) or under § 15-4-2708(c) shall begin on January 1 of the year in which the financial incentive agreement was signed.

~~(B)~~(C) The director may allow a qualified targeted business to sell any income tax credits earned through one (1) or more incentives authorized by this subchapter.

(d)(1) In order to sell income tax credits earned through incentives authorized by this subchapter, the new targeted business must apply to the department and furnish information necessary to facilitate the sale of income tax credits.

(2)(A) Any unused tax credits may be carried forward for nine (9) years after the year in which the credit was first earned or until exhausted, whichever occurs first.

(B) The ultimate recipient of the tax credits shall be subject to the same carry-forward provisions as the targeted business that earned the credits.

(C) The purchase of the tax credits will not establish a new carry-forward period for the ultimate recipient.

(e) A targeted business claiming or selling tax credits earned under this section or § 15-4-2708 shall be prohibited from receiving the credit granted by § 26-51-1102(b) for the same expenditures.

(f)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Innovate Arkansas Fund" for the support of a contract to provide support and assistance to the development and growth of knowledge-based and technology-based companies in the State of Arkansas.

(2) This fund shall be for the sole support of a contract between the department and the entity selected to provide direct support and assistance to knowledge-based companies in the State of Arkansas.

(3) Moneys deposited into the Innovate Arkansas Fund by the Arkansas General Assembly shall be used only through a contractual relationship between the department and the entity selected to provide needed services to knowledge-based companies.

SECTION 6. The provisions of this act shall not be effective until the Chief Fiscal Officer of the State certifies that additional funding has been provided to state general revenues from other funding sources and is available for use during fiscal year 2008 and fiscal year 2009 in an amount sufficient to replace the general revenue reduction for each of the fiscal years 2008 and 2009 that would result from the adoption of this act.

/s/ Dunn

APPROVED: 4/9/2007