

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S2/20/01

A Bill

Act 541 of 2001
SENATE BILL 474

5 By: Senators Bryles, Cash, Critcher, Everett, B. Johnson, Miller, Simes, K. Smith, Wooldridge
6 By: Representatives Childers, Goss, Agee, Allison, Bevis, Biggs, Bookout, Boyd, Dangeau, D. Elliott, J.
7 Elliott, Ferguson, Gipson, Glover, Green, Hausam, Hunt, Jones, J. Lewellen, Lowery, Mack, Nichols,
8 Prater, Rankin, Rodgers, T. Roebuck, Schall, R. Smith, M. Steele, T. Steele, Stovall, Teague, Trammell,
9 W. Walker, Willis, Womack, Wood

For An Act To Be Entitled

13 AN ACT TO EXTEND SPECIAL INCENTIVES FOR QUALIFIED
14 MANUFACTURERS OF STEEL; AND FOR OTHER PURPOSES.

Subtitle

17 AN ACT TO EXTEND SPECIAL INCENTIVES FOR
18 QUALIFIED MANUFACTURERS OF STEEL.

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

23 SECTION 1. Definitions.

24 For purposes of this act:

25 (1) "Invested" includes, but is not limited to, expenditures made from
26 the proceeds of bonds, including interim notes or other evidence of
27 indebtedness, issued by a municipality, county, or an agency or
28 instrumentality of a municipality, county, or the State of Arkansas, if the
29 obligation to repay the bonds, including interest thereon, is a legally
30 binding obligation, directly or indirectly, of the taxpayer;

31 (2) "Production, processing and testing equipment" includes machinery
32 and equipment essential for the receiving, storing, processing, and testing of
33 raw materials and the production, storage, testing and shipping of finished
34 products, and facilities for the production of steam, electricity, chemicals,
35 and other materials that are essential to the manufacturing process, but which
36 are consumed in the manufacturing process and do not become essential

1 components of the finished product; and

2 (3) "Qualified manufacturer of steel" means any natural person,
3 company, or corporation engaged in the manufacture, refinement, or processing
4 of steel whenever more than fifty percent (50%) of the electricity or more
5 than fifty percent (50%) of the natural gas consumed in the manufacture,
6 refinement, or processing of steel is used to power an electric arc furnace or
7 furnaces, continuous casting equipment, or rail steel mill equipment in
8 connection with the melting, continuous casting, or rolling of steel or in the
9 preheating of steel for processing through a rail steel mill.

10
11 SECTION 2. Certification required.

12 To claim the benefits of this act, a taxpayer must obtain a
13 certification prior to December 31, 2006 from the Director of the Arkansas
14 Department of Economic Development certifying to the Revenue Division of the
15 Department of Finance and Administration that the taxpayer:

16 (1) Is a qualified manufacturer of steel;

17 (2) Operates a steel mill in Arkansas which began production after
18 January 1, 2001; and

19 (3) Has invested after January 1, 2001, and prior to December 31, 2006,
20 more than two hundred million dollars (\$200,000,000) in a steel mill, which
21 investment expenditure is for one (1) or more of the following:

22 (A) Property purchased for use in the construction of a building
23 or buildings or any addition or improvement thereon to house the steel mill;

24 (B) Machinery and equipment to be located in or in connection
25 with the steel mill. Motor vehicles of a type subject to registration shall
26 not be considered as machinery and equipment; and

27 (C) Project planning costs or construction labor costs, including
28 on-site direct labor and supervision, whether employed by a contractor or the
29 project owner; architectural fees or engineering fees, or both; right-of-way
30 purchases; utility extensions; site preparation; parking lots; disposal or
31 containment systems; water and sewer treatment systems; rail spurs; streets
32 and roads; purchase of mineral rights; land; buildings; building renovation;
33 production, processing and testing equipment; drainage systems; water tanks
34 and reservoirs; storage facilities; equipment rental; contractor's cost plus
35 fees; builders risk insurance; original spare parts; job administrative
36 expenses; office furnishings and equipment; rolling stock; capitalized start-

1 up costs related to the construction.

2
3 SECTION 3. Exemption from taxes.

4 Sales of natural gas and electricity, to taxpayers qualified to receive
5 the benefits of this act, for use in connection with the steel mill, shall be
6 exempt from the gross receipts tax levied by the Arkansas Gross Receipts Act,
7 beginning at Arkansas Code 26-52-101, and the Compensating Tax Act, beginning
8 at Arkansas Code 26-53-101, and any other state or local tax administered
9 under those acts.

10
11 SECTION 4. Net operating loss deduction - Carry forward.

12 Taxpayers qualified for the benefits of this act and entitled to a net
13 operating loss deduction as provided in Arkansas Code 26-51-427 may carry
14 forward that deduction to the next-succeeding taxable year following the year
15 of such net operating loss and annually thereafter for a total period of ten
16 (10) years or until such net operating loss has been exhausted, whichever is
17 earlier. The net operating loss deduction must be carried forward in the
18 order named above.

19
20 SECTION 5. Extension of recycling tax credit - Post consumer waste.

21 (a)(1) A qualified manufacturer of steel which has been certified by
22 the Director of the Arkansas Department of Economic Development after January
23 1, 2001 and prior to December 31, 2006 as qualifying for the benefits of this
24 act, and has qualified for the income tax credit for the purchase of waste
25 reduction, reuse or recycling equipment provided by § 26-51-506, may carry
26 forward any unused income tax credit earned under § 26-51-506 for a period of
27 fourteen (14) consecutive years following the taxable year in which the credit
28 originated.

29 (2) Income tax credits which would otherwise expire during such
30 period shall first be used.

31 (b) In the case of a qualified manufacturer of steel described in
32 Section 5(a) of this act, the term "waste reduction, reuse or recycling
33 equipment" as defined in Arkansas Code 26-51-506 shall include production,
34 processing and testing equipment used to manufacture products containing
35 recovered materials.

36 (c) In the case of a qualified manufacturer of steel described in

1 Section 5(a) of this act, the provisions of Arkansas Code 26-51-506 (d)(4)
 2 shall not apply. However, the qualified manufacturer of steel as described in
 3 Section 5(a) of this act shall make a good faith effort to use recovered
 4 materials containing Arkansas post consumer waste as a part of the materials
 5 used.

6
 7 SECTION 6. Refund of recycling tax credit.

8 (a) In the case of a qualified manufacturer of steel described in
 9 Section 5(a) of this act, the provisions of Arkansas Code 26-51-506 (f) shall
 10 not apply. However, the qualified manufacturer of steel shall refund the
 11 amount of the tax credit provided by subdivision (b) of this section if,
 12 within three (3) years of the taxable year in which the credit originated:

13 (1) The waste reduction, reuse, or recycling equipment is removed
 14 from Arkansas, is disposed of, is transferred to another person, or the
 15 qualified manufacturer of steel otherwise ceases to use the required materials
 16 or operate in accordance with § 26-51-506, provided that reorganization
 17 transactions, changes of ownership and control, and sales and transfers of
 18 waste reduction, reuse, or recycling equipment among affiliates which do not
 19 constitute sales or transfers to a third party purchaser, shall not be
 20 considered disposals, transfers or cessations of use for purposes of the
 21 section; or

22 (2) The Director of the Arkansas Department of Environmental
 23 Quality finds that the qualified manufacturer of steel has operated the waste
 24 reduction, reuse or recycling equipment in a manner which demonstrates a
 25 pattern of intentional failure to comply with final administrative or judicial
 26 orders which clearly indicates a disregard for environmental regulation.

27 (b) If the provisions of subdivision (a) of this section apply, the
 28 qualified manufacturer of steel shall refund the amount of the tax credit
 29 which was deducted from income tax liability which exceeds the following
 30 amounts:

31 (1) Within the first year, zero dollars (\$0);

32 (2) Within the second year, an amount equal to thirty-three
 33 percent (33%) of the amount of credit allowed; and

34 (3) Within the third year, an amount equal to sixty-seven percent
 35 (67%) of the credit allowed.

36 (c) Any refund required by subdivision (a)(1) of this section shall

1 apply only to the credit given for the particular waste reduction, reuse, or
2 recycling equipment to which that subdivision applies.

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

6 (e) Any person or legal entity aggrieved by a decision of the Director
7 of the Arkansas Department of Environmental Quality under this section may
8 appeal to the Arkansas Pollution Control and Ecology Commission through
9 administrative procedures adopted by the commission, and to the courts in the
10 manner provided in Arkansas Code 8-4-222 – 8-4-229.

11
12 SECTION 7. Apportionment of Credit Amount.

13 (a) In the case of a qualified manufacturer of steel as described in
14 Section 5(a) of this act which is a proprietorship, partnership, or other
15 business organization treated as a proprietorship or partnership for tax
16 purposes, the amount of the credit determined under this act for any taxable
17 year shall be apportioned to each proprietor, partner, member or other owner
18 in proportion to the amount of income from the entity which the proprietor,
19 partner, member or other owner is required to include in gross income.

20 (b) In the case of a qualified manufacturer of steel as described in
21 Section 5(a) of this act which is a Subchapter S corporation, the amount of
22 credit determined shall be apportioned to each Subchapter S corporation
23 shareholder in proportion to the amount of income from the entity which the
24 Subchapter S corporation shareholder is required to include as gross income.

25 (c) In the case of a qualified manufacturer of steel as described in
26 Section 5(a) of this act which is an estate or trust:

27 (1) The amount of the credit determined for any taxable year
28 shall be apportioned between the estate or trust and the beneficiaries on the
29 basis of the income of the estate or trust allocable to each; and

30 (2) Any beneficiary to whom any amount has been apportioned under
31 this act shall be allowed, subject to the limitations contained in this act, a
32 credit under this act for that amount.

33 */s/ Bryles*

34
35
36 APPROVED: 3/2/2001