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4

As Engrossed: S3/15/11
A Bill

SENATE BILL 758

5 By: Senator M. Lamoureux
6 By: Representative Hammer
7

For An Act To Be Entitled

9 AN ACT TO REPEAL CERTAIN INCOME TAX EXEMPTIONS,
10 CREDITS, INCENTIVES, REDUCED RATES, AND OTHER
11 SECTIONS OF THE ARKANSAS CODE THAT REDUCE TAX
12 LIABILITY; TO PROVIDE FOR CORRESPONDING REDUCTION TO
13 THE INCOME TAX RATES FOR INDIVIDUALS, TRUSTS, AND
14 ESTATES; AND FOR OTHER PURPOSES.
15
16

Subtitle

17
18 TO REPEAL CERTAIN INCOME TAX EXEMPTIONS,
19 CREDITS, INCENTIVES, REDUCED RATES, AND
20 OTHER STATUTES THAT REDUCE TAX LIABILITY
21 AND TO PROVIDE FOR A CORRESPONDING
22 ADJUSTMENT TO THE INCOME TAX RATES FOR
23 INDIVIDUALS, TRUSTS, AND ESTATES.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 2 is amended
29 to add an additional section to read as follows:

30 26-51-208. Adjustment of tax rates.

31 (a)(1) For each of the tax years 2013 through 2017 inclusive, and for
32 each tax year thereafter as stated in subsection (b), the Department of
33 Finance and Administration shall calculate the individual amount of income
34 tax that the state would have received with respect to each exemption,
35 credit, incentive, reduced tax rate, and other section of the Arkansas Code
36 that reduces tax liability if the exemptions, credits, incentives, reduced



1 tax rates, and other sections of the Arkansas Code that reduce tax liability
2 that are repealed by this act were not in effect.

3 (2) The department shall:

4 (A) Calculate the sum over five (5) years of the
5 individual amounts calculated under subdivision (a)(1) of this section for
6 each of the exemptions, credits, incentives, reduced tax rates, and other
7 sections of the Arkansas Code that reduce tax liability that were in effect
8 on the effective date of this act but are not effective as of January 1,
9 2019;

10 (B) Determine the average of each of the individual
11 amounts calculated under subdivision (a)(2)(A) of this section; and

12 (C) Calculate the adjustment in the tax rates stated in §
13 26-51-201 that would be necessary to reduce the tax rates in a proportional
14 manner that causes the total income tax receipt reduction to match the total
15 of the average amounts calculated under subdivision (a)(2)(B) of this
16 section.

17 (b)(1) For tax year 2019, the tax rates stated in § 26-51-201 shall be
18 adjusted according to the calculation provided in subdivision (a)(2) of this
19 section.

20 (2) For tax years beginning on and after January 1, 2020, the
21 tax rates stated in § 26-51-201 shall be adjusted:

22 (A) According to the calculation provided in subdivision
23 (a)(2) of this section; and

24 (B) Based on the individual amounts of income tax that the
25 state would have received during the previous five (5) tax years for each of
26 the exemptions, credits, incentives, reduced tax rates, and other sections of
27 the Arkansas Code that reduce tax liability that were in effect on the
28 effective date of this act but are not effective as of the date of the
29 calculation.

30 (3) The department shall calculate the adjustment provided under
31 this subsection (b) by January 1 of the year in which the adjusted rates are
32 effective.

33
34 SECTION 2. Arkansas Code § 26-51-201 is amended to read as follows:

35 26-51-201. Individuals, trusts, and estates.

36 (a) A tax is imposed upon, ~~and with respect to,~~ the entire income of

1 every resident, individual, trust, or estate. The tax shall be levied,
 2 collected, and paid annually upon the entire net income as defined and
 3 computed in this chapter at the following rates, ~~giving effect to the tax~~
 4 ~~credits provided hereafter, and in the manner set forth~~ stated:

5 (1) On the first two thousand nine hundred ninety-nine dollars
 6 (\$2,999) of net income or any part thereof, one percent (1%);

7 (2) On the next three thousand dollars (\$3,000) of net income or
 8 any part thereof, two and one-half percent (2½%);

9 (3) On the next three thousand dollars (\$3,000) of net income or
 10 any part thereof, three and one-half percent (3½%);

11 (4) On the next six thousand dollars (\$6,000) of net income or
 12 any part thereof, four and one-half percent (4½%);

13 (5) On the next ten thousand dollars (\$10,000) of net income or
 14 any part thereof, six percent (6%); and

15 (6) On net income of twenty-five thousand dollars (\$25,000) and
 16 above, seven percent (7%).

17 (b) However, no state income tax ~~shall be~~ is due ~~this~~ the state from a
 18 trust or estate created by a nonresident donor, trustor, or settlor, or by a
 19 nonresident testator even though administered by a resident trustee or
 20 personal representative except on income derived from:

21 (1) ~~Lands~~ Land situated in ~~this~~ the state, including without
 22 limitation gains from ~~any a~~ sale thereof;

23 (2) ~~Any~~ An interest in ~~lands~~ land situated in ~~this~~ the state,
 24 including, without limitation, chattels real, ~~including~~ and gains from ~~any a~~
 25 sale thereof;

26 (3) Tangible personal property located in ~~Arkansas~~ the state,
 27 including without limitation gains from ~~any a~~ sale thereof; and

28 (4) ~~Unincorporated businesses~~ An unincorporated business
 29 domiciled in ~~Arkansas~~ the state.

30 (c) No income tax ~~shall be~~ is due the ~~State of Arkansas~~ state from a
 31 nonresident beneficiary on income received from a trust being administered by
 32 a resident trustee except on income derived by the trust from:

33 (1) ~~Lands~~ Land situated in ~~this~~ the state, including without
 34 limitation gains from ~~any a~~ sale thereof;

35 (2) ~~Any~~ An interest in ~~lands~~ land situated in ~~this~~ the state,
 36 including, without limitation, chattels real, ~~including~~ and gains from ~~any a~~

1 sale thereof;

2 (3) Tangible personal property located in ~~Arkansas~~ the state,
3 including without limitation gains from ~~any~~ a sale thereof; and

4 (4) ~~Unincorporated businesses~~ An unincorporated business
5 domiciled in ~~Arkansas~~ the state.

6 (d)(1) Not later than December 15 of 1998, and each subsequent
7 calendar year, the ~~director~~ Director of the Department of Finance and
8 Administration shall prescribe a table ~~which~~ that shall apply in lieu of the
9 table contained in § 26-51-201(a) with respect to taxable years beginning in
10 the succeeding calendar year.

11 (A)(i) The director shall increase the minimum and maximum
12 dollar amounts for each rate bracket ~~(rounding to the nearest \$100)~~ for which
13 a tax is imposed under ~~such~~ the table by the cost-of-living adjustment ~~(COLA)~~
14 for ~~such~~ the calendar year ~~and by not changing the rate applicable to any~~
15 ~~rate bracket as adjusted.~~

16 (ii) The adjusted minimum and maximum dollar amounts
17 for each rate bracket shall be rounded to the nearest one hundred dollars
18 (\$100).

19 (iii) The director shall not change the rate
20 applicable to any rate bracket as adjusted.

21 (B) The yearly ~~COLA~~ cost-of-living adjustment increase in
22 each rate bracket as provided in subdivision (d)(2) of this section shall
23 apply to the brackets ~~as~~ contained in § 26-51-201(a) as in effect on January
24 1, 1998.

25 ~~(2) For purposes of subdivision (d)(1) of this section, the~~
26 ~~cost-of-living adjustment for any calendar year is the percentage (if any) by~~
27 ~~which the CPI for the calendar year preceding the taxable year exceeds the~~
28 ~~CPI for the calendar year 1997, not to exceed three percent (3%). The CPI for~~
29 ~~any calendar year is the average of the Consumer Price Index as of the close~~
30 ~~of the 12-month period ending on August 31 of such calendar year. "Consumer~~
31 ~~Price Index" means the last Consumer Price Index for all urban consumers~~
32 ~~published by the Department of Labor.~~

33 (2) As used in subsection (d) of this section:

34 (A) "Average consumer price index" means, for a calendar
35 year, the average of the consumer price index as of the close of the 12-month
36 period ending on August 31 of the calendar year in which the average is being

1 determined.

2 (B) "Consumer price index" means the last Consumer Price
3 Index for All Urban Consumers published by the Department of Labor; and

4 (C) "Cost-of-living adjustment" means the percentage, if
5 any, by which the average consumer price index for the calendar year
6 preceding the taxable year exceeds the average consumer price index for the
7 calendar year 1997, not to exceed three percent (3%).

8 (3) The new tables, as adjusted, shall apply for tax returns
9 filed for taxable year 1999 and thereafter, and shall be used by the director
10 in preparing the income tax withholding tables pursuant to § 26-51-907.

11 (e) The tax rates stated in subsection (a) of this section are subject
12 to the adjustment stated in § 26-51-208.

13

14 SECTION 3. Arkansas Code § 6-45-109 is amended to read as follows:

15 6-45-109. Certification by the Division of Child Care and Early
16 Childhood Education.

17 ~~(a)~~ The Division of Child Care and Early Childhood Education shall
18 certify child care facilities which have an appropriate early childhood
19 program, as defined in § 6-45-103. Certification numbers shall be issued to
20 those child care facilities that meet the applicable qualifications.

21 (b) Upon certification of the child care facilities, the division
22 shall provide a listing of all certified facilities and their certification
23 numbers to the Director of the Department of Finance and Administration for
24 the purpose of the income tax credit or refund provided for in §§ 26-51-502
25 ~~and 26-51-507.~~

26

27 SECTION 4. Arkansas Code § 9-28-408(a), concerning the church-related
28 exemption under the Child Welfare Agency Licensing Act, is amended to read as
29 follows:

30 (a)(1) Any church or group of churches ~~exempt from the state income~~
31 ~~tax levied by § 26-51-101 et seq. when~~ operating a child welfare agency shall
32 ~~may be exempt~~ exempted from obtaining a license to operate the facility by
33 the receipt by the Child Welfare Agency Review Board of written request
34 therefor, together with the written verifications required in subsection (b)
35 of this section.

36 (2) A written request shall be made by those churches desiring

1 exemption to the board, which is mandated under the authority of this
2 subchapter to license all child welfare agencies.

3
4 SECTION 5. Arkansas Code § 11-10-314(j)(2), concerning the disclosure
5 of information under the Department of Workforce Services Law, is amended to
6 read as follows:

7 (2) The Revenue Division of the Department of Finance and
8 Administration may be provided:

9 (A) Such information as is required and necessary by the
10 Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., and the Arkansas
11 Economic Development Act of 1995, § 15-4-1901 et seq.; and

12 ~~(B) The net increase in employment at manufacturing and~~
13 ~~mining establishments as defined in § 26-51-505 which are participating in~~
14 ~~the manufacturing jobs tax credit program created by § 26-51-505 if the~~
15 ~~division provides a list of employers by name, location, and the period of~~
16 ~~time for which the data is sought; and~~

17 ~~(C)~~ (B) Such information as is necessary for the effective
18 operation of their respective programs to allow cooperation between the
19 division and the Department of Workforce Services;

20
21 SECTION 6. Arkansas Code § 14-164-203(12), concerning the definition
22 of "technology-based enterprises" under the Municipalities and Counties
23 Industrial Development Revenue Bond Law, is amended to read as follows:

24 (12) "Technology-based enterprises" means:

25 (A) A grouping of growing business sectors, identified as
26 targeted businesses ~~in § 15-4-2703(43)(A) and which~~ that pay one hundred
27 fifty percent (150%) of the lesser of the county or state average wage;

28 (B) "Scientific and technical services business" ~~as~~
29 ~~defined in § 15-4-2703(33);~~

30 (C) A corporation, partnership, limited liability company,
31 sole proprietorship, or other legal entity whose primary business directly
32 involves commercializing the results of research conducted in one (1) of the
33 six (6) growing business sectors identified as targeted businesses ~~in § 15-4-~~
34 ~~2703(43)(A) and paying not less than one hundred fifty percent (150%) of the~~
35 lesser of the county or state average wage; and

36

1 SECTION 7. Arkansas Code § 14-164-203, concerning the definitions used
2 under the Municipalities and Counties Industrial Development Revenue Bond
3 Law, is amended to add two additional subdivisions to read as follows:

4 (14) "Scientific and technical services business" means a
5 business:

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

8 (i) Architectural and engineering design;

9 (ii) Computer programming and computer systems
10 design; and

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

13 (B) Selling expertise;

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

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

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

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

23 (A) Advanced materials and manufacturing systems;

24 (B) Agriculture, food, and environmental sciences;

25 (C) Biotechnology, bioengineering, and life sciences;

26 (D) Information technology;

27 (E) Transportation logistics; and

28 (F) Bio-based products.

29
30 SECTION 8. Arkansas Code § 15-3-403 is amended to read as follows:

31 15-3-403. Eligibility for grants.

32 To qualify for a grant authorized under § 15-3-404, a business shall:

33 (1) Have operations within the State of Arkansas that are in one
34 (1) of the six (6) following categories of targeted businesses ~~identified in~~
35 ~~§ 15-4-2703(43)(A)†;~~

36 (i) Advanced materials and manufacturing systems;

- 1 (ii) Agriculture, food, and environmental sciences;
- 2 (iii) Biotechnology, bioengineering, and life
- 3 sciences;
- 4 (iv) Information technology;
- 5 (v) Transportation logistics; and
- 6 (vi) Bio-based products;

7 (2) Pay average hourly wages in excess of one hundred ten
 8 percent (110%) of the county or state average hourly wage, whichever is less;

9 (3) Agree to hire a postdoctoral graduate; and

10 (4) Provide proof that the postdoctoral graduate is an Arkansas
 11 taxpayer and a resident of the State of Arkansas.

12
 13 SECTION 9. Arkansas Code § 15-4-220 is repealed.

14 ~~15-4-220. Audit of economic incentive programs.~~

15 ~~(a) In order to provide information to the General Assembly regarding~~
 16 ~~the benefits of certain economic incentive programs, the Division of~~
 17 ~~Legislative Audit shall prepare a cost-benefit analysis of the incentive~~
 18 ~~programs provided under the Consolidated Incentive Act of 2003, § 15-4-2701~~
 19 ~~et seq.~~

20 ~~(b) The analysis may include, but not be limited to:~~

21 ~~(1) The dollar amount of incentives actually provided;~~

22 ~~(2) The direct and indirect state and local benefits associated~~
 23 ~~with each program; and~~

24 ~~(3) The safeguards to protect noneconomic influences in the~~
 25 ~~award of incentives.~~

26 ~~(c)(1) The analysis may be conducted annually on a rotating basis so~~
 27 ~~that each incentive program provided under the Consolidated Incentive Act of~~
 28 ~~2003, § 15-4-2701 et seq., is evaluated at least one (1) time every five (5)~~
 29 ~~years.~~

30 ~~(2) Should the division's staff be insufficient to conduct the~~
 31 ~~scheduled analysis in a given year, the executive committee of the~~
 32 ~~Legislative Joint Auditing Committee may establish the priority and number of~~
 33 ~~programs that can be reasonably analyzed with available resources for a~~
 34 ~~particular year.~~

35 ~~(d)(1) All records, data, and other information from whatever source~~
 36 ~~that the Legislative Auditor deems necessary in the examination of the~~

1 ~~incentive programs shall be made available to the division.~~

2 ~~(2) However, nothing in this subsection authorizes or permits~~
3 ~~publication of information protected from publication by law.~~

4 ~~(3) Records and information exempt from public disclosure shall~~
5 ~~remain exempt in the custody of the division.~~

6
7 SECTION 10. Arkansas Code §§ 15-4-1025 and 15-4-1026 are repealed.

8 ~~15-4-1025. Exemption from certain taxes.~~

9 ~~(a)(1) The income of a capital development company shall be exempt~~
10 ~~from taxation under the Income Tax Act of 1929, § 26-51-101 et seq., and from~~
11 ~~the payment of any other income taxes levied by a county or a municipality.~~

12 ~~(2) Dividends, distributions, and income allocable to the equity~~
13 ~~interests of any company shall be exempt from all state, county, or municipal~~
14 ~~income tax.~~

15 ~~(3) Interest on bonds, notes, or other obligations of any~~
16 ~~company issued under and in accordance with the provisions of this subchapter~~
17 ~~shall be exempt from all state, county, or municipal income taxes.~~

18 ~~(b) Each company shall file an income tax return each year at the time~~
19 ~~provided for the filing of tax returns in the Income Tax Act of 1929, § 26-~~
20 ~~51-101 et seq.~~

21 ~~(c) Each company claiming exemption from income tax under this section~~
22 ~~shall attach to the return required in subsection (b) of this section a~~
23 ~~certification from the Bank Commissioner stating that the company has been~~
24 ~~organized and is operating as a capital development company in accordance~~
25 ~~with the provisions of this subchapter.~~

26
27 ~~15-4-1026. Tax credit.~~

28 ~~(a)(1) Subject to the limitations contained in this section, a person~~
29 ~~who purchases an equity interest in a capital development company in any of~~
30 ~~the calendar years 2003—2015 is entitled to a credit against any state~~
31 ~~income tax liability or premium tax liability that may be imposed on the~~
32 ~~purchaser for any tax year commencing on or after the date of the purchase.~~

33 ~~(2) However, within eighteen (18) months after receipt of the~~
34 ~~proceeds from the purchase of an equity interest in a company, the proceeds~~
35 ~~must be used in one (1) or more of the transactions described in subdivision~~
36 ~~(a)(3) of this section and for the purposes stated in § 15-4-1016 or for~~

1 ~~operating expenses.~~

2 ~~(3) Upon satisfaction of the conditions in subdivisions (a)(1)~~
3 ~~and (2) of this section, use of proceeds from the purchase described in~~
4 ~~subdivision (a)(1) of this section in the following transactions shall cause~~
5 ~~the purchaser to be eligible for the tax credit under subdivision (a)(1) of~~
6 ~~this section:~~

7 ~~(A) Transactions in which one (1) or more persons purchase~~
8 ~~equity interests in a capital development company to create a pool of capital~~
9 ~~available for investment in entities approved by the capital development~~
10 ~~company's governing board;~~

11 ~~(B) Transactions in which one (1) or more persons purchase~~
12 ~~equity interests in a capital development company and the proceeds of the~~
13 ~~purchases are invested by the capital development company at the direction of~~
14 ~~the purchasers into one (1) or more venture capital funds or private equity~~
15 ~~funds that have investment policies which conform to all or a portion of the~~
16 ~~capital development company's investment policy, if the governing board~~
17 ~~reviews and does not object to the use of the proceeds by the funds; and~~

18 ~~(C) Transactions in which:~~

19 ~~(i) A capital development company enters into an~~
20 ~~agreement with an entity approved by the governing board of the company;~~

21 ~~(ii) The entity is required to identify the~~
22 ~~investors who will invest in the entity;~~

23 ~~(iii) Receipt of the tax credit is contingent upon~~
24 ~~the investors' actually investing in the entity through the company; and~~

25 ~~(iv) The governing board of the company determines~~
26 ~~that the entity would not be able to raise the funds needed for the entity's~~
27 ~~business without a tax credit.~~

28 ~~(b) The credit shall be determined in the following manner:~~

29 ~~(1)(A) The credit shall be equal to thirty three and one third~~
30 ~~percent (33 1/3%) of the actual purchase price paid for the equity interest to~~
31 ~~the company, which shall include any fees or commissions to underwriters or~~
32 ~~sales agents paid by the company.~~

33 ~~(B)(i) However, the total amount of fees and commissions~~
34 ~~to underwriters or sales agents for which a credit may be taken shall not~~
35 ~~exceed fifteen percent (15%) of the actual purchase price.~~

36 ~~(ii) No fees or commissions in excess of fifteen~~

1 percent (15%) of the total purchase price may be considered in calculating
2 the amount of the credit determined in this section;

3 (2) In any one (1) tax year, the credit allowed by this section
4 shall not exceed fifty percent (50%) of the net Arkansas state income tax
5 liability or premium tax liability of the taxpayer after all other credits
6 and reductions in tax have been calculated;

7 (3)(A) Any credit in excess of the amount allowed by subdivision
8 (b)(2) of this section for any one (1) tax year may be carried forward and
9 applied against Arkansas state income tax or premium tax for the next
10 succeeding tax year and annually thereafter for a total period of eight (8)
11 years next succeeding the year in which the equity interest in a company was
12 purchased, subject to the provisions of subdivision (b)(2) of this section or
13 until the credit is exhausted, whichever occurs first.

14 (B) In no event may the credit allowed by this section be
15 allowed for any tax year ending after December 31, 2021; and

16 (4) An original purchaser of equity interests who seeks to
17 qualify for the income tax credit or premium tax credit provided in this
18 section must obtain and attach to the income tax return or premium tax return
19 for the years the credit is claimed a certified statement from the company
20 stating:

21 (A) The name and address of the original purchaser;

22 (B) The tax identification number of the person entitled
23 to the credit;

24 (C) The original date of purchase of the equity interest;

25 (D) The number and type of equity interests purchased;

26 (E) The amount paid by the original purchaser for the
27 equity interest;

28 (F) The amount of the tax credit associated with the
29 purchase of the equity interest; and

30 (G) The amount of dividends and distributions previously
31 paid by the company to the purchaser.

32 (c)(1) A transferee from an original purchaser is entitled to the tax
33 credit described in this section only to the extent the credit is still
34 available to and has not previously been used by the transferor.

35 (2) A transferee of equity interests or tax credits who seeks to
36 qualify for the income tax credit or premium tax credit provided in this

1 ~~section must obtain and attach to the income tax return or premium tax return~~
2 ~~for the years the credit is claimed a certified statement from the company~~
3 ~~stating:~~

4 ~~(A) The name and address of the original purchaser and all~~
5 ~~transferees;~~

6 ~~(B) The tax identification number of all persons entitled~~
7 ~~to any portion of the original tax credit;~~

8 ~~(C) The original date the equity interest was purchased;~~

9 ~~(D) The number and type of equity interests purchased;~~

10 ~~(E) The amount paid by the original purchaser for the~~
11 ~~equity interest;~~

12 ~~(F) The amount of the tax credit associated with the~~
13 ~~purchase of the equity interest;~~

14 ~~(G) The amount of the tax credit associated with the~~
15 ~~original purchase used by all previous owners of the equity interest or tax~~
16 ~~credit and the remaining amount of the tax credit available for use by the~~
17 ~~transferee; and~~

18 ~~(H) The amount of dividends and distributions previously~~
19 ~~paid by the company to the original purchaser and all transferees.~~

20 ~~(d)(1) If the owner of an equity interest in or a tax credit issued by~~
21 ~~a company is a pass-through entity for tax purposes, such as a limited~~
22 ~~liability company or a partnership, then the owner of the pass-through entity~~
23 ~~is entitled to the tax credit described in this section.~~

24 ~~(2) If a pass-through entity entitled to a tax credit under~~
25 ~~subdivision (d)(1) of this section is owned by two (2) or more persons, then~~
26 ~~the tax credit may be allocated among the pass-through entity owners in the~~
27 ~~method selected by the owners as described in the governing documents of the~~
28 ~~pass-through entity or by other written agreement among the owners.~~

29 ~~(e)(1) For the purpose of ascertaining the gain or loss from the sale~~
30 ~~or other disposition of an equity interest in a company, the owner of the~~
31 ~~equity interest shall reduce his or her basis in the equity interest by the~~
32 ~~amount of the tax credits previously deducted under this section.~~

33 ~~(2) However, sale or other disposition under subdivision (e)(1)~~
34 ~~of this section does not include a transfer from the holder of an equity~~
35 ~~interest to the company in liquidation of the equity interest.~~

36 ~~(3) This reduced basis shall be used by the original purchaser~~

1 ~~or transferee when calculating tax due under the Income Tax Act of 1929, §~~
2 ~~26-51-101 et seq.~~

3 ~~(f)(1) If any of the proceeds from the purchase of equity interests in~~
4 ~~a company are not used for the purposes stated in § 15-4-1016 or for~~
5 ~~operating expenses within eighteen (18) months after receipt, then for each~~
6 ~~person who previously claimed a tax credit under this section with respect to~~
7 ~~that purchase, the tax imposed by the Income Tax Act of 1929, § 26-51-101 et~~
8 ~~seq., for the year in which the eighteen-month period ends shall be increased~~
9 ~~by the tax credit amount associated with the unused purchase proceeds.~~

10 ~~(2) Within thirty (30) days after the expiration of the~~
11 ~~eighteen-month period, the company shall notify each person who claimed a tax~~
12 ~~credit under this section and the Department of Finance and Administration of~~
13 ~~the failure to use the proceeds and the tax recapture amount associated with~~
14 ~~the failure.~~

15 ~~(g)(1) Except as provided in subdivision (g)(2) of this section, the~~
16 ~~total cumulative amount of tax credits available to all purchasers of equity~~
17 ~~interest in capital development companies under this section in any calendar~~
18 ~~year shall not exceed five million dollars (\$5,000,000).~~

19 ~~(2) For any calendar year, the maximum tax credit under~~
20 ~~subdivision (g)(1) of this section may be increased by an additional amount~~
21 ~~not to exceed one million two hundred fifty thousand dollars (\$1,250,000) by~~
22 ~~the Director of the Department of Finance and Administration if a capital~~
23 ~~development company requests the increase and the requirements of subdivision~~
24 ~~(g)(3) of this section are met.~~

25 ~~(3) By August 15 of the calendar year for which the maximum tax~~
26 ~~credit increase is requested, the director shall:~~

27 ~~(A) Determine:~~

28 ~~(i) The total amount of tax credits first claimed~~
29 ~~under this section during the most recent fiscal year;~~

30 ~~(ii) The total amount of tax credits claimed under~~
31 ~~this section by all taxpayers during the most recent fiscal year; and~~

32 ~~(iii) Based upon the amounts calculated under~~
33 ~~subdivisions (g)(3)(A)(i) and (ii) of this section, the estimated amount of~~
34 ~~tax credits that may be claimed under this section during the fiscal year~~
35 ~~that began on the most recent July 1;~~

36 ~~(B) Based on the most recent revenue forecast and budget~~

1 ~~information, determine:~~

2 ~~(i) The fiscal impact of the estimated tax credits~~
3 ~~under subdivision (g)(3)(A) of this section on the amount of general revenues~~
4 ~~available for distribution under § 19-5-202 for the fiscal year that began on~~
5 ~~the most recent July 1, including amounts to be distributed for the support~~
6 ~~of public schools; and~~

7 ~~(ii) The fiscal impact of increasing the maximum tax~~
8 ~~credit under subdivision (g)(2) of this section on the amount of general~~
9 ~~revenues available for distribution under § 19-5-202 for the fiscal year that~~
10 ~~began on the most recent July 1, including amounts to be distributed for the~~
11 ~~support of public schools; and~~

12 ~~(C) Certify the amount, if any, that the maximum tax~~
13 ~~credit shall be increased under subdivision (g)(2) of this section such that~~
14 ~~the resulting estimated amount of general revenues available for distribution~~
15 ~~under § 19-5-202 for the fiscal year that began on the most recent July 1,~~
16 ~~including amounts to be distributed for the support of public schools, is~~
17 ~~sufficient to meet the budgeted needs of state agencies and public schools~~
18 ~~funded by general revenues.~~

19 ~~(h)(1) No capital development company shall enter into an~~
20 ~~agreement or a commitment for the purchase by any person of equity interests~~
21 ~~in the capital development company on or after July 1, 2007.~~

22 ~~(2) However, all agreements and commitments of the capital~~
23 ~~development company related to the purchase of equity interests in existence~~
24 ~~before July 1, 2007, and certified to the Arkansas Economic Development~~
25 ~~Commission shall remain valid and enforceable, shall be entitled to the tax~~
26 ~~credits set forth in this section, and shall be completed in accordance with~~
27 ~~their respective terms.~~

28
29 SECTION 11. Arkansas Code § 15-4-1029(f), concerning dissolution of a
30 capital development company, is repealed.

31 ~~(f)(1) Upon dissolution, if any proceeds from the purchase of an~~
32 ~~equity interest in a company have not been used for the purposes stated in §~~
33 ~~15-4-1016 or for operating expenses, then for each person who previously~~
34 ~~claimed a tax credit under § 15-4-1026 with respect to that purchase, the tax~~
35 ~~imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for the year in~~
36 ~~which dissolution occurs shall be increased by the tax credit amount~~

1 ~~associated with the unused purchase proceeds.~~

2 ~~(2) Within thirty (30) days after dissolution, the company shall~~
3 ~~notify each person who previously claimed a tax credit and the Department of~~
4 ~~Finance and Administration of a failure to use the proceeds and the tax~~
5 ~~recapture amount associated with the failure.~~

6
7 SECTION 12. Arkansas Code §§ 15-4-1223 and 15-4-1224 are repealed.
8 ~~15-4-1223. Exemption from certain taxes.~~

9 ~~(a)(1) County or regional industrial development companies shall be~~
10 ~~exempt from taxation under the Income Tax Act of 1929, § 26-51-101 et seq.,~~
11 ~~and from the payment of any other income taxes levied by a county or a~~
12 ~~municipality.~~

13 ~~(2) Dividends on stock or distributions with respect to units of~~
14 ~~interest of any such company pursuant to § 15-4-1215 shall be exempt from all~~
15 ~~state, county, or municipal income tax.~~

16 ~~(3) Interest on bonds, notes, or other obligations of any~~
17 ~~company issued under and in accordance with the provisions of this subchapter~~
18 ~~shall be exempt from all state, county, or municipal income taxes.~~

19 ~~(b) Corporations and limited liability companies shall file income tax~~
20 ~~returns each year at the time provided for the filing of corporate or~~
21 ~~partnership income tax returns, respectively.~~

22 ~~(c) A company claiming exemption from income tax under this section~~
23 ~~shall attach to the return required in subsection (b) of this section a~~
24 ~~certification from the Bank Commissioner stating that the company has been~~
25 ~~incorporated or organized and is operating as a corporation or limited~~
26 ~~liability company in accordance with the provisions of this subchapter.~~

27
28 ~~15-4-1224. Tax credit.~~

29 ~~(a)(1) The original purchaser of common stock of a corporation or a~~
30 ~~unit of interest of a limited liability company shall be entitled to a credit~~
31 ~~against any Arkansas income tax liability or premium tax liability which may~~
32 ~~be imposed on such a purchaser for any tax year commencing on or after~~
33 ~~January 1, 1999, for common stock purchased from a corporation or units of~~
34 ~~interest of a limited liability company and retained during any of the~~
35 ~~calendar years 1999-2003.~~

36 ~~(2) The credit shall be determined in the following manner:~~

1 ~~(A)(i)(a) The credit is an amount equal to thirty three~~
2 ~~and one third percent (33 1/3%) of the actual purchase price paid for the~~
3 ~~stock of a corporation to the corporation or for the units of interest of a~~
4 ~~limited liability company to the limited liability company, which shall~~
5 ~~include any fees or commissions to underwriters or sales agents paid by the~~
6 ~~company.~~

7 ~~(b) However, the total amount of fees and~~
8 ~~commissions to underwriters or sales agents for which a credit may be taken~~
9 ~~shall not exceed fifteen percent (15%) of the actual purchase price. Any fees~~
10 ~~or commissions in excess of fifteen percent (15%) of the total purchase price~~
11 ~~shall not be considered in calculating the amount of the credit determined in~~
12 ~~this section.~~

13 ~~(ii) If any shares or units of interest, once~~
14 ~~purchased from the company, are then sold or otherwise disposed of prior to~~
15 ~~five (5) years elapsing from the date of purchase, the maximum amount of any~~
16 ~~credit shall be reduced a pro rata amount. In addition, any distribution from~~
17 ~~the company to the holder of the common stock or the unit of interest that is~~
18 ~~not a dividend or distribution within the meaning of § 15-4-1215 shall be~~
19 ~~deemed a sale of that portion of the original purchase price of the common~~
20 ~~stock or unit of interest on the date of such distribution for application of~~
21 ~~the credit reduction calculated under subdivision (a)(2)(A) of this section;~~

22 ~~(B) In any one (1) tax year, the credit allowed by this~~
23 ~~section shall not exceed fifty percent (50%) of the net Arkansas state income~~
24 ~~tax or premium tax liability of the taxpayer after all other credits and~~
25 ~~reductions in tax have been calculated;~~

26 ~~(C)(i) Any credit in excess of the amount allowed by~~
27 ~~subdivision (a)(2)(B) of this section for any one (1) tax year may be carried~~
28 ~~forward and applied against Arkansas state income tax or premium tax for the~~
29 ~~next succeeding tax year and annually thereafter for a total period of three~~
30 ~~(3) years next succeeding the year in which the credit arose, subject to the~~
31 ~~provisions of subdivision (a)(2)(B) of this section, or until the credit is~~
32 ~~exhausted, whichever occurs first.~~

33 ~~(ii) However, any credit arising under the County~~
34 ~~and Regional Industrial Development Company Act, § 15-4-1201 et seq., shall~~
35 ~~be allowed to be carried forward to years past December 31, 1999, subject to~~
36 ~~the three year carry forward rules of subdivision (a)(2)(C) of this section.~~

1 ~~(iii) In no event will the credit allowed by this~~
2 ~~section be allowed for any tax year ending after December 31, 2006; and~~

3 ~~(D) Any original purchaser of common stock or units of~~
4 ~~interest who seeks to qualify for and maintain the income tax credit or~~
5 ~~premium tax credit provided in this section must obtain and attach to its~~
6 ~~annual income tax or premium tax return a certified statement from the~~
7 ~~company issuing the common stock or units of interest stating:~~

8 ~~(i) The name and address of the original purchaser;~~

9 ~~(ii) The number of shares or units of interest~~
10 ~~purchased;~~

11 ~~(iii) The amount paid by the original purchaser for~~
12 ~~the common stock or units of interest, specifying what portion of the~~
13 ~~original purchase price consisted of fees or commissions to the underwriter~~
14 ~~or sales agent;~~

15 ~~(iv) The date of purchase of the common stock or~~
16 ~~units of interest;~~

17 ~~(v) The number of shares or units of interest of the~~
18 ~~original purchase still owned by the original purchaser; and~~

19 ~~(vi) The amount and date of distributions made from~~
20 ~~the company to the purchaser and whether or not such distributions are ones~~
21 ~~made pursuant to § 15-4-1215.~~

22 ~~(b)(1) For the purpose of ascertaining the gain or loss from the sale~~
23 ~~or other disposition of common stock in a corporation or units of interest in~~
24 ~~a limited liability company, the original purchaser of the common stock or~~
25 ~~the units of interest shall reduce his or her basis in the stock or units by~~
26 ~~the amount of the tax credits previously deducted under this section.~~

27 ~~(2)(A) The original purchaser's basis in the stock or the units~~
28 ~~shall be further reduced by ten percent (10%) of the original purchase price~~
29 ~~for any shares of stock or any units of interest sold or otherwise disposed~~
30 ~~of before five (5) years have elapsed from the date of purchase.~~

31 ~~(B) This reduced basis shall be used by the original~~
32 ~~purchaser when calculating tax due under the Income Tax Act of 1929, § 26-51-~~
33 ~~101 et seq.~~

34
35 SECTION 13. Arkansas Code § 15-4-1704 is repealed.

36 ~~15-4-1704. Refund of sales and use tax—Tax credit.~~

1 ~~(a)(1) The Revenue Division of the Department of Finance and~~
2 ~~Administration shall authorize a refund of sales and use taxes imposed by the~~
3 ~~state and a municipality or county if the municipality or county authorized~~
4 ~~the refund of its local tax on the purchases of the material used in the~~
5 ~~construction of a building or buildings or any addition, modernization, or~~
6 ~~improvement thereon for housing any legitimate business enterprise and~~
7 ~~machinery and equipment to be located in or in connection with such a~~
8 ~~building.~~

9 ~~(2) A refund shall not be authorized for routine operating~~
10 ~~expenditures.~~

11 ~~(3)(A)(i) A refund shall not be authorized for the purchase of~~
12 ~~replacements of items previously purchased as part of a project under this~~
13 ~~subchapter unless the items previously purchased will not enable the project~~
14 ~~to function as originally intended.~~

15 ~~(ii) In order to qualify for a refund under this~~
16 ~~subchapter, the replacement of an item previously purchased must be necessary~~
17 ~~for the implementation or completion of the project.~~

18 ~~(B) However, a program participant may make changes in a~~
19 ~~project by amendment to the project plan filed with the Arkansas Economic~~
20 ~~Development Council.~~

21 ~~(4)(A) All claims for sales and use tax refunds under this~~
22 ~~subchapter shall be filed with the Revenue Division within three (3) years~~
23 ~~from the date of the qualified purchase or purchases.~~

24 ~~(B) Claims filed after three (3) years from the date of~~
25 ~~the qualified purchase or purchases shall be disallowed.~~

26 ~~(5)(A) The time limitation in this section for filing claims~~
27 ~~shall be tolled if:~~

28 ~~(i) A program participant fails to pay sales or use~~
29 ~~tax on an item that was taxable; and~~

30 ~~(ii) The applicable tax is subsequently assessed as~~
31 ~~a result of an audit by the Revenue Division.~~

32 ~~(B) All claims for sales and use tax refunds relating to~~
33 ~~an audited purchase shall be filed with the Revenue Division within one (1)~~
34 ~~year after payment of the assessed tax or the date of a final administrative~~
35 ~~or judicial order, whichever is later.~~

36 ~~(6) A program participant that files a claim for a sales or use~~

1 ~~tax refund relating to an audited purchase shall be entitled to a refund of~~
2 ~~interest paid on the amount of tax assessed on the audited purchase if a~~
3 ~~refund is approved for the purchase.~~

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

7 ~~(1) Manufacturers classified in Standard Industrial~~
8 ~~Classification codes 20-39, including semiconductor and microelectronic~~
9 ~~manufacturers, that create one (1) or more net new full-time permanent jobs;~~

10 ~~(2)(A) Computer businesses primarily engaged in:~~

11 ~~(i) Providing computer programming services;~~

12 ~~(ii) The design and development of prepackaged~~
13 ~~software;~~

14 ~~(iii) Businesses engaged in digital content~~
15 ~~production and digital preservation;~~

16 ~~(iv) Computer processing and data preparation~~
17 ~~services;~~

18 ~~(v) Information retrieval services; and~~

19 ~~(vi) Computer and data processing consultants and~~
20 ~~developers.~~

21 ~~(B) All businesses in this group must:~~

22 ~~(i) Create five (5) or more net new full-time~~
23 ~~permanent jobs after July 1, 2001;~~

24 ~~(ii) Derive at least seventy five percent (75%) of~~
25 ~~their revenue from out-of-state sales; and~~

26 ~~(iii) Have no retail sales to the general public;~~

27 ~~(3) Businesses primarily engaged in commercial physical and~~
28 ~~biological research as classified by Standard Industrial Classification code~~
29 ~~8731 that create one (1) or more net new full-time permanent jobs;~~

30 ~~(4)(A) Businesses primarily engaged in motion picture production~~
31 ~~that will create twenty five (25) or more net new full-time permanent jobs.~~

32 ~~(B) All businesses in this group must derive at least~~
33 ~~sixty percent (60%) of their revenue from out-of-state sales and have no~~
34 ~~retail sales to the general public;~~

35 ~~(5) A distribution center with no retail sales to the general~~
36 ~~public, unless seventy five percent (75%) of the sales revenues are from out-~~

1 ~~of state customers, that creates twenty five (25) or more net new full-time~~
2 ~~permanent jobs;~~

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

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

9 ~~(8) A trucking/distribution terminal as classified by Standard~~
10 ~~Industrial Classification code 4231 with no retail sales to the general~~
11 ~~public that creates twenty five (25) or more net new full-time permanent~~
12 ~~jobs; and~~

13 ~~(9) A coal mining operation that employs twenty five (25) or~~
14 ~~more net full-time permanent persons.~~

15 ~~(c) The business shall file an endorsement resolution with the~~
16 ~~Arkansas Economic Development Council and the Department of Finance and~~
17 ~~Administration. The endorsement resolution must be approved by the governing~~
18 ~~body of a municipality or county in whose jurisdiction the facility is~~
19 ~~located and must:~~

20 ~~(1) Approve the specific entity's participation in the program;~~
21 ~~and~~

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

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

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

1 ~~(f)(1) In the event that a business fails to notify the Department of~~
2 ~~Finance and Administration that the number of employees has fallen below the~~
3 ~~required number to continue to receive benefits under this subchapter, that~~
4 ~~business will be liable for the repayment of all benefits which were paid to~~
5 ~~the business after it no longer qualified for the benefits.~~

6 ~~(2) Interest shall also be due at the rate of ten percent (10%)~~
7 ~~per annum.~~

8 ~~(g)(1) The requisite number of net new full-time permanent employees~~
9 ~~must be employed by the business within twenty-four (24) months following the~~
10 ~~date the financial incentive plan was signed.~~

11 ~~(2) In the event that the requisite number of net new full-time~~
12 ~~permanent employees cannot be employed within the twenty-four-month period,~~
13 ~~the business can file a written application with the commission explaining~~
14 ~~why additional time is necessary. The business can be afforded up to twenty-~~
15 ~~four (24) more months to hire the requisite number of employees if the~~
16 ~~Director of the Arkansas Economic Development Council and the Chief Fiscal~~
17 ~~Officer of the State determine that the need for additional time is due to:~~

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

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

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

25 ~~(h)(1) The Revenue Division of the Department of Finance and~~
26 ~~Administration shall authorize an income tax credit equal to one hundred~~
27 ~~(100) times the average hourly wage paid, with a maximum of three thousand~~
28 ~~dollars (\$3,000) per net new full-time permanent employee hired within sixty~~
29 ~~(60) months following the date of the approved financial incentive plan of a~~
30 ~~business qualifying under subsection (b) of this section.~~

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

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

1 ~~projects approved on or after March 25, 1997, the credit may be applied~~
2 ~~against income tax for the succeeding nine (9) years or until the credit is~~
3 ~~entirely used, whichever occurs first.~~

4 ~~(3) The multiplier allowed under this section shall be four~~
5 ~~hundred (400) multiplied by the average hourly wage paid with a maximum~~
6 ~~credit of six thousand dollars (\$6,000) if the business is located in a high-~~
7 ~~unemployment county.~~

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

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

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

16 ~~(2)(A) In the event it is found that any business receiving the~~
17 ~~benefits contained in subsection (h) of this section has failed to comply~~
18 ~~with the conditions contained in this section, that business shall be~~
19 ~~disqualified from receiving any further benefits under the program and shall~~
20 ~~be liable for the payment of such additional income taxes as may be due after~~
21 ~~the income tax credits provided for in subsection (h) of this section are~~
22 ~~disallowed.~~

23 ~~(B) Interest shall also be due at the rate of ten percent~~
24 ~~(10%) per annum.~~

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

29
30 SECTION 14. Arkansas Code § 15-4-2306 is repealed.

31 ~~15-4-2306. Tax credit.~~

32 ~~(a) A taxpayer shall be entitled to a credit against any Arkansas~~
33 ~~income tax liability which may be imposed on the taxpayer for any tax year~~
34 ~~commencing on or after January 1, 1999, for contributions transmitted to the~~
35 ~~Treasurer of State pursuant to this subchapter.~~

36 ~~(b) The credit shall be determined in the following manner:~~

1 ~~(1) The credit is limited to an amount not to exceed thirty-~~
2 ~~three percent (33%) of the taxpayer's contribution;~~

3 ~~(2) In any one (1) tax year, the credit allowed by this section~~
4 ~~shall not exceed fifty percent (50%) of the net Arkansas state income tax~~
5 ~~liability of the taxpayer after all other credits and reductions in tax have~~
6 ~~been calculated; and~~

7 ~~(3) Any credit in excess of the amount allowed by subdivision~~
8 ~~(b)(2) of this section for any one (1) tax year may be carried forward and~~
9 ~~applied against any Arkansas state income tax liability for the next-~~
10 ~~succeeding tax year and annually thereafter for a total period of three (3)~~
11 ~~years next succeeding the year in which the credit arose, subject to the~~
12 ~~provisions of subdivision (b)(2) of this section or until the credit is~~
13 ~~exhausted, whichever occurs first.~~

14
15 SECTION 15. Arkansas Code Title 15, Chapter 4, Subchapter 24 is
16 repealed.

17 ~~Subchapter 24 — Steel Manufacturers' Tax Exemptions and Credits~~

18
19 ~~15-4-2401. Definitions.~~

20 ~~As used in this subchapter:~~

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

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

34 ~~(3) "Qualified manufacturer of steel" means any natural person,~~
35 ~~company, or corporation engaged in the manufacture, refinement, or processing~~
36 ~~of steel whenever more than fifty percent (50%) of the electricity or more~~

1 ~~than fifty percent (50%) of the natural gas consumed in the manufacture,~~
2 ~~refinement, or processing of steel is used to power an electric arc furnace~~
3 ~~or furnaces, continuous casting equipment, or rail steel mill equipment in~~
4 ~~connection with the melting, continuous casting, or rolling of steel or in~~
5 ~~the preheating of steel for processing through a rail steel mill.~~

6
7 ~~15-4-2402. Certification required.~~

8 ~~To claim the benefits of this subchapter, a taxpayer must obtain a~~
9 ~~certification prior to December 31, 2006, from the Director of the Arkansas~~
10 ~~Economic Development Commission certifying to the Revenue Division of the~~
11 ~~Department of Finance and Administration that the taxpayer:~~

12 ~~(1) Is a qualified manufacturer of steel;~~

13 ~~(2) Operates a steel mill in Arkansas which began production~~
14 ~~after January 1, 2001; and~~

15 ~~(3) Has invested after January 1, 2001, and prior to December~~
16 ~~31, 2006, more than two hundred million dollars (\$200,000,000) in a steel~~
17 ~~mill, and the investment expenditure is for one (1) or more of the following:~~

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

21 ~~(B)(i) Machinery and equipment to be located in or in~~
22 ~~connection with the steel mill.~~

23 ~~(ii) Motor vehicles of a type subject to~~
24 ~~registration shall not be considered as machinery and equipment; and~~

25 ~~(C) Project planning costs or construction labor costs,~~
26 ~~including:~~

27 ~~(i) On-site direct labor and supervision, whether~~
28 ~~employed by a contractor or the project owner;~~

29 ~~(ii) Architectural fees or engineering fees, or~~
30 ~~both;~~

31 ~~(iii) Right-of-way purchases;~~

32 ~~(iv) Utility extensions;~~

33 ~~(v) Site preparation;~~

34 ~~(vi) Parking lots;~~

35 ~~(vii) Disposal or containment systems;~~

36 ~~(viii) Water and sewer treatment systems;~~

~~(ix) Rail spurs;~~
~~(x) Streets and roads;~~
~~(xi) Purchase of mineral rights;~~
~~(xii) Land;~~
~~(xiii) Buildings;~~
~~(xiv) Building renovation;~~
~~(xv) Production, processing, and testing equipment;~~
~~(xvi) Drainage systems;~~
~~(xvii) Water tanks and reservoirs;~~
~~(xviii) Storage facilities;~~
~~(xix) Equipment rental;~~
~~(xx) Contractor's cost-plus fees;~~
~~(xxi) Builders' risk insurance;~~
~~(xxii) Original spare parts;~~
~~(xxiii) Job administrative expenses;~~
~~(xxiv) Office furnishings and equipment;~~
~~(xxv) Rolling stock; and~~
~~(xxvi) Capitalized start-up costs related to the~~
~~construction.~~

~~15-4-2403. Exemption from taxes.~~

~~Sales of natural gas and electricity to taxpayers qualified to receive~~
~~the benefits of this subchapter for use in connection with the steel mill~~
~~shall be exempt from the gross receipts tax levied by the Arkansas Gross~~
~~Receipts Act of 1941, the Arkansas Compensating Tax Act of 1949, § 26-53-101~~
~~et seq., and any other state or local tax administered under those acts.~~

~~15-4-2404. Net operating loss deduction—Carry forward.~~

~~(a) Taxpayers qualified for the benefits of this subchapter and~~
~~entitled to a net operating loss deduction as provided in § 26-51-427 may~~
~~carry forward that deduction to the next succeeding taxable year following~~
~~the year of the net operating loss and annually thereafter for a total period~~
~~of ten (10) years or until the net operating loss has been exhausted,~~
~~whichever is earlier.~~

~~(b) The net operating loss deduction must be carried forward in the~~
~~order named in subsection (a) of this section.~~

1
2 ~~15-4-2405. Extension of recycling tax credit—Postconsumer waste.~~

3 ~~(a)(1) A qualified manufacturer of steel which has been certified by~~
4 ~~the Director of the Arkansas Economic Development Commission after January 1,~~
5 ~~2001, and prior to December 31, 2006, as qualifying for the benefits of this~~
6 ~~subchapter and has qualified for the income tax credit for the purchase of~~
7 ~~waste reduction, reuse, or recycling equipment provided by § 26-51-506, may~~
8 ~~carry forward any unused income tax credit earned under § 26-51-506 for a~~
9 ~~period of fourteen (14) consecutive years following the taxable year in which~~
10 ~~the credit originated.~~

11 ~~(2) Income tax credits which would otherwise expire during that~~
12 ~~period shall first be used.~~

13 ~~(b) In the case of a qualified manufacturer of steel as described in~~
14 ~~subsection (a) of this section:~~

15 ~~(1) The term “waste reduction, reuse, or recycling equipment” as~~
16 ~~defined in § 26-51-506 shall include production, processing, and testing~~
17 ~~equipment used to manufacture products containing recovered materials; and~~

18 ~~(2)(A) The provisions of § 26-51-506(d)(4) shall not apply.~~

19 ~~(B) However, the qualified manufacturer of steel shall~~
20 ~~make a good faith effort to use recovered materials containing Arkansas post-~~
21 ~~consumer waste as a part of the materials used.~~

22
23 ~~15-4-2406. Refund of recycling tax credit.~~

24 ~~(a)(1) In the case of a qualified manufacturer of steel as described~~
25 ~~in § 15-4-2405(a), the provisions of § 26-51-506(f) shall not apply.~~

26 ~~(2) However, the qualified manufacturer of steel shall refund~~
27 ~~the amount of the tax credit provided by subsection (b) of this section if~~
28 ~~within three (3) years of the taxable year in which the credit originated:~~

29 ~~(A)(i) The waste reduction, reuse, or recycling equipment~~
30 ~~is removed from Arkansas, disposed of, or transferred to another person, or~~
31 ~~the qualified manufacturer of steel otherwise ceases to use the required~~
32 ~~materials or operate in accordance with § 26-51-506.~~

33 ~~(ii) However, reorganization transactions, changes~~
34 ~~of ownership and control, and sales and transfers of waste reduction, reuse,~~
35 ~~or recycling equipment among affiliates which do not constitute sales or~~
36 ~~transfers to a third party purchaser shall not be considered disposals,~~

1 ~~transfers, or cessations of use for purposes of § 26-51-506; or~~

2 ~~(B) The Director of the Arkansas Department of~~
3 ~~Environmental Quality finds that the qualified manufacturer of steel has~~
4 ~~operated the waste reduction, reuse, or recycling equipment in a manner which~~
5 ~~demonstrates a pattern of intentional failure to comply with final~~
6 ~~administrative or judicial orders which clearly indicates a disregard for~~
7 ~~environmental regulation.~~

8 ~~(b) If the provisions of subsection (a) of this section apply, the~~
9 ~~qualified manufacturer of steel shall refund the amount of the tax credit~~
10 ~~which was deducted from income tax liability which exceeds the following~~
11 ~~amounts:~~

12 ~~(1) Within the first year, zero dollars (\$0.00);~~

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

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

17 ~~(c) Any refund required by subdivision (a)(2)(A) of this section shall~~
18 ~~apply only to the credit given for the particular waste reduction, reuse, or~~
19 ~~recycling equipment to which that subdivision applies.~~

20 ~~(d) Any taxpayer who is required to refund part of a credit pursuant~~
21 ~~to this section shall no longer be eligible to carry forward any amount of~~
22 ~~that credit which had not been used as of the date the refund is required.~~

23 ~~(e) Any person or legal entity aggrieved by a decision of the director~~
24 ~~under this section may appeal to the Arkansas Pollution Control and Ecology~~
25 ~~Commission through administrative procedures adopted by the commission and to~~
26 ~~the courts in the manner provided in §§ 8-4-222—8-4-229.~~

27
28 ~~15-4-2407. Apportionment of credit amount.~~

29 ~~In the case of a qualified manufacturer of steel as described in § 15-~~
30 ~~4-2405(a) which is:~~

31 ~~(1) A proprietorship, partnership, or other business~~
32 ~~organization treated as a proprietorship or partnership for tax purposes, the~~
33 ~~amount of the credit determined under this subchapter for any taxable year~~
34 ~~shall be apportioned to each proprietor, partner, member, or other owner in~~
35 ~~proportion to the amount of income from the entity which the proprietor,~~
36 ~~partner, member, or other owner is required to include in gross income;~~

1 ~~(2) A Subchapter S corporation, the amount of credit determined~~
2 ~~shall be apportioned to each Subchapter S corporation shareholder in~~
3 ~~proportion to the amount of income from the entity which the Subchapter S~~
4 ~~corporation shareholder is required to include as gross income; or~~

5 ~~(3) An estate or trust:~~

6 ~~(A) The amount of the credit determined for any taxable~~
7 ~~year shall be apportioned between the estate or trust and the beneficiaries~~
8 ~~on the basis of the income of the estate or trust allocable to each; and~~

9 ~~(B) Any beneficiary to whom any amount has been~~
10 ~~apportioned under this subchapter shall be allowed, subject to the~~
11 ~~limitations contained in this subchapter, a credit under this subchapter for~~
12 ~~that amount.~~

13
14 SECTION 16. Arkansas Code Title 15, Chapter 4, Subchapter 27 is
15 repealed.

16 ~~Subchapter 27—Consolidated Incentive Act of 2003~~

17
18 ~~15-4-2701. Legislative intent.~~

19 ~~(a) The General Assembly recognizes that job creation and capital~~
20 ~~investment in Arkansas are dependent upon being competitive with other states~~
21 ~~for business locations and expansions.~~

22 ~~(b) Acts 2001, No. 757, authorized the Bureau of Legislative Research~~
23 ~~to conduct a study of business development incentives in Arkansas and in~~
24 ~~states with which Arkansas frequently competes for business locations.~~

25 ~~(c) This subchapter incorporates many of the findings of that study in~~
26 ~~an effort to make our state more competitive for the creation of new and~~
27 ~~better jobs for the citizens of Arkansas.~~

28
29 ~~15-4-2702. Title.~~

30 ~~This subchapter shall be known and may be cited as the “Consolidated~~
31 ~~Incentive Act of 2003”.~~

32
33 ~~15-4-2703. Definitions.~~

34 ~~As used in this subchapter:~~

35 ~~(1) “Applied research” means any activity that seeks to utilize,~~
36 ~~synthesize, or apply existing knowledge, information, or resources to the~~

1 ~~resolution of a specific problem, question, or issue;~~

2 ~~(2)(A) —“Average hourly wage” means the amount obtained when~~
3 ~~payroll, as defined in this section, is divided by the number of hours worked~~
4 ~~to earn the payroll.~~

5 ~~(B) —For the purpose of subdivision (2)(A) of this section,~~
6 ~~forty (40) hours per week shall be used as the number of hours worked for a~~
7 ~~salaried employee;~~

8 ~~(3) —“Basic research” means any original investigation for the~~
9 ~~advancement of scientific or technological knowledge;~~

10 ~~(4) —“Commission” means the Arkansas Economic Development~~
11 ~~Commission;~~

12 ~~(5) —“Contractual employee” means an employee who:~~

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

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

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

23 ~~(6)(A) —“Corporate headquarters” means the facility or portion of~~
24 ~~a facility where corporate staff employees are physically employed and where~~
25 ~~the majority of the company’s financial, personnel, legal, planning,~~
26 ~~information technology, or other headquarters-related functions are handled~~
27 ~~either on a regional basis or a national basis.~~

28 ~~(B) —A corporate headquarters must be a regional corporate~~
29 ~~headquarters or a national corporate headquarters;~~

30 ~~(7)(A) —“County or state average hourly wage” means the weighted~~
31 ~~average weekly earnings for Arkansans in all industries, both statewide and~~
32 ~~countywide, as calculated by the Department of Workforce Services in its most~~
33 ~~recent “Annual Covered Employment and Earnings” publication, divided by forty~~
34 ~~(40).~~

35 ~~(B) —The average hourly wage threshold determined at the~~
36 ~~signing date of the financial incentive agreement shall be the threshold for~~

1 ~~the term of the agreement;~~

2 ~~(8) "Director" means the Director of the Arkansas Economic~~
3 ~~Development Commission;~~

4 ~~(9) "Distribution center" means a facility for the reception,~~
5 ~~storage, and shipping of;~~

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

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

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

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

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

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

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

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

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

32 ~~(D) Distribution centers or intermodal facilities;~~

33 ~~(E) Office sector businesses;~~

34 ~~(F) National or regional corporate headquarters, North~~
35 ~~American Industry Classification System Code 551114, as in effect January 1,~~
36 ~~2005;~~

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

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

5 ~~(ii)(a) All businesses in this group shall derive at~~
6 ~~least seventy five percent (75%) of their sales revenue from out of state.~~

7 ~~(b)(1) The average hourly wages paid by~~
8 ~~businesses in this group shall exceed one hundred fifty percent (150%) of the~~
9 ~~county or state average hourly wage, whichever is less.~~

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

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

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

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

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

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

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

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

33 ~~(ii) The position vacated by the existing employee~~
34 ~~was either filled by a subsequent employee or no subsequent employee will be~~
35 ~~hired because the business no longer conducts the particular business~~
36 ~~activity requiring that classification.~~

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

6 ~~(13) “Facility” means a single physical location at which the~~
7 ~~eligible business is conducting its operations;~~

8 ~~(14) “Financial incentive agreement” means an agreement entered~~
9 ~~into by an eligible business and the commission to provide the business an~~
10 ~~incentive to locate a new business or to expand an existing business in~~
11 ~~Arkansas;~~

12 ~~(15) “Fund” means the Economic Development Incentive Fund;~~

13 ~~(16) “Governing authority” means the quorum court of a county or~~
14 ~~the governing body of a municipality;~~

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

19 ~~(a) Dedicated to the conduct of research~~
20 ~~activities;~~

21 ~~(b) Operated by the business; and~~

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

26 ~~(ii) “In-house research” includes:~~

27 ~~(a) Experimental or laboratory activity to~~
28 ~~develop new products, improve existing products, or develop new uses of~~
29 ~~products, but only to the extent that activity is conducted in Arkansas; and~~

30 ~~(b) A contractual agreement with a state~~
31 ~~college, state university, or other research organization to perform research~~
32 ~~for a targeted business if the President of the Arkansas Science and~~
33 ~~Technology Authority makes a written determination before the research is~~
34 ~~performed that the research is essential to the core function of the targeted~~
35 ~~business.~~

36 ~~(B) “In-house research” does not include tests or~~

1 ~~inspections of materials or products for quality control, efficiency surveys,~~
2 ~~management studies, other market research, or any other ordinary and~~
3 ~~necessary expenses of conducting business;~~

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

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

10 ~~(20) "Investment threshold" means the minimum amount of~~
11 ~~investment in project costs that must be incurred in order to qualify for~~
12 ~~eligibility;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~(B) "Person" includes:~~

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

28 ~~(ii) Beneficiaries, members, managers, and partners;~~
29 ~~and~~

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

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

34 ~~(A) Project planning costs;~~

35 ~~(B) Architectural and engineering fees;~~

36 ~~(C) Right-of-way purchases;~~

1 ~~(D) Utility extensions;~~
2 ~~(E) Site preparations;~~
3 ~~(F) Purchase of mineral rights;~~
4 ~~(G) Building demolition;~~
5 ~~(H) Builders risk insurance;~~
6 ~~(I) Capitalized start-up costs;~~
7 ~~(J) Deposits and process payments on eligible machinery~~
8 ~~and equipment; and~~
9 ~~(K) Other costs necessary to prepare for the start of~~
10 ~~construction;~~
11 ~~(31)(A) "Project" means costs associated with the:~~
12 ~~(i) Construction of a new plant or facility~~
13 ~~including, but not limited to, land, building, production equipment, or~~
14 ~~support infrastructure;~~
15 ~~(ii) Expansion of an established plant or facility~~
16 ~~by adding to the building, production equipment, or support infrastructure;~~
17 ~~or~~
18 ~~(iii) Modernization of an established plant or~~
19 ~~facility through the replacement of production or processing equipment or~~
20 ~~support infrastructure that improves efficiency or productivity.~~
21 ~~(B) "Project" does not include:~~
22 ~~(i) Expenditures for routine repair and maintenance~~
23 ~~that do not result in new construction or expansion;~~
24 ~~(ii) Routine operating expenditures;~~
25 ~~(iii) Expenditures incurred at multiple facilities;~~
26 ~~or~~
27 ~~(iv) The purchase or acquisition of an existing~~
28 ~~business unless:~~
29 ~~(a) There is sufficient documentation that the~~
30 ~~existing business was closed; and~~
31 ~~(b) The purchase of the existing business will~~
32 ~~result in the retention of the jobs that would have been lost due to the~~
33 ~~closure.~~
34 ~~(C) Eligible project costs must be incurred within four~~
35 ~~(4) years from the date a financial incentive agreement was signed by the~~
36 ~~commission;~~

1 ~~(32) "Project plan" means a plan;~~

2 ~~(A) Submitted to the commission containing such~~
3 ~~information as may be required by the director to determine eligibility for~~
4 ~~benefits; and~~

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

7 ~~(33) "Qualified business" means an eligible business that;~~

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

10 ~~(B) Has signed a financial incentive agreement with the~~
11 ~~commission or is involved in a research and development program administered~~
12 ~~by the Arkansas Science and Technology Authority;~~

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

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

19 ~~(36)(A) "Regional corporate headquarters" means the location~~
20 ~~where a headquarters staff performs functions on a regional basis that~~
21 ~~involve the services of administration, planning, research and development,~~
22 ~~marketing, personnel, legal, computer, or telecommunications.~~

23 ~~(B)(i) As used in subdivision (36)(A) of this section,~~
24 ~~"regional" means a geographic area composed of this state and a contiguous~~
25 ~~state.~~

26 ~~(ii) However, a function on a regional basis does~~
27 ~~not include a function involving manufacturing, processing, warehousing,~~
28 ~~distributing, or wholesaling activities or the operation of a call center;~~

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

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

36 ~~(39) "Scientific and technical services business" means a~~

1 ~~business;~~

2 ~~(A) Primarily engaged in performing scientific and~~
3 ~~technical activities for others, including;~~

4 ~~(i) Architectural and engineering design;~~

5 ~~(ii) Computer programming and computer systems~~
6 ~~design; and~~

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

9 ~~(B) Selling expertise;~~

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

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

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

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

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

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

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

31 ~~(i) Advanced materials and manufacturing systems;~~

32 ~~(ii) Agriculture, food, and environmental sciences;~~

33 ~~(iii) Biotechnology, bioengineering, and life~~
34 ~~sciences;~~

35 ~~(iv) Information technology;~~

36 ~~(v) Transportation logistics; and~~

1 ~~(vi) Bio-based products.~~

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

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

6 ~~(ii) Pay not less than one hundred fifty percent~~
7 ~~(150%) of the lesser of the county or state average hourly wage; and~~

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

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

13
14 ~~15-4-2704. Tier system.~~

15 ~~(a) The Arkansas Economic Development Commission shall establish a~~
16 ~~tier system that shall rank all seventy five (75) counties of this state into~~
17 ~~four (4) divisions on the basis of economic prosperity.~~

18 ~~(b) Tier 4 will be the least prosperous division and tier 1 will be~~
19 ~~the most prosperous division.~~

20 ~~(c) The assignment of a county to a tier shall be based on a ranking~~
21 ~~of:~~

22 ~~(1) Unemployment rate;~~

23 ~~(2) Poverty rate;~~

24 ~~(3) Per capita income; and~~

25 ~~(4) Population growth.~~

26 ~~(d) The commission shall:~~

27 ~~(1) Update ranking statistics annually; and~~

28 ~~(2) Place counties into tiers based on the updated statistics.~~

29 ~~(e)(1) A county that has experienced a sudden and severe period of~~
30 ~~economic distress caused by the closing of a business entity that results in~~
31 ~~the loss of a minimum of five percent (5%) of the employed labor force, as~~
32 ~~determined by the most recent Labor Market Information publication published~~
33 ~~by the Department of Workforce Services, may be moved up one (1) tier upon~~
34 ~~submitting a request to and being approved by the Arkansas Economic~~
35 ~~Development Council.~~

36 ~~(2) If the council approves a county's move to a higher tier,~~

1 ~~any qualified business having signed a financial incentive agreement with the~~
2 ~~commission dated before the council's action shall receive the benefits for~~
3 ~~the duration of the term of the agreement that were assigned to the county to~~
4 ~~which it located at the time the financial incentive agreement was signed by~~
5 ~~the commission regardless of any subsequent change to the tier in which the~~
6 ~~county is assigned.~~

7
8 ~~15-4-2705. Job creation tax credit.~~

9 ~~(a) There is established a job creation tax credit to encourage:~~

10 ~~(1) The creation of new jobs; and~~

11 ~~(2) Business growth and expansion.~~

12 ~~(b) An application for the income tax credit under this section shall~~
13 ~~be submitted to the Arkansas Economic Development Commission.~~

14 ~~(c) To qualify for this credit, an eligible business shall have an~~
15 ~~annual payroll for new full-time permanent employees in excess of the payroll~~
16 ~~threshold for the county tier in which the project is located, as follows:~~

17 ~~(1) For tier 1 counties, the annual payroll threshold is one~~
18 ~~hundred twenty-five thousand dollars (\$125,000);~~

19 ~~(2) For tier 2 counties, the annual payroll threshold is one~~
20 ~~hundred thousand dollars (\$100,000);~~

21 ~~(3) For tier 3 counties, the annual payroll threshold is~~
22 ~~seventy-five thousand dollars (\$75,000); and~~

23 ~~(4) For tier 4 counties, the annual payroll threshold is fifty~~
24 ~~thousand dollars (\$50,000).~~

25 ~~(d)(1) The credit earned under this section is a percentage of the~~
26 ~~payroll of the new full-time permanent employees hired following the date of~~
27 ~~the approved financial incentive agreement.~~

28 ~~(2) The percentage shall be determined by the county tier in~~
29 ~~which the project is located, as follows:~~

30 ~~(A) For tier 1 counties, the credit is one percent (1%) of~~
31 ~~the payroll for the new full-time permanent employees of the business;~~

32 ~~(B) For tier 2 counties, the credit is two percent (2%) of~~
33 ~~the payroll for the new full-time permanent employees of the business;~~

34 ~~(C) For tier 3 counties, the credit is three percent (3%)~~
35 ~~of the payroll for the new full-time permanent employees of the business; and~~

36 ~~(D) For tier 4 counties, the credit is four percent (4%)~~

1 of the payroll for the new full-time permanent employees of the business.

2 ~~(3) To qualify for a credit under this subsection, the proposed~~
3 ~~average hourly wage of a company applying for the benefit shall equal or be~~
4 ~~greater than the lowest county average hourly wage as calculated by the~~
5 ~~commission based on the most recent calendar year data published by the~~
6 ~~Department of Workforce Services.~~

7 ~~(e) The term of the financial incentive agreement shall be for a~~
8 ~~period of sixty (60) months, beginning on the date of the approved financial~~
9 ~~incentive agreement.~~

10 ~~(f)(1) After receiving an approved financial incentive agreement from~~
11 ~~the Arkansas Economic Development Commission, the qualified business shall~~
12 ~~certify to the Revenue Division of the Department of Finance and~~
13 ~~Administration the payroll of the new full-time permanent employees annually~~
14 ~~at the end of each tax year during the term of the agreement.~~

15 ~~(2) Upon verification of the reported payroll amounts, the~~
16 ~~Revenue Division shall authorize the appropriate income tax credit.~~

17 ~~(g)(1) The tax credits earned under this section may offset fifty~~
18 ~~percent (50%) of the business's tax liability in any one (1) year.~~

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

22 ~~(h)(1) If a business fails to meet the payroll threshold within two~~
23 ~~(2) years after the signing of the financial incentive agreement or within~~
24 ~~the time period established by an extension approved by the Director of the~~
25 ~~Department of Finance and Administration and the Director of the Arkansas~~
26 ~~Economic Development Commission, that business will be liable for repayment~~
27 ~~of all benefits previously received by the business.~~

28 ~~(2) After a business has failed to reach the payroll threshold~~
29 ~~of this section in a timely manner, the Department of Finance and~~
30 ~~Administration shall have two (2) years to collect benefits previously~~
31 ~~received by the business or file a lawsuit to enforce the repayment~~
32 ~~provisions.~~

33
34 ~~15-4-2706. Investment tax incentives.~~

35 ~~(a) There are established investment tax incentives to:~~

36 ~~(1) Encourage capital investment for the long-term viability of~~

1 ~~businesses in the state; and~~

2 ~~(2) Create new jobs.~~

3 ~~(b)(1) The award of this incentive shall be at the discretion of the~~
4 ~~Director of the Arkansas Economic Development Commission.~~

5 ~~(2) If offered, an application for an income tax credit under~~
6 ~~this section shall be submitted to the commission.~~

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

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

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

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

20 ~~(D) For tier 4 counties, the business shall invest two~~
21 ~~million dollars (\$2,000,000) or more and have an annual payroll for new full-~~
22 ~~time permanent employees in excess of eight hundred thousand dollars~~
23 ~~(\$800,000).~~

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

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

31 ~~(6)(A)(i) After receiving an approved financial incentive~~
32 ~~agreement from the commission, the approved company shall certify eligible~~
33 ~~project costs annually at the end of each calendar year for the term of the~~
34 ~~agreement to the Revenue Division.~~

35 ~~(ii) Upon verification of eligible project costs,~~
36 ~~the Revenue Division shall authorize an income tax credit of ten percent~~

1 ~~(10%) based on the total investment in land, buildings, equipment, and costs~~
2 ~~related to licensing and protecting intellectual property.~~

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

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

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

12 ~~(7) Technology-based enterprises, as defined by § 14-164-~~
13 ~~203(12), may earn, at the discretion of the Director of the Arkansas Economic~~
14 ~~Development Commission, an income tax credit or sales and use tax credit~~
15 ~~based on new investment, provided that the technology-based enterprise:~~

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

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

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

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

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

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

35 ~~(iv) The income tax credit or sales and use tax~~
36 ~~credit will be equal to eight percent (8%) of the investment for that part of~~

1 ~~the investment that is over two million dollars (\$2,000,000).~~

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

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

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

10 ~~(A) A sales and use tax credit; or~~

11 ~~(B) An income tax credit.~~

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

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

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

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

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

32 ~~(12) After receiving an approved financial incentive agreement~~
33 ~~from the commission, the approved company shall certify eligible project~~
34 ~~costs annually at the end of each tax year for the term of the financial~~
35 ~~incentive agreement to the Revenue Division of the Department of Finance and~~
36 ~~Administration.~~

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

4 ~~(c)(1)(A) An application for a retention tax credit under this~~
5 ~~subsection shall be submitted to the commission.~~

6 ~~(B)(i) The application shall be submitted to the~~
7 ~~commission before incurring any project costs.~~

8 ~~(ii) With the exception of preconstruction costs,~~
9 ~~only those costs incurred after the commission's approval are eligible for~~
10 ~~the tax credit.~~

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

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

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

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

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

22 ~~(B) The amount of the credit shall be one-half percent~~
23 ~~(0.5%) above the state sales and use tax rate in effect at the time a~~
24 ~~financial incentive agreement is signed with the commission.~~

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

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

30 ~~(4)(A) Upon determination by the Director of the Arkansas~~
31 ~~Economic Development Commission that the project qualifies for credit under~~
32 ~~this subsection, the Director of the Arkansas Economic Development Commission~~
33 ~~shall certify to the Director of the Department of Finance and Administration~~
34 ~~that the project qualifies and shall transmit with his or her certification~~
35 ~~the documents or copies of the documents upon which the certification was~~
36 ~~based.~~

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

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

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

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

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

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

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

31 ~~(B) The resolution shall:~~

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

34 ~~(ii)(a) Specify that the Department of Finance and~~
35 ~~Administration is authorized to refund local sales taxes to the qualified~~
36 ~~business.~~

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

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

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

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

21 ~~(B) A refund shall not be authorized for:~~

22 ~~(i) Routine operating expenditures; or~~

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

27 ~~(3) Subject to the approval of the commission, a program~~
28 ~~participant may make changes in a project by written amendment to the project~~
29 ~~plan filed with the commission.~~

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

34 ~~(5)(A)(i) In order to be eligible for the benefits under this~~
35 ~~subsection, a business shall sign a job creation financial incentive~~
36 ~~agreement under § 15-4-2705 or § 15-4-2707 and comply with the eligibility~~

1 ~~requirements of the incentive agreement.~~

2 ~~(ii) However, a business may apply for benefits~~
3 ~~under this subsection if:~~

4 ~~(a) The business has an existing agreement~~
5 ~~under subdivision (d)(5)(A) of this section and the provisions of subdivision~~
6 ~~(d)(5)(B) of this section have been met within the previous forty-eight (48)~~
7 ~~months; or~~

8 ~~(b) The business has signed a job creation~~
9 ~~financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the~~
10 ~~previous forty-eight (48) months.~~

11 ~~(B) The financial incentive agreement under § 15-4-2705 or~~
12 ~~§ 15-4-2707 shall be signed within twenty-four (24) months after signing the~~
13 ~~financial incentive agreement under this subsection.~~

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

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

19 ~~(B) The business shows proof of an equity investment of at~~
20 ~~least two hundred fifty thousand dollars (\$250,000).~~

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

26 ~~(B) The resolution shall:~~

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

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

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

36 ~~(3) After the Director of the Arkansas Economic Development~~

1 ~~Commission has determined that the project is eligible for the sales and use~~
2 ~~tax refund, this determination accompanied by the financial incentive~~
3 ~~agreement and any other pertinent documentation shall be forwarded to the~~
4 ~~Director of the Department of Finance and Administration.~~

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

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

17 ~~(B) A refund shall not be authorized for:~~

18 ~~(i) Routine operating expenditures; or~~

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

22 ~~(5) Subject to the approval of the commission, a program~~
23 ~~participant may make changes in a project by written amendment to the project~~
24 ~~plan filed with the Arkansas Economic Development Commission.~~

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

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

34
35 ~~15-4-2707. Economic Development Incentive Fund — Payroll rebate.~~

36 ~~(a) There is established on the books of the Treasurer of State, the~~

1 ~~Auditor of State, and the Chief Fiscal Officer of the State a fund to be~~
2 ~~known as the Economic Development Incentive Fund of the Arkansas Economic~~
3 ~~Development Commission.~~

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

7 ~~(c) After the department has received the certification of the~~
8 ~~payrolls of the businesses that have entered into financial incentive~~
9 ~~agreements with the commission for the payroll rebate authorized by this~~
10 ~~section, the department shall transfer the appropriate amount of money~~
11 ~~designated by the financial incentive agreements out of general revenues into~~
12 ~~a special account designated as special revenue for the fund.~~

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

16 ~~(2)(A) Benefits are conditioned upon the hiring of new full-time~~
17 ~~permanent employees with an annual payroll threshold of two million dollars~~
18 ~~(\$2,000,000) and certifying to the department that the requisite payroll~~
19 ~~threshold has been met.~~

20 ~~(B) The eligible business receiving benefits under this~~
21 ~~subsection must certify annually to the department that the requisite payroll~~
22 ~~threshold has been met.~~

23 ~~(C) The eligible business receiving benefits under this~~
24 ~~subsection must claim the rebate payment on an annual basis by certifying or~~
25 ~~recertifying payroll figures and filing the appropriate claim forms with the~~
26 ~~Department of Finance and Administration.~~

27
28 ~~(D) Failure to certify or recertify payroll figures and~~
29 ~~claim the rebate payment annually shall result in:~~

30 ~~(i) A ten percent reduction of the earned rebate if~~
31 ~~not claimed within twelve (12) months from the end of the tax year in which~~
32 ~~the rebate was earned; or~~

33 ~~(ii) A one hundred percent forfeiture of the earned~~
34 ~~rebate if not claimed within twenty four (24) months from the end of the tax~~
35 ~~year in which the rebate was earned.~~

36 ~~(3) Payments are subject to the following conditions:~~

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

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

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

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

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

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

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

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

21 (e)(1) ~~Technology-based enterprises, as defined in § 14-164-~~
22 ~~203(12), may earn, at the discretion of the director, a payroll rebate equal~~
23 ~~to five percent (5%) of the payroll for new full-time permanent employees for~~
24 ~~a period not to exceed ten (10) years.~~

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

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

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

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

35
36 15-4-2708. ~~Research and development tax credits.~~

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

6 ~~(b)(1) New eligible businesses that conduct in-house research in a~~
7 ~~research facility operated by the business and that qualify for federal~~
8 ~~research and development tax credits may qualify for an income tax credit~~
9 ~~equal to twenty percent (20%) of the amount spent on in-house research that~~
10 ~~exceeds the base year for a period of three (3) years and the incremental~~
11 ~~increase in qualified research expenditures for the succeeding two (2) years,~~
12 ~~subject to the limitations established under § 26-51-1103.~~

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

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

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

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

28 ~~(A) For an existing research facility, the base year~~
29 ~~amount shall be the amount of eligible research and development expenditures~~
30 ~~incurred in the year prior to the year in which the financial incentive~~
31 ~~agreement was signed by the Arkansas Economic Development Commission.~~

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

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

1 year.

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

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

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

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

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

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

18 ~~(c)(1) Targeted businesses may qualify for an income tax credit equal~~
19 ~~to thirty-three percent (33%) of the amount spent on in-house research per~~
20 ~~year for the first five (5) tax years following the business' signing a~~
21 ~~financial incentive agreement with the commission, subject to the limitations~~
22 ~~established under § 15-4-2709(d)(2).~~

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

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

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

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

36 ~~(2) However, the maximum tax credit for a qualified business~~

1 engaged in a research area of strategic value or involved in research and
2 development programs sponsored by the authority shall not exceed fifty
3 thousand dollars (\$50,000) per year.

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

7 (4)(A) ~~A business claiming tax credits earned under this~~
8 ~~subsection may offset one hundred percent (100%) of the business's Arkansas~~
9 ~~income tax liability in any one (1) year.~~

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

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

19
20 ~~15-4-2709. Targeted business special incentive.~~

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

23 (1) ~~Encourage the development of jobs that pay significantly~~
24 ~~more than the county average hourly wage in the county in which the business~~
25 ~~locates or the state average hourly wage if the state average hourly wage is~~
26 ~~less than the county average hourly wage; and~~

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

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

31 (1) ~~Be identified by the Arkansas Economic Development~~
32 ~~Commission as being one of those business sectors targeted for growth under §~~
33 ~~15-4-2703;~~

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

1 ~~(3) Show proof of an equity investment of two hundred fifty~~
2 ~~thousand dollars (\$250,000) or more; and~~

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

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

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

12 ~~(B) The term of the financial incentive agreement for new~~
13 ~~targeted businesses earning a tax credit under this subsection (c) or under §~~
14 ~~15-4-2708(c) shall begin on January 1 of the year in which the financial~~
15 ~~incentive agreement was signed.~~

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

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

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

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

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

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

34 ~~(f)(1) There is established on the books of the Treasurer of State,~~
35 ~~the Auditor of State, and the Chief Fiscal Officer of the State a fund to be~~
36 ~~known as the "Innovate Arkansas Fund" for the support of a contract to~~

1 ~~provide support and assistance to the development and growth of knowledge-~~
2 ~~based and technology based companies in the State of Arkansas.~~

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

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

10
11 ~~15-4-2710. Powers and duties of the Arkansas Economic Development~~
12 ~~Commission.~~

13 ~~The Arkansas Economic Development Commission shall administer this~~
14 ~~subchapter and in addition to powers and duties mentioned in other laws may:~~

15 ~~(1) Promulgate rules and regulations in accordance with the~~
16 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to~~
17 ~~carry out the provisions of this subchapter;~~

18 ~~(2) Provide the Department of Finance and Administration with a~~
19 ~~copy of each financial incentive agreement entered into by the commission~~
20 ~~with each qualifying business;~~

21 ~~(3) Assist the governing authority in obtaining assistance from~~
22 ~~any other agency of state government, including assistance to new businesses~~
23 ~~and industries;~~

24 ~~(4) Assist any employer or prospective employer with a~~
25 ~~qualifying project in obtaining the benefits of any incentive or inducement~~
26 ~~program authorized by state law;~~

27 ~~(5) Act as a liaison between other state agencies and businesses~~
28 ~~and industries to ensure that both the spirit and intent of this subchapter~~
29 ~~are met;~~

30 ~~(6) Make disbursements from the Economic Development Incentive~~
31 ~~Fund to qualified businesses as authorized in § 15-4-2707; and~~

32 ~~(7) Negotiate proposals on behalf of the state with prospective~~
33 ~~businesses that are considering locating new facilities or expanding existing~~
34 ~~facilities that would seek the benefits of § 15-4-2706(b) or (c), § 15-4-~~
35 ~~2707, § 15-4-2708(c), or § 15-4-2709.~~

36

1 ~~15-4-2711. Administration.~~

2 ~~(a) A person claiming credit under the provisions of § 15-4-2706(e) is~~
3 ~~a "taxpayer" within the meaning of § 26-18-104(16) and shall be subject to~~
4 ~~all applicable provisions of that section.~~

5 ~~(b) Administration of the provisions of § 15-4-2706(e) shall be under~~
6 ~~the Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

7 ~~(c)(1) All claims for sales and use tax refunds under § 15-4-2706(d)~~
8 ~~and (e) shall be filed annually with the Revenue Division of the Department~~
9 ~~of Finance and Administration within three (3) years from the date of the~~
10 ~~qualified purchase or purchases.~~

11 ~~(2) Claims filed after three (3) years from the date of the~~
12 ~~qualified purchase or purchases shall be disallowed.~~

13 ~~(d)(1) The time limitation for § 15-4-2706(d) and (e) for filing~~
14 ~~claims shall be tolled if:~~

15 ~~(A) A program participant fails to pay sales tax on an~~
16 ~~item that was taxable; and~~

17 ~~(B) The applicable tax is subsequently assessed as a~~
18 ~~result of an audit by the Revenue Division.~~

19 ~~(2) All claims for sales and use tax refunds relating to an~~
20 ~~audited purchase shall be entitled to a refund of interest paid on the amount~~
21 ~~of tax assessed on the audited purchase if a refund is approved for the~~
22 ~~purchase.~~

23 ~~(e) A business must reach the investment thresholds under § 15-4-2706~~
24 ~~within four (4) years from the date of the signed financial incentive~~
25 ~~agreement.~~

26 ~~(f)(1) All claims for payroll rebate payments under § 15-4-2707 shall~~
27 ~~be certified to the Department of Finance and Administration and shall be~~
28 ~~recertified annually thereafter during the term of the financial incentive~~
29 ~~agreement.~~

30 ~~(2) Failure to annually certify or recertify payroll figures and~~
31 ~~claim the rebate payment shall result in:~~

32 ~~(A) A ten percent (10%) reduction of the earned rebate if~~
33 ~~not claimed within twelve (12) months from the end of the tax year in which~~
34 ~~the rebate was earned; or~~

35 ~~(B) A one hundred percent (100%) forfeiture of the earned~~
36 ~~rebate if not claimed within twenty four (24) months from the end of the tax~~

1 ~~year in which the rebate was earned.~~

2 ~~(g)(1) If the annual payroll of the business applying for benefits~~
3 ~~under this subchapter is not met within twenty four (24) months after signing~~
4 ~~the financial incentive agreement, the business may request in writing an~~
5 ~~extension of time to reach the required payroll threshold.~~

6 ~~(2)(A) If the Director of the Arkansas Economic Development~~
7 ~~Commission and the Director of the Department of Finance and Administration~~
8 ~~find that the approved business has presented compelling reasons for an~~
9 ~~extension of time, the Director of the Arkansas Economic Development~~
10 ~~Commission may grant an extension of time not to exceed forty eight (48)~~
11 ~~months.~~

12 ~~(B) However, the extension on projects applying for~~
13 ~~benefits under § 15-4-2705 is limited to a twenty-four-month extension.~~

14 ~~(3)(A) If a business fails to reach the annual payroll threshold~~
15 ~~before the expiration of the twenty-four (24) months or the time period~~
16 ~~established by a subsequent extension of time, the business will be liable~~
17 ~~for the repayment of all benefits previously received by the business.~~

18 ~~(B) After a business has failed to reach the annual~~
19 ~~payroll threshold in a timely manner, the Department of Finance and~~
20 ~~Administration shall have two (2) years to collect benefits previously~~
21 ~~received by the business or file a lawsuit to enforce the repayment~~
22 ~~provisions.~~

23 ~~(h)(1) If a business fails to reach the investment threshold before~~
24 ~~the expiration of the four-year time limit, the business will be liable for~~
25 ~~the repayment of all benefits previously received by the business.~~

26 ~~(2) After a business has failed to reach the investment~~
27 ~~threshold of this subchapter in a timely manner, the Department of Finance~~
28 ~~and Administration shall have two (2) years to collect benefits previously~~
29 ~~received by the business or file a lawsuit to enforce the repayment~~
30 ~~provisions.~~

31 ~~(i)(1) If the annual payroll of a business receiving benefits under~~
32 ~~this subchapter falls below the payroll threshold for qualification in a year~~
33 ~~subsequent to the one in which it initially qualified for the incentive, the~~
34 ~~benefits outlined in the financial incentive agreement will be terminated~~
35 ~~unless the business files a written application for an extension of benefits~~
36 ~~with the Arkansas Economic Development Commission explaining why the payroll~~

1 ~~has fallen below the level required for qualification.~~

2 ~~(2) The Director of the Arkansas Economic Development Commission~~
3 ~~and the Director of the Department of Finance and Administration may approve~~
4 ~~the request for extension of time, not to exceed twenty four (24) months, for~~
5 ~~the business to bring the payroll back up to the requisite threshold amount~~
6 ~~and may approve the continuation of benefits during the period the extension~~
7 ~~is granted.~~

8 ~~(3)(A) If a business fails to reach the payroll threshold before~~
9 ~~the expiration of the twenty four (24) months or the time period established~~
10 ~~by a subsequent extension of time, the business shall be liable for the~~
11 ~~repayment of all benefits previously received by the business.~~

12 ~~(B) After a business has failed to reach the payroll~~
13 ~~threshold in a timely manner, the Department of Finance and Administration~~
14 ~~shall have two (2) years to collect benefits previously received by the~~
15 ~~business or file a lawsuit to enforce the repayment provisions.~~

16 ~~(j)(1) If a business fails to reach the average hourly wage~~
17 ~~requirement for benefits under this subchapter within twenty four (24) months~~
18 ~~of the effective date of the financial incentive agreement, the business will~~
19 ~~be liable for the repayment of all benefits previously received by the~~
20 ~~business.~~

21 ~~(2) After a business has failed to meet the hourly wage~~
22 ~~requirements, the Department of Finance and Administration shall have two (2)~~
23 ~~years to collect benefits previously received by the business or file a~~
24 ~~lawsuit to enforce the repayment provisions.~~

25 ~~(k)(1) If a business fails to meet the nonretail business requirements~~
26 ~~of this subchapter, the business will be liable for the repayment of all~~
27 ~~benefits previously received by the business.~~

28 ~~(2) After a business has failed to meet the nonretail business~~
29 ~~requirements, the Department of Finance and Administration shall have two (2)~~
30 ~~years to collect benefits previously received by the business or file a~~
31 ~~lawsuit to enforce the repayment provisions.~~

32 ~~(1)(1) Eligible businesses whose qualification depends on receiving~~
33 ~~seventy five percent (75%) of their sales revenue from out-of-state customers~~
34 ~~shall meet this requirement within three (3) years from the date of their~~
35 ~~financial incentive agreement.~~

36 ~~(2)(A) If the requirement is not met within three (3) years of~~

1 ~~the signed financial incentive agreement, the business may request in writing~~
2 ~~an extension of time to reach the required sales threshold.~~

3 ~~(B) If the Director of the Arkansas Economic Development~~
4 ~~Commission finds that the business has presented compelling reasons for an~~
5 ~~extension of time, the Director of the Arkansas Economic Development~~
6 ~~Commission may grant an extension of time not to exceed twenty four (24)~~
7 ~~months.~~

8 ~~(m)(1) If a business fails to timely meet the out-of-state revenue~~
9 ~~requirements of this subchapter, the business will be liable for the~~
10 ~~repayment of all benefits previously received by the business.~~

11 ~~(2) After a business has failed to meet the out-of-state revenue~~
12 ~~requirements, the Department of Finance and Administration shall have two (2)~~
13 ~~years to collect benefits previously received by the business or file a~~
14 ~~lawsuit to enforce the repayment provisions.~~

15 ~~(n)(1) If a business fails to notify the Department of Finance and~~
16 ~~Administration that the annual payroll of the business has fallen below the~~
17 ~~payroll threshold for qualification for and retention of any incentive~~
18 ~~authorized by this subchapter, the business will be liable for the repayment~~
19 ~~of all benefits that were paid to the business after it no longer qualified~~
20 ~~for the benefits.~~

21 ~~(2) After a business has failed to notify the Department of~~
22 ~~Finance and Administration that the business has fallen below the payroll~~
23 ~~threshold, the Department of Finance and Administration shall have two (2)~~
24 ~~years to collect benefits previously received by the business or file a~~
25 ~~lawsuit to enforce the repayment provisions.~~

26 ~~(3) Interest shall also be due at the rate of ten percent (10%)~~
27 ~~per annum.~~

28 ~~(o)(1) For a qualified business taking advantage of one (1) or more of~~
29 ~~the investment incentives offered in § 15-4-2706, if the project costs exceed~~
30 ~~the initial project cost estimate included in the approved financial~~
31 ~~incentive agreement, the business shall submit an amended project plan to~~
32 ~~include updated cost figures as soon as the cost overrun is recognized.~~

33 ~~(2)(A) An amendment that exceeds twenty five percent (25%) of~~
34 ~~the original financial incentive agreement estimate will not be considered~~
35 ~~and shall be submitted as a new project.~~

36 ~~(B) An amendment shall not change the start date of the~~

1 original project.

2 ~~(p) The Department of Finance and Administration may obtain whatever~~
3 ~~information is necessary from a participating business and from the~~
4 ~~Department of Workforce Services to verify that a business that has entered~~
5 ~~into financial incentive agreements with the Arkansas Economic Development~~
6 ~~Commission is complying with the terms of the financial incentive agreements~~
7 ~~and reporting accurate information concerning investments, payrolls, and out-~~
8 ~~of-state revenues to the Department of Finance and Administration.~~

9 ~~(q) The Department of Finance and Administration may file a lawsuit in~~
10 ~~the Pulaski County Circuit Court or the circuit court in any county where a~~
11 ~~program participant is located to enforce the repayment provisions of this~~
12 ~~subchapter.~~

13 ~~(r)(1) If a business fails to satisfy or maintain any other~~
14 ~~requirement or threshold of this subchapter, the business will be liable for~~
15 ~~the repayment of all benefits that were paid to the business after it no~~
16 ~~longer qualified.~~

17 ~~(2) After a business has failed to comply with the requirements~~
18 ~~or thresholds of this subchapter, the Department of Finance and~~
19 ~~Administration shall have two (2) years to collect benefits previously~~
20 ~~received by the business or file a lawsuit to enforce the repayment~~
21 ~~provisions.~~

22 ~~(s) If a repayment is required as a result of not complying with the~~
23 ~~requirements or thresholds of this subchapter, interest shall be due at the~~
24 ~~rate of ten percent (10%) per annum.~~

25
26 ~~15-4-2712. Restrictions.~~

27 ~~(a) Except as provided in subsection (b) of this section, the~~
28 ~~incentives established by this subchapter may be combined.~~

29 ~~(b)(1) The investment tax credit authorized in § 15-4-2706(e) may not~~
30 ~~be combined with the sales and use tax refund authorized in § 15-4-2706(d)~~
31 ~~for the same project.~~

32 ~~(2) The job creation tax credits authorized in § 15-4-2709, the~~
33 ~~sales and use tax refund authorized in § 15-4-2706(e), and the research and~~
34 ~~development tax credit authorized in § 15-4-2708(e) may be combined with each~~
35 ~~other but may not be combined with any other incentives authorized in this~~
36 ~~subchapter during the period in which the business qualifies for benefits~~

1 ~~under § 15-4-2709.~~

2 ~~(3) The job creation tax credit authorized in § 15-4-2705 may~~
 3 ~~not be combined with the investment tax credit authorized in § 15-4-2706(b).~~

4 ~~(4) The job creation tax credit authorized in § 15-4-2705 may~~
 5 ~~not be combined with the payroll rebate program authorized in § 15-4-2707.~~

6 ~~(5) The investment tax credit authorized in § 15-4-2706(b) may~~
 7 ~~not be combined with the sales and use tax refund authorized in § 15-4-~~
 8 ~~2706(d) for the same project.~~

9 ~~(c) The following are discretionary incentives and are not available~~
 10 ~~unless offered by the Arkansas Economic Development Commission:~~

11 ~~(1) The payroll rebate program authorized in § 15-4-2707;~~

12 ~~(2) The job creation tax credit authorized in § 15-4-2709;~~

13 ~~(3) The investment tax credit authorized in § 15-4-2706(b);~~

14 ~~(4) The sales and use tax refund authorized in § 15-4-2706(e);~~

15 ~~and~~

16 ~~(5) The research and development tax credit authorized in § 15-~~
 17 ~~4-2708(e).~~

18
 19 ~~15-4-2713. [Repealed.]~~

20
 21 ~~15-4-2714. Coordination with other economic development programs.~~

22 ~~(a) Eligible businesses that sign a financial incentive agreement with~~
 23 ~~the Arkansas Economic Development Commission before March 3, 2003, shall be~~
 24 ~~provided only the benefits for which they are qualified under any of the~~
 25 ~~following:~~

26 ~~(1) Biotechnology Training and Development Act, § 2-8-101 et~~
 27 ~~seq. [repealed];~~

28 ~~(2) Arkansas Economic Development Incentive Act of 1993, § 15-4-~~
 29 ~~1601 et seq.;~~

30 ~~(3) Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq.;~~

31 ~~(4) Arkansas Economic Development Act of 1995, § 15-4-1901 et~~

32 ~~seq.;~~

33 ~~(5) Economic Investment Tax Credit Act, § 26-52-701 et seq.; and~~

34 ~~(6) Arkansas Emerging Technology Development Act of 1999, § 15-~~
 35 ~~4-2101 et seq. [repealed].~~

36 ~~(b) Eligible businesses signing a financial incentive agreement with~~

1 ~~the department after March 3, 2003, shall receive only the benefits for which~~
2 ~~they are qualified under this subchapter.~~

3 ~~(c)(1) Under no circumstances shall an eligible business be entitled~~
4 ~~to receive incentives or benefits for a project under this subchapter and the~~
5 ~~programs listed in subsection (a) of this section.~~

6 ~~(2) It is the specific intent of this subchapter that the~~
7 ~~incentives provided by this subchapter and the incentives provided by prior~~
8 ~~laws are mutually exclusive.~~

9
10 SECTION 17. Arkansas Code § 15-4-2803 is repealed.

11 ~~15-4-2803. Tax credit for biodiesel suppliers.~~

12 ~~(a) There shall be allowed a credit against the income tax imposed by~~
13 ~~the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined~~
14 ~~in subsection (b) of this section to a biodiesel supplier for the cost of the~~
15 ~~facilities and equipment used directly in the wholesale or retail~~
16 ~~distribution of biodiesel fuels.~~

17 ~~(b) The amount of the credit allowed shall be equal to five percent~~
18 ~~(5%) of the cost of the facilities and equipment.~~

19 ~~(c) The costs of service contracts, sales tax, or acquisition of~~
20 ~~undeveloped land shall not be included in determining the amount of the~~
21 ~~credit.~~

22 ~~(d)(1) No income tax credit shall be claimed by a supplier for any~~
23 ~~facility or equipment that is in use on or before the certification of the~~
24 ~~company for tax credits or for which a tax credit was previously claimed by a~~
25 ~~supplier for any other tax year.~~

26 ~~(2) The provisions of this subsection shall not apply if any~~
27 ~~entity is sold and the entity is entitled to an income tax credit under this~~
28 ~~subchapter.~~

29 ~~(3) The tax credit provided in subsection (b) of this section~~
30 ~~may be carried forward for a period not to exceed three (3) years.~~

31 ~~(e)(1) A supplier is entitled to a refund of all or a portion of the~~
32 ~~tax imposed on the supplier under §§ 26-56-201, 26-56-502, and 26-56-601.~~

33 ~~(2)(A) The amount of the refund authorized in subdivision (e)(1)~~
34 ~~of this section shall be equal to fifty cents (50¢) for each gallon of~~
35 ~~biodiesel fuel used by the supplier to produce a biodiesel mixture for sale~~
36 ~~by the supplier or for use by the supplier in a trade or business.~~

1 ~~(B) To the extent the gallons of biodiesel fuel mixed with~~
2 ~~undyed, clear distillate special fuel to make a biodiesel mixture exceed two~~
3 ~~percent (2%) of the total biodiesel mixture, the refund shall be limited to~~
4 ~~two percent (2%) of the total gallons of biodiesel mixture.~~

5 ~~(3) The refund allowed under this subsection shall first be~~
6 ~~available to a supplier when:~~

7 ~~(A) One (1) or more biodiesel producers:~~

8 ~~(i) Sign a financial incentive agreement with the~~
9 ~~Arkansas Economic Development Council;~~

10 ~~(ii) Are approved by the Alternative Fuels~~
11 ~~Commission as biodiesel producers with biodiesel fuel production capacity to~~
12 ~~produce at least one million gallons (1,000,000 gal.) of biodiesel fuel in a~~
13 ~~twelve-month period;~~

14 ~~(iii) Certify that they will produce biodiesel fuel~~
15 ~~meeting appropriate federal and state standards; and~~

16 ~~(iv) Begin production of biodiesel fuel; and~~

17 ~~(B) The supplier is approved as a biodiesel supplier by~~
18 ~~the Director of the Department of Finance and Administration in accordance~~
19 ~~with rules promulgated by the director.~~

20 ~~(4) A supplier may file a claim for refund for the sale or use~~
21 ~~of biodiesel mixture that occurred on or after the date that all of the~~
22 ~~requirements of subdivision (e)(3) of this section have been met.~~

23 ~~(5)(A) A claim for refund under this subsection shall be filed~~
24 ~~quarterly, and in no event shall a claim be filed later than one (1) year~~
25 ~~after the sale or use of the biodiesel mixture under subdivision (e)(2) of~~
26 ~~this section.~~

27 ~~(B) The total amount of refunds paid to a supplier during~~
28 ~~a calendar year shall not exceed the tax liability of the supplier under §§~~
29 ~~26-56-201, 26-56-502, and 26-56-601 during the calendar year.~~

30 ~~(C) Except as otherwise provided in this subsection, a~~
31 ~~claim for refund under this subsection shall be subject to the Arkansas Tax~~
32 ~~Procedure Act, § 26-18-101 et seq.~~

33 ~~(6) The director shall promulgate rules for the administration~~
34 ~~and enforcement of this subsection.~~

35 ~~(7) This subsection shall expire on June 30, 2007.~~

36

1 SECTION 18. Arkansas Code Title 15, Chapter 4, Subchapter 33 is
2 repealed.

3 ~~Subchapter 33 — Equity Investment Incentive Act of 2007~~

4
5 ~~15-4-3301. Title.~~

6 ~~This subchapter shall be known and may be cited as the “Equity~~
7 ~~Investment Incentive Act of 2007”.~~

8
9 ~~15-4-3302. Equity investment incentives — Creation — Purpose — Tax~~
10 ~~credit.~~

11 ~~(a) — Equity investment incentives in the form of tax credits to persons~~
12 ~~or companies investing in certain types of eligible businesses are created.~~

13 ~~(b) — The equity investment incentives shall:~~

14 ~~(1) — Encourage capital investment in certain types of businesses~~
15 ~~including:~~

16 ~~(A) — Early stage businesses and start-up businesses in this~~
17 ~~state;~~

18 ~~(B) — Businesses paying wages in excess of prevailing wages~~
19 ~~in the state or the county where the company is located; and~~

20 ~~(C) — Businesses that are invested in by venture capital~~
21 ~~funds and regional or community based alliance funds; and~~

22 ~~(2) — Create new jobs.~~

23 ~~(c)(1) — An equity investment incentive tax credit is created that shall~~
24 ~~be equal to thirty three and one third percent (33 1/3%) of the approved~~
25 ~~amount invested by an investor in an eligible business, as identified in §~~
26 ~~15-4-3303(a).~~

27 ~~(2) — The tax credit, if awarded, is available to the investor.~~

28
29 ~~15-4-3303. Eligibility for equity investment incentive.~~

30 ~~(a) — Eligibility for the equity investment incentive tax credit under~~
31 ~~this subchapter is limited to investments in:~~

32 ~~(1) — Targeted businesses as defined in § 15-4-2703(43); or~~

33 ~~(2) — Businesses that receive assistance in the form of equity~~
34 ~~investments from capital investment funds that target early stage businesses~~
35 ~~and start-up businesses, if the business:~~

36 ~~(A) — Pays not less than one hundred fifty percent (150%) of~~

1 ~~the lesser of the county average wage or the state average wage; and~~

2 ~~(B) Meets at least two (2) of the following conditions:~~

3 ~~(i) The business is in one (1) of the business~~
4 ~~sectors set forth in § 15-4-2703(43)(A)(i)-(vi);~~

5 ~~(ii) The business is identified in a local or~~
6 ~~regional economic development plan as the type of business targeted for~~
7 ~~recruitment or growth within the community or region;~~

8 ~~(iii) The business is supported by a resolution of~~
9 ~~the city council or quorum court in the municipality or county in which the~~
10 ~~business is located or plans to locate;~~

11 ~~(iv) The business is supported by business~~
12 ~~incubators certified under § 26-51-815(d);~~

13 ~~(v) The business is supported by federal small~~
14 ~~business innovation research grants; or~~

15 ~~(vi) The business is supported by technology~~
16 ~~development or seed capital investments made by instrumentalities of the~~
17 ~~state.~~

18 ~~(b)(1) The award of the equity investment incentive tax credit to a~~
19 ~~qualified business under subsection (a) of this section shall be at the~~
20 ~~discretion of the Director of the Arkansas Economic Development Commission.~~

21 ~~(2) Only cash investments shall qualify for the equity~~
22 ~~investment incentive tax credit under this subchapter.~~

23 ~~(3) A business that seeks eligibility for an equity investment~~
24 ~~incentive tax credit under this subchapter shall sign an equity investment~~
25 ~~incentive agreement with the Arkansas Economic Development Commission.~~

26
27 ~~15-4-3304. Application for an equity investment incentive tax credit.~~

28 ~~(a) A business that seeks eligibility for an equity investment~~
29 ~~incentive tax credit under this subchapter shall file an application with the~~
30 ~~Arkansas Economic Development Commission.~~

31 ~~(b) The application shall include:~~

32 ~~(1) A business plan describing the proposed business for which~~
33 ~~an equity investment incentive tax credit is sought;~~

34 ~~(2) A projection of the amount of capital being sought for the~~
35 ~~proposed business; and~~

36 ~~(3) Other information requested by the Director of the Arkansas~~

1 ~~Economic Development Commission.~~

2 ~~(c)(1) The commission shall gather information necessary to determine~~
3 ~~the eligibility of a business that seeks an equity investment incentive tax~~
4 ~~credit and process the application.~~

5 ~~(2)(A) The commission shall share the application and all~~
6 ~~information concerning the business with the Arkansas Development Finance~~
7 ~~Authority and the Arkansas Science and Technology Authority.~~

8 ~~(B) The Arkansas Science and Technology Authority shall~~
9 ~~decide whether an equity investment incentive shall be offered to the~~
10 ~~business.~~

11 ~~(d)(1) If a business is notified of approval of an application for an~~
12 ~~equity investment incentive tax credit, the business shall sign an equity~~
13 ~~investment incentive agreement with the commission.~~

14 ~~(2) After the equity investment incentive agreement has been~~
15 ~~signed by the business and the commission, the business may solicit investors~~
16 ~~and offer the equity investment incentive tax credit to the investors.~~

17 ~~(e) For the equity investment tax credit to be awarded to an investor,~~
18 ~~the eligible business shall verify that all conditions to the award of an~~
19 ~~equity investment incentive tax credit stated in the equity investment~~
20 ~~incentive agreement have been met within the time set forth in the agreement.~~

21
22 ~~15-4-3305. Award of an equity investment incentive tax credit.~~

23 ~~(a) A person or company that purchases an equity interest in a~~
24 ~~qualified business under § 15-4-3303(a) in any of the calendar years 2007—~~
25 ~~2019 is entitled to a credit against any state income tax liability that may~~
26 ~~be imposed on the person or company for any tax year commencing on or after~~
27 ~~the date of the purchase.~~

28 ~~(b) The credit against state income tax liability shall be determined~~
29 ~~in the following manner:~~

30 ~~(1) The credit shall not exceed thirty three and one third~~
31 ~~percent (33 1/3%) of the actual purchase price paid for the equity interest~~
32 ~~to the business, less any fees or commissions to underwriters or sales agents~~
33 ~~paid by the business;~~

34 ~~(2) In any one (1) tax year, the credit allowed by this section~~
35 ~~shall not exceed fifty percent (50%) of the net Arkansas state income tax~~
36 ~~liability or premium tax liability of the taxpayer after all other credits~~

1 ~~and reductions in tax have been calculated;~~

2 ~~(3)(A) Any credit in excess of the amount allowed by subdivision~~
3 ~~(b)(2) of this section for any one (1) tax year may be carried forward and~~
4 ~~applied against Arkansas state income tax for the next succeeding tax year~~
5 ~~and annually thereafter for a total period of nine (9) years next succeeding~~
6 ~~the year in which the equity interest in a business was purchased, subject to~~
7 ~~the provisions of subdivision (b)(2) of this section or until the credit is~~
8 ~~exhausted, whichever occurs first.~~

9 ~~(B) In no event may the credit allowed by this section be~~
10 ~~allowed for any tax year ending after December 31, 2028; and~~

11 ~~(4) An original purchaser of equity interests who seeks to~~
12 ~~qualify for the income tax credit or premium tax credit provided in this~~
13 ~~section shall obtain and attach to the income tax return or premium tax~~
14 ~~return for the years the credit is claimed a certified statement from the~~
15 ~~business stating:~~

16 ~~(A) The name and address of the original purchaser;~~

17 ~~(B) The tax identification number of the person entitled~~
18 ~~to the credit;~~

19 ~~(C) The original date of purchase of the equity interest;~~

20 ~~(D) The number and type of equity interests purchased;~~

21 ~~(E) The amount paid by the original purchaser for the~~
22 ~~equity interest;~~

23 ~~(F) The amount of the tax credit associated with the~~
24 ~~purchase of the equity interest; and~~

25 ~~(G) The amount of dividends and distributions previously~~
26 ~~paid by the business to the purchaser.~~

27 ~~(c)(1) A transferee from an original purchaser is entitled to the tax~~
28 ~~credit described in this section only to the extent the credit is still~~
29 ~~available to and has not previously been used by the transferor.~~

30 ~~(2) A transferee of equity interests or tax credits who seeks to~~
31 ~~qualify for the income tax credit or premium tax credit provided in this~~
32 ~~section shall obtain and attach to the income tax return or premium tax~~
33 ~~return for the years the credit is claimed a certified statement from the~~
34 ~~business stating:~~

35 ~~(A) The name and address of the original purchaser and all~~
36 ~~transferees;~~

1 ~~(B) The tax identification number of all persons entitled~~
2 ~~to any portion of the original tax credit;~~

3 ~~(C) The original date the equity interest was purchased;~~

4 ~~(D) The number and type of equity interests purchased;~~

5 ~~(E) The amount paid by the original purchaser for the~~
6 ~~equity interest;~~

7 ~~(F) The amount of the tax credit associated with the~~
8 ~~purchase of the equity interest;~~

9 ~~(G) The amount of the tax credit associated with the~~
10 ~~original purchase used by all previous owners of the equity interest or tax~~
11 ~~credit and the remaining amount of the tax credit available for use by the~~
12 ~~transferee; and~~

13 ~~(H) The amount of dividends and distributions previously~~
14 ~~paid by the business to the original purchaser and all transferees.~~

15 ~~(d)(1) If the owner of an equity interest in or a tax credit issued by~~
16 ~~a company is a pass-through entity for tax purposes, such as a limited~~
17 ~~liability company or a partnership, then the owner of the pass-through entity~~
18 ~~is entitled to the tax credit described in this section.~~

19 ~~(2) If a pass-through entity entitled to a tax credit under~~
20 ~~subdivision (d)(1) of this section is owned by two (2) or more persons, then~~
21 ~~the tax credit may be allocated among the pass-through entity owners in the~~
22 ~~method selected by the owners as described in the governing documents of the~~
23 ~~pass-through entity or by other written agreement among the owners.~~

24 ~~(e)(1) For the purpose of ascertaining the gain or loss from the sale~~
25 ~~or other disposition of an equity interest in a business, the owner of the~~
26 ~~equity interest shall reduce the owner's basis in the equity interest by the~~
27 ~~amount of the tax credits previously deducted under this section.~~

28 ~~(2) However, sale or other disposition under subdivision (e)(1)~~
29 ~~of this section does not include a transfer from the holder of an equity~~
30 ~~interest to the business in liquidation of the equity interest.~~

31 ~~(3) This reduced basis shall be used by the original purchaser~~
32 ~~or transferee when calculating tax due under the Income Tax Act of 1929, §~~
33 ~~26-51-101 et seq.~~

34 ~~(f) The total cumulative amount of tax credits available to all~~
35 ~~purchasers of equity interest in qualified businesses under this section and~~
36 ~~under § 15-4-1026 in any calendar year shall not exceed six million two~~

1 ~~hundred fifty thousand dollars (\$6,250,000).~~

2
3 ~~15-4-3306. Rules.~~

4 ~~The Arkansas Economic Development Commission shall promulgate~~
5 ~~guidelines and rules to implement this subchapter.~~

6
7 SECTION 19. Arkansas Code § 15-4-3202(25), concerning the definition
8 of "sponsor" under Arkansas Amendment 82 Implementation Act, is amended to
9 read as follows:

10 (25) "Sponsor" means a sole proprietor, partnership,
11 corporation, limited liability company, joint venture, or association taxable
12 as a business entity, or any combination of these entities, that qualifies as
13 an eligible business ~~under the Consolidated Incentive Act of 2003, § 15-4-~~
14 ~~2701 et seq.~~; and

15
16 SECTION 20. Arkansas Code § 15-4-3202, concerning the definitions used
17 under the Arkansas Amendment 82 Implementation Act, is amended to add an
18 additional subdivision to read as follows:

19 (27) "Eligible business" means a nonretail business engaged in
20 commerce for profit that falls into one (1) or more of the following
21 categories:

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

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

28 (ii) A business in this group shall derive at least
29 seventy-five percent (75%) of its sales revenue from out of state;

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

32 (ii) A business in this group shall derive at least
33 seventy-five percent (75%) of its sales revenue from out of state;

34 (D) Distribution centers or intermodal facilities;

35 (E) Office sector businesses;

36 (F) National or regional corporate headquarters, North

1 American Industry Classification System Code 551114, as in effect January 1,
 2 2005;

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

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

7 (ii)(a) A business in this group shall derive at
 8 least seventy-five percent (75%) of its sales revenue from out of state.

9 (b)(1) The average hourly wages paid by a
 10 business in this group shall exceed one hundred fifty percent (150%) of the
 11 county or state average hourly wage, whichever is less.

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

15 (I) The Director of the Arkansas Economic Development
 16 Commission may classify a nonretail business as an eligible business if the
 17 following conditions exist:

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

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

23
 24 SECTION 21. Arkansas Code Title 15, Chapter 4, Subchapter 33 is
 25 repealed.

26 ~~Subchapter 33 — Equity Investment Incentive Act of 2007~~

27
 28 ~~15-4-3301. Title.~~

29 ~~This subchapter shall be known and may be cited as the “Equity~~
 30 ~~Investment Incentive Act of 2007”.~~

31
 32 ~~15-4-3302. Equity investment incentives — Creation — Purpose — Tax~~
 33 ~~credit.~~

34 ~~(a) Equity investment incentives in the form of tax credits to persons~~
 35 ~~or companies investing in certain types of eligible businesses are created.~~

36 ~~(b) The equity investment incentives shall:~~

1 ~~(1) Encourage capital investment in certain types of businesses~~
2 ~~including:~~

3 ~~(A) Early stage businesses and start-up businesses in this~~
4 ~~state;~~

5 ~~(B) Businesses paying wages in excess of prevailing wages~~
6 ~~in the state or the county where the company is located; and~~

7 ~~(C) Businesses that are invested in by venture capital~~
8 ~~funds and regional or community based alliance funds; and~~

9 ~~(2) Create new jobs.~~

10 ~~(c)(1) An equity investment incentive tax credit is created that shall~~
11 ~~be equal to thirty-three and one-third percent (33 1/3%) of the approved~~
12 ~~amount invested by an investor in an eligible business, as identified in §~~
13 ~~15-4-3303(a).~~

14 ~~(2) The tax credit, if awarded, is available to the investor.~~

15
16 ~~15-4-3303. Eligibility for equity investment incentive.~~

17 ~~(a) Eligibility for the equity investment incentive tax credit under~~
18 ~~this subchapter is limited to investments in:~~

19 ~~(1) Targeted businesses as defined in § 15-4-2703(43); or~~

20 ~~(2) Businesses that receive assistance in the form of equity~~
21 ~~investments from capital investment funds that target early stage businesses~~
22 ~~and start-up businesses, if the business:~~

23 ~~(A) Pays not less than one hundred fifty percent (150%) of~~
24 ~~the lesser of the county average wage or the state average wage; and~~

25 ~~(B) Meets at least two (2) of the following conditions:~~

26 ~~(i) The business is in one (1) of the business~~
27 ~~sectors set forth in § 15-4-2703(43)(A)(i)-(vi);~~

28 ~~(ii) The business is identified in a local or~~
29 ~~regional economic development plan as the type of business targeted for~~
30 ~~recruitment or growth within the community or region;~~

31 ~~(iii) The business is supported by a resolution of~~
32 ~~the city council or quorum court in the municipality or county in which the~~
33 ~~business is located or plans to locate;~~

34 ~~(iv) The business is supported by business~~
35 ~~incubators certified under § 26-51-815(d);~~

36 ~~(v) The business is supported by federal small~~

1 ~~business innovation research grants; or~~
2 ~~(vi) The business is supported by technology~~
3 ~~development or seed capital investments made by instrumentalities of the~~
4 ~~state.~~

5 ~~(b)(1) The award of the equity investment incentive tax credit to a~~
6 ~~qualified business under subsection (a) of this section shall be at the~~
7 ~~discretion of the Director of the Arkansas Economic Development Commission.~~

8 ~~(2) Only cash investments shall qualify for the equity~~
9 ~~investment incentive tax credit under this subchapter.~~

10 ~~(3) A business that seeks eligibility for an equity investment~~
11 ~~incentive tax credit under this subchapter shall sign an equity investment~~
12 ~~incentive agreement with the Arkansas Economic Development Commission.~~

13
14 ~~15-4-3304. Application for an equity investment incentive tax credit.~~

15 ~~(a) A business that seeks eligibility for an equity investment~~
16 ~~incentive tax credit under this subchapter shall file an application with the~~
17 ~~Arkansas Economic Development Commission.~~

18 ~~(b) The application shall include:~~

19 ~~(1) A business plan describing the proposed business for which~~
20 ~~an equity investment incentive tax credit is sought;~~

21 ~~(2) A projection of the amount of capital being sought for the~~
22 ~~proposed business; and~~

23 ~~(3) Other information requested by the Director of the Arkansas~~
24 ~~Economic Development Commission.~~

25 ~~(c)(1) The commission shall gather information necessary to determine~~
26 ~~the eligibility of a business that seeks an equity investment incentive tax~~
27 ~~credit and process the application.~~

28 ~~(2)(A) The commission shall share the application and all~~
29 ~~information concerning the business with the Arkansas Development Finance~~
30 ~~Authority and the Arkansas Science and Technology Authority.~~

31 ~~(B) The Arkansas Science and Technology Authority shall~~
32 ~~decide whether an equity investment incentive shall be offered to the~~
33 ~~business.~~

34 ~~(d)(1) If a business is notified of approval of an application for an~~
35 ~~equity investment incentive tax credit, the business shall sign an equity~~
36 ~~investment incentive agreement with the commission.~~

1 ~~(2) After the equity investment incentive agreement has been~~
2 ~~signed by the business and the commission, the business may solicit investors~~
3 ~~and offer the equity investment incentive tax credit to the investors.~~

4 ~~(c) For the equity investment tax credit to be awarded to an investor,~~
5 ~~the eligible business shall verify that all conditions to the award of an~~
6 ~~equity investment incentive tax credit stated in the equity investment~~
7 ~~incentive agreement have been met within the time set forth in the agreement.~~

8
9 ~~15-4-3305. Award of an equity investment incentive tax credit.~~

10 ~~(a) A person or company that purchases an equity interest in a~~
11 ~~qualified business under § 15-4-3303(a) in any of the calendar years 2007—~~
12 ~~2019 is entitled to a credit against any state income tax liability that may~~
13 ~~be imposed on the person or company for any tax year commencing on or after~~
14 ~~the date of the purchase.~~

15 ~~(b) The credit against state income tax liability shall be determined~~
16 ~~in the following manner:~~

17 ~~(1) The credit shall not exceed thirty three and one third~~
18 ~~percent (33 1/3%) of the actual purchase price paid for the equity interest~~
19 ~~to the business, less any fees or commissions to underwriters or sales agents~~
20 ~~paid by the business;~~

21 ~~(2) In any one (1) tax year, the credit allowed by this section~~
22 ~~shall not exceed fifty percent (50%) of the net Arkansas state income tax~~
23 ~~liability or premium tax liability of the taxpayer after all other credits~~
24 ~~and reductions in tax have been calculated;~~

25 ~~(3)(A) Any credit in excess of the amount allowed by subdivision~~
26 ~~(b)(2) of this section for any one (1) tax year may be carried forward and~~
27 ~~applied against Arkansas state income tax for the next succeeding tax year~~
28 ~~and annually thereafter for a total period of nine (9) years next succeeding~~
29 ~~the year in which the equity interest in a business was purchased, subject to~~
30 ~~the provisions of subdivision (b)(2) of this section or until the credit is~~
31 ~~exhausted, whichever occurs first.~~

32 ~~(B) In no event may the credit allowed by this section be~~
33 ~~allowed for any tax year ending after December 31, 2028; and~~

34 ~~(4) An original purchaser of equity interests who seeks to~~
35 ~~qualify for the income tax credit or premium tax credit provided in this~~
36 ~~section shall obtain and attach to the income tax return or premium tax~~

1 ~~return for the years the credit is claimed a certified statement from the~~
2 ~~business stating:~~

3 ~~(A) The name and address of the original purchaser;~~

4 ~~(B) The tax identification number of the person entitled~~
5 ~~to the credit;~~

6 ~~(C) The original date of purchase of the equity interest;~~

7 ~~(D) The number and type of equity interests purchased;~~

8 ~~(E) The amount paid by the original purchaser for the~~
9 ~~equity interest;~~

10 ~~(F) The amount of the tax credit associated with the~~
11 ~~purchase of the equity interest; and~~

12 ~~(G) The amount of dividends and distributions previously~~
13 ~~paid by the business to the purchaser.~~

14 ~~(c)(1) A transferee from an original purchaser is entitled to the tax~~
15 ~~credit described in this section only to the extent the credit is still~~
16 ~~available to and has not previously been used by the transferor.~~

17 ~~(2) A transferee of equity interests or tax credits who seeks to~~
18 ~~qualify for the income tax credit or premium tax credit provided in this~~
19 ~~section shall obtain and attach to the income tax return or premium tax~~
20 ~~return for the years the credit is claimed a certified statement from the~~
21 ~~business stating:~~

22 ~~(A) The name and address of the original purchaser and all~~
23 ~~transferees;~~

24 ~~(B) The tax identification number of all persons entitled~~
25 ~~to any portion of the original tax credit;~~

26 ~~(C) The original date the equity interest was purchased;~~

27 ~~(D) The number and type of equity interests purchased;~~

28 ~~(E) The amount paid by the original purchaser for the~~
29 ~~equity interest;~~

30 ~~(F) The amount of the tax credit associated with the~~
31 ~~purchase of the equity interest;~~

32 ~~(G) The amount of the tax credit associated with the~~
33 ~~original purchase used by all previous owners of the equity interest or tax~~
34 ~~credit and the remaining amount of the tax credit available for use by the~~
35 ~~transferee; and~~

36 ~~(H) The amount of dividends and distributions previously~~

1 ~~paid by the business to the original purchaser and all transferees.~~

2 ~~(d)(1) If the owner of an equity interest in or a tax credit issued by~~
3 ~~a company is a pass-through entity for tax purposes, such as a limited~~
4 ~~liability company or a partnership, then the owner of the pass-through entity~~
5 ~~is entitled to the tax credit described in this section.~~

6 ~~(2) If a pass-through entity entitled to a tax credit under~~
7 ~~subdivision (d)(1) of this section is owned by two (2) or more persons, then~~
8 ~~the tax credit may be allocated among the pass-through entity owners in the~~
9 ~~method selected by the owners as described in the governing documents of the~~
10 ~~pass-through entity or by other written agreement among the owners.~~

11 ~~(e)(1) For the purpose of ascertaining the gain or loss from the sale~~
12 ~~or other disposition of an equity interest in a business, the owner of the~~
13 ~~equity interest shall reduce the owner's basis in the equity interest by the~~
14 ~~amount of the tax credits previously deducted under this section.~~

15 ~~(2) However, sale or other disposition under subdivision (e)(1)~~
16 ~~of this section does not include a transfer from the holder of an equity~~
17 ~~interest to the business in liquidation of the equity interest.~~

18 ~~(3) This reduced basis shall be used by the original purchaser~~
19 ~~or transferee when calculating tax due under the Income Tax Act of 1929, §~~
20 ~~26-51-101 et seq.~~

21 ~~(f) The total cumulative amount of tax credits available to all~~
22 ~~purchasers of equity interest in qualified businesses under this section and~~
23 ~~under § 15-4-1026 in any calendar year shall not exceed six million two~~
24 ~~hundred fifty thousand dollars (\$6,250,000).~~

25
26 ~~15-4-3306. Rules.~~

27 ~~The Arkansas Economic Development Commission shall promulgate~~
28 ~~guidelines and rules to implement this subchapter.~~

29
30 SECTION 22. Arkansas Code Title 15, Chapter 5, Subchapter 13 is
31 repealed.

32 ~~Subchapter 13—Affordable Neighborhood Housing Tax Credit Act of 1997~~
33

34 ~~15-5-1301. Title.~~

35 ~~This subchapter shall be known and may be cited as the “Affordable~~
36 ~~Neighborhood Housing Tax Credit Act of 1997”.~~

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~~15-5-1302. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Affordable housing assistance activities" means money, real, or personal property expended or devoted to the construction or rehabilitation of affordable housing units developed by or in conjunction with any governmental unit or not for profit corporation, such costs to include related site and infrastructure costs and community and supportive services;~~

~~(2) "Affordable housing unit" means:~~

~~(A) For purposes of rental units, a housing unit or units which have restricted rents that do not exceed thirty percent (30%) of median income for the metropolitan area or county in which the project is located for:~~

~~(i) At least forty percent (40%) of its units, which must be occupied by persons or families having incomes of sixty percent (60%) or less of the median income for the metropolitan area or county in which the project is located; or~~

~~(ii) For at least twenty percent (20%) of its units, which must be occupied by persons or families having incomes of fifty percent (50%) or less of the median income for the metropolitan area or county in which the project is located;~~

~~(B) In the case of owner-occupied units, a housing unit which is sold to a purchaser:~~

~~(i) Whose family income does not exceed one hundred fifteen percent (115%) of the median income, adjusted for family size, of the county of SMSA at the time of the initial purchase contract;~~

~~(ii) Who has not owned a home for three (3) years prior to initial occupancy; and~~

~~(iii) Who will occupy the housing unit as the family's principal residence;~~

~~(C) In the case of rental units, the cost to the occupant shall be considered the amount of the gross rent; and~~

~~(D) For purposes of owner-occupied units, the Arkansas Development Finance Authority shall establish the requirements for an affordable housing unit to be consistent with guidelines established under~~

1 ~~the federal HOME program;~~

2 ~~(3) "Authority" means the Arkansas Development Finance Authority~~
3 ~~or its successor agency;~~

4 ~~(4) "Business firm" means:~~

5 ~~(A) A person;~~

6 ~~(B) A general or limited partnership;~~

7 ~~(C) A partner in such partnership;~~

8 ~~(D) A corporation;~~

9 ~~(E) A limited liability company or a member thereof;~~

10 ~~(F) A shareholder in an S corporation subject to the state~~
11 ~~income tax imposed by the provisions of §§ 26-51-101—26-51-1510;~~

12 ~~(G) An insurance company paying an annual tax on its gross~~
13 ~~premium receipts in this state; or~~

14 ~~(H) A financial institution paying income taxes to the~~
15 ~~State of Arkansas;~~

16 ~~(5) "Director" means the Director of the Department of Finance~~
17 ~~and Administration;~~

18 ~~(6) "Governmental unit" means:~~

19 ~~(A) The State of Arkansas;~~

20 ~~(B) Any county, municipality, or other political~~
21 ~~subdivision of the State of Arkansas; and~~

22 ~~(C) Any agency, board, commission, or instrumentality of~~
23 ~~any of the foregoing;~~

24 ~~(7) "Neighborhood organization" means any organization~~
25 ~~performing community services or economic development activities in the State~~
26 ~~of Arkansas and:~~

27 ~~(A) Holding a ruling from the Internal Revenue Service~~
28 ~~that the organization is exempt from income taxation under the provisions of~~
29 ~~the Internal Revenue Code;~~

30 ~~(B) Incorporated in the State of Arkansas as a not-for-~~
31 ~~profit corporation; or~~

32 ~~(C) Designated as a community development corporation by~~
33 ~~the United States Government under the provisions of Title VII of the~~
34 ~~Economic Opportunity Act of 1964 [repealed]; and~~

35 ~~(8) "S corporation" means a corporation described in section~~
36 ~~1361(a)(1) of the United States Internal Revenue Code of 1986.~~

1
2 ~~15-5-1303. Affordable housing assistance activities and affordable~~
3 ~~housing units—Business firms proposing to provide—Procedure for approval~~
4 ~~and tax credit.~~

5 ~~(a) Any business firm which engages in providing affordable housing~~
6 ~~assistance activities in the State of Arkansas shall receive a tax credit as~~
7 ~~provided in § 15-5-1304 if the Arkansas Development Finance Authority or its~~
8 ~~delegate approves a proposal submitted by one (1) or more business firms for~~
9 ~~the provision of affordable housing units.~~

10 ~~(b) The proposal shall set forth:~~

11 ~~(1) A program of affordable housing to be conducted;~~

12 ~~(2) The location and number of affordable housing units;~~

13 ~~(3) The neighborhood area to be served;~~

14 ~~(4) Why the program is needed;~~

15 ~~(5) The time period for which affordable housing units shall be~~
16 ~~provided;~~

17 ~~(6) The estimated amount to be invested in the program;~~

18 ~~(7) Plans for implementing the program; and~~

19 ~~(8) A list of the business firms proposing to provide affordable~~
20 ~~housing assistance activities which are a part of the proposal.~~

21 ~~(c) In the case of rental units, all proposals approved by the~~
22 ~~authority shall require a land-use restriction agreement stating the~~
23 ~~provision of affordable housing on the property for a time period deemed~~
24 ~~reasonable by the authority.~~

25 ~~(d)(1) In the case of owner-occupied units, all proposals approved by~~
26 ~~the authority shall require a land-use restriction agreement for a time~~
27 ~~period deemed reasonable by the authority requiring any subsequent owner,~~
28 ~~except a lender with a security interest in the property, to be an owner-~~
29 ~~occupant whose income at the time of acquisition is at or below the level~~
30 ~~described in § 15-5-1302 and further requiring that the acquisition price to~~
31 ~~any subsequent owner shall not exceed by more than a five percent (5%) annual~~
32 ~~appreciation the acquisition price to the original, eligible owner at the~~
33 ~~time tax credits are first claimed.~~

34 ~~(2) The restriction shall be approved by the property owner and~~
35 ~~shall be binding on any subsequent owner of the property unless otherwise~~
36 ~~approved by the authority.~~

1 ~~(e) In approving a proposal, the authority may authorize the use of~~
2 ~~tax credits by one (1) or more of the business firms listed in the proposal~~
3 ~~and shall establish specific requirements regarding the degree of completion~~
4 ~~of affordable housing assistance activities necessary to be eligible for tax~~
5 ~~credits provided under this section.~~

6 ~~(f) If, in the opinion of the authority or its delegate, a business~~
7 ~~firm's investment can be made more consistently with the purposes of this~~
8 ~~section through contributions to a neighborhood organization, tax credits may~~
9 ~~be allowed as provided in this section.~~

10 ~~(g) The authority or its delegate is authorized to promulgate rules~~
11 ~~and regulations for:~~

12 ~~(1) Establishing criteria for evaluating such proposals by~~
13 ~~business firms for approval or disapproval;~~

14 ~~(2) Establishing housing priorities for approval or disapproval~~
15 ~~of such proposals by business firms, and;~~

16 ~~(3) The certification of eligibility for tax credits authorized~~
17 ~~under this section.~~

18 ~~(h) The decision of the authority or its delegate to approve or~~
19 ~~disapprove a proposal pursuant to this section shall be in writing, and if~~
20 ~~approved, the maximum credit allowable to the business firm shall be stated.~~
21

22 ~~(i) A copy of the decision of the authority or its delegate shall be~~
23 ~~transmitted to the Director of the Department of Finance and Administration~~
24 ~~and to the Governor.~~

25 ~~(j) A copy of the certification approved by the authority and a~~
26 ~~statement of the total amount of credits approved by the authority, the~~
27 ~~amount of credits previously taken by the taxpayer, and the amount being~~
28 ~~claimed for the current tax year shall be filed in a manner and form~~
29 ~~designated by the director for any tax year in which a tax credit is being~~
30 ~~claimed.~~
31

32 ~~15-5-1304. Tax credits authorized—Amount allowed annually—Exceeded~~
33 ~~when—Upper limits set—Carryover permitted.~~

34 ~~(a)(1) For proposals approved under § 15-5-1303, the amount of the tax~~
35 ~~credit shall not exceed thirty percent (30%) of the total amount invested in~~
36 ~~affordable housing assistance activities by a business firm.~~

1 ~~(2) Any tax credit not used in the period for which the credit~~
2 ~~was approved may be carried forward to any of the five (5) subsequent taxable~~
3 ~~years until the full credit has been allowed.~~

4 ~~(3) The total amount of tax credits granted for programs~~
5 ~~approved under § 15-5-1303 shall not exceed seven hundred fifty thousand~~
6 ~~dollars (\$750,000) in any taxable year.~~

7 ~~(4) For taxable year 1997, at least one half (½) of the tax~~
8 ~~credits shall be designated by the Arkansas Development Finance Authority to~~
9 ~~the affordable housing assistance activities in counties declared disaster~~
10 ~~areas by the Governor.~~

11 ~~(b)(1) For any year during the compliance period indicated in the~~
12 ~~land-use restriction agreement, the owner of the affordable housing rental~~
13 ~~units for which a credit is being claimed shall certify to the authority that~~
14 ~~all tenants renting claimed units are income-eligible for the affordable~~
15 ~~housing units and that the rentals for each claimed unit are affordable in~~
16 ~~compliance with the provisions of § 15-5-1302.~~

17 ~~(2) The authority is authorized, in its discretion, to audit the~~
18 ~~records and the accounts of the owner to verify the certification.~~

19 ~~(c)(1) In the case of owner-occupied affordable housing units, the~~
20 ~~qualifying owner-occupant, before the end of the first year in which credits~~
21 ~~are claimed, shall certify to the authority that the occupant is income~~
22 ~~eligible during the preceding two (2) years and at the time of the initial~~
23 ~~purchase contract, but not thereafter.~~

24 ~~(2) The qualifying owner-occupant shall further certify to the~~
25 ~~authority before the end of the first year in which credits are claimed that~~
26 ~~during the compliance period indicated in the land-use restriction agreement,~~
27 ~~the cost of the affordable housing unit to the occupant for the claimed unit~~
28 ~~can reasonably be projected to be in compliance with the provisions of § 15-~~
29 ~~5-1302.~~

30 ~~(3) Any succeeding owner-occupant acquiring the affordable~~
31 ~~housing unit during the compliance period indicated in the land-use~~
32 ~~restriction agreement shall make the same certification.~~

33
34 ~~15-5-1305. Rules and regulations.~~

35 ~~The Director of the Department of Finance and Administration and the~~
36 ~~Arkansas Development Finance Authority shall promulgate rules and regulations~~

1 ~~necessary to administer the provisions of this subchapter. No rule or portion~~
2 ~~of a rule promulgated under the authority of this subchapter shall become~~
3 ~~effective until it has been approved by the director in accordance with the~~
4 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

5
6 SECTION 23. Arkansas Code § 15-5-1406 is repealed.

7 ~~15-5-1406. Tax credits.~~

8 ~~(a) The State of Arkansas shall issue income tax credits that may be~~
9 ~~used to reduce the tax liability of a person, firm, or corporation.~~

10 ~~(b)(1) Income tax credits transferred by the Arkansas Development~~
11 ~~Finance Authority shall only be used to offset payment of reported state~~
12 ~~income tax liability and are not refundable.~~

13 ~~(2) Unused credit may be carried forward for five (5) additional~~
14 ~~taxable years after the taxable year in which the credit was first used.~~

15 ~~(b) Tax credits against liabilities shall be limited to the amount~~
16 ~~that would otherwise be collected and allocated to the Treasurer of State.~~

17 ~~(c) The total amount of credits issued and transferable to the~~
18 ~~authority is sixty million dollars (\$60,000,000).~~

19 ~~(d) The credits issued under this subchapter shall be transferred only~~
20 ~~after:~~

21 ~~(1) The authority guaranty funds, subject to limits established~~
22 ~~by the authority, are exhausted;~~

23 ~~(2)(A) The authority presents its recommendations concerning the~~
24 ~~issuance of tax credits to the State Board of Finance.~~

25 ~~(B) These recommendations shall include:~~

26 ~~(i) The amount of tax credits to be transferred to~~
27 ~~the parties with whom the authority has contracted;~~

28 ~~(ii) The parties to whom the credits will be~~
29 ~~transferred; and~~

30 ~~(iii) Other information requested by the board; and~~

31 ~~(3) The board reviews and approves the issuance of the tax~~
32 ~~credits.~~

33 ~~(e)(1) The authority shall immediately notify in writing the President~~
34 ~~Pro Tempore of the Senate, the Speaker of the House of Representatives, and~~
35 ~~the Governor if any tax credit is transferred in conjunction with a~~
36 ~~legitimate call on an authority guarantee.~~

1 ~~(2) The authority shall not be required to make such a~~
2 ~~notification for transfers to subsequent transferees.~~

3 ~~(f) The authority shall determine the amount of income tax credits to~~
4 ~~be transferred by the authority under this subchapter, up to a total amount~~
5 ~~of ten million dollars (\$10,000,000) in any one (1) fiscal year, and may~~
6 ~~negotiate for sale of the credits subject only to the limits imposed under~~
7 ~~this subchapter.~~

8 ~~(g) The authority shall clearly indicate upon the face of the document~~
9 ~~transferring the tax credit the principal amount of the tax credit.~~

10 ~~(h) The authority may pay a fee in connection with the purchase by the~~
11 ~~authority of an option or other agreement under which the transfer of the tax~~
12 ~~credits authorized under this subchapter may be made.~~

13 ~~(i) The authority shall have the power to make any contract, execute~~
14 ~~any document, charge reasonable fees for any services rendered, perform any~~
15 ~~act, or enter into any financial or other transaction necessary in order to~~
16 ~~carry out its mission.~~

17 ~~(j)(1) The authority may employ any person as required for:~~
18 ~~(A) Proper implementation of this subchapter;~~
19 ~~(B) The management of its assets; or~~
20 ~~(C) The performance of any function authorized or required~~
21 ~~by this subchapter or necessary for the accomplishment of any function.~~

22 ~~(2) The person employed shall be selected by the authority based~~
23 ~~upon outstanding knowledge and leadership in the field for which the person~~
24 ~~performs services for the authority.~~

25
26 SECTION 24. Arkansas Code § 15-11-503(6), concerning the definition of
27 "final approval" under the Arkansas Tourism Development Act, is amended to
28 read as follows:

29 (6) "Final approval" means the action taken by the director
30 authorizing the eligible company to receive inducements under §§ 15-11-507
31 and 15-11-509;

32
33 SECTION 25. Arkansas Code § 15-11-503(9), concerning the definition of
34 "inducements" under the Arkansas Tourism Development Act, is amended to read
35 as follows:

36 (9) "Inducements" means the Arkansas sales tax credit as

1 prescribed in § 15-11-507 or the Arkansas income tax credit as prescribed in
2 § 15-11-509, or both;

3
4 SECTION 26. Arkansas Code § 15-11-509 is repealed.

5 ~~15-11-509. Tourism attraction project income tax credit.~~

6 ~~(a) Tourism attraction projects meeting the eligibility requirements~~
7 ~~under § 15-11-503(13)(A) are entitled to receive an income tax credit based~~
8 ~~upon a percentage of the payroll of the new full-time permanent employees~~
9 ~~working at the tourism attraction project.~~

10 ~~(b) Upon notification from the Director of the Arkansas Economic~~
11 ~~Development Commission that an approved company has entered into a tourism~~
12 ~~attraction project agreement and is entitled to the income tax credit~~
13 ~~provided by this section, the Director of the Department of Finance and~~
14 ~~Administration shall provide the approved company with such forms and~~
15 ~~instructions as are necessary to claim those credits.~~

16 ~~(c)(1) The approved company shall certify the number and payroll of~~
17 ~~the new full-time permanent employees to the Revenue Division of the~~
18 ~~Department of Finance and Administration.~~

19 ~~(2) Upon certification by the company, the Department of Finance~~
20 ~~and Administration shall authorize an income tax credit equal to four percent~~
21 ~~(4%) of the payroll of the new full-time permanent employees of the approved~~
22 ~~tourism attraction project qualifying for benefits under this act.~~

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

27 ~~(e) In the event it is found that any approved company receiving the~~
28 ~~benefits contained in this section has failed to comply with the conditions~~
29 ~~contained in this act, that company shall be disqualified from receiving any~~
30 ~~further benefits under this act and shall be liable for payment of such~~
31 ~~additional income taxes as may be due after the income tax credits provided~~
32 ~~for in this section are disallowed, plus interest.~~

33 ~~(f) If the Department of Finance and Administration determines that an~~
34 ~~approved company is no longer qualified to participate in this act, it shall~~
35 ~~decertify the company. Any company so decertified shall not receive any~~
36 ~~benefits under this act.~~

1 ~~(g) For projects receiving final approval after March 1, 1999, the~~
2 ~~credit may be applied against the approved company's income tax liability for~~
3 ~~the succeeding nine (9) years or until the credit is entirely used, whichever~~
4 ~~occurs first.~~

5
6 SECTION 27. Arkansas Code § 20-78-209(a), concerning the religious
7 exception to licensing of child-care facilities, is amended to read as
8 follows:

9 (a) Any church or group of churches ~~exempt from the state income tax~~
10 ~~levied by § 26-51-101 et seq. when~~ operating a child care facility shall may
11 be ~~exempt~~ exempted from obtaining a license to operate the facility upon the
12 receipt by the Division of Child Care and Early Childhood Education of
13 written request therefor. A written request shall be made by those churches
14 desiring exemption to the division, which is mandated under the authority of
15 this subchapter to license all child care facilities.

16
17 SECTION 28. Arkansas Code § 20-86-109 is amended to read as follows:

18 20-86-109. Matching funds.

19 (a)(1) Any individual, business, organization, or other entity may
20 contribute matching funds to a fiduciary organization.

21 (2) The funds shall be designated to the fiduciary organization
22 to allocate to participants who meet the requirements in § 20-86-106.

23 ~~(b)(1) A credit shall be allowed against the income tax liability~~
24 ~~imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for any Arkansas~~
25 ~~taxpayer who contributes to a fiduciary organization created pursuant to this~~
26 ~~subchapter in an amount equal to fifty percent (50%) of the amount of~~
27 ~~matching funds contributed to a fiduciary organization during the calendar~~
28 ~~year.~~

29 ~~(2) The amount of the credit that may be used by a taxpayer for~~
30 ~~a taxable year shall not exceed the lesser of twenty five thousand dollars~~
31 ~~(\$25,000) or the amount of individual or corporate income tax otherwise due.~~

32 ~~(c) Any unused credit may be carried over for a maximum of three (3)~~
33 ~~years up to a total tax credit allowed in the amount of twenty five thousand~~
34 ~~dollars (\$25,000).~~

35 ~~(d)(1)(A) To claim the benefits of this section, a taxpayer must~~
36 ~~notify the fiduciary organization that the taxpayer intends to make a~~

1 ~~contribution and the amount of the contribution.~~

2 ~~(B) The fiduciary organization shall then notify the~~
3 ~~Department of Workforce Services and request a certification from the~~
4 ~~department certifying the amount of the tax credit to which the taxpayer is~~
5 ~~entitled.~~

6 ~~(C) The fiduciary organization shall deliver the~~
7 ~~certification to the taxpayer upon receipt of the contribution.~~

8 ~~(2) A taxpayer must file the certificate with the taxpayer's~~
9 ~~income tax return for the first year in which the taxpayer claims a tax~~
10 ~~credit under this subchapter.~~

11 ~~(e) The total amount of tax credits certified under this subchapter~~
12 ~~shall not exceed one hundred thousand dollars (\$100,000) per calendar year.~~

13 ~~(f) (b) The Department of Finance and Administration shall promulgate~~
14 ~~any regulations necessary to carry out the provisions of this section.~~

15 ~~(g) (c) The Department of Workforce Services may monitor the use of~~
16 ~~these funds by fiduciary organizations.~~

17
18 SECTION 29. Arkansas Code § 23-79-702 is repealed.

19 ~~23-79-702. Tax credit for medically necessary medical foods and low~~
20 ~~protein modified food products.~~

21 ~~(a) A credit of up to two thousand four hundred dollars (\$2,400) per~~
22 ~~year per child shall be allowed to individuals or to families with a~~
23 ~~dependent child or children with phenylketonuria, galactosemia, organic~~
24 ~~acidemias, and disorders of amino acid metabolism against the income tax~~
25 ~~imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for expenses for~~
26 ~~the purchase of medically necessary medical foods and low protein modified~~
27 ~~food products.~~

28 ~~(b) The credit allowed in this section shall be effective for taxable~~
29 ~~years beginning January 1, 1999.~~

30 ~~(c) To the extent that the credit fully available under this~~
31 ~~subchapter is not fully utilized in this first year, it may be carried~~
32 ~~forward for an additional two (2) years. Any credit remaining thereafter~~
33 ~~shall expire.~~

34
35 SECTION 30. Arkansas Code § 23-79-703(a), concerning health insurance
36 coverage for medically necessary foods, is amended to read as follows:

1 (a) All health plans issued, delivered, amended, or modified on or
2 after January 1, 2000, shall provide the minimum benefits set out in
3 subsection (b) of this section for medical foods and low protein modified
4 food products for the treatment of a covered person inflicted with
5 phenylketonuria, galactosemia, organic acidemias, and disorders of amino acid
6 metabolism if:

7 (1) The medical food or low protein modified food products are
8 prescribed as medically necessary for the therapeutic treatment of
9 phenylketonuria, galactosemia, organic acidemias, and disorders of amino acid
10 metabolism;

11 (2) The products are administered under the direction of a
12 physician licensed under § 17-95-401 et seq.; and

13 (3) The cost of the medical food or low protein modified food
14 products for an individual or a family with a dependent person or persons
15 exceeds ~~the income tax credit of~~ two thousand four hundred dollars (\$2,400)
16 per year per person ~~allowed under § 23-79-702.~~

17
18 SECTION 31. Arkansas Code § 23-79-703(c), concerning health insurance
19 coverage for medically necessary foods, is amended to read as follows:

20 (c) If the cost of the medical food or low protein modified food
21 products for an individual or a family with a dependent child or children
22 exceeds ~~the income tax credit of~~ two thousand four hundred dollars (\$2,400)
23 per year per child ~~allowed under § 23-79-702~~ and the individual or a family
24 with a dependent child or children has been denied accident and health
25 insurance or coverage for phenylketonuria, galactosemia, organic acidemias,
26 and disorders of amino acid metabolism or cannot afford insurance coverage
27 for phenylketonuria, galactosemia, organic acidemias, and disorders of amino
28 acid metabolism, the Department of Health shall reimburse the provider up to
29 one thousand dollars (\$1,000) per individual from any funds appropriated
30 therefor for the required health care service, including screening,
31 diagnostic, and treatment services.

32
33 SECTION 32. Arkansas Code § 24-7-720 is amended to read as follows:
34 24-7-720. Lump-sum benefit.

35 (f)~~(l)~~ Pursuant to the board's fiduciary duty, the board shall
36 implement this benefit provision for lump-sum payments by either making the

1 lump-sum payments directly from the system or by purchasing a group life
2 insurance policy for the benefit of system members.

3 ~~(2) A lump sum payment under this subsection is intended to be~~
4 ~~exempt from income tax.~~

5

6 SECTION 33. Arkansas Code § 26-18-303(b)(11), concerning exceptions to
7 the confidential and privileged nature of tax records, is amended to read as
8 follows:

9 (11) Disclosure of the name of any taxpayer and the amount of
10 any tax credit, tax rebate, tax discount, or commission for the collection of
11 a tax received by such taxpayer from the following tax incentive provisions:

- 12 (A) Discount for prompt payment, § 26-52-503;
- 13 (B) Economic Investment Tax Credit Act, § 26-52-701 et
14 seq.;
- 15 (C) Steel Mill Tax Incentives, §§ 26-52-901 – 26-52-903;
- 16 (D) Motor fuel shrinkage allowance, § 26-55-230(a)(1)(F);
- 17 (E) Commission for sale of stamps for cigarettes and the
18 collection of cigarette taxes, § 26-57-236(f), as amended by Acts 1997, No.
19 1337;
- 20 (F) Motion Picture Incentive Act of 1983, § 26-4-201 et
21 seq.;
- 22 (G) Credit on severance tax of oil producer, § 26-58-204;
- 23 (H) Credit on severance tax of gas producer, § 26-58-205;
- 24 (I) Refund of motor fuel tax by municipal buses, § 26-55-
25 401 et seq.;
- 26 (J) Refund of distillate special fuel tax to interstate
27 users, §§ 26-56-214 and 26-56-215;
- 28 (K) Credit against severance tax for the discovery of a
29 commercial oil pool, § 15-72-706;
- 30 (L) Native wines – Subsidies, § 3-5-1001 et seq.;
- 31 (M) Native wines – Incentive grants, § 3-5-901 et seq.;
- 32 and
- 33 ~~(N) Native wines export incentives, § 3-5-607 [repealed];~~
- 34 ~~(O) Consolidated Incentive Act of 2003, § 15-4-2701 et~~
35 ~~seq.; and~~
- 36 ~~(P)~~ (N)(i) Any other tax incentive program enacted after

1 January 1, 1991, that provides a tax credit, tax rebate, tax discount, or
2 commission for the collection of a tax, with the exception of any benefits
3 under the income tax laws of this state.

4 (ii) However, information that is subject to
5 disclosure under ~~the provisions of~~ this subdivision (b)(11) shall not be
6 disclosed if ~~such~~ the information would give an advantage to competitors or
7 bidders or if ~~such~~ the information is exempt from disclosure under any other
8 provision of law that exempts specified information from disclosure under any
9 such law;

10
11 SECTION 34. Arkansas Code § 26-50-101(a) and (b), concerning the
12 definitions used with respect to state taxes, are amended to read as follows:

13 26-50-101. Definitions.

14 (a) As used in §§ 26-26-1501 – 26-26-1504, ~~26-51-303~~, 26-51-407, 26-
15 51-408, 26-52-305, and 26-53-110, unless the context otherwise requires:

16 (1) “State bank” means a bank, trust company, or savings bank
17 chartered under the banking laws of this state;

18 (2) “National bank” means a bank chartered under the banking
19 laws of the United States;

20 (3) “Savings and loan association” or “building and loan
21 association” means any financial institution or association established and
22 operating under the authority of § 23-37-101 et seq., or § 23-37-706 and §
23 23-38-101 et seq., or under any other appropriate state or federal law;

24 (4) “Financial institution” means a state or national bank, a
25 savings and loan association, or a building and loan association as defined
26 above;

27 (5) “Business corporation” means a corporation incorporated
28 under the Arkansas Business Corporation Act, § 4-26-101 et seq.

29 (b)(1) It is the purpose of §§ 26-26-1501 – 26-26-1504, ~~26-51-303~~, 26-
30 51-407, 26-51-408, 26-52-305, and 26-53-110 to clarify the law relating to
31 the taxation of state and national banks and savings and loan and building
32 and loan associations chartered under state and federal law and to simplify
33 and to broaden the tax base applicable to such financial institutions.

34 (2) It is the intent of §§ 26-26-1501 – 26-26-1504, ~~26-51-303~~,
35 26-51-407, 26-51-408, 26-52-305, and 26-53-110 to repeal the capital stock
36 tax and, in lieu thereof, to tax state and national banks, savings and loan

1 associations and building and loan associations, under the existing tax laws
2 generally applicable to business corporations.

3
4 *SECTION 35. Arkansas Code § 26-51-303 is amended to read as follows:*

5 *26-51-303. Exempt organizations.*

6 *(a) The following organizations shall be exempt from taxation under*
7 *the Income Tax Act of 1929, § 26-51-101 et seq.:*

8 ~~*(1) Fraternal benefit societies, orders, or associations;*~~

9 ~~*(A) Operating under the lodge system or for the exclusive*~~
10 ~~*benefit of the members of a fraternity itself operating under the lodge*~~
11 ~~*system; and*~~

12 ~~*(B) Providing for the payment of life, sick, accident, or*~~
13 ~~*other benefits to the members of such society, order, or association or their*~~
14 ~~*dependents;*~~

15 ~~*(2) Domestic life and disability insurance companies and foreign*~~
16 ~~*insurance companies;*~~

17 ~~*(3) Cemetery corporations;*~~

18 ~~*(4) Business leagues, chambers of commerce, or boards of trade*~~
19 ~~*not organized for profit and no part of the net earnings of which inures to*~~
20 ~~*the benefit of any private stockholders or individuals;*~~

21 ~~*(5) Civic leagues or organizations not organized for profit but*~~
22 ~~*operated exclusively for the promotion of social welfare;*~~

23 ~~*(6) Farmers' or other mutual hail, cyclone, or fire insurance*~~
24 ~~*companies, or other domestic insurance companies writing lines of insurance*~~
25 ~~*other than those specified in subdivisions (a)(1) and (2) of this section,*~~
26 ~~*mutual ditch or irrigation companies, mutual or cooperative telephone*~~
27 ~~*companies, or like organizations of a purely local character, but only if*~~
28 ~~*eighty five percent (85%) or more of the income of the organization consists*~~
29 ~~*solely of assessments, dues, and fees collected from members for the sole*~~
30 ~~*purpose of meeting losses and expenses;*~~

31 ~~*(7) Farmers', fruit growers', or like organizations organized*~~
32 ~~*and operated as sales agent for the purpose of marketing the products of*~~
33 ~~*members and turning back to them the proceeds of sales, less the necessary*~~
34 ~~*selling expenses, on the basis of the quantity of produce furnished by them;*~~

35 ~~*(8) Labor, agricultural, or horticultural organizations, no part*~~
36 ~~*of the net earnings of which inures to the benefit of any private stockholder*~~

1 ~~or member;~~

2 ~~(9) Corporations, trusts, and any community chest, fund, or~~
3 ~~foundation, organized and operated exclusively for religious, charitable,~~
4 ~~scientific, literary, or educational purposes, or for the prevention of~~
5 ~~cruelty to children or animals, no part of the net earnings of which inures~~
6 ~~to the benefit of any private shareholder or individual, no substantial part~~
7 ~~of the activities of which is carrying on propaganda or otherwise attempting~~
8 ~~to influence legislation, and which does not participate in, or intervene in,~~
9 ~~including the publishing or distributing of statements, any political~~
10 ~~campaign on behalf of or in opposition to any candidate for public office;~~
11 ~~and~~

12 ~~(10) A political organization that does not have political~~
13 ~~organization taxable income for the tax year under 26 U.S.C. § 527, as in~~
14 ~~effect on January 1, 2009.~~

15 ~~(b)(1) Every organization claiming exemption under this act shall~~
16 ~~notify the Revenue Division of the Department of Finance and Administration~~
17 ~~of its exempt status.~~

18 ~~(2) Each such organization shall provide such additional~~
19 ~~information as the division shall also reasonably require for verification of~~
20 ~~the organization's exempt status.~~

21 ~~(3) Provided, however, that any organization which is determined~~
22 ~~to be exempt from income taxation under the provisions of the Internal~~
23 ~~Revenue Code of 1986 for any one (1) or more of the purposes set forth in~~
24 ~~subsection (a) of this section shall verify its exempt status hereunder by~~
25 ~~delivery to the division of a copy of the document declaring its exempt~~
26 ~~status under the Internal Revenue Code of 1986.~~

27 ~~(1) Domestic life, accident, and health insurance companies and~~
28 ~~foreign insurance companies; and~~

29 ~~(2) Farmers' or other mutual hail, cyclone, or fire insurance~~
30 ~~companies, other domestic insurance companies writing lines of insurance~~
31 ~~other than those specified in subdivision (a)(1) of this section, mutual~~
32 ~~ditch or irrigation companies, mutual or cooperative telephone companies, or~~
33 ~~similar organizations of a purely local character, if eighty-five percent~~
34 ~~(85%) or more of the income of the organization consists solely of~~
35 ~~assessments, dues, and fees collected from members for the sole purpose of~~
36 ~~meeting losses and expenses.~~

1 (b)(1) An organization claiming an exemption under this section shall
2 notify the Revenue Division of the Department of Finance and Administration
3 of its exempt status.

4 (2) An organization claiming an exemption under this section
5 shall provide any additional information that the division requires for
6 verification of the organization's exempt status.

7
8 SECTION 36. Arkansas Code § 26-51-304 is repealed.

9 ~~26-51-304. Income from investments made by nonprofit organizations,~~
10 ~~Income derived from investments made by nonprofit organizations,~~
11 ~~whether or not the organization is organized or exists under the laws of this~~
12 ~~state, shall be exempt from state income tax where the income is for the sole~~
13 ~~purpose of providing pension and annuity benefits to members of the nonprofit~~
14 ~~organizations.~~

15
16 SECTION 37. Arkansas Code §§ 26-51-306 – 26-51-312 are repealed.

17 ~~26-51-306. Compensation and benefits from military service.~~

18 ~~(a)(1)(A) For tax years beginning before January 1, 2007, no member of~~
19 ~~the armed services of the United States shall be liable for or required to~~
20 ~~pay any income tax on the first six thousand dollars (\$6,000) of service pay~~
21 ~~or allowances.~~

22 ~~(B)(i) For tax years 2005 and 2006, enlisted personnel of~~
23 ~~the armed services of the State of Arkansas or of the United States shall not~~
24 ~~be liable for or required to pay any income tax on the first nine thousand~~
25 ~~dollars (\$9,000) of service pay or allowances.~~

26 ~~(ii) For tax years 2005 and 2006, an officer or a~~
27 ~~warrant officer of the armed services of the State of Arkansas or of the~~
28 ~~United States is only entitled to the exemption in subdivision (a)(1)(A) of~~
29 ~~this section and is not entitled to the exemption in subdivision (a)(1)(B)(i)~~
30 ~~of this section.~~

31 ~~(C) For tax years beginning on and after January 1, 2007,~~
32 ~~any member of the armed services of the State of Arkansas or the United~~
33 ~~States is not liable for or required to pay any income tax on the first nine~~
34 ~~thousand dollars (\$9,000) of service pay or allowance.~~

35 ~~(2) The compensation and benefits are declared exempt, to the~~
36 ~~extent of the amounts provided in subdivision (a)(1) of this section, from~~

1 ~~the state income tax.~~

2 ~~(3) All service pay or allowances of members of the armed~~
3 ~~services of the State of Arkansas or the United States in excess of the~~
4 ~~amounts provided in subdivision (a)(1) of this section shall be subject to~~
5 ~~the state income tax, unless otherwise provided for in this section.~~

6 ~~(4)(A) Sections 112 and 692 of the Internal Revenue Code of~~
7 ~~1986, as in effect on January 1, 2007, regarding combat zone compensation of~~
8 ~~members of the armed forces and income taxes of members of the armed forces~~
9 ~~on death are adopted.~~

10 ~~(B) The provisions contained in § 112 of the Internal~~
11 ~~Revenue Code are in addition to all other provisions contained in this~~
12 ~~section.~~

13 ~~(b) Nothing in this section shall exempt from taxation the income of~~
14 ~~members of the armed services derived from other sources than their service~~
15 ~~pay and allowances.~~

16 ~~(c) As used in this section, "armed services" means any and all~~
17 ~~members of the National Guard, reserve components of the armed forces, United~~
18 ~~States Army, Navy, Marine Corps, Coast Guard, Air Force, and any and all~~
19 ~~other branches of the military and naval forces or auxiliaries.~~

20
21 ~~26-51-307. Retirement or disability benefits.~~

22 ~~(a)(1) The first six thousand dollars (\$6,000) of benefits received by~~
23 ~~any resident of this state from an individual retirement account or the first~~
24 ~~six thousand dollars (\$6,000) of retirement benefits received by any resident~~
25 ~~of this state from public or private employment-related retirement systems,~~
26 ~~plans, or programs, regardless of the method of funding for these systems,~~
27 ~~plans, or programs, shall be exempt from the state income tax.~~

28 ~~(2)(A) Only individual retirement account benefits received by~~
29 ~~an individual retirement account participant after reaching fifty-nine and~~
30 ~~one-half (59½) years of age qualify for the exemption.~~

31 ~~(B) The only other distributions or withdrawals from an~~
32 ~~individual retirement account that qualify for the exemption before the~~
33 ~~individual retirement account participant reaches fifty-nine and one-half~~
34 ~~(59½) years of age are those made on account of the participant's death or~~
35 ~~disability.~~

36 ~~(C) All other premature distributions or early withdrawals~~

1 including, but not limited to, those taken for medical-related expenses,
2 higher education expenses, or a first-time home purchase do not qualify for
3 the exemption.

4 (b)(1)(A) Except as provided in subdivision (b)(2) of this section,
5 the exemption provided for in subsection (a) of this section for benefits
6 received from an individual retirement account or from a public or private
7 employment-related retirement system, plan, or program shall be the only
8 exemption from the state income tax allowed for benefits received from an
9 individual retirement account or from any publicly or privately supported
10 employment-related retirement system, plan, or program, excepting only
11 benefits received under systems, plans, or programs which are by federal law
12 exempt from the state income tax.

13 (B) No taxpayer shall receive an exemption greater than
14 six thousand dollars (\$6,000) during any tax year under the provisions of
15 this section.

16 (2) The provisions of this section shall not apply to retirement
17 or disability benefits received under a plan, system, or fund described in §
18 26-51-404(b)(6).

19 (c)(1) Section 72 of the Internal Revenue Code of 1986, as in effect
20 on January 1, 2009, is the sole method by which a recipient of benefits from
21 an individual retirement account or from public or private employment-related
22 retirement systems, plans, or programs may deduct or recover his or her cost
23 of contribution to the plan when computing his or her income for state income
24 tax purposes.

25 (2) A taxpayer shall not be allowed to deduct or recover any
26 portion of the taxpayer's cost of contribution to the plan that the taxpayer:

27 (A) Has once deducted or recovered; or

28 (B) Would have been allowed to deduct or recover under any
29 provision of law or court decision.

30 (d)(1) An individual who is sixty-five (65) years of age or older and
31 who does not claim an exemption under subsection (a) of this section shall be
32 entitled to an additional state income tax credit of twenty dollars (\$20.00).

33 (2) This credit is in addition to all other credits allowed by
34 law.

35
36 26-51-308. Trusts for qualified deferred compensation plans exempt.

1 ~~An organization or trust described in section 401(a) of the Internal~~
2 ~~Revenue Code, as in effect on January 1, 2009, is exempt from income taxation~~
3 ~~under the Income Tax Act of 1929, § 26-51-101 et seq.~~

4
5 ~~26-51-309. Charitable remainder trusts.~~

6 ~~(a) Section 664 of the Internal Revenue Code of 1986, as in effect on~~
7 ~~January 1, 2007, and the regulations of the Secretary of the Treasury~~
8 ~~promulgated under § 664 of the Internal Revenue Code of 1986 and in effect on~~
9 ~~January 1, 2007, are adopted for the purpose of computing the tax liability~~
10 ~~of charitable remainder trusts and their beneficiaries under the Income Tax~~
11 ~~Act of 1929, § 26-51-101 et seq.~~

12 ~~(b) Furthermore, any other provision of the federal income tax law and~~
13 ~~regulations which are necessary for interpreting and implementing 26 U.S.C. §~~
14 ~~664 are adopted to the extent as in effect on January 1, 2007.~~

15
16 ~~26-51-310. Foreign income exclusion.~~

17 ~~Sections 911 and 912 of the Internal Revenue Code of 1986, as in effect~~
18 ~~on January 1, 2007, 26 U.S.C. § 911 regarding citizens or residents of the~~
19 ~~United States living abroad, and 26 U.S.C. § 912 regarding certain allowances~~
20 ~~for citizens or residents of the United States living abroad, are adopted for~~
21 ~~the purpose of computing Arkansas income tax liability.~~

22
23 ~~26-51-311. Qualified windmill blade manufacturing exemption.~~

24 ~~(a) A qualified windmill blade manufacturer that meets the criteria~~
25 ~~found in subsection (b) of this section is exempt from income taxes levied~~
26 ~~under the Income Tax Act of 1929, § 26-51-101 et seq., until December 31,~~
27 ~~2033.~~

28 ~~(b) A windmill blade manufacturer shall meet the following criteria in~~
29 ~~order to claim the income tax exemption provided in subsection (a) of this~~
30 ~~section:~~

31 ~~(1) Shall be classified in the North American Industry~~
32 ~~Classification System (NAICS) Code 333611, as in effect January 1, 2007;~~

33 ~~(2) Shall locate in the state before December 31, 2007;~~

34 ~~(3) Shall expend a minimum of one hundred fifty million dollars~~
35 ~~(\$150,000,000) in the state within six (6) years of signing a financial~~
36 ~~incentive agreement with the Arkansas Economic Development Commission; and~~

1 ~~(4) Shall hire a minimum of one thousand (1,000) employees in~~
2 ~~the state within six (6) years of signing a financial incentive agreement~~
3 ~~with the commission.~~

4 ~~(c) If any of the criteria under subsection (b) of this section are~~
5 ~~not met, the income tax exemption in subsection (a) of this section shall~~
6 ~~expire in the year that the failure to meet any of the criteria for~~
7 ~~qualification occurs.~~

8
9 ~~26-51-312. Qualified windmill blade and windmill component~~
10 ~~manufacturing exemption.~~

11 ~~(a) A qualified windmill blade or windmill component manufacturer that~~
12 ~~meets the criteria under this section is eligible for a limited exemption~~
13 ~~from the income taxes levied under the Income Tax Act of 1929, § 26-51-101 et~~
14 ~~seq.~~

15 ~~(b) To qualify for a limited exemption under this section from income~~
16 ~~taxes, a windmill blade or windmill component manufacturer shall:~~

17 ~~(1) Be classified in the North American Industrial~~
18 ~~Classification System (NAICS) Code 333611 as in effect January 1, 2009;~~

19 ~~(2) Locate in the state after January 1, 2008; and~~

20 ~~(3) Sign a financial incentive agreement with the Arkansas~~
21 ~~Economic Development Commission after January 1, 2008.~~

22 ~~(c) The limited income tax exemption allowed under this section is~~
23 ~~calculated based on the formula in subsection (d) of this section that~~
24 ~~comprises the following variables:~~

25 ~~(1) Investment;~~

26 ~~(2) Job creation;~~

27 ~~(3) Tier status; and~~

28 ~~(4) Wages.~~

29 ~~(d) The number of years that a limited income tax exemption is granted~~
30 ~~to a qualified windmill blade or windmill component manufacturer is~~
31 ~~calculated as follows:~~

32 ~~(1) Divide the proposed number of jobs to be created by one~~
33 ~~thousand (1,000);~~

34 ~~(2)(A) Multiply the number calculated under subdivision (d)(1)~~
35 ~~of this section by thirty five hundredths (0.35).~~

36 ~~(B) The number calculated under subdivision (d)(2)(A) of~~

1 ~~this section is the weighting factor for job creation under subdivision~~
2 ~~(c)(2) of this section;~~

3 ~~(3) Divide the proposed hourly wage by the lesser of the state~~
4 ~~or county average wage;~~

5 ~~(4)(A) Multiply the number calculated under subdivision (d)(3)~~
6 ~~of this section by thirty five hundredths (0.35).~~

7 ~~(B) The number calculated under subdivision (d)(4)(A) of~~
8 ~~this section is the weighting factor for wages under subdivision (c)(4) of~~
9 ~~this section;~~

10 ~~(5) Divide the proposed investment amount by one hundred fifty~~
11 ~~million dollars (\$150,000,000);~~

12 ~~(6)(A) Multiply the number calculated under subdivision (d)(5)~~
13 ~~of this section by twenty hundredths (0.20).~~

14 ~~(B) The number calculated under subdivision (d)(6)(A) of~~
15 ~~this section is the weighting factor for investment under subdivision (c)(1)~~
16 ~~of this section;~~

17 ~~(7) Divide the tier number of the county in which the business~~
18 ~~locates by four (4);~~

19 ~~(8)(A) Multiply the number calculated under subdivision (d)(7)~~
20 ~~of this section by ten hundredths (0.10).~~

21 ~~(B) The number calculated under subdivision (d)(8)(A) of~~
22 ~~this section is the weighting factor for tier status that is associated with~~
23 ~~location under subdivision (c)(3) of this section;~~

24 ~~(9) Take the sum of the numbers in subdivisions (d)(2)(A),~~
25 ~~(d)(4)(A), (d)(6)(A), and (d)(8)(A) of this section and multiply the sum by~~
26 ~~twenty five (25); and~~

27 ~~(10) The number calculated in subdivision (d)(9) of this section~~
28 ~~is the number of years of income tax exemption granted to the qualified~~
29 ~~windmill blade or windmill component manufacturer.~~

30 ~~(e) If a qualified windmill blade or windmill component manufacturer~~
31 ~~that signs a financial incentive agreement with the commission after January~~
32 ~~1, 2008, has employed a minimum of one thousand (1,000) persons during the~~
33 ~~last year of the income tax exemption provided for in the initial signed~~
34 ~~financial incentive agreement with the commission, then additional years of~~
35 ~~income tax exemption may be authorized by the commission.~~

36 ~~(f) An income tax exemption allowed by this section shall not exceed~~

~~twenty five (25) years from the year that the exemption is first granted.~~

SECTION 38. Arkansas Code §§ 26-51-505 – 26-51-509 are repealed.

~~26-51-505. Establishment or expansion of manufacturing enterprise.~~

~~(a) There shall be allowed a credit against the tax imposed by the Arkansas Income Tax Act, as amended, § 26-51-101 et seq., § 26-51-205, and § 26-51-303, an amount as determined in subsection (c) of this section, for any taxpayer who establishes or expands a manufacturing enterprise in the State of Arkansas which results in the creation of new additional full-time or part-time jobs within this state.~~

~~(b)(1) For the purposes of this section, the term “manufacturing” refers to and includes those operations commonly understood within their ordinary meaning and shall also include mining, quarrying, refining, extracting oil and gas, cotton ginning, the drying of rice, soybeans, and other grains, the manufacturing of feed, processing of poultry or eggs and livestock, and the hatching of poultry.~~

~~(2)(A) A “new employee” shall be a person residing and domiciled in this state, hired by the taxpayer to fill a new additional job in this state which previously did not exist in the manufacturing enterprise during the taxable year for which the credit allowed by this section is claimed.~~

~~(B) To qualify for the credit provided in this section, the employment of a new employee by the manufacturer must increase the total number of employees who are employed by the manufacturer. In no case shall the new employees allowed for the purpose of the credit exceed the total increase in employment.~~

~~(C) A person shall be deemed to be so engaged if that person performs duties in connection with the operation of the business enterprise on:~~

~~(i) A regular full-time basis;~~

~~(ii) A part-time basis if the person is customarily performing such duties at least twenty (20) hours per week for at least six (6) months during the taxable year.~~

~~(c)(1) The credit shall be a portion of the state individual or corporate income tax paid by the taxpayer but not in excess of fifty percent (50%) of the tax. The portion shall be an amount determined by multiplying the number of new employees, as defined in subdivision (b)(2) of this~~

1 ~~section, by one hundred dollars (\$100) per eligible new employee per taxable~~
2 ~~year.~~

3 ~~(2) The amount of the credit allowed under subdivision (c)(1) of~~
4 ~~this section for the taxable year shall be an amount equal to the sum of:~~

5 ~~(A) A carryover of prior unused credits arising from the~~
6 ~~taxable years beginning on or after January 1, 1983, carried to the taxable~~
7 ~~year; plus~~

8 ~~(B) The amount of the credit allowed by subdivision (c)(1)~~
9 ~~of this section for the taxable year.~~

10 ~~(3) If the sum of the amount of the credits under subdivisions~~
11 ~~(c)(2)(A) and (B) of this section for the taxable year exceeds the limitation~~
12 ~~imposed by subdivision (c)(1) of this section, the excess shall be treated as~~
13 ~~a carryover credit and may be carried over for a maximum of three (3)~~
14 ~~consecutive years following the taxable year in which the credit originated.~~

15 ~~(d)(1) In the case of a proprietorship or partnership, the amount of~~
16 ~~the credit determined under this section for any taxable year shall be~~
17 ~~apportioned to each proprietor or partner in proportion to the amount of~~
18 ~~income from the manufacturing entity which the proprietor or partner is~~
19 ~~required to include in his gross income.~~

20 ~~(2) In the case of a Subchapter S corporation, as allowed by §~~
21 ~~26-51-409, the amount of the credit determined under this section for any~~
22 ~~taxable year shall be apportioned pro rata among the persons who are~~
23 ~~shareholders of the corporation on the last day of the taxable year.~~

24 ~~(3) No credit shall be allowed under this section to any~~
25 ~~organization which is exempt from state income tax.~~

26 ~~(4) In the case of an estate or trust:~~

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

31 ~~(B) Any beneficiary to whom any amount has been~~
32 ~~apportioned under subdivision (d)(4)(A) of this section shall be allowed,~~
33 ~~subject to the limitations contained in this section, a credit under this~~
34 ~~section for the amount.~~

35 ~~(e)(1) The Revenue Division of the Department of Finance and~~
36 ~~Administration shall promulgate such rules and regulations as may be deemed~~

1 ~~necessary to carry out the purposes of this section.~~

2 ~~(2) The Revenue Division shall consult with the Arkansas~~
3 ~~Employment Security Department and the Arkansas Economic Development~~
4 ~~Commission during the promulgation of the rules and regulations.~~

5 ~~(f) The tax credit provided by this section shall expire on June 30,~~
6 ~~1988. Any unused credits may be carried over beyond this date in accordance~~
7 ~~with subdivision (b)(3) of this section.~~

8
9 ~~26-51-506. Tax credit for waste reduction, reuse, or recycling~~
10 ~~equipment—Eligibility.~~

11 ~~(a) The intent and purpose of this section is to increase capacity in~~
12 ~~the State of Arkansas for the use of recovered materials.~~

13 ~~(b) As used in this section:~~

14 ~~(1) “Cost”, in the case of a transfer of title or a finance~~
15 ~~lease, means the amount of the purchase price, and, in the case of a lease~~
16 ~~which is not a finance lease but which otherwise qualifies as a purchase~~
17 ~~under this section, means the amount of the lease payments due to be paid~~
18 ~~during the term of the lease after deducting any portion of the lease~~
19 ~~payments attributable to interest, insurance, and taxes;~~

20 ~~(2) “Equipment to service waste reduction, reuse, or recycling~~
21 ~~equipment” means expenditures, machinery, or equipment that keeps existing~~
22 ~~machinery or equipment in running order by providing repair, maintenance,~~
23 ~~adjustment, inspection, or supplies;~~

24 ~~(3) “Finance lease” means a lease agreement which is treated as~~
25 ~~a purchase by a lessee for Arkansas income tax purposes;~~

26 ~~(4) “Home scrap” means materials or by-products generated from~~
27 ~~and commonly reused within an original manufacturing process;~~

28 ~~(5) “Maintenance” means expenditures, machinery, or equipment~~
29 ~~used to keep existing machinery or equipment in a condition that approaches~~
30 ~~or equates to its original condition;~~

31 ~~(6) “Motor vehicle” means a vehicle or trailer that is licensed,~~
32 ~~or that normally would be licensed, for use on highways in Arkansas;~~

33 ~~(7) “Postconsumer waste” means products or other materials~~
34 ~~generated by a business, governmental entity, or consumer which have served~~
35 ~~their intended end use and have been recovered from or otherwise diverted~~
36 ~~from the solid waste stream for the purpose of recycling;~~

1 ~~(8) “Preconsumer material” means material generated during any~~
2 ~~step in the production of a product and recovered or otherwise diverted from~~
3 ~~the solid waste stream for the purpose of recycling but does not include home~~
4 ~~serap;~~

5 ~~(9) “Purchase” means a transaction under which title to an item~~
6 ~~is transferred for consideration or a lease contract for a period of at least~~
7 ~~three (3) years regardless of whether title to the item is transferred at the~~
8 ~~end of such period;~~

9 ~~(10) “Recovered materials” means those materials which have been~~
10 ~~separated, diverted, or removed from the waste stream for the purpose of~~
11 ~~recycling and includes preconsumer material and postconsumer waste but not~~
12 ~~home serap;~~

13 ~~(11) “Recycling” means the systematic collecting, sorting,~~
14 ~~decontaminating, and returning of waste materials to commerce as commodities~~
15 ~~for use or exchange;~~

16 ~~(12) “Repair” means expenditures, machinery, or equipment used~~
17 ~~to restore existing machinery or equipment to its original or similar~~
18 ~~condition and capacity after damage or after deterioration from use;~~

19 ~~(13) “Solid waste” means all putrescible and nonputrescible~~
20 ~~wastes in solid or semisolid form, including, but not limited to, yard or~~
21 ~~food waste, waste glass, waste metals, waste plastics, wastepapers, waste~~
22 ~~paperboard, and all other solid or semisolid wastes resulting from~~
23 ~~industrial, commercial, agricultural, community, and residential activities;~~
24 ~~and~~

25 ~~(14)(A)(i) “Waste reduction, reuse, or recycling equipment”~~
26 ~~means new or used machinery or equipment located in Arkansas on the last day~~
27 ~~of the taxable year which is operated or used exclusively in Arkansas to~~
28 ~~collect, separate, process, modify, convert, or treat solid waste so that the~~
29 ~~resulting product may be used as a raw material or for productive use or to~~
30 ~~manufacture products containing recovered materials.~~

31 ~~(ii) “Waste reduction, reuse, or recycling~~
32 ~~equipment” also includes devices which are directly connected with or are an~~
33 ~~integral and necessary part of such machinery or equipment and are necessary~~
34 ~~for such collection, separation, processing, modification, conversion,~~
35 ~~treatment, or manufacturing.~~

36 ~~(B) “Waste reduction, reuse, or recycling equipment” does~~

1 ~~not include motor vehicles.~~

2 ~~(c) There shall be allowed a credit against the tax imposed by the~~
3 ~~Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in~~
4 ~~subsection (c) of this section for any taxpayer engaged in the business of~~
5 ~~reducing, reusing, or recycling solid waste for commercial purposes who~~
6 ~~purchases waste reduction, reuse, or recycling equipment used exclusively for~~
7 ~~the purpose of reducing, reusing, or recycling solid waste.~~

8 ~~(d) To claim the benefits of this section, a taxpayer must obtain a~~
9 ~~certification from the Director of the Arkansas Department of Environmental~~
10 ~~Quality certifying to the Revenue Division of the Department of Finance and~~
11 ~~Administration that:~~

12 ~~(1) The taxpayer is engaged in the business of reducing,~~
13 ~~reusing, or recycling solid waste material for commercial purposes, whether~~
14 ~~or not for profit;~~

15 ~~(2) The machinery or equipment purchased is waste reduction,~~
16 ~~reuse, or recycling equipment;~~

17 ~~(3) The machinery or equipment is being used in the collection,~~
18 ~~separation, processing, modification, conversion, treatment, or manufacturing~~
19 ~~of products containing at least fifty percent (50%) recovered materials,~~
20 ~~provided that at least ten percent (10%) of the recovered materials shall be~~
21 ~~post-consumer waste; and~~

22 ~~(4) The taxpayer has filed a statement with the director~~
23 ~~acknowledging that the taxpayer will make a good faith effort to utilize~~
24 ~~post-consumer waste generated in Arkansas as at least ten percent (10%) of~~
25 ~~the post-consumer waste being used in the equipment, to the extent available~~
26 ~~at a competitive price.~~

27 ~~(e)(1) The amount of the credit allowed under subsection (c) of this~~
28 ~~section shall be equal to thirty percent (30%) of the cost of waste~~
29 ~~reduction, reuse, or recycling equipment, including the cost of installation.~~

30 ~~(2) The cost of installation shall not include the cost of:~~

31 ~~(A) Feasibility studies;~~

32 ~~(B) Engineering costs of a building to house the equipment~~
33 ~~and related machinery; or~~

34 ~~(C) Equipment used to service the waste reduction, reuse,~~
35 ~~or recycling equipment.~~

36 ~~(3)(A) The cost of replacement parts which serve only to keep~~

1 ~~existing waste reduction, reuse, or recycling equipment in its ordinary~~
2 ~~efficient operating condition shall not be included in determining the amount~~
3 ~~of the credit.~~

4 ~~(B) The cost of replacement of existing waste reduction,~~
5 ~~reuse, or recycling equipment shall not be included in determining the amount~~
6 ~~of the credit unless the replacement provides greater capacity for recycling~~
7 ~~or provides the capability to collect, separate, process, modify, convert,~~
8 ~~treat, or manufacture additional or a different type of solid waste.~~

9 ~~(4) The cost of service contracts, sales tax, maintenance, and~~
10 ~~repairs shall not be included in determining the amount of the credit.~~

11 ~~(f)(1) The taxpayer shall refund the amount of the tax credit~~
12 ~~determined by subdivision (f)(2) of this section if, within three (3) years~~
13 ~~of the taxable year for which a credit is allowed.~~

14 ~~(A) The waste reduction, reuse, or recycling equipment is~~
15 ~~removed from Arkansas, is disposed of, is transferred to another person, or~~
16 ~~the taxpayer otherwise ceases to use the required materials or operate in the~~
17 ~~manner required by this section; or~~

18 ~~(B) The director finds that the taxpayer has demonstrated~~
19 ~~a pattern of intentional failure to comply with final administrative or~~
20 ~~judicial orders which clearly indicates a disregard for environmental~~
21 ~~regulation or a pattern of prohibited conduct which could reasonably be~~
22 ~~expected to result in adverse environmental impact.~~

23 ~~(2) If the provisions of subdivision (f)(1) of this section~~
24 ~~apply, the taxpayer shall refund the amount of the tax credit which was~~
25 ~~deducted from income tax liability which exceeds the following amounts:~~

26 ~~(A) Within the first year, zero dollars (\$0);~~

27 ~~(B) Within the second year, an amount equal to thirty-~~
28 ~~three percent (33%) of the amount of credit allowed; and~~

29 ~~(C) Within the third year, an amount equal to sixty-seven~~
30 ~~percent (67%) of the credit allowed.~~

31 ~~(3) Any refund required by subdivision (f)(1)(A) of this section~~
32 ~~shall apply only to the credit given for the particular waste reduction,~~
33 ~~reuse, or recycling equipment to which that subdivision applies.~~

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

1 required.

2 ~~(5)(A) This subsection shall apply to all credits which are~~
3 ~~certified as a result of applications for certification filed with the~~
4 ~~Arkansas Department of Environmental Quality on or after July 1, 1993.~~

5 ~~(B) This subsection shall not apply to credits which are~~
6 ~~certified as a result of applications for certification filed with the~~
7 ~~Arkansas Department of Environmental Quality prior to July 1, 1993.~~

8 ~~(C) Taxpayers who file written notice and a project plan~~
9 ~~with the Arkansas Department of Environmental Quality prior to July 1, 1993,~~
10 ~~shall be deemed to have filed an application for certification for purposes~~
11 ~~of subdivision (f)(5) of this section, provided that all the information~~
12 ~~necessary to complete the application for certification is provided to the~~
13 ~~Arkansas Department of Environmental Quality on or before December 31, 1993.~~

14 ~~(g)(1) Waste reduction, reuse, or recycling equipment shall only be~~
15 ~~eligible for one (1) tax credit.~~

16 ~~(2) The sale or transfer of waste reduction, reuse, or recycling~~
17 ~~equipment shall not recreate the eligibility for a tax credit.~~

18 ~~(h)(1) In the case of a proprietorship or partnership engaged in the~~
19 ~~business of waste reduction, reuse, or recycling of solid waste, the amount~~
20 ~~of the credit determined under this section for any taxable year shall be~~
21 ~~apportioned to each proprietor or partner in proportion to the amount of~~
22 ~~income from the entity which the proprietor or partner is required to include~~
23 ~~as gross income.~~

24 ~~(2) In the case of a Subchapter S corporation, as allowed by §~~
25 ~~26-51-409, the amount of the credit determined under this section for any~~
26 ~~taxable year shall be apportioned among the persons who are shareholders of~~
27 ~~the corporation on the last day of the taxable year based on each person's~~
28 ~~percentage of ownership.~~

29 ~~(3) In the case of an estate or trust:~~

30 ~~(A) The amount of the credit determined under this section~~
31 ~~for any taxable year shall be apportioned between the estate or trust and the~~
32 ~~beneficiaries on the basis of the income of the estate or trust allocable to~~
33 ~~each; and~~

34 ~~(B) Any beneficiary to whom any amount has been~~
35 ~~apportioned under this subsection shall be allowed, subject to limitations~~
36 ~~contained in this section, a credit under this section for the amount.~~

1
2 ~~(i)(1) The amount of the credit that may be used by~~
3 ~~a taxpayer for a taxable year may not exceed the amount of state, individual,~~
4 ~~or corporate income tax otherwise due.~~

5 ~~(2) Any unused credit may be carried over for a maximum of three~~
6 ~~(3) consecutive years following the taxable year in which the credit~~
7 ~~originated.~~

8 ~~(j) A taxpayer who receives a credit under this section shall not be~~
9 ~~entitled to claim any other state or local tax credit or deduction based on~~
10 ~~the purchase of the machinery or equipment, except for the deduction for~~
11 ~~normal depreciation.~~

12 ~~(k)(1)(A) The Arkansas Department of Environmental Quality and the~~
13 ~~division shall promulgate rules or regulations as are necessary to administer~~
14 ~~this section.~~

15 ~~(B) These rules or regulations may include, but are not~~
16 ~~limited to, the establishment of technical specifications and of requirements~~
17 ~~for information and documentation for taxpayers seeking a credit under this~~
18 ~~section and shall encourage, but not require, the use of Arkansas contractors~~
19 ~~and post-consumer waste generated in Arkansas in recycling projects which~~
20 ~~qualify for credits provided by this section.~~

21 ~~(2) In order to determine eligibility for the credit or to~~
22 ~~ensure that the machinery or equipment is being utilized in the required~~
23 ~~manner, each agency shall have the right to inspect facilities and records of~~
24 ~~a taxpayer requesting or receiving a credit under this section.~~

25 ~~(l) Any person or legal entity aggrieved by a decision of the director~~
26 ~~under subsection (d) of this section or subdivision (f)(1)(B) of this section~~
27 ~~may appeal to the Arkansas Pollution Control and Ecology Commission through~~
28 ~~administrative procedures adopted by the commission and to the courts in the~~
29 ~~manner provided in §§ 8-4-222—8-4-229.~~

30
31 ~~26-51-507. Employer provided child care—As qualified under § 26-52-~~
32 ~~401.~~

33 ~~(a) A business which qualifies for the exemption from the gross~~
34 ~~receipts tax under § 26-52-401(29) shall be allowed an income tax credit of~~
35 ~~three and nine tenths percent (3.9%) of the annual salary of employees~~
36 ~~employed exclusively in providing child care services.~~

1 ~~(b) If two (2) or more businesses participate in a child care program~~
2 ~~for their employees as provided by § 26-52-401(29), then each business will~~
3 ~~be allowed an income tax credit of three and nine tenths percent (3.9%) of~~
4 ~~the annual salary of only those employees who are on the respective business'~~
5 ~~payroll and are employed exclusively for providing child care services.~~

6 ~~(c)(1) To qualify for the income tax credit, the revenue to the~~
7 ~~business or businesses from the child care facility cannot exceed the direct~~
8 ~~operating costs of the facility. If, on an annual basis, the child care~~
9 ~~facility receives revenue which exceeds the direct operating costs of the~~
10 ~~facility, the business or businesses will not be entitled to the income tax~~
11 ~~credit.~~

12 ~~(2) For the purposes of this subsection, direct operating costs~~
13 ~~means:~~

14 ~~(A) The cost of food and beverages provided to the~~
15 ~~children;~~

16 ~~(B) The cost of labor for personnel whose services are~~
17 ~~performed exclusively on the premises of the child care facility for the care~~
18 ~~of the children and all related employment taxes paid by the employer; and~~

19 ~~(C) All materials and supplies necessary to operate the~~
20 ~~child care facility.~~

21 ~~(d) The income tax credit created by subsection (a) of this section~~
22 ~~shall first be available in the taxable year following the year the business~~
23 ~~makes payment of wages to child care workers. To the extent that the credit~~
24 ~~is not fully utilized in this first year, it may be carried forward for an~~
25 ~~additional two (2) years. Any credit remaining thereafter shall expire.~~

26 ~~(e) The income tax provisions of this section shall be in full force~~
27 ~~and effect for all income tax years beginning on and after January 1, 1993.~~

28 ~~(f) [Repealed.]~~

29
30 ~~26-51-508. Employer provided child care — As qualified under § 26-52-~~
31 ~~516 or § 26-53-132.~~

32 ~~(a) A business which qualifies for the refund of the gross receipts~~
33 ~~tax or compensating use tax under § 26-52-516 or § 26-53-132 shall be allowed~~
34 ~~an income tax credit of three and nine tenths percent (3.9%) of the annual~~
35 ~~salary of its employees employed exclusively in providing child care service,~~
36 ~~or a five thousand dollar (\$5,000) income tax credit for the first tax year~~

1 ~~the business provides its employees with a child care facility.~~

2 ~~(b) If two (2) or more businesses participate in a child care program~~
3 ~~for their employees as provided by § 26-52-516 or § 26-53-132, then each~~
4 ~~business will be allowed an income tax credit of three and nine tenths~~
5 ~~percent (3.9%) of the annual salary of only those employees who are on the~~
6 ~~respective business' payroll and are employed exclusively for providing child~~
7 ~~care services. The first year's five thousand dollar (\$5,000) credit will be~~
8 ~~prorated among the businesses based upon the percentage of the cost paid by~~
9 ~~each business for the initial construction and equipping of the child care~~
10 ~~facility.~~

11 ~~(c)(1)(A) To qualify for the income tax credit, the revenue to the~~
12 ~~business or businesses from the child care facility cannot exceed the direct~~
13 ~~operating costs of the facility.~~

14 ~~(B) If, on an annual basis, the business receives revenues~~
15 ~~from the operation of the child care facility which exceed the direct~~
16 ~~operating costs of the facility, the businesses will not be entitled to the~~
17 ~~income tax credit.~~

18 ~~(2) For the purposes of this subsection, "direct operating~~
19 ~~costs" means:~~

20 ~~(A) The cost of food and beverages provided to the~~
21 ~~children;~~

22 ~~(B) The cost of labor for personnel whose services are~~
23 ~~performed exclusively on the premises of the child care facility for the care~~
24 ~~of the children and all related employment taxes paid by the employer; and~~

25 ~~(C) All materials and supplies necessary to operate the~~
26 ~~child care facility.~~

27 ~~(d) The income tax credit created by subsection (a) of this section~~
28 ~~shall first be available in the taxable year following the year the business~~
29 ~~makes payment of wages to child care workers. To the extent that the credit~~
30 ~~is not fully utilized in this first year, it may be carried forward for an~~
31 ~~additional two (2) years. Any credit remaining thereafter shall expire.~~

32
33 ~~26-51-509. Youth apprenticeship program.~~

34 ~~(a) For the purposes of this section:~~

35 ~~(1) "Bureau" means the Bureau of Apprenticeship and Training of~~
36 ~~the United States Department of Labor;~~

1 ~~(2) "Department" means the Department of Finance and~~
2 ~~Administration; and~~

3 ~~(3) "Youth apprentice" means an individual between the ages of~~
4 ~~sixteen (16) and twenty one (21) years who is enrolled in a public or private~~
5 ~~secondary or postsecondary school.~~

6 ~~(b)(1) A taxpayer who employs a youth apprentice in a registered~~
7 ~~apprenticeship program as provided in Title 29, Subtitle (a), Part 29 of the~~
8 ~~Code of Federal Regulations, as in effect on January 1, 1995, shall be~~
9 ~~allowed a credit in the amount of two thousand dollars (\$2,000) or ten~~
10 ~~percent (10%) of the wages earned by the youth apprentice, whichever is less,~~
11 ~~against the tax imposed by the Arkansas Income Tax Act of 1929, as amended, §~~
12 ~~26-51-101 et seq., for each such apprentice.~~

13 ~~(2)(A) A partner's or member's distributive share of the credit~~
14 ~~shall be determined by the partnership or limited liability company~~
15 ~~agreement, unless the agreement does not have substantial economic effect or~~
16 ~~does not provide for the allocation of credits.~~

17 ~~(B) If the agreement does not have substantial economic~~
18 ~~effect or does not provide for the allocation of the credit, the credit shall~~
19 ~~be allocated according to the partner's or member's interest in the~~
20 ~~partnership, pursuant to federal Internal Revenue Code section 704(b), as in~~
21 ~~effect on January 1, 1995.~~

22 ~~(c)(1) To claim the benefits of this section, a taxpayer must obtain a~~
23 ~~certification from the bureau certifying to the Revenue Division of the~~
24 ~~Department of Finance and Administration that the taxpayer has met all the~~
25 ~~requirements and qualifications set forth in this section.~~

26 ~~(2) The certification to the department shall include the total~~
27 ~~amount of wages paid to each youth apprentice employed by the taxpayer or~~
28 ~~501(c)(3) corporation in the taxable year for which the taxpayer claims the~~
29 ~~credit provided in this section.~~

30 ~~(d)(1) The amount of the credit that may be used by a taxpayer for a~~
31 ~~taxable year may not exceed the amount of individual or corporate income tax~~
32 ~~otherwise due.~~

33 ~~(2) Any unused credit may be carried over for a maximum of two~~
34 ~~(2) consecutive taxable years.~~

35 ~~(e) If the business is an "S" corporation, the pass-through provisions~~
36 ~~of § 26-51-409, as in effect for the taxable year the credit is earned, shall~~

1 ~~be applicable.~~

2 ~~(f) A taxpayer who trains a youth apprentice in a registered youth~~
3 ~~apprenticeship program as provided in subsection (b) of this section shall be~~
4 ~~entitled to the tax credit provided in this section for such youth~~
5 ~~apprentice, even though the apprentice receives his or her wages for such~~
6 ~~training from a 501(c)(3) corporation.~~

7 ~~(g)(1) The Revenue Division of the Department of Finance and~~
8 ~~Administration shall promulgate such rules and regulations as may be deemed~~
9 ~~necessary to carry out the purposes of this section.~~

10 ~~(2) The Revenue Division shall consult with the Bureau of~~
11 ~~Apprenticeship and Training of the United States Department of Labor during~~
12 ~~the promulgation of the rules and regulations.~~

13
14 SECTION 39. Arkansas Code §§ 26-51-511 – 26-51-514 are repealed.

15 ~~26-51-511. Coal mining, producing, and extracting.~~

16 ~~(a) As used in this section:~~

17 ~~(1) "Coal mining enterprise" means:~~

18 ~~(A) An Arkansas taxpayer primarily engaged in surface or~~
19 ~~highwall mining, producing, or extracting coal in Arkansas; and~~

20 ~~(B) A holder of a valid mining permit issued by the~~
21 ~~Arkansas Department of Environmental Quality to allow surface or highwall~~
22 ~~mining;~~

23 ~~(2) "Eligible transferee" means any Arkansas taxpayer subject to~~
24 ~~the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed by §~~
25 ~~23-75-119, or the premium tax imposed by § 23-63-1614; and~~

26 ~~(3) "Taxpayer" means a coal mining enterprise or an eligible~~
27 ~~transferee.~~

28 ~~(b)(1) There shall be allowed a credit against the income tax imposed~~
29 ~~by the Income Tax Act of 1929, § 26-51-101 et seq., the premium tax imposed~~
30 ~~by § 23-75-119, or the premium tax imposed by § 23-63-1614 in an amount as~~
31 ~~determined in subsection (c) of this section for a taxpayer.~~

32 ~~(2) A credit allowed under this section shall expire after five~~
33 ~~(5) tax years following the tax year in which the tax credit was earned.~~

34 ~~(c)(1)(A) A credit of two dollars (\$2.00) per ton of coal mined,~~
35 ~~produced, or extracted shall be allowed on each ton of coal mined in Arkansas~~
36 ~~by a coal mining enterprise in a tax year.~~

1 ~~(B) An additional credit of three dollars (\$3.00) per ton~~
2 ~~of coal mined, produced, or extracted shall be allowed on each ton of coal~~
3 ~~mined in Arkansas in excess of fifty thousand (50,000) tons by a coal mining~~
4 ~~enterprise in a tax year.~~

5 ~~(2) A credit under this section is earned only if the coal is~~
6 ~~sold to an electric generation plant for less than forty dollars (\$40.00) per~~
7 ~~ton excluding freight charges.~~

8 ~~(3) At the election of the taxpayer, the credit may be treated~~
9 ~~as:~~

10 ~~(A) Payment of a tax;~~

11 ~~(B) Prepayment of a tax; or~~

12 ~~(C) Prepayment of an estimated tax.~~

13 ~~(d)(1) The credits allowed under this section shall be freely~~
14 ~~transferable by written agreement to subsequent transferees at any time~~
15 ~~during the five (5) years following the year the credit was earned.~~

16 ~~(2) A coal mining enterprise that has earned a credit under this~~
17 ~~section may transfer the credit in writing to an eligible transferee.~~

18 ~~(3)(A) The coal mining enterprise and the eligible transferee~~
19 ~~shall jointly file a copy of the written credit transfer agreement with the~~
20 ~~Director of the Department of Finance and Administration within thirty (30)~~
21 ~~days of the credit transfer.~~

22 ~~(B) The written credit transfer agreement shall contain:~~

23 ~~(i) The name of the parties to the transfer;~~

24 ~~(ii) The amount of the credit transferred;~~

25 ~~(iii) The tax year that the credit was originally~~
26 ~~earned by the coal mining enterprise; and~~

27 ~~(iv) The tax year or years in which the credit may~~
28 ~~be claimed.~~

29 ~~(C)(i) The Department of Finance and Administration shall~~
30 ~~promulgate rules and regulations to permit the verification of the validity~~
31 ~~and timeliness of a claimed tax credit that has been transferred under this~~
32 ~~subsection.~~

33 ~~(ii) The rules and regulations shall not unduly~~
34 ~~restrict or hinder the transfers of credits under this section.~~

35
36 ~~26-51-512. Rice straw tax credit.~~

1 ~~(a) As used in this section:~~

2 ~~(1) "End user" means a person who purchases and uses rice straw~~
3 ~~for processing, manufacturing, generating energy, or producing ethanol; and~~

4 ~~(2) "Rice straw" means the dry stems of rice left after the seed~~
5 ~~heads have been removed.~~

6 ~~(b)(1) There is allowed a credit against the income tax imposed by the~~
7 ~~Income Tax Act of 1929, § 26-51-101 et seq., in the amount of fifteen dollars~~
8 ~~(\$15.00) for each ton of rice straw over five hundred (500) tons that is~~
9 ~~purchased by an Arkansas taxpayer who is the end user.~~

10 ~~(2) The amount of credit that may be used by the taxpayer for a~~
11 ~~taxable year may not exceed fifty percent (50%) of the amount of income tax~~
12 ~~due for that tax year.~~

13 ~~(3) Any unused credit may be carried forward for ten (10)~~
14 ~~consecutive tax years following the tax year the credit was earned.~~

15 ~~(c) A taxpayer who claims a credit under this section shall not claim~~
16 ~~any other state tax credit or deduction for the purchase of rice straw.~~

17
18 ~~26-51-513. Arkansas historic rehabilitation income tax credit.~~

19 ~~(a) In addition to any income tax credit not related to the same~~
20 ~~eligible property for which a taxpayer qualifies, the taxpayer is allowed an~~
21 ~~income tax credit for the amount of the Arkansas historic rehabilitation~~
22 ~~income tax credit allowed by the certification of completion issued by the~~
23 ~~Department of Arkansas Heritage under the Arkansas Historic Rehabilitation~~
24 ~~Income Tax Credit Act, § 26-51-2201 et seq.~~

25 ~~(b) The amount of the income tax credit under this section that may be~~
26 ~~claimed by the taxpayer in a tax year shall not exceed the amount of state~~
27 ~~income tax due by the taxpayer.~~

28 ~~(c) Any unused income tax credit under this section may be carried~~
29 ~~forward for a maximum of five (5) consecutive tax years for credit against~~
30 ~~the state income tax.~~

31 ~~(d) The Director of the Department of Finance and Administration shall~~
32 ~~promulgate rules to implement this section.~~

33
34 ~~26-51-514. Cigarette receptacle tax credit. [Effective if contingency~~
35 ~~in Acts 2009, No. 1500, § 2 is met.]~~

36 ~~(a) As used in this section, "cigarette receptacle" means a receptacle~~

1 ~~or urn specifically designed for the disposal of cigarette litter such as~~
2 ~~cigarette butts and ash.~~

3 ~~(b)(1) A business or commercial enterprise with fifty (50) or fewer~~
4 ~~employees is allowed an income tax credit against the income tax imposed by~~
5 ~~the Income Tax Act of 1929, § 26-51-101 et seq., for the purchase of a~~
6 ~~cigarette receptacle that is placed in service during the taxable year.~~

7 ~~(2) The amount of the income tax credit under this section is~~
8 ~~twenty percent (20%) of the purchase price of the cigarette receptacle.~~

9 ~~(3) A taxpayer may claim the income tax credit under this~~
10 ~~section only one (1) time and only for one (1) cigarette receptacle.~~

11 ~~(c) Any unused income tax credit under this section may be carried~~
12 ~~forward for three (3) consecutive tax years following the tax year the income~~
13 ~~tax credit was earned.~~

14 ~~(d) The amount of the income tax credit under this section that may be~~
15 ~~claimed by the taxpayer in a tax year shall not exceed the amount of income~~
16 ~~tax due by the taxpayer.~~

17 ~~(e) The Department of Finance and Administration shall promulgate~~
18 ~~rules to implement this section.~~

19
20 SECTION 40. Arkansas Code § 26-51-806(a), concerning the filing of
21 income tax returns, is amended to read as follows:

22 (a)(1) Returns shall be in such form as the Director of the Department
23 of Finance and Administration may prescribe from time to time and shall be
24 filed with the director's office at Little Rock.

25 (2) Returns for all income taxes other than corporation income
26 tax, and cooperative associations, ~~and exempt organizations~~ shall be filed as
27 follows:

28 (A) If covering the preceding calendar year, on or before
29 April 15; or

30 (B) If covering a fiscal year, on or before the expiration
31 of three and one-half (3½) months after the closing date of the period
32 covered.

33 (3) Returns for corporation income tax shall be filed as
34 follows:

35 (A) If covering the preceding calendar year, on or before
36 March 15; or

1 (B) If covering a fiscal year, on or before the expiration
2 of two and one-half (2½) months after the closing date of the period covered.

3 (4)(A) Returns for cooperative association income tax shall be
4 filed as follows:

5 (i) If covering the preceding calendar year, on or
6 before September 15; or

7 (ii) If covering a fiscal year, on or before the
8 expiration of eight and one-half (8½) months after the closing date of the
9 period covered.

10 (B) As used in this section, "cooperative association"
11 means a cooperative association as described in § 26 U.S.C. § 1381(a) as in
12 effect on January 1, 2003.

13 ~~(5)(A) Returns for an exempt organization that is required to~~
14 ~~file an income tax return shall be filed as follows:~~

15 ~~(i) If covering the preceding calendar year, on or~~
16 ~~before May 15; or~~

17 ~~(ii) If covering a fiscal year, on or before the~~
18 ~~expiration of four and one-half (4½) months after the closing date of the~~
19 ~~period covered.~~

20 ~~(B) As used in this section, "exempt organization" means~~
21 ~~an organization as described in § 26-51-303.~~

22
23 SECTION 41. Arkansas Code § 26-51-815 is amended to read as follows:
24 26-51-815. Computing capital gains and losses.

25 (a)(1)~~(A)~~ To the extent they apply to capital gains and losses
26 realized or incurred during income years beginning after December 31, 1996,
27 26 U.S.C. §§ 1211-1237 and 1239-1257 as in effect on January 1, 2007, and the
28 regulations of the Secretary of the Treasury promulgated under 26 U.S.C. §§
29 1211-1237 and 1239-1257 as in effect on January 1, 2007, are adopted for the
30 purpose of computing tax liability under the Income Tax Act of 1929, § 26-51-
31 101 et seq.

32 ~~(B)~~ (2) However, the provisions of this section shall not apply
33 to a C corporation as defined in 26 U.S.C. § 1361, as in effect on January 1,
34 1997.

35 ~~(2)~~ (b) Furthermore, any other provisions of the federal income tax
36 law and regulations necessary for interpreting and implementing 26 U.S.C. §§

1 1211-1237 and 1239-1257 are adopted to that extent and as in effect on
2 January 1, 2007.

3 ~~(b) If a taxpayer has a net capital gain for tax years beginning on~~
4 ~~and after January 1, 1999, thirty percent (30%) of the gain shall be exempt~~
5 ~~from state income tax.~~

6 ~~(c) Section 1202 of the Internal Revenue Code of 1986, as in effect on~~
7 ~~January 1, 1995, regarding the exclusion from gain of certain small business~~
8 ~~stock, is adopted for the purpose of computing Arkansas income tax liability.~~

9 ~~(d)(1) If a taxpayer has a net capital gain from a venture capital~~
10 ~~investment, one hundred percent (100%) of the gain shall be exempt from the~~
11 ~~Income Tax Act of 1929, § 26-51-101 et seq., if:~~

12 ~~(A) The venture capital investment was initially made on~~
13 ~~or after January 1, 2001; and~~

14 ~~(B) The venture capital investment was held for at least~~
15 ~~five (5) years prior to disposition.~~

16 ~~(2)(A) "Venture capital" means equity financing, broadly~~
17 ~~defined, including early stage research, development, commercialization, seed~~
18 ~~capital for startup enterprises, and other risk capital for expansion of~~
19 ~~entrepreneurial enterprises doing business in Arkansas that are:~~

20 ~~(i) Qualified technology-based enterprises doing~~
21 ~~business in Arkansas;~~

22 ~~(ii) Qualified biotechnology enterprises doing~~
23 ~~business in Arkansas; or~~

24 ~~(iii) Qualified technology incubator clients doing~~
25 ~~business in Arkansas.~~

26 ~~(B) "Venture capital" does not include the purchase of a~~
27 ~~share of stock in a company if, on the date on which the share of stock is~~
28 ~~purchased, the company has securities outstanding that are:~~

29 ~~(i) Registered on a national securities exchange~~
30 ~~under § 12(b) of Title I of the Securities Exchange Act of 1934 as it exists~~
31 ~~on January 1, 2001;~~

32 ~~(ii) Registered or required to be registered under §~~
33 ~~12(g) of Title I of the Securities Exchange Act of 1934 as it exists on~~
34 ~~January 1, 2001; or~~

35 ~~(iii) Required to be registered except for the~~
36 ~~exemptions in § 12(g)(2) of Title I of the Securities Exchange Act of 1934 as~~

1 ~~it exists on January 1, 2001.~~

2 ~~(C) "Qualified biotechnology enterprise" means a~~
3 ~~corporation, partnership, limited liability company, sole proprietorship, or~~
4 ~~other entity that is certified by the Arkansas Economic Development~~
5 ~~Commission pursuant to § 2-8-108.~~

6 ~~(D) "Qualified technology incubator" means a business~~
7 ~~incubator certified by the Board of Directors of the Arkansas Science and~~
8 ~~Technology Authority as being a facility operated in cooperation with an~~
9 ~~Arkansas college or university to foster the growth of technology-based~~
10 ~~enterprises.~~

11 ~~(E) "Qualified technology incubator client" means a~~
12 ~~corporation, partnership, limited liability company, sole proprietorship, or~~
13 ~~other entity that, as of the date of the venture capital investment, is~~
14 ~~certified by an Arkansas college or university as currently receiving, or~~
15 ~~having received within the previous three (3) years, the services of a~~
16 ~~qualified technology incubator.~~

17 ~~(F) "Qualified technology-based enterprise" means a~~
18 ~~corporation, partnership, limited liability company, sole proprietorship, or~~
19 ~~other legal entity whose primary business directly involves commercializing~~
20 ~~the results of research in fields having long-term economic or commercial~~
21 ~~value to the state and having been identified in the research and development~~
22 ~~plan approved by the board.~~

23
24 SECTION 42. Arkansas Code § 26-51-902(13)(J), concerning the
25 definition of "wages" under the Arkansas Income Tax Withholding Act, is
26 amended to read as follows:

27 (J) To an employee or his or her beneficiary:

28 ~~(i) From a trust or to a trust exempt from tax under~~
29 ~~§ 26-51-308 unless the payment is rendered to an employee of the trust as~~
30 ~~remuneration for services rendered by the employee and not as a beneficiary~~
31 ~~of the trust;~~

32 ~~(ii) (i) Under an annuity plan or to an annuity plan~~
33 ~~under 26 U.S.C. § 403(a), adopted by § 26-51-414;~~

34 ~~(iii) (ii) Under 26 U.S.C. §§ 402(h)(1) and (2),~~
35 ~~adopted by § 26-51-414, if it is reasonable to believe at the time of payment~~
36 ~~that the payment will be excluded under § 26-51-414;~~

1 ~~(iv)~~ (iii) Under 26 U.S.C. § 408(p), adopted by §
2 26-51-414; or

3 ~~(v)~~ (iv) Under an eligible deferred compensation
4 plan or paid to an eligible deferred compensation plan under 26 U.S.C. §
5 457(b), maintained by an eligible employer under 26 U.S.C. § 457(e)(1)(A), as
6 those sections are adopted by § 26-51-414;

7
8 SECTION 43. Arkansas Code Title 26, Chapter 51, Subchapter 10 is
9 repealed.

10 ~~Subchapter 10—Water Resource Conservation and Development Incentives Act~~

11
12 ~~26-51-1001.—Title.~~

13 ~~This subchapter shall be known as the “Water Resource Conservation and~~
14 ~~Development Incentives Act”.~~

15
16 ~~26-51-1002.—Legislative findings.~~

17 ~~(a) The State of Arkansas is blessed with abundant rainfall and other~~
18 ~~surface and underground water resources which, when managed conjunctively,~~
19 ~~can provide a continuous high quality water supply to meet the foreseeable~~
20 ~~needs of the entire state.~~

21 ~~(b) Existing water use patterns are depleting groundwater supplies at~~
22 ~~an unacceptable rate, and alternative surface water supplies are not~~
23 ~~available in sufficient quantities to alleviate this groundwater depletion~~
24 ~~problem.~~

25 ~~(c) The tax incentives provided in this subchapter will encourage the~~
26 ~~water users to invest in:~~

27 ~~(1) The construction of impoundments to utilize available~~
28 ~~surface water and reduce our dependence on groundwater;~~

29 ~~(2) The conversion from groundwater use to surface water use~~
30 ~~when surface water is available; and~~

31 ~~(3) The water conservation practice of land leveling to reduce~~
32 ~~agricultural irrigation water use.~~

33 ~~(d) It is of utmost importance to Arkansas that, within critical~~
34 ~~groundwater areas, surface water be used when available.~~

35
36 ~~26-51-1003.—Definitions.~~

1 ~~As used in this subchapter:~~

2 ~~(1) "Acre foot" means the volumetric measure equal to forty-~~
3 ~~three thousand five hundred sixty cubic feet (43,560 cu. ft.) or~~
4 ~~approximately three hundred twenty five thousand nine hundred gallons~~
5 ~~(325,900 gals.);~~

6 ~~(2) "Application" means a written request for approval for tax~~
7 ~~credits, describing the project, including a water conservation plan~~
8 ~~outlining the operation of the project and any additional requirements as the~~
9 ~~Arkansas Natural Resources Commission may adopt by rule;~~

10 ~~(3) "Commission" means the Arkansas Natural Resources~~
11 ~~Commission;~~

12 ~~(4) "Critical groundwater areas" means those areas that are~~
13 ~~designated by the commission pursuant to the Arkansas Groundwater Protection~~
14 ~~and Management Act, § 15-22-901 et seq.;~~

15 ~~(5) "Department" means the Revenue Division of the Department of~~
16 ~~Finance and Administration;~~

17 ~~(6) "Land leveling" means modifying the surface relief of a~~
18 ~~field to a planned grade to provide a more suitable surface for efficiently~~
19 ~~applying irrigation water without excessive erosion, loss of water quality,~~
20 ~~or damage to land by waterlogging;~~

21 ~~(7) "Project" means:~~

22 ~~(A) The construction, installation, or restoration of~~
23 ~~water impoundment or water control structures of twenty (20) acre feet or~~
24 ~~more designed for the purpose of storing water to be used for agricultural,~~
25 ~~commercial, or industrial purposes;~~

26 ~~(B) The conversion from groundwater to surface water use~~
27 ~~by agricultural, commercial, industrial, or recreational water users;~~

28 ~~(C) Agricultural land leveling resulting in water savings~~
29 ~~due to the more efficient use of irrigation water for which tax credits are~~
30 ~~claimed; and~~

31 ~~(D)(i) The purchase and installation of water measuring or~~
32 ~~metering devices used to determine the quantity of water used;~~

33 ~~(ii) Installation of such devices shall be~~
34 ~~considered a conversion from groundwater to surface water for tax credit~~
35 ~~purposes; and~~

36 ~~(8) "Project cost" means the actual expenditure for a project,~~

1 ~~less any reimbursement received by the taxpayer from cost share programs.~~

2
3 ~~26-51-1004. Applicability—Effective date.~~

4 ~~(a)(1) The tax credits provided by this subchapter shall apply to~~
5 ~~taxable years beginning on or after January 1, 1996, and all taxable years~~
6 ~~thereafter.~~

7 ~~(2) Any taxpayer claiming a tax credit under this subchapter may~~
8 ~~not claim a credit under the Water Resource Conservation and Development~~
9 ~~Incentives Act of 1985 [repealed] or any similar act for any costs related to~~
10 ~~the same project.~~

11 ~~(3) Any tax credits issued to partnerships, limited liability~~
12 ~~companies, Subchapter S corporations, or fiduciaries may pass through to~~
13 ~~their members, managers, partners, shareholders, and/or beneficiaries.~~

14 ~~(b)(1) No new tax credit approval certificates under the Water~~
15 ~~Resource Conservation and Development Incentives Act of 1985 [repealed] shall~~
16 ~~be issued after December 31, 1995.~~

17 ~~(2) However, any taxpayer having been issued a certificate of~~
18 ~~tax credit approval on or prior to December 31, 1995, may complete the~~
19 ~~project and shall be entitled to the credits provided under that act.~~

20
21 ~~26-51-1005. Credit granted—Water impoundments outside critical~~
22 ~~areas.~~

23 ~~(a) For projects located outside critical groundwater areas, there~~
24 ~~shall be allowed as a credit against the tax imposed by the Income Tax Act of~~
25 ~~1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the~~
26 ~~project cost incurred in the construction and installation or restoration of~~
27 ~~water impoundments or water control structures of twenty (20) acre feet or~~
28 ~~more designed for the purpose of storing water to be used primarily for~~
29 ~~agricultural, commercial, or industrial purposes.~~

30 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~
31 ~~taxable year may not exceed the lesser of the amount of individual or~~
32 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

33 ~~(2) Any unused credit may be carried over for a maximum of nine~~
34 ~~(9) consecutive taxable years following the taxable year in which the credit~~
35 ~~originated.~~

36

1 ~~26-51-1006. Credit granted—Water impoundments within critical areas.~~

2 ~~(a) For projects located within critical groundwater areas, there~~
3 ~~shall be allowed as a credit against the tax imposed by the Income Tax Act of~~
4 ~~1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the~~
5 ~~project cost incurred in the construction and installation or restoration of~~
6 ~~water impoundments or water control structures of twenty (20) acre feet or~~
7 ~~more designed for the purpose of storing water to be used primarily for~~
8 ~~agricultural, commercial, or industrial purposes.~~

9 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~
10 ~~taxable year may not exceed the lesser of the amount of individual or~~
11 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

12 ~~(2) Any unused credit may be carried over for a maximum of nine~~
13 ~~(9) consecutive taxable years following the taxable year in which the credit~~
14 ~~originated.~~

15
16 ~~26-51-1007. Credit granted—Surface water conversion outside critical~~
17 ~~areas.~~

18 ~~(a) For projects located outside critical groundwater areas, there~~
19 ~~shall be allowed as a credit against the tax imposed by the Income Tax Act of~~
20 ~~1929, § 26-51-101 et seq., in an amount equal to ten percent (10%) of the~~
21 ~~project cost incurred for the reduction of groundwater use by substitution of~~
22 ~~surface water for water used for industrial, commercial, agricultural, or~~
23 ~~recreational purposes.~~

24 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~
25 ~~taxable year may not exceed the lesser of the amount of individual or~~
26 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

27 ~~(2) Any unused tax credit may be carried over for a maximum of~~
28 ~~two (2) consecutive taxable years following the taxable year in which the~~
29 ~~credit originated.~~

30
31 ~~26-51-1008. Credit granted—Surface water conversion within critical~~
32 ~~areas.~~

33 ~~(a) For projects located within critical groundwater areas, there~~
34 ~~shall be allowed as a credit against the tax imposed by the Income Tax Act of~~
35 ~~1929, § 26-51-101 et seq., in an amount equal to fifty percent (50%) of the~~
36 ~~project cost incurred for the reduction of groundwater use by substitution of~~

1 ~~surface water for water used for industrial, commercial, agricultural, or~~
2 ~~recreational purposes.~~

3 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~
4 ~~taxable year may not exceed the lesser of the amount of individual or~~
5 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000) for~~
6 ~~projects using water for agricultural or recreational purposes and two~~
7 ~~hundred thousand dollars (\$200,000) for projects using water for industrial~~
8 ~~or commercial purposes.~~

9 ~~(2) Any unused tax credit may be carried over for a maximum of~~
10 ~~two (2) consecutive taxable years for projects using water for agricultural~~
11 ~~or recreational purposes and a maximum of four (4) consecutive taxable years~~
12 ~~for projects using water for industrial or commercial purposes following the~~
13 ~~taxable year in which the credit originated.~~

14
15 ~~26-51-1009. Credit granted—Land leveling for water conservation.~~

16 ~~(a) There shall be allowed as a credit against the tax imposed by the~~
17 ~~Income Tax Act of 1929, § 26-51-101 et seq., in an amount equal to ten~~
18 ~~percent (10%) of the project cost incurred for agricultural land leveling to~~
19 ~~conserve irrigation water.~~

20 ~~(b)(1) The amount of the credit that may be used by a taxpayer for a~~
21 ~~taxable year may not exceed the lesser of the amount of individual or~~
22 ~~corporate income tax otherwise due or nine thousand dollars (\$9,000).~~

23 ~~(2) Any unused tax credit may be carried over for a maximum of~~
24 ~~two (2) consecutive taxable years following the taxable year in which the~~
25 ~~credit originated.~~

26
27 ~~26-51-1010. Application and approval procedure—Administration.~~

28 ~~(a)(1) The commission shall promulgate such rules and regulations as~~
29 ~~may be deemed necessary in administering projects submitted with the intent~~
30 ~~of qualifying for the tax incentives provided for in this subchapter.~~

31 ~~(2) The rules shall not be adopted without the approval of the~~
32 ~~department.~~

33 ~~(b)(1) The commission may charge a reasonable application fee for the~~
34 ~~processing of tax credit applications.~~

35 ~~(2) All fees collected shall be deposited in the Arkansas Water~~
36 ~~Development Fund.~~

1 ~~(c)(1) The commission may issue a tax credit approval certificate for~~
2 ~~those applications proposing projects that meet the requirements of this~~
3 ~~subchapter and rules promulgated thereunder.~~

4 ~~(2) Upon completion of the project, the commission shall issue a~~
5 ~~certificate of completion.~~

6 ~~(3) To claim the benefits of this section, a taxpayer must~~
7 ~~obtain a certification from the commission certifying to the department that~~
8 ~~the taxpayer has met all the requirements and qualifications set forth in~~
9 ~~this subchapter.~~

10 ~~(4)(A) A taxpayer must file the certificate of tax credit~~
11 ~~approval with his income tax return for the first year in which the taxpayer~~
12 ~~claims a tax credit under this subchapter.~~

13 ~~(B) A taxpayer must file the certificate of completion~~
14 ~~with the first tax return filed after issuance of the certificate of~~
15 ~~completion.~~

16 ~~(d) The department shall promulgate such rules and regulations as may~~
17 ~~be deemed necessary to carry out the tax credit provisions of this~~
18 ~~subchapter.~~

19
20 ~~26-51-1011. Development, operation, and tax credits.~~

21 ~~(a) Project activities shall meet or exceed those standards as~~
22 ~~established by the commission, and the project must be maintained for a~~
23 ~~minimum life of ten (10) years after issuance of a certificate of completion.~~

24 ~~(b) Project costs incurred after issuance of a tax credit approval~~
25 ~~certificate may be claimed for tax credit, subject to other limitations~~
26 ~~contained in this subchapter.~~

27 ~~(c)(1) All projects must be completed within three (3) years of the~~
28 ~~date of the certificate of tax credit approval.~~

29 ~~(2) If the taxpayer does not complete the project within the~~
30 ~~period provided in subdivision (c)(1) of this section, all credits claimed~~
31 ~~must be repaid to the department, and the project will be disallowed as a~~
32 ~~project for tax credit purposes.~~

33 ~~(d)(1) If the taxpayer terminates the project prior to expiration of~~
34 ~~the minimum project life, the taxpayer shall provide written notification to~~
35 ~~the commission and the department. In addition, the taxpayer shall file an~~
36 ~~amended tax return and repay the amount of tax credit claimed which was not~~

1 allowable.

2 ~~(2) If the commission determines that the taxpayer has~~
3 ~~terminated the project, it shall notify the department.~~

4 ~~(e)(1) Upon the termination of a project, the taxpayer shall not be~~
5 ~~allowed any further tax credits provided in this subchapter, and the~~
6 ~~department shall recapture the pro rata share of any tax credits claimed~~
7 ~~under this subchapter for the period of termination.~~

8 ~~(2) The pro rata share for recapture of the disallowed tax~~
9 ~~credits shall be determined by dividing the period of time from termination~~
10 ~~of the project until the expiration of the minimum life of the project by the~~
11 ~~required minimum life of the project times the tax credit claimed.~~

12 ~~(f) Notwithstanding the provisions of § 26-18-306, the department may~~
13 ~~make necessary assessments to recapture disallowed tax credits for a period~~
14 ~~of three (3) years from the date of expiration of the minimum life of the~~
15 ~~project.~~

16 ~~(g) For purposes of this subchapter, the recordkeeping provisions of §~~
17 ~~26-18-506 requiring a taxpayer to maintain records for six (6) years after a~~
18 ~~return is filed shall be extended to require the taxpayer claiming a credit~~
19 ~~under this subchapter to maintain the required records for the required~~
20 ~~minimum life of the project plus three (3) years.~~

21

22 ~~26-51-1012. Deduction for project costs above tax credit.~~

23 ~~(a) In determining net income for Arkansas income tax purposes, any~~
24 ~~taxpayer qualifying for the credits provided for in this subchapter shall~~
25 ~~also be entitled to a deduction in an amount equal to the project cost less~~
26 ~~the total amount of credits to which the taxpayer is entitled under this~~
27 ~~subchapter.~~

28 ~~(b) The deduction provided for in this subchapter shall be taken only~~
29 ~~during the year in which the expenditures for the project were actually~~
30 ~~incurred.~~

31

32 ~~26-51-1013. Annual compilation of credits — Expiration of the~~
33 ~~subchapter.~~

34 ~~(a) The Department of Finance and Administration shall compile the~~
35 ~~total amount of tax credits used pursuant to the provisions of this~~
36 ~~subchapter for each calendar year.~~

1 ~~(b)(1) When the total amount of tax credits used pursuant to the~~
2 ~~provisions of this subchapter exceeds ten million dollars (\$10,000,000) in~~
3 ~~any calendar year, the tax credits established by this subchapter shall~~
4 ~~expire on December 31 of the calendar year following the calendar year in~~
5 ~~which the tax credits used pursuant to the provisions of this subchapter~~
6 ~~exceeded ten million dollars (\$10,000,000).~~

7 ~~(2) However, any taxpayer having been issued a certificate of~~
8 ~~tax credit approval on or prior to December 31 may complete the project and~~
9 ~~shall be entitled to the tax credits provided under this subchapter without~~
10 ~~regard to the fact that the availability of the tax credits has otherwise~~
11 ~~expired.~~

12
13 ~~26-51-1014. Construction.~~

14 ~~No part or segment of this subchapter shall be interpreted to in any~~
15 ~~way alter or amend the permit requirements, reporting requirements,~~
16 ~~allocation procedures, or other requirements set forth in title 15, chapter~~
17 ~~22.~~

18
19 SECTION 44. Arkansas Code Title 26, Chapter 51, Subchapter 11 is
20 repealed.

21 ~~Subchapter 11 Donations or Sales of Equipment to Educational Institutions~~
22

23 ~~26-51-1101. Definitions.~~

24 ~~As used in this subchapter:~~

25 ~~(1) "Accredited institution of higher education" means a four-~~
26 ~~year public college or university that offers bachelor's degrees and is~~
27 ~~recognized by the Department of Higher Education for credit; (2) "Cost"~~
28 ~~means:~~

29 ~~(A) In the case of a donation or sale below cost by a~~
30 ~~wholesale or retail business, the amount actually paid by the wholesaler or~~
31 ~~retailer to the supplier for the machinery or equipment; or~~

32 ~~(B) In the case of a donation or sale below cost by a~~
33 ~~manufacturer of machinery or equipment, the enhanced value of the materials~~
34 ~~used to produce the machinery or equipment, which shall be deemed to be the~~
35 ~~lowest price at which the manufacturer sells the machinery or equipment;~~

36 ~~(3) "Machinery and equipment" means tangible personal property~~

1 ~~used in connection with a qualified education program or a qualified research~~
2 ~~program that has been approved for a tax credit under rules and regulations~~
3 ~~prescribed by the Department of Finance and Administration;~~

4 ~~(4) "New" means the machinery and equipment are state-of-the-art~~
5 ~~machinery and equipment that have:~~

6 ~~(A) Never been used except for normal testing by the~~
7 ~~manufacturer to ensure that the machinery or equipment is of a proper quality~~
8 ~~and in good working order; or~~

9 ~~(B) Been used by the retailer or wholesaler solely for the~~
10 ~~purpose of demonstrating the product to customers for sale;~~

11 ~~(5) "Qualified education program" means a program conducted by a~~
12 ~~qualified educational institution under rules prescribed by the Department of~~
13 ~~Higher Education for programs in colleges, universities, or junior colleges,~~
14 ~~by the Department of Workforce Education for programs in vocational technical~~
15 ~~training schools and by the Department of Education for programs in~~
16 ~~elementary or secondary schools, all of which programs are for the purpose of~~
17 ~~promoting the use of new machinery and equipment for classroom, laboratory,~~
18 ~~and other educational instruction;~~

19 ~~(6) "Qualified educational institution" means:~~

20 ~~(A) Any public university, college, junior college, or~~
21 ~~vocational technical training school supported by the State of Arkansas;~~

22 ~~(B) Any private university, college, junior college, or~~
23 ~~vocational technical training school located in Arkansas and qualified for~~
24 ~~tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; or~~

25 ~~(C) Any public elementary or secondary school;~~

26 ~~(7) "Qualified research expenditures" means the sum of any~~
27 ~~amounts that are paid or incurred by a taxpayer during the taxable year in~~
28 ~~funding a qualified research program that has been approved for tax credit~~
29 ~~treatment under rules promulgated by the Department of Finance and~~
30 ~~Administration;~~

31 ~~(8) "Qualified research program" means a program of applied or~~
32 ~~basic research undertaken by a qualified educational institution pursuant to~~
33 ~~rules jointly prescribed by the Arkansas Science and Technology Authority and~~
34 ~~the Department of Higher Education under § 15-3-110;~~

35 ~~(9) "Research park authority" means a public entity created~~
36 ~~under the Research Park Authority Act, § 14-144-101 et seq., to provide~~

1 ~~facilities and support for businesses engaged in research and development in~~
2 ~~pursuit of economic development opportunities; and~~

3 ~~(10) "State of the art machinery and equipment" means machinery~~
4 ~~and equipment that is of the same type, design, and capability as like~~
5 ~~machinery and equipment that is currently sold or manufactured by the donee~~
6 ~~for sale to customers.~~

7
8 ~~26-51-1102. Credit granted.~~

9 ~~(a)(1) There is granted a credit against a taxpayer's Arkansas~~
10 ~~corporate income tax or Arkansas individual income tax for donations by any~~
11 ~~taxpayer of new machinery or equipment and for sales below cost of machinery~~
12 ~~and equipment by taxpayers to qualified educational institutions in~~
13 ~~connection with a qualified education program or a qualified research~~
14 ~~program.~~

15 ~~(2) The amount of the credit granted by this section shall be:~~

16 ~~(A) In the case of a donation, thirty-three percent (33%)~~
17 ~~of the cost of the machinery and equipment donated; and~~

18 ~~(B) In the case of a sale below cost, thirty-three (33%)~~
19 ~~of the amount by which the cost is reduced.~~

20 ~~(b) There is granted a credit against a taxpayer's Arkansas corporate~~
21 ~~income tax or Arkansas individual income tax equal to thirty-three percent~~
22 ~~(33%) of the qualified research expenditures of a taxpayer in qualified~~
23 ~~research programs.~~

24 ~~(c)(1) There is granted a credit against a taxpayer's Arkansas~~
25 ~~corporate income tax or Arkansas individual income tax equal to thirty-three~~
26 ~~percent (33%) of a donation made to an accredited institution of higher~~
27 ~~education to support a research park authority.~~

28 ~~(2) In order to claim this credit authorized by subdivision~~
29 ~~(c)(1) of this section, a donation made in support of a research park~~
30 ~~authority shall:~~

31 ~~(A) Be consistent with the research and development plan~~
32 ~~approved by the Board of Directors of the Arkansas Science and Technology~~
33 ~~Authority, as evidenced by a letter of support from the President of the~~
34 ~~Arkansas Science and Technology Authority; and~~

35 ~~(B) Support either directly or indirectly research subject~~
36 ~~to being funded by one (1) or more federal agencies, as enumerated in § 15-3-~~

1 ~~205(1).~~

2

3 ~~26-51-1103. Limit on total credit.~~

4 ~~(a) Total credits for qualified research expenditures, donations, and~~
5 ~~sales under this subchapter shall be allowed up to one hundred percent (100%)~~
6 ~~of the net tax liability of the taxpayer after all other credits and~~
7 ~~reductions in tax have been calculated.~~

8 ~~(b) The credit shall be claimed in the tax year of the qualified~~
9 ~~research expenditure, donation, or sale. However, all or part of any unused~~
10 ~~credit may be carried over to and claimed in succeeding tax years until the~~
11 ~~credits are exhausted or until the end of the nine (9) tax years succeeding~~
12 ~~the tax year of the qualified research expenditure, donation, or sale,~~
13 ~~whichever occurs earlier. In no event shall a taxpayer claim a credit under~~
14 ~~this subchapter for any tax year in excess of one hundred percent (100%) of~~
15 ~~the net tax due after all other credits and reductions in tax have been~~
16 ~~calculated.~~

17 ~~(c) Any person claiming any credit granted by this subchapter for any~~
18 ~~expense or contribution shall not take any deduction under the Arkansas~~
19 ~~income tax law for the same expense or contribution.~~

20

21 ~~26-51-1104. Documentation required.~~

22 ~~(a) To claim the credit granted by § 26-51-1102, the taxpayer must~~
23 ~~provide the following for each piece of machinery and equipment donated or~~
24 ~~sold below cost:~~

25 ~~(1) A statement from the receiving qualified educational~~
26 ~~institution that it has received the machinery or equipment; that the~~
27 ~~machinery or equipment is new machinery or equipment within the meaning of~~
28 ~~this subchapter; that it received the machinery or equipment as a donation~~
29 ~~or, if it purchased the machinery or equipment below cost, a statement of the~~
30 ~~amount paid for the machinery or equipment; and that the machinery or~~
31 ~~equipment has been donated or sold to the qualified educational institution~~
32 ~~for use in a qualified education program or a qualified research program;~~

33 ~~(2) In the case of a donation or sale by a retail or wholesale~~
34 ~~business, a copy of the invoice from the business' supplier showing the~~
35 ~~actual cost of the machinery or equipment. In the case of a donation or sale~~
36 ~~below cost by a manufacturer, a copy of the manufacturer's wholesale price~~

1 ~~list showing the lowest price of the machinery or equipment for which credit~~
2 ~~is claimed.~~

3 ~~(b) To claim the credit granted by § 26-51-1102, the taxpayer must~~
4 ~~show that the Arkansas Science and Technology Authority and the Department of~~
5 ~~Higher Education have approved the qualified research expenditure as a part~~
6 ~~of a qualified research program.~~

7 ~~(c) Copies of each of the above documents shall be filed by the~~
8 ~~taxpayer with his return as an attachment to the form prescribed by the~~
9 ~~Director of the Department of Finance and Administration.~~

10
11 ~~26-51-1105. Rules and regulations.~~

12 ~~The Director of the Department of Finance and Administration, the~~
13 ~~Director of the Department of Higher Education, the Director of the~~
14 ~~Vocational and Technical Division of the Department of Education, the~~
15 ~~Director of the General Education Division of the Department of Education,~~
16 ~~and the President of the Arkansas Science and Technology Authority shall~~
17 ~~promulgate such reasonable rules and regulations as they shall deem necessary~~
18 ~~and appropriate to carry out the purposes of this subchapter.~~

19
20 SECTION 45. Arkansas Code Title 26, Chapter 51, Subchapter 12 is
21 repealed.

22 ~~Subchapter 12 — Steel Mill Tax Incentives~~

23
24 ~~26-51-1201. Definition.~~

25 ~~For the purposes of §§ 26-51-1201—26-51-1203, the term “invested”~~
26 ~~shall include expenditures made from the proceeds of bonds, including interim~~
27 ~~notes or other evidence of indebtedness, issued by a municipality, county, or~~
28 ~~an agency or instrumentality of a municipality, county, or the State of~~
29 ~~Arkansas, if the obligation to repay the bonds, including interest on the~~
30 ~~bonds, is a legal, binding obligation, directly or indirectly, of the~~
31 ~~taxpayer.~~

32
33 ~~26-51-1202. Certification required.~~

34 ~~(a) To claim the benefits of §§ 26-51-1201—26-51-1203, a taxpayer~~
35 ~~must obtain a certification from the Director of the Arkansas Department of~~
36 ~~Economic Development certifying to the Revenue Division of the Department of~~

1 ~~Finance and Administration that the taxpayer:~~

2 ~~(1) Operates a steel mill in Arkansas which began production~~
3 ~~after February 16, 1987; and~~

4 ~~(2) Has invested, after February 16, 1987, in excess of one~~
5 ~~hundred twenty million dollars (\$120,000,000) in the steel mill, which~~
6 ~~investment expenditure is for one (1) of the following:~~

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

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

13 ~~(C) Project planning costs or construction labor costs,~~
14 ~~including on-site direct labor and supervision, whether employed by a~~
15 ~~contractor or the project owner; architectural fees, engineering fees, or~~
16 ~~both; right-of-way purchases; utility extensions; site preparation; parking~~
17 ~~lots; disposal or containment systems; water and sewer treatment systems;~~
18 ~~rail spurs; streets and roads; purchase of mineral rights; land; buildings;~~
19 ~~building renovation; production, processing, and testing equipment; freight~~
20 ~~charges; building demolition; material handling equipment; drainage systems;~~
21 ~~water tanks and reservoirs; storage facilities; equipment rental;~~
22 ~~contractor's cost plus fees; builders risk insurance; original spare parts;~~
23 ~~job administrative expenses; office furnishings and equipment; rolling stock;~~
24 ~~capitalized start-up costs as recognized by generally accepted accounting~~
25 ~~principles; and other costs related to the construction.~~

26 ~~(b) "Production and processing equipment", as used in subdivision~~
27 ~~(a)(2)(C) of this section, includes machinery and equipment essential for the~~
28 ~~receiving, storing, processing, and testing of raw materials and the~~
29 ~~production, storage, testing, and shipping of finished products, including~~
30 ~~facilities for the production of steam, electricity, chemicals, and other~~
31 ~~materials that are essential to the manufacturing process, but which are~~
32 ~~consumed in the manufacturing process and do not become essential components~~
33 ~~of the finished product.~~

34
35 ~~26-51-1203. Net operating loss deduction—Carry forward.~~

36 ~~(a) Taxpayers qualified under § 26-51-1202(a) and (b), entitled to a~~

1 ~~net operating loss deduction as provided in § 26-51-427, may carry forward~~
2 ~~that deduction to the next succeeding taxable year following the year of the~~
3 ~~net operating loss and annually thereafter for a total period of ten (10)~~
4 ~~years or until the net operating loss has been exhausted, whichever is~~
5 ~~earlier.~~

6 ~~(b) The net operating loss deduction must be carried forward in the~~
7 ~~order named above.~~

8
9 ~~26-51-1204—26-51-1210. [Reserved.]~~

10
11 ~~26-51-1211. Definitions.~~

12 ~~For purposes of §§ 26-51-1211—26-51-1214, the following definitions~~
13 ~~apply:~~

14 ~~(1) A taxpayer is a “qualified manufacturer of steel” if:~~

15 ~~(A) The taxpayer is a natural person, company, or~~
16 ~~corporation engaged in the manufacture, refinement, or processing of steel;~~
17 ~~and~~

18 ~~(B) More than fifty percent (50%) of the electricity or~~
19 ~~natural gas consumed in the manufacture, refinement, or processing of steel~~
20 ~~by the taxpayer is used either:~~

21 ~~(i) To power an electric arc furnace or furnaces,~~
22 ~~continuous casting equipment, or rolling mill equipment in connection with~~
23 ~~melting, continuous casting, or rolling of steel; or~~

24 ~~(ii) In the preheating of steel for processing~~
25 ~~through a rolling mill;~~

26 ~~(2) “Production and processing equipment” includes machinery and~~
27 ~~equipment essential for the receiving, storing, processing, and testing of~~
28 ~~raw materials and the production, storage, testing, and shipping of finished~~
29 ~~products, including facilities for the production of steam, electricity,~~
30 ~~chemicals, and such other materials that are essential to the manufacturing~~
31 ~~process, but which are consumed in the manufacturing process and do not~~
32 ~~become essential components of the finished product;~~

33 ~~(3) “Invested” shall include expenditures made from the proceeds~~
34 ~~of bonds including interim notes or other evidence of indebtedness issued by~~
35 ~~a municipality, county, or an agency or instrumentality of a municipality,~~
36 ~~county, or the State of Arkansas, if the obligation to repay the bonds,~~

1 including interest thereon, is a legal, binding obligation, directly or
2 indirectly, of the taxpayer.

3
4 ~~26-51-1212. Certification required—Contents.~~

5 To claim the benefits of §§ 26-51-1211—26-51-1214, a taxpayer must
6 obtain certification prior to June 30, 1994, from the Director of the
7 Arkansas Department of Economic Development certifying to the Revenue
8 Division of the Department of Finance and Administration that:

9 (1) The taxpayer is a “qualified manufacturer of steel” as
10 defined in § 26-51-1211; or

11 (2)(A) The taxpayer operates a steel mill in Arkansas which
12 began production after February 13, 1991; and

13 (B) The taxpayer has invested, after February 13, 1991, in
14 excess of one hundred twenty million dollars (\$120,000,000) in the steel
15 mill, which investment expenditure is for one (1) of the following:

16 (i) Property purchased for use in the construction
17 of a building or buildings or any addition or improvement thereon to house
18 the steel mill;

19 (ii) Machinery and equipment to be located in or in
20 connection with the steel mill. Motor vehicles of a type subject to
21 registration shall not be considered as machinery and equipment;

22 (iii) Project planning costs; construction labor
23 costs, including on-site direct labor and supervision, whether employed by a
24 contractor or the project owner; architectural or engineering fees; right-of-
25 way purchases; utility extensions; site preparation; parking lots; disposal
26 or containment systems; water and sewer treatment systems; rail spurs;
27 streets and roads; purchase of mineral rights; land; buildings; building
28 renovation; production, processing, and testing equipment; freight charges;
29 building demolition; material handling equipment; drainage systems; water
30 tanks and reservoirs; storage facilities; equipment rental; contractor’s cost
31 plus fees; builders risk insurance; original spare parts; job administration
32 expenses; office furnishings and equipment; rolling stock; capitalized start-
33 up costs as recognized by generally accepted accounting principles; and other
34 costs related to the construction.

35
36 ~~26-51-1213. Net operating loss deduction—Carry forward.~~

1 ~~(a) Taxpayers qualified under § 26-51-1212(2) and entitled to a net~~
2 ~~operating loss deduction as provided in § 26-51-427 may carry forward that~~
3 ~~deduction to the next succeeding taxable year following the year of such net~~
4 ~~operating loss and annually thereafter for a total period of ten (10) years~~
5 ~~or until such net operating loss has been exhausted, whichever is earlier.~~

6 ~~(b) The net operating loss deduction must be carried forward in the~~
7 ~~order named above.~~

8
9 ~~26-51-1214. Sales of natural gas and electricity—Exemption.~~

10 ~~(a) Sales of natural gas and electricity to taxpayers qualified under~~
11 ~~subdivision (1) or (2) of § 26-51-1212 for use in connection with the steel~~
12 ~~mill shall be exempt from the Arkansas gross receipts tax levied by the~~
13 ~~Arkansas Gross Receipts Act of 1941, as amended, § 26-52-101 et seq., and the~~
14 ~~Arkansas compensating use tax, levied by the Arkansas Compensating Tax Act of~~
15 ~~1949, as amended, § 26-53-101 et seq., and any other state or local tax~~
16 ~~administered under those acts.~~

17 ~~(b) The benefits of exemptions granted pursuant to this section shall~~
18 ~~become effective on July 1, 1991.~~

19
20 SECTION 46. Arkansas Code Title 26, Chapter 51, Subchapter 15 is
21 repealed.

22 ~~Subchapter 15—Private Wetland and Riparian Zone Creation and Restoration~~
23 ~~Incentive~~

24
25 ~~26-51-1501. Title.~~

26 ~~This subchapter may be cited as the “Arkansas Private Wetland and~~
27 ~~Riparian Zone Creation, Restoration, and Conservation Tax Credits Act”.~~

28
29 ~~26-51-1502. Legislative findings.~~

30 ~~(a) Wetlands and riparian zones have significant benefits to the~~
31 ~~state. They include:~~

32 ~~(1) Flood impact mitigation by slowing storm water runoff;~~

33 ~~(2) Water quality enhancement by removing sediment, nitrogen,~~
34 ~~phosphorus, and other pollutants from surface water;~~

35 ~~(3) Habitats for fish and wildlife, including waterfowl and rare~~
36 ~~or endangered species;~~

1 ~~(4) Groundwater recharge can occur in wetlands that will assist~~
2 ~~in ensuring that groundwater is available for the future;~~

3 ~~(5) Recreational uses for hunting, fishing, hiking, et cetera,~~
4 ~~that not only add to the quality of life, but also have a significant~~
5 ~~economic impact on the state; and~~

6 ~~(6) Timber and food production in properly managed wetlands can~~
7 ~~provide wood products, plants, and animals for human and livestock~~
8 ~~consumption.~~

9 ~~(b) Arkansas has lost over seventy percent (70%) of its pre-European~~
10 ~~settlement wetlands. Even though the rate of wetland loss in the United~~
11 ~~States has declined in recent years, wetlands in Arkansas continue to~~
12 ~~experience significant loss.~~

13 ~~(c) The majority of lands suitable for wetlands and riparian zones are~~
14 ~~held by private owners. The state should encourage these owners to restore~~
15 ~~and enhance existing wetlands and riparian zones and, when possible, create~~
16 ~~new wetlands and riparian zones.~~

17 ~~(d) The donation of wetland and riparian zone qualified real property~~
18 ~~interests should be encouraged by the state so that permanent protection of~~
19 ~~the conservation values of these lands is ensured.~~

20
21 ~~26-51-1503. Definitions.~~

22 ~~As used in this subchapter:~~

23 ~~(1) "Application" means a written plan for development and~~
24 ~~operation of the project, including all requirements the Arkansas Natural~~
25 ~~Resources Commission may adopt by rule;~~

26 ~~(2) "Commission" means the Arkansas Natural Resources~~
27 ~~Commission;~~

28 ~~(3) "Committee" means the Private Wetland and Riparian Zone~~
29 ~~Creation, Restoration, and Conservation Committee, which is a committee made~~
30 ~~up of:~~

31 ~~(A) The directors or their designees of:~~

32 ~~(i) The Arkansas Forestry Commission;~~

33 ~~(ii) The Arkansas State Game and Fish Commission;~~

34 ~~(iii) The Department of Finance and Administration;~~

35 ~~(iv) The Department of Arkansas Heritage; and~~

36 ~~(v) The Arkansas Department of Environmental~~

1 ~~Quality; and~~

2 ~~(B)(i) Two (2) public members with expertise in wetlands~~
3 ~~and riparian zone ecology appointed by the Arkansas Natural Resources~~
4 ~~Commission.~~

5 ~~(ii) In appointing public members, the Arkansas~~
6 ~~Natural Resources Commission should consider the wide variety of interests in~~
7 ~~wetlands and riparian zones;~~

8 ~~(4) "Department" means the Revenue Division of the Department of~~
9 ~~Finance and Administration;~~

10 ~~(5)(A) "Eligible donee" means a qualified organization under 26~~
11 ~~U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding~~
12 ~~regulations in 26 C.F.R. § 1.170A-14(e), as in effect on January 1, 2009.~~

13 ~~(B) A non-governmental qualified organization must have~~
14 ~~adopted the Land Trust Alliance's Land Trust Standards and Practices, as in~~
15 ~~effect on January 1, 2009, in order to qualify as an "eligible donee";~~

16 ~~(6) "Eligible donor" means any person or entity that owns a~~
17 ~~qualified real property interest, including without limitation an individual,~~
18 ~~corporation, trust, estate, and partnership or other pass-through legal~~
19 ~~entity;~~

20 ~~(7) "Project" means wetlands or riparian zones created or~~
21 ~~restored by activities for which tax credits are claimed;~~

22 ~~(8) "Project cost" means the actual expenditure for a project,~~
23 ~~less any reimbursement received by the taxpayer from cost-share programs;~~

24 ~~(9) "Qualified appraisal" means an appraisal in accordance with~~
25 ~~26 C.F.R. § 1.170A-13(e)(3), as in effect on January 1, 2009, and the Uniform~~
26 ~~Standards of Professional Appraisal Practice, as in effect on January 1,~~
27 ~~2009;~~

28 ~~(10) "Qualified conservation purpose" means a conservation~~
29 ~~purpose as defined by 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009,~~
30 ~~and corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on~~
31 ~~January 1, 2009;~~

32 ~~(11) "Qualified real property interest" means an interest in~~
33 ~~real property located completely in this state and containing wetlands or~~
34 ~~riparian zones, which also meets the definition of a qualified real property~~
35 ~~interest under 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009, and~~
36 ~~the corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on~~

1 ~~January 1, 2009;~~

2 ~~(12) "Riparian zone" means:~~

3 ~~(A) An area of land along the bank of a natural~~
4 ~~watercourse or contiguous to a body of water that is set aside to reduce~~
5 ~~impacts of adjoining land use on the stream or water body; or~~

6 ~~(B) Any other definition promulgated by the Arkansas~~
7 ~~Natural Resources Commission; and~~

8 ~~(13) "Wetlands" means:~~

9 ~~(A) An area that:~~

10 ~~(i) Has water at or near the surface of the ground~~
11 ~~at some time during the growing season, wetland hydrology;~~

12 ~~(ii) Contains plants that are adapted to wet~~
13 ~~habitats, hydrophytic vegetation; and~~

14 ~~(iii) Is made up of soils that have developed under~~
15 ~~wet conditions, hydric soils; or~~

16 ~~(B) Any other definition promulgated by the Arkansas~~
17 ~~Natural Resources Commission.~~

18
19 ~~26-51-1504. Applicability.~~

20 ~~(a) There are two (2) types of tax credits available under this~~
21 ~~subchapter:~~

22 ~~(1) Wetland and riparian zone creation and restoration tax~~
23 ~~credits, which shall apply to taxable years beginning on or after January 1,~~
24 ~~1996, and all taxable years thereafter; and~~

25 ~~(2) Wetland and riparian zone conservation tax credits, which~~
26 ~~shall apply to taxable years beginning on or after January 1, 2009, and all~~
27 ~~taxable years thereafter.~~

28 ~~(b)(1) Any taxpayer claiming a tax credit under this subchapter may~~
29 ~~not claim a credit under the Water Resources Conservation and Development~~
30 ~~Incentives Act of 1985, § 26-51-1001 et seq., or any similar act for any~~
31 ~~costs related to the same project.~~

32 ~~(2) Any taxpayer claiming a tax credit under this subchapter may~~
33 ~~not claim a tax credit under any other act for any costs related to the same~~
34 ~~project.~~

35 ~~(c) Any tax credits issued to partnerships, limited liability~~
36 ~~companies, Subchapter S corporations, or fiduciaries may pass through to~~

1 ~~their members, managers, partners, shareholders, and/or beneficiaries.~~

2
3 ~~26-51-1505. Credits granted.~~

4 ~~(a) There shall be allowed a wetland and riparian zone creation and~~
5 ~~restoration tax credit against the tax imposed by the Income Tax Act of 1929,~~
6 ~~§ 26-51-101 et seq., in an amount as determined in subsection (c) of this~~
7 ~~section for any taxpayer engaged in the creation or restoration of wetlands~~
8 ~~and riparian zones.~~

9 ~~(b) There shall be allowed a wetland and riparian zone conservation~~
10 ~~tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101~~
11 ~~et seq., in an amount as determined in subsection (c) of this section for any~~
12 ~~eligible donor who donates a qualified real property interest for a qualified~~
13 ~~conservation purpose to an eligible donee.~~

14 ~~(c)(1) The amount of the wetland and riparian zone creation and~~
15 ~~restoration tax credit allowed under subsection (a) of this section shall be~~
16 ~~equal to the project cost incurred in the creation or restoration of wetlands~~
17 ~~and riparian zones and shall not exceed fifty thousand dollars (\$50,000).~~

18 ~~(2) The amount of the wetland and riparian zone conservation tax~~
19 ~~credit allowed under subsection (b) of this section shall equal fifty percent~~
20 ~~(50%) of the fair market value of the qualified real property interest~~
21 ~~donation calculated to exclude any short term capital gain under 26 U.S.C. §~~
22 ~~170(e)(1)(A), as in effect on January 1, 2009, and shall not exceed fifty~~
23 ~~thousand dollars (\$50,000).~~

24 ~~(3)(A) The amount of the tax credit under this subchapter that~~
25 ~~may be used by a taxpayer for a taxable year may not exceed the lesser of:~~

26 ~~(i) The amount of individual or corporate income tax~~
27 ~~otherwise due; or~~

28 ~~(ii) Five thousand dollars (\$5,000).~~

29 ~~(B) Any unused tax credit under this subchapter may be~~
30 ~~carried over for a maximum of nine (9) consecutive taxable years following~~
31 ~~the taxable year in which the tax credit originated.~~

32 ~~(C) Any unused tax credit under this subchapter shall~~
33 ~~survive the death of an individual taxpayer and may be used by the individual~~
34 ~~taxpayer's estate, subject to the limitations in this subdivision (c)(3).~~

35 ~~(4) Tax credits under this subchapter may only be used by the~~
36 ~~taxpayer certified to earn a tax credit to offset the taxpayer's state income~~

1 ~~tax liability and are nontransferable.~~

2 ~~(5)(A) Only one (1) wetland and riparian zone conservation tax~~
3 ~~credit may be earned per qualified real property interest donation.~~

4 ~~(B) If the qualified real property interest is held in~~
5 ~~common ownership, the wetland and riparian zone conservation tax credit shall~~
6 ~~be allocated in proportion to each respective ownership share.~~

7 ~~(C) If the qualified real property interest is held by a~~
8 ~~pass-through entity, the wetland and riparian zone conservation tax credit~~
9 ~~shall be allocated as prescribed under 26 U.S.C. § 704(b), as in effect on~~
10 ~~January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.704-~~
11 ~~1(b)(4)(ii), as in effect on January 1, 2009.~~

12 ~~(6) An eligible donor may earn only one (1) wetland and riparian~~
13 ~~zone conservation tax credit per income tax year.~~

14 ~~(d) To claim the benefits of this section, a taxpayer must obtain a~~
15 ~~certification from the Arkansas Natural Resources Commission certifying to~~
16 ~~the Revenue Division of the Department of Finance and Administration that the~~
17 ~~taxpayer has met all the requirements and qualifications set forth in §§ 26-~~
18 ~~51-1504(b)(2) and 26-51-1507(a) for a wetland and riparian zone creation and~~
19 ~~restoration tax credit or § 26-51-1507(b) for a wetland and riparian zone~~
20 ~~conservation tax credit.~~

21 ~~(e) The division shall promulgate such rules and regulations as may be~~
22 ~~deemed necessary to carry out the tax credit provisions of this subchapter.~~

23
24 ~~26-51-1506. Administration.~~

25 ~~(a)(1) The Arkansas Natural Resources Commission is charged with the~~
26 ~~responsibility of promulgating and administering rules related to the~~
27 ~~creation, restoration, and conservation of wetlands and riparian zones with~~
28 ~~the intent of qualifying for the tax credits provided for in this subchapter.~~

29 ~~(2) Prior to adoption of any rules under this subchapter, the~~
30 ~~commission shall obtain comments on the proposed rules from the Private~~
31 ~~Wetland and Riparian Zone Creation, Restoration, and Conservation Committee.~~

32 ~~(b)(1) The commission may charge a reasonable application fee for the~~
33 ~~processing of tax credit applications.~~

34 ~~(2) All fees collected shall be deposited into the Arkansas~~
35 ~~Water Development Fund.~~

36

1 ~~26-51-1507. Application and approval procedure.~~

2 ~~(a)(1)(A) Wetland and Riparian Zone Creation and Restoration Tax~~
3 ~~Credit.~~

4 ~~(B) A taxpayer wishing to obtain a wetland and riparian~~
5 ~~zone creation and restoration tax credit shall submit an application to the~~
6 ~~Arkansas Natural Resources Commission.~~

7 ~~(C) Upon receipt of the application, the commission shall~~
8 ~~make the application available to the Private Wetland and Riparian Zone~~
9 ~~Creation, Restoration, and Conservation Committee for its review and comment.~~

10 ~~(D) After review of the committee comments, the commission~~
11 ~~may issue a wetland and riparian zone creation and restoration tax credit~~
12 ~~approval certificate for those applications proposing projects that meet the~~
13 ~~requirements of this subchapter and rules promulgated thereunder.~~

14 ~~(2)(A) Project costs incurred after issuance of a wetland and~~
15 ~~riparian zone creation and restoration tax credit approval certificate may be~~
16 ~~claimed for a wetland and riparian zone creation and restoration tax credit,~~
17 ~~subject to the limitations in § 26-51-1505.~~

18 ~~(B) A taxpayer must file the certificate of wetland and~~
19 ~~riparian zone creation and restoration tax credit approval with the~~
20 ~~taxpayer's income tax return for the first year in which the taxpayer claims~~
21 ~~a tax credit under this subchapter.~~

22 ~~(3)(A) Upon completion and proper functioning of the project,~~
23 ~~the commission shall issue a certificate of completion.~~

24 ~~(B) A taxpayer must file the certificate of completion~~
25 ~~with the first tax return filed after issuance of the certificate of~~
26 ~~completion.~~

27 ~~(b)(1)(A) Wetland and Riparian Zone Conservation Tax Credit.~~

28 ~~(B) An eligible donor wishing to obtain a wetland and~~
29 ~~riparian zone conservation tax credit shall submit an application to the~~
30 ~~commission.~~

31 ~~(C) Upon receipt of the application, the commission shall~~
32 ~~make the application available to the committee for its review and comment.~~
33 ~~The committee's review shall include the following considerations:~~

34 ~~(i) Whether the appraisal of the qualified real~~
35 ~~property interest meets the minimum standards of the Uniform Standards of~~
36 ~~Professional Appraisal Practice and the Internal Revenue Service requirements~~

1 ~~for a qualified appraisal;~~

2 ~~(ii) Whether the qualified real property interest's~~
3 ~~valuation does not appear to be manifestly abusive;~~

4 ~~(iii) Whether the conservation purpose of the~~
5 ~~donation complies with the requirements of a qualified conservation purpose~~
6 ~~and contributes to the wetland and riparian zone benefits in § 26-51-1502;~~

7 ~~(iv) Whether the real property interest meets the~~
8 ~~requirements for a qualified real property interest; and~~

9 ~~(v) Whether the donee of the qualified real property~~
10 ~~interest meets the requirements of an eligible donee.~~

11 ~~(D) After review of the committee comments, the commission~~
12 ~~may issue a wetland and riparian zone conservation tax credit approval~~
13 ~~certificate for those applications that meet the requirements of this~~
14 ~~subchapter and the rules promulgated under this subchapter.~~

15 ~~(2)(A) An eligible donor may apply for conditional approval of a~~
16 ~~wetland and riparian zone conservation tax credit before a qualified real~~
17 ~~property interest donation has been recorded.~~

18 ~~(B) If conditional approval of a wetland and riparian zone~~
19 ~~conservation tax credit is granted, the application must be resubmitted to~~
20 ~~the commission after the qualified real property interest donation has been~~
21 ~~recorded for the limited purpose of demonstrating conformity with the~~
22 ~~originally submitted draft documents.~~

23 ~~(3)(A) If the commission denies approval of a wetland and~~
24 ~~riparian zone conservation tax credit, it shall provide a brief written~~
25 ~~statement to the applicant of the reason for a decision to deny approval.~~

26 ~~(B) When a problem identified by the commission is~~
27 ~~remedied, an eligible donor may resubmit the application for approval of the~~
28 ~~wetland and riparian zone conservation tax credit.~~

29 ~~(4) A decision on an application for approval or conditional~~
30 ~~approval of a wetland and riparian zone conservation tax credit or on a~~
31 ~~resubmission of a conditionally approved or previously denied application~~
32 ~~shall be issued in the order in which the completed applications or~~
33 ~~resubmissions are received.~~

34 ~~(5) For good cause shown, the Department of Finance and~~
35 ~~Administration may review and either accept or reject in whole or in part any~~
36 ~~wetland and riparian zone conservation tax credit claimed by a taxpayer and~~

1 ~~may require information from a taxpayer regarding the:~~

2 ~~(A) Appraisal value of the qualified real property~~
3 ~~interest;~~

4 ~~(B) Amount of the wetland and riparian zone conservation~~
5 ~~tax credit;~~

6 ~~(C) Validity of the wetland and riparian zone conservation~~
7 ~~tax credit; and~~

8 ~~(D) Other relevant matters.~~

9
10 ~~26-51-1508. Development, operation, and tax credits.~~

11 ~~(a)(1) All projects must be completed and properly functioning within~~
12 ~~three (3) years of the date of the certificate of tax credit approval, except~~
13 ~~if the commission determines that failure to comply with this subdivision~~
14 ~~(a)(1) is the result of conditions beyond the control of the taxpayer, an~~
15 ~~additional year to comply with this subdivision (a)(1) may be granted by the~~
16 ~~commission.~~

17 ~~(2) If the taxpayer does not complete the project within the~~
18 ~~period provided in subdivision (a)(1) of this section, all credits claimed~~
19 ~~must be repaid to the department, and the project will be disallowed as a~~
20 ~~project for tax credit purposes.~~

21 ~~(b)(1) Project activities shall meet or exceed those standards as~~
22 ~~established by the commission, and the project must be maintained for a~~
23 ~~minimum life of ten (10) years after it is certified as being complete.~~

24 ~~(2)(A) If the taxpayer terminates the project prior to~~
25 ~~expiration of the minimum project life, the taxpayer shall provide written~~
26 ~~notification to the commission and the department.~~

27 ~~(B) In addition, the taxpayer shall file an amended tax~~
28 ~~return and repay the amount of tax credit claimed which was not allowable.~~

29 ~~(3) If the commission determines that the taxpayer has~~
30 ~~terminated the project, it shall notify the department.~~

31 ~~(4)(A) Upon the termination of the project, the taxpayer shall~~
32 ~~not be allowed any further tax credits provided in this subchapter and the~~
33 ~~department shall recapture the pro rata share of any tax credits claimed~~
34 ~~under this subchapter for the period of termination.~~

35 ~~(B) The pro rata share for recapture of the disallowed tax~~
36 ~~credits shall be determined by dividing the period of time from termination~~

1 of the project until the expiration of the minimum life of the project by the
2 required minimum life of the project times the tax credit claimed.

3 (C) Notwithstanding the provisions of § 26-18-306, the
4 department may make necessary assessments to recapture disallowed tax credits
5 for a period of three (3) years from the date of expiration of the minimum
6 life of the project.

7
8 ~~26-51-1509. Recordkeeping requirement.~~

9 For purposes of this subchapter, the recordkeeping provisions of § 26-
10 18-506 requiring a taxpayer to maintain records for six (6) years after a
11 return is filed shall be extended to require the taxpayer claiming a wetland
12 and riparian zone creation and restoration tax credit under this subchapter
13 to maintain the required records for the required minimum life of the project
14 plus three (3) years.

15
16 ~~26-51-1510. Annual compilation of credits—Expiration of subchapter—~~
17 ~~Tax credit availability.~~

18 (a) Following the end of every calendar year, the Department of
19 Finance and Administration shall compile the cumulative total amount of tax
20 credits used pursuant to the provisions of this subchapter.

21 (b)(1) The tax credits established by this subchapter and the
22 availability of those tax credits shall expire on December 31 of the calendar
23 year following the calendar year in which the tax credits used pursuant to
24 the provisions of this subchapter exceed five hundred thousand dollars
25 (\$500,000).

26 (2) However, any taxpayer having been issued a certificate of
27 tax credit approval on or prior to such December 31 shall be entitled to the
28 tax credits provided under this subchapter without regard to the fact that
29 the availability of the tax credits has otherwise expired.

30
31 SECTION 47. Arkansas Code Title 26, Chapter 51, Subchapter 16 is
32 repealed.

33 ~~Subchapter 16—Youth Apprenticeship/Work-Based Learning Program Tax Credit~~

34
35 ~~26-51-1601. Legislative findings and intent.~~

36 ~~The General Assembly finds that some of the youth apprenticeship/work-~~

1 ~~based learning programs in the state, while of high quality and standards,~~
2 ~~are not in occupations that are covered by Title 29, Subtitle (a), Part 29 of~~
3 ~~the Code of Federal Regulations which would allow the programs to be~~
4 ~~registered by the Bureau of Apprenticeship and Training of the U. S.~~
5 ~~Department of Labor. Employers of youth apprentices who are in~~
6 ~~programs/occupations registered by the Bureau of Apprenticeship and Training~~
7 ~~are allowed to participate in a two thousand dollar (\$2,000) tax credit as~~
8 ~~provided in § 26-51-509. It is the intent of this subchapter to provide~~
9 ~~guidelines and a process for certifying high quality youth apprentice/work-~~
10 ~~based learning programs/occupations that meet the criteria set forth by the~~
11 ~~Vocational and Technical Education Division of the Department of Education in~~
12 ~~order that they may also participate in a two thousand dollar (\$2,000) tax~~
13 ~~credit. The qualifying programs/occupations must meet the standards and~~
14 ~~program designs that are nationally recognized by business and industry~~
15 ~~and/or trade associations and have support by such groups in this state. No~~
16 ~~apprentice program may be certified as meeting the intent of the subchapter~~
17 ~~if its curriculum and standards are not nationally recognized and/or do not~~
18 ~~meet the criteria established for such programs.~~

19
20 ~~26-51-1602.—Definitions.~~

21 ~~For the purposes of this subchapter:~~

22 ~~(a) “Department” means the Department of Finance and~~
23 ~~Administration;~~

24 ~~(b) “Division” means the Vocational and Technical Education~~
25 ~~Division of the Department of Education; and~~

26 ~~(c) “Youth apprentice” means an individual between the ages of~~
27 ~~sixteen (16) and twenty one (21) who is enrolled in a public or private~~
28 ~~secondary or postsecondary school.~~

29
30 ~~26-51-1603.—Credit permitted.~~

31 ~~A taxpayer who employs a youth apprentice in an apprenticeship/work-~~
32 ~~based learning program which meets the standards of program design for~~
33 ~~nationally recognized curriculum and/or business and industry or trade~~
34 ~~association standards and which meets the criteria for vocationally approved~~
35 ~~youth apprentice/work based learning programs and which is not in an~~
36 ~~occupation eligible for registration as provided in Title 29, Subtitle (a),~~

1 ~~Part 29 of the Code of Federal Regulations, as in effect on January 1, 1995,~~
2 ~~shall be allowed a credit in the amount of two thousand dollars (\$2,000) or~~
3 ~~ten percent (10%) of the wages earned by the youth apprentice, whichever is~~
4 ~~less, against the tax imposed by the Arkansas Income Tax Act of 1929, as~~
5 ~~amended, § 26-51-101 et seq., for each such apprentice.~~

6
7 ~~26-51-1604. Claiming the credit.~~

8 ~~To claim the benefits of this subchapter, a taxpayer must obtain~~
9 ~~certification from the division certifying to the Revenue Division of the~~
10 ~~Department of Finance and Administration that the taxpayer has met all the~~
11 ~~requirements and qualifications set forth in this subchapter. The~~
12 ~~certification to the department shall include the total amount of wages paid~~
13 ~~to each youth apprentice employed by the taxpayer or 501(c)(3) corporation in~~
14 ~~the taxable year for which the taxpayer claims the credit provided in this~~
15 ~~subchapter.~~

16
17 ~~26-51-1605. Limits on amount of credit—Applicability of credit.~~

18 ~~(a) The amount of the credit that may be used by a taxpayer for a~~
19 ~~taxable year may not exceed the amount of individual or corporate income tax~~
20 ~~otherwise due. Any unused credit may be carried over for a maximum of two (2)~~
21 ~~consecutive taxable years.~~

22 ~~(b) If the business is an “S” corporation, the pass-through provisions~~
23 ~~of § 26-51-409, as in effect for the taxable year the credit is earned, shall~~
24 ~~be applicable.~~

25 ~~(c) A partner’s or member’s distributive share of the credit shall be~~
26 ~~determined by the partnership or limited liability company agreement, unless~~
27 ~~the agreement does not have substantial economic effect or does not provide~~
28 ~~for the allocation of credits. If the agreement does not have substantial~~
29 ~~economic effect or does not provide for the allocation of the credit, the~~
30 ~~credit shall be allocated according to the partner’s or member’s interest in~~
31 ~~the partnership, pursuant to federal Internal Revenue Code Section 704(b), as~~
32 ~~in effect on January 1, 1995.~~

33 ~~(d) A taxpayer who trains a youth apprentice in a certified youth~~
34 ~~apprenticeship program as provided in § 26-51-1603 shall be entitled to the~~
35 ~~tax credit provided in this subchapter for such youth apprentice, even though~~
36 ~~the apprentice receives his or her wages for such training from a 501(c)(3)~~

1 ~~corporation.~~

2 ~~(e) The tax credit provided by this subchapter shall apply to taxable~~
3 ~~years beginning January 1, 1998, and all taxable years thereafter.~~

4
5 ~~26-51-1606. Rules and regulations.~~

6 ~~The Revenue Division of the Department of Finance and Administration~~
7 ~~shall promulgate such rules and regulations as may be deemed necessary to~~
8 ~~carry out the purposes of this subchapter. The Revenue Division shall consult~~
9 ~~with the Vocational and Technical Education Division of the Department of~~
10 ~~Education during the promulgation of the rules and regulations.~~

11
12 SECTION 48. Arkansas Code Title 26, Chapter 51, Subchapter 17 is
13 repealed.

14 ~~Subchapter 17—Low Income Housing Tax Credit~~

15
16 ~~26-51-1701. Definitions.~~

17 ~~As used in this subchapter, unless the context clearly requires~~
18 ~~otherwise, the following words and phrases shall mean:~~

19 ~~(1) "Authority" shall mean the Arkansas Development Finance~~
20 ~~Authority, or its successor agency;~~

21 ~~(2) "Director" shall mean the Director of the Arkansas~~
22 ~~Department of Finance and Administration;~~

23 ~~(3) "Eligibility statement" shall mean a statement authorized~~
24 ~~and issued by the authority certifying that a given project qualifies for the~~
25 ~~Arkansas low income housing tax credit. The authority shall promulgate rules~~
26 ~~establishing criteria upon which the eligibility statements will be issued.~~
27 ~~The eligibility statement shall specify the amount of the Arkansas low income~~
28 ~~housing tax credit allowed;~~

29 ~~(4) "Federal low income housing tax credit" shall mean the~~
30 ~~federal tax credit as provided in Section 42 of the Internal Revenue Code of~~
31 ~~1986, as amended;~~

32 ~~(5) "Qualified project" shall mean a qualified low income~~
33 ~~building as that term is defined in Section 42 of the Internal Revenue Code~~
34 ~~of 1986, as amended, which is located in Arkansas;~~

35 ~~(6) "Taxpayer" shall mean a person, firm or corporation subject~~
36 ~~to the state income tax imposed by provisions of §§ 26-51-101—26-51-1510,~~

1 ~~or an insurance company paying an annual tax on its gross premium receipts in~~
2 ~~this state, or a financial institution paying income taxes to the State of~~
3 ~~Arkansas.~~

4
5 ~~26-51-1702. Allowance and calculation of tax credit.~~

6 ~~(a) A taxpayer owning an interest in a qualified project shall be~~
7 ~~allowed a state tax credit, to be termed the Arkansas low income housing tax~~
8 ~~credit, if the authority issues an eligibility statement for that project.~~
9 ~~For any taxpayer which is, for state income tax purposes, taxed as a~~
10 ~~partnership or an S corporation, the tax credits allocated to the taxpayer~~
11 ~~shall be allocated to each partner, member or shareholder of the taxpayer in~~
12 ~~accordance with the provisions of the articles of incorporation, bylaws,~~
13 ~~partnership agreement, operating agreement or other agreement setting forth~~
14 ~~such allocation.~~

15 ~~(b) The Arkansas low income housing tax credit available to a~~
16 ~~qualified project shall be calculated by multiplying an amount equal to the~~
17 ~~federal low income housing tax credit for a qualified project for a federal~~
18 ~~tax period, by twenty percent (20%) and such amount shall be subtracted from~~
19 ~~the amount of state income or premium tax otherwise due from the taxpayer for~~
20 ~~the same tax period.~~

21 ~~(c) The Arkansas low income housing tax credit shall be taken against~~
22 ~~the state income or premium taxes due from the taxpayer. The credit~~
23 ~~authorized by this subchapter shall not be refundable. Any amount of credit~~
24 ~~that exceeds the tax due for a taxable year may be carried forward to any of~~
25 ~~the five (5) subsequent taxable years or carried forward to any of the five~~
26 ~~(5) subsequent taxable years.~~

27 ~~(d) All or any portion of the Arkansas low income housing tax credits~~
28 ~~may be allocated to parties who are eligible under the provisions of~~
29 ~~subsection (a) of this section. An owner of a qualified project shall certify~~
30 ~~to the director the amount of the Arkansas low income housing tax credit~~
31 ~~allocated to each taxpayer.~~

32 ~~(e) In the event that recapture of Arkansas low income housing tax~~
33 ~~credits is required pursuant to subsection (b) of § 26-51-1703 of this~~
34 ~~subchapter, any statement submitted to the director as provided in this~~
35 ~~section shall include the proportion of the Arkansas low income housing tax~~
36 ~~credit required to be recaptured, the identity of each taxpayer subject to~~

1 ~~the recapture and the amount of Arkansas low income housing tax credit~~
2 ~~previously allocated to such taxpayer.~~

3 ~~(f) The total amount of tax credit granted under this subchapter shall~~
4 ~~not exceed two hundred fifty thousand dollars (\$250,000) in any taxable year.~~

5
6 ~~26-51-1703. Eligibility statement.~~

7 ~~(a) The owner of a qualified project eligible for the Arkansas low~~
8 ~~income housing tax credit shall submit, at the time of filing the owner's~~
9 ~~income or gross premium tax return, an eligibility statement. In the case of~~
10 ~~failure to attach the eligibility statement, no Arkansas low income housing~~
11 ~~tax credit under the subchapter shall be allowed with respect to such project~~
12 ~~for that year until these copies are provided to the Department of Finance~~
13 ~~and Administration.~~

14 ~~(b) If under Section 42 of the Internal Revenue Code of 1986, as~~
15 ~~amended, a portion of any federal low income housing tax credit taken with~~
16 ~~respect to a qualified project is required to be recaptured, the taxpayer~~
17 ~~claiming Arkansas low income housing tax credit with respect to such project~~
18 ~~shall also be required to recapture a portion of any Arkansas low income~~
19 ~~housing tax credit authorized by this subchapter. The state recapture amount~~
20 ~~shall be equal to the proportion of the Arkansas low income housing tax~~
21 ~~credit claimed by the taxpayer that equals the proportion the federal~~
22 ~~recapture amount bears to the original federal low income housing credit~~
23 ~~claimed by the taxpayer.~~

24
25 ~~26-51-1704. Sale, assignment, and transfer of tax credit allowed.~~

26 ~~(a) All or any portion of Arkansas low income housing tax credit~~
27 ~~issued in accordance with the provisions of this subchapter may be~~
28 ~~transferred, sold or assigned but only in connection with the sale or~~
29 ~~transfer of the interest in the qualified project or in the taxpayer.~~

30 ~~(b) An owner or transferee desiring to make a transfer, sale, or~~
31 ~~assignment as described in subsection (a) of this section shall submit to the~~
32 ~~director a statement which describes the amount of Arkansas low income~~
33 ~~housing tax credit for which transfer, sale, or assignment of Arkansas low~~
34 ~~income housing tax credit is eligible. The owner shall provide to the~~
35 ~~director such information as is specified by the department in regulations so~~
36 ~~that the Arkansas low income housing tax credit may be properly allocated.~~

1 ~~(c) In the event that recapture of Arkansas low income housing tax~~
2 ~~credit is required pursuant to subsection (b) of § 26-51-1703 of this~~
3 ~~subchapter, the statements submitted to the director as provided in this~~
4 ~~section shall include the proportion of the Arkansas low income housing tax~~
5 ~~credit required to be recaptured, the identity of each transferee subject to~~
6 ~~recapture, and the amount of Arkansas low income housing tax credit~~
7 ~~previously transferred to such transferee and such other information as is~~
8 ~~specified by the department in regulations.~~

9
10 ~~26-51-1705. Rules and regulations.~~

11 ~~The director and the authority shall promulgate rules and regulations~~
12 ~~necessary to administer the provisions of this subchapter. No rule or portion~~
13 ~~of a rule promulgated under the authority of this section shall become~~
14 ~~effective until it has been approved by the director in accordance with the~~
15 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

16
17 SECTION 49. Arkansas Code Title 26, Chapter 51, Subchapter 19 is
18 repealed.

19 ~~Subchapter 19 — Employee Tuition Reimbursement Tax Credit~~

20
21 ~~26-51-1901. Legislative intent.~~

22 ~~It is recognized that the reimbursement or payment by an employer of or~~
23 ~~for tuition for employee training or courses that aid in improving job skills~~
24 ~~is in the best interest of the state. Increasing the skills and abilities of~~
25 ~~the workforce allows Arkansas to compete for jobs that require specialized~~
26 ~~knowledge and talent not available in sufficient supply. In order to reward~~
27 ~~those employers who subsidize educational opportunities for their employees~~
28 ~~and to encourage other employers to make such benefits available to their~~
29 ~~employees, it is necessary to create an incentive.~~

30
31 ~~26-51-1902. Creation of tax incentive.~~

32 ~~(a) There shall be allowed a credit against the income tax imposed by~~
33 ~~the Income Tax Act of 1929, § 26-51-101 et seq., equal to thirty percent~~
34 ~~(30%) of the cost of tuition reimbursed or paid by an employer to on behalf~~
35 ~~of a full-time, permanent employee for the cost of tuition, books, and fees~~
36 ~~for a program of undergraduate or postgraduate education from an accredited~~

1 ~~institution of postsecondary education located in Arkansas.~~

2 ~~(b) In order to qualify for the income tax credit, the employer shall~~
3 ~~document that the employee has successfully completed the course.~~

4 ~~(c) The incentive authorized by this section shall not exceed twenty-~~
5 ~~five percent (25%) of a business's income tax liability in any year.~~

6
7 ~~26-51-1903. Eligibility.~~

8 ~~The following types of businesses are eligible for the tax benefit~~
9 ~~provided by § 26-51-1902:~~

10 ~~(1) A manufacturer classified in sectors 31-33 in the North~~
11 ~~American Industry Classification System, as it existed on January 1, 2005;~~

12 ~~(2) A business:~~

13 ~~(A) Primarily engaged in:~~

14 ~~(i) The design and development of prepackaged~~
15 ~~software;~~

16 ~~(ii) Digital content production and preservation;~~

17 ~~(iii) Computer processing and data preparation~~
18 ~~services; and~~

19 ~~(iv) Information retrieval services; and~~

20 ~~(B) That derives at least seventy five percent (75%) of~~
21 ~~its revenue from out-of-state sales and has less than ten percent (10%) of~~
22 ~~its retail sales to the general public;~~

23 ~~(3) A business primarily engaged in motion picture productions~~
24 ~~and that derives at least seventy five percent (75%) of its revenue from out-~~
25 ~~of-state sales and has less than ten percent (10%) of its retail sales to the~~
26 ~~general public;~~

27 ~~(4) A distribution center for the reception, storage, or~~
28 ~~shipping of:~~

29 ~~(A) A business's own products or products that the~~
30 ~~business wholesales to retail businesses or ships to its own retail outlets;~~

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

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

36 ~~(5) An office sector business with less than ten percent (10%)~~

1 ~~of its retail sales to the general public;~~

2 ~~(6) A national or regional corporate headquarters with less than~~
3 ~~ten percent (10%) of its retail sales to the general public;~~

4 ~~(7) A firm primarily engaged in commercial, physical, and~~
5 ~~biological research as classified in the North American Industry~~
6 ~~Classification System Code 541710, as in effect on January 1, 2005;~~

7 ~~(8) A scientific and technical services business if:~~

8 ~~(A) The business derives at least seventy five percent~~
9 ~~(75%) of its revenue from out of state; and~~

10 ~~(B)(i) The average hourly wages paid by the business~~
11 ~~exceed one hundred fifty percent (150%) of the county or state average hourly~~
12 ~~wage, whichever is less.~~

13 ~~(ii) The average hourly wage threshold determined at~~
14 ~~the signing date of the financial incentive agreement shall be the threshold~~
15 ~~for the term of the agreement; and~~

16 ~~(9) Any other business classified as an eligible business by the~~
17 ~~Director of the Arkansas Economic Development Commission if the following~~
18 ~~conditions exist:~~

19 ~~(A) The business receives at least seventy five percent~~
20 ~~(75%) of its revenue from out of state; and~~

21 ~~(B) The business proposes to pay wages in excess of one~~
22 ~~hundred ten percent (110%) of the county or state average wage, whichever is~~
23 ~~less.~~

24
25 SECTION 50. Arkansas Code Title 26, Chapter 51, Subchapter 20 is
26 repealed.

27 ~~Subchapter 20 — Manufacturer's Investment Tax Credit~~

28
29 ~~26-51-2001. Title.~~

30 ~~This subchapter may be known and cited as the "Manufacturer's~~
31 ~~Investment Tax Credit Act".~~

32
33 ~~26-51-2002. Definitions.~~

34 ~~As used in this subchapter:~~

35 ~~(1) "Director" means the Director of the Arkansas Economic~~
36 ~~Development Commission;~~

1 ~~(2) “Eligible business” means any person engaged in a business~~
2 ~~classified as manufacturing paper and allied products in federal Standard~~
3 ~~Industrial Classification code 26 that has been in continuous operation in~~
4 ~~Arkansas for at least two (2) years prior to the initial application to the~~
5 ~~director for income tax credits under the provision of this subchapter;~~

6 ~~(3) “Modernization” means to increase efficiency or to increase~~
7 ~~productivity of the business through investment in machinery or equipment, or~~
8 ~~both, and shall not include costs for routine maintenance;~~

9 ~~(4) “Person” means a person as defined by § 26-18-104;~~

10 ~~(5) “Project” means any construction, expansion, or~~
11 ~~modernization in Arkansas by an eligible business whose investment shall~~
12 ~~exceed one hundred million dollars (\$100,000,000) between August 13, 2001,~~
13 ~~and December 31, 2004, for projects involving either single or multiple~~
14 ~~locations within the State of Arkansas, including the cost of the land,~~
15 ~~buildings, and equipment used in the construction, expansion, or~~
16 ~~modernization and which construction, expansion, or modernization has been~~
17 ~~approved by the department as a construction, expansion, or modernization~~
18 ~~project that qualifies for the credit under the provisions of this~~
19 ~~subchapter; and~~

20 ~~(6) “Routine maintenance” means the replacement of existing~~
21 ~~machinery parts with like parts.~~

22
23 ~~26-51-2003. Certain other benefits precluded.~~

24 ~~(a) A recipient of benefits under this subchapter is precluded from~~
25 ~~receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-~~
26 ~~1701 et seq., for the same project.~~

27 ~~(b) A recipient of benefits under this subchapter is precluded from~~
28 ~~receiving benefits under the Economic Investment Tax Credit Act, § 26-52-701~~
29 ~~et seq., for the same project.~~

30
31 ~~26-51-2004. Credit granted.~~

32 ~~There is granted a credit against the state income tax liability of an~~
33 ~~eligible business of seven percent (7%) of the amount of the total project~~
34 ~~cost of any project, subject to the limit set out in § 26-51-2005.~~

35
36 ~~26-51-2005. Qualification and determination of credit.~~

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

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

8 ~~(b)(1) Upon determination by the Director of the Arkansas Economic~~
9 ~~Development Commission that the project qualifies for credit under this~~
10 ~~subchapter, the Director of the Arkansas Economic Development Commission~~
11 ~~shall certify to the Director of the Department of Finance and Administration~~
12 ~~that the project is qualified and transmit with his or her certification the~~
13 ~~documents upon which the certification was based or copies.~~

14 ~~(2) Upon receipt by the Director of the Department of Finance~~
15 ~~and Administration of a certification from the Director of the Arkansas~~
16 ~~Economic Development Commission that an eligible business is entitled to~~
17 ~~credit under this subchapter, the Director of the Department of Finance and~~
18 ~~Administration shall provide forms to the eligible business on which to claim~~
19 ~~the credit.~~

20 ~~(c)(1) At the end of the calendar year in which the application was~~
21 ~~made to the Director of the Arkansas Economic Development Commission and at~~
22 ~~the end of each calendar year thereafter until the project is completed, the~~
23 ~~eligible business shall certify on the form provided by the Director of the~~
24 ~~Department of Finance and Administration the amount of expenditures on the~~
25 ~~project during the preceding calendar year.~~

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

31 ~~(B)(i)(a) Except as provided in § 26-51-2007, the credit~~
32 ~~shall then be applied against the eligible business' state income tax~~
33 ~~liability in the year following the year of the expenditure.~~

34 ~~(b) However, if the credit is not used in the~~
35 ~~calendar year following the expenditure, it may be carried over to the next~~
36 ~~succeeding calendar year for a total period of six (6) years following the~~

1 ~~year in which the credit was first available for use or until the credit is~~
2 ~~exhausted, whichever occurs first.~~

3 ~~(ii) In no event shall the credit used on any~~
4 ~~regular return be more than fifty percent (50%) of the eligible business'~~
5 ~~total state income tax liability for the reporting period.~~

6 ~~(iii) The Director of the Department of Finance and~~
7 ~~Administration may require proof of these expenditures.~~

8 ~~(iv) The Director of the Department of Finance and~~
9 ~~Administration may examine those records necessary and specific to the~~
10 ~~project to determine credit eligibility. Any credits disallowed shall be~~
11 ~~subject to payment in full.~~

12 ~~(d) In order to receive credit for project costs, the costs must be~~
13 ~~incurred within five (5) years from the date of certification of the project~~
14 ~~plan by the Director of the Arkansas Economic Development Commission.~~

15
16 ~~26-51-2006. Administration.~~

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

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

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

25
26 ~~26-51-2007. Availability.~~

27 ~~(a) The state income tax credit provided by this subchapter shall not~~
28 ~~be claimed on any income tax return filed or required by law to be filed~~
29 ~~prior to July 1, 2003.~~

30 ~~(b) State income tax credits arising under this subchapter that but~~
31 ~~for the provisions of this section would be available to be claimed on an~~
32 ~~income tax return required to be filed before July 1, 2003, shall first be~~
33 ~~available on income tax returns due after July 1, 2003, and shall be subject~~
34 ~~to the same carryover provisions for unused credits as otherwise provided in~~
35 ~~this subchapter.~~

36

1 SECTION 51. Arkansas Code Title 26, Chapter 51, Subchapter 22 is
2 repealed.

3 ~~Subchapter 22—Arkansas Historic Rehabilitation Income Tax Credit Act~~

4
5 ~~26-51-2201.—Title.~~

6 ~~This subchapter shall be known and may be cited as the “Arkansas~~
7 ~~Historic Rehabilitation Income Tax Credit Act”.~~

8
9 ~~26-51-2202.—Purpose.~~

10 ~~The purpose of this subchapter is to encourage economic development and~~
11 ~~community revitalization within existing state and federal infrastructure by~~
12 ~~providing an income tax credit to promote the rehabilitation of historic~~
13 ~~structures throughout Arkansas.~~

14
15 ~~26-51-2203.—Definitions.~~

16 ~~As used in this subchapter:~~

17 ~~(1) “Arkansas historic rehabilitation income tax credit” means~~
18 ~~an income tax credit against the income tax imposed by the Income Tax Act of~~
19 ~~1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601—~~
20 ~~26-57-605 that includes:~~

21 ~~(A) An income tax credit for an income-producing property~~
22 ~~that qualifies for a federal rehabilitation tax credit; and~~

23 ~~(B) An income tax credit for a nonincome-producing~~
24 ~~property;~~

25 ~~(2) “Certified rehabilitation” means a substantial~~
26 ~~rehabilitation of an eligible property that has been issued an eligibility~~
27 ~~certificate;~~

28 ~~(3) “Certification of completion” means a certificate issued by~~
29 ~~the Department of Arkansas Heritage certifying that a project is a certified~~
30 ~~rehabilitation of an eligible property that qualifies for the Arkansas~~
31 ~~historic rehabilitation income tax credit;~~

32 ~~(4) “Eligible property” means property that is located in the~~
33 ~~state that is:~~

34 ~~(A) Income-producing property that:~~

35 ~~(i) Qualifies as a certified historic structure~~
36 ~~under 26 U.S.C. § 47, as it existed on January 1, 2009; or~~

1 ~~(ii) Will qualify as a certified historic structure~~
2 ~~following certified rehabilitation; or~~

3 ~~(B) Nonincome producing property that is:~~

4 ~~(i) Listed in the National Register of Historic~~
5 ~~Places;~~

6 ~~(ii) Designated as contributing to a district listed~~
7 ~~in the National Register of Historic Places; or~~

8 ~~(iii) Eligible for designation as contributing to a~~
9 ~~district listed in the National Register of Historic Places following~~
10 ~~certified rehabilitation;~~

11 ~~(5) "Federal rehabilitation tax credit" means the federal tax~~
12 ~~credit as provided under 26 U.S.C. § 47, as it existed on January 1, 2009;~~

13 ~~(6) "Holder" means the holder of a certification of completion~~
14 ~~that is:~~

15 ~~(A) A person, firm, or corporation subject to the income~~
16 ~~tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or~~

17 ~~(B) An insurance company paying the premium tax on its~~
18 ~~gross premium receipts;~~

19 ~~(7) "Owner" means a person or an entity that owns eligible~~
20 ~~property and is the initial recipient of the certification of completion from~~
21 ~~the department;~~

22 ~~(8) "Premium tax" means a tax levied under §§ 26-57-603—26-57-~~
23 ~~605; and~~

24 ~~(9) "Qualified rehabilitation expenses" means costs and expenses~~
25 ~~incurred to complete a certified rehabilitation that are qualified~~
26 ~~rehabilitation expenses under the federal rehabilitation tax credit or under~~
27 ~~the Arkansas historic rehabilitation income tax credit.~~

28
29 ~~26-51-2204. Arkansas historic rehabilitation income tax credit.~~

30 ~~(a) There is allowed an income tax credit up to the amount of tax~~
31 ~~imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or the premium~~
32 ~~tax to a holder of an Arkansas historic rehabilitation income tax credit.~~

33 ~~(b) The Arkansas historic rehabilitation income tax credit shall be in~~
34 ~~an amount equal to twenty five percent (25%) of the total qualified~~
35 ~~rehabilitation expenses incurred by the owner to complete a certified~~
36 ~~rehabilitation up to the first:~~

1 ~~(1) Five hundred thousand dollars (\$500,000) of qualified~~
2 ~~rehabilitation expenses on income-producing property; or~~

3 ~~(2) One hundred thousand dollars (\$100,000) of qualified~~
4 ~~rehabilitation expenses on nonincome-producing property.~~

5 ~~(c)(1) The Department of Arkansas Heritage shall only issue Arkansas~~
6 ~~historic rehabilitation income tax credits for up to four million dollars~~
7 ~~(\$4,000,000) in any one (1) fiscal year.~~

8 ~~(2) Any unused Arkansas historic rehabilitation income tax~~
9 ~~credits shall not be carried over to the following fiscal year for use by the~~
10 ~~department.~~

11 ~~(3) Any certification of completion that would cause the~~
12 ~~Arkansas historic rehabilitation income tax credit to exceed the amounts~~
13 ~~listed in subdivision (c)(1) of this section during the fiscal year will be~~
14 ~~carried forward for consideration during the following fiscal year.~~

15 ~~(d) The Arkansas historic rehabilitation income tax credit shall be~~
16 ~~available to an owner of an eligible property that:~~

17 ~~(1) Completes a certified rehabilitation that is placed in~~
18 ~~service after January 1, 2009;~~

19 ~~(2) Has a minimum investment of twenty-five thousand dollars~~
20 ~~(\$25,000) in qualified rehabilitation expenses; and~~

21 ~~(3) Is not receiving a tax credit under any other state law for~~
22 ~~the same eligible property.~~

23 ~~(e) Upon completion of a rehabilitation, the owner shall submit~~
24 ~~documentation required by the department to verify that the completed~~
25 ~~rehabilitation qualifies as a certified rehabilitation.~~

26 ~~(f) If the department determines that a rehabilitation qualifies as a~~
27 ~~certified rehabilitation and that the certified rehabilitation is complete,~~
28 ~~the department shall issue a freely transferable certification of completion~~
29 ~~specifying the total amount of the qualified rehabilitation expenses and~~
30 ~~Arkansas historic rehabilitation income tax credit allowed.~~

31 ~~(g)(1) If the owner requests a review of the department's~~
32 ~~determination under subsection (f) of this section, the owner shall submit a~~
33 ~~written request for review of the determination.~~

34 ~~(2) The owner shall submit the request in writing to the~~
35 ~~department within thirty (30) days of the date of notification to the owner~~
36 ~~of the determination.~~

1 ~~(h)(1) The owner shall certify to the department the validity of costs~~
2 ~~and expenses claimed as qualified rehabilitation expenses and shall maintain~~
3 ~~a record supporting the claim for at least five (5) years after the issuance~~
4 ~~of the certification of completion.~~

5 ~~(2) An owner's record supporting a claim for qualified~~
6 ~~rehabilitation expenses may be reviewed by the department, the appropriate~~
7 ~~tax collection authority, or a holder.~~

8
9 ~~26-51-2205. Procedure to claim tax credit—Transferring credit.~~

10 ~~(a)(1) A holder shall submit the certification of completion and~~
11 ~~documents proving an assignment, if any, with the appropriate tax collection~~
12 ~~authority at the time of filing the holder's income tax return or premium tax~~
13 ~~return.~~

14 ~~(2) The appropriate tax collection authority may refuse to~~
15 ~~recognize the Arkansas historic rehabilitation income tax credit claimed if~~
16 ~~the holder fails to submit the certification of completion and any assignment~~
17 ~~documents.~~

18 ~~(b) The amount of the Arkansas historic rehabilitation income tax~~
19 ~~credit that may be used by a holder for a taxable year may equal but shall~~
20 ~~not exceed the amount of income tax or premium tax due.~~

21 ~~(c) A holder of an unused Arkansas historic rehabilitation income tax~~
22 ~~credit may carry forward part or all of an Arkansas historic rehabilitation~~
23 ~~income tax credit for five (5) consecutive taxable years to apply against the~~
24 ~~holder's income taxes due or the holder's premium tax due.~~

25 ~~(d)(1) An owner of an Arkansas historic rehabilitation income tax~~
26 ~~credit may freely transfer, sell, or assign part or all of the Arkansas~~
27 ~~historic rehabilitation income tax credit amount identified in the~~
28 ~~certification of completion.~~

29 ~~(2) A subsequent holder may transfer, sell, or assign part or~~
30 ~~all of the remaining Arkansas historic rehabilitation income tax credit.~~

31 ~~(e) An owner may sell the owner's eligible property after the issuance~~
32 ~~of the certification of completion.~~

33 ~~(f) An Arkansas historic rehabilitation income tax credit granted to a~~
34 ~~partnership, Subchapter S corporation, a limited liability company taxed as a~~
35 ~~partnership, or multiple owners of property shall be passed through to the~~
36 ~~partners, members, or owners respectively on a pro rata basis or pursuant to~~

1 ~~an executed agreement among the partners, members, or owners documenting an~~
2 ~~alternate distribution method.~~

3 ~~(g)(1) A holder may use the Arkansas historic rehabilitation income~~
4 ~~tax credit to offset up to one hundred percent (100%) of the state income~~
5 ~~taxes due or premium tax due from the holder.~~

6 ~~(2) A holder is not required to have any ownership or other~~
7 ~~interest in the eligible property for which an Arkansas historic~~
8 ~~rehabilitation income tax credit is claimed.~~

9 ~~(3) An Arkansas historic rehabilitation income tax credit may be~~
10 ~~used up to its total amount by any holder without limitation and is not~~
11 ~~subject to limits imposed by federal law or regulation on the use of federal~~
12 ~~rehabilitation tax credits.~~

13 ~~(h) An owner or holder that assigns part or all of an Arkansas~~
14 ~~historic rehabilitation income tax credit shall perfect the transfer by~~
15 ~~notifying the Department of Arkansas Heritage and the appropriate tax~~
16 ~~collection authority in writing within thirty (30) calendar days following~~
17 ~~the effective date of the transfer and shall provide any information as may~~
18 ~~be required by the department and the appropriate tax collection authority to~~
19 ~~administer and carry out this subchapter and to ensure proper tracking of the~~
20 ~~ownership of the unused Arkansas historic rehabilitation income tax credit.~~

21
22 ~~(i)(1) Any consideration received for the transfer of the Arkansas~~
23 ~~historic rehabilitation income tax credit shall not be included as income~~
24 ~~taxable by the State of Arkansas.~~

25 ~~(2) Any consideration paid for the transfer of the Arkansas~~
26 ~~historic rehabilitation income tax credit shall not be deducted from income~~
27 ~~taxable by the State of Arkansas.~~

28
29 ~~26-51-2206. Fees.~~

30 ~~(a)(1) The Department of Arkansas Heritage may charge a fee to~~
31 ~~process:~~

32 ~~(A) An application for an Arkansas historic rehabilitation~~
33 ~~income tax credit; and~~

34 ~~(B) A request to record transfers of interests in an~~
35 ~~Arkansas historic rehabilitation income tax credit to other holders.~~

36 ~~(2) The fee for processing an application for an Arkansas~~

1 ~~historic rehabilitation income tax credit shall not exceed two and five-~~
2 ~~tenths percent (2.5%) of the amount of the Arkansas historic rehabilitation~~
3 ~~income tax credit applied for or seventy five hundredths percent (0.75%) of~~
4 ~~the amount of the Arkansas historic rehabilitation income tax credit~~
5 ~~transferred, whichever is less.~~

6 ~~(b) A fee collected under this subchapter by the department shall be~~
7 ~~considered cash funds of the department and shall be used for the~~
8 ~~administration of this subchapter.~~

9
10 ~~26-51-2207. Rules.~~

11 ~~(a) The Department of Arkansas Heritage shall promulgate rules to~~
12 ~~implement this subchapter that shall include criteria for the prioritizing of~~
13 ~~the rehabilitation applications and that will stimulate the local economy~~
14 ~~where the property is located, including without limitation the criteria that~~
15 ~~the rehabilitation project will be prioritized in the following order:~~

16 ~~(1) Result in the creation of a new business;~~

17 ~~(2) Result in the expansion of an existing business;~~

18 ~~(3) Establish or contribute to the establishment of a tourism~~
19 ~~attraction as defined by the Department of Parks and Tourism;~~

20 ~~(4) Contribute to the revitalization of a specific business~~
21 ~~district; or~~

22 ~~(5) Be a key property in the revitalization of a specific~~
23 ~~neighborhood.~~

24 ~~(b) The Department of Arkansas Heritage shall consult with the~~
25 ~~Department of Finance and Administration, the Arkansas Economic Development~~
26 ~~Commission, and the State Insurance Department in promulgating rules under~~
27 ~~this subchapter.~~

28 ~~(c) The Department of Parks and Tourism shall promulgate rules to~~
29 ~~define a "tourism attraction" as provided in subdivision (a)(3) of this~~
30 ~~section.~~

31
32 SECTION 52. Arkansas Code § 26-52-703 is amended to read as follows:

33 26-52-703. Precluded provisions supplemental.

34 ~~(a) A recipient of benefits under this subchapter is precluded from~~
35 ~~receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-~~
36 ~~1701 et seq., for the same project.~~

