

# Donations or Sales of Equipment to Educational Institutions Tax Credit Program

(Act 469 of 1985, as amended)

## Rules

RECEIVED

APR 01 2020

BUREAU OF  
LEGISLATIVE RESEARCH

### I. Introduction

Act 469 of 1985, as amended and codified at §26-51-1101 et seq., was created to encourage the donation of machinery and equipment to accredited educational institutions for use in qualified educational programs or qualified research programs by providing an income tax credit incentive to entities making the donation. Act 203 of 2019 amended the program to allow a taxpayer that makes a cash donation to a qualified educational institution for the purchase of new machinery and equipment to receive a tax credit.

For more information, please contact:

Arkansas Economic Development Commission  
Business Finance Division  
1 Commerce Way, Suite 601  
Little Rock, AR 72202  
(501) 682-1121

### II. Definitions

1. "Accredited institution of higher education" means a four-year public college or university that offers bachelor's degrees and is recognized by the Division of Higher Education for credit;
2. "Cost" means:
  - i. In the case of a donation or sale below cost by a wholesale or retail business, the amount actually paid by the wholesaler or retailer to the supplier for the machinery and equipment;
  - ii. In the case of a donation or sale below cost by a manufacturer of machinery and equipment, the enhanced value of the materials used to produce the machinery and equipment, which shall be deemed to be the lowest price at which the manufacturer sells the machinery and equipment; or
  - iii. In the case of a cash donation by a taxpayer to a qualified educational institution for the purchase of new machinery and equipment, the amount actually paid by the qualified educational institution to the wholesale, retail, or manufacturing business, as documented by itemized receipts;
3. "Financial incentive agreement" means an agreement between the Arkansas Economic Development Commission and a taxpayer outlining the terms and conditions of a tax credit awarded under these regulations;

**Donations or Sales of Equipment to Educational Institutions Tax Credit Program Rules (2020)**

4. "Machinery and equipment" means tangible personal property used in connection with a qualified education program or a qualified research program that has been approved for a tax credit under rules prescribed by the Department of Finance and Administration;
5. "New" means the machinery and equipment are state-of-the-art machinery and equipment that have:
  - i. Never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of a proper quality and in good working order; or
  - ii. Been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;
6. "Qualified education program" means a program conducted by a qualified educational institution under rules prescribed by the Division of Higher Education for programs in colleges, universities, or junior colleges, by the Division of Career and Technical Education for programs in vocational technical training schools and by the Division of Elementary and Secondary Education for programs in secondary schools, all of which programs are for the purpose of promoting the use of new machinery and equipment for classroom, laboratory, and other educational instruction;
7. "Qualified educational institution" means:
  - i. A public university, college, junior college, or vocational technical training school located in and supported by the State of Arkansas;
  - ii. A private university, college, junior college, or vocational technical training school located in Arkansas and qualified for tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; and
  - iii. A public secondary school;
8. "Qualified research expenditures" means the sum of any amounts that are paid or incurred by a taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules promulgated by the Department of Finance and Administration;
9. "Qualified research program" means a program of applied or basic research undertaken by a qualified educational institution that applies the findings of the research or other existing knowledge toward discovering new scientific knowledge that has specific commercial objectives with respect to new products, services, processes, or methods;
10. "Research park authority" means a public entity created under the Research Park Authority Act, §14-144-101 et seq., to provide facilities and support for businesses engaged in research and development in pursuit of economic development opportunities; and
11. "State-of-the-art-machinery and equipment" means machinery and equipment that are of the same type, design, and capability as like machinery and equipment that are currently sold or manufactured by the donee for sale to customers.

### **III. Application For Credit Approval**

- A. A taxpayer seeking a credit under this program shall submit an original application and one (1) copy to the Executive Director of the Arkansas Economic Development Commission on the forms provided by the agency.
- B. The Executive Director of the Arkansas Economic Development Commission shall review each application submitted and shall either:
  - i. Approve the application; or
  - ii. Reject the application and notify the applicant of the deficiencies in the application.
- C. An applicant that receives approval shall sign a financial incentive agreement with, and in a form specified by, the Arkansas Economic Development Commission. The financial incentive agreement must be signed before the taxpayer makes the donation or sale to a qualified educational institution or qualified research program. An expenditure made before the approval date of the signed financial incentive agreement shall be denied a credit under this program.
- D. An applicant may resubmit a rejected application after addressing any deficiencies identified by the Executive Director of the Arkansas Economic Development Commission.
- E. The Executive Director of the Arkansas Economic Development Commission and the Director of the Division of Higher Education must approve a qualified research expenditure as part of a qualified research program.

### **IV. Credit Granted**

- A. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit for donations and sales of new machinery and equipment, or both, to a qualified educational institution in connection with a qualified education program or a qualified research program. The amount of the credit to a taxpayer shall be thirty-three percent (33%) of the:
  - i. Cost of the machinery and equipment donated for new machinery and equipment;
  - ii. Amount by which the cost is reduced for below cost machinery and equipment; and
  - iii. Cash donation used by the educational institution to purchase new machinery and equipment from a wholesale, retail, or manufacturing business.
- B. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit equal to thirty-three percent (33%) of the qualified research expenditures of a taxpayer in a qualified research program.
- C. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit equal to thirty-three percent (33%) of the donation (whether of machinery or equipment, sale below costs, or cash) made to an accredited higher education institution to support a research park authority. This donation must also directly or indirectly support research funded by one or more of the following federal agencies:
  - i. The National Science Foundation;

- ii. The National Institutes of Health;
  - iii. The U.S. Department of Energy;
  - iv. The U.S. Department of Defense;
  - v. The U.S. Environmental Protection Agency;
  - vi. The National Aeronautics and Space Administration;
  - vii. The U.S. Department of Agriculture;
  - viii. The U.S. Department of Transportation;
  - ix. The U.S. Department of Commerce;
  - x. The U.S. Department of Education; and
  - xi. The U.S. Department of Homeland Security
- D. Tax credits are allowed for up to one hundred percent (100%) of the net tax liability of the taxpayer after all other credits and reductions in tax have been calculated.
- E. The credit must be claimed in the tax year that the qualified research expenditure, donation, or sale was made. All or part of any unused credit may be carried forward to the next succeeding tax year and annually thereafter for a total period of nine (9) years succeeding the year in which the credit was earned or until the credits are exhausted, whichever occurs first.
- F. A taxpayer awarded any tax credit under this program for any expense or contribution may not take a deduction under the Arkansas income tax law for the same expense or contribution.
- G. Tax credits issued under this program may not be sold or transferred.

## **V. Documentation Required**

To claim the credit granted for this program, the taxpayer shall provide the following documents to the Executive Director of the Arkansas Economic Development Commission for each piece of machinery and equipment donated, sold below cost, or purchased by a qualified educational institution with a cash donation:

- A. An affidavit from the receiving qualified educational institution that includes:
- i. A statement that the educational institution received the machinery and equipment;
  - ii. A statement that the machinery and equipment are new within the meaning of this program;
  - iii. If applicable, a statement of the amount that the education institution paid for machinery and;
  - iv. A statement indicating whether the educational institution received the machinery and equipment as a donation; purchased the machinery and equipment below cost; or purchased the machinery and equipment with a cash donation provided by the taxpayer;
  - v. A statement that the educational institution will use the equipment or machinery, however acquired, in connection with a qualified education program or a qualified research program.
- B. In the case of a donation or sale by a retail or wholesale business, a copy of the invoice from the business' supplier showing the actual cost of the machinery and equipment.

**Donations or Sales of Equipment to Educational Institutions Tax Credit Program Rules (2020)**

- C. In the case of a donation or sale below cost by a manufacturer, a copy of the manufacturer's wholesale price list showing the lowest price of the machinery and equipment for which the credit is claimed.
- D. In the case of a purchase by a qualified educational institution with a cash donation, itemized receipts documenting the amount of the cash donation and the purchase costs of the new machinery and equipment.
- E. In the case of a donation to a qualified research program, documentation of the approval of the Executive Director of the Arkansas Economic Development Commission and the Director of the Division of Higher Education of a qualified research expenditure as part of a qualified research program.

## **VI. Issuance of Tax Credit**

Upon receipt of the all documentation required, the Executive Director of the Arkansas Economic Development Commission will review the documentation for completeness and if the terms and obligations under the signed financial incentive agreement have been met. If the requirements and obligations have been met, the Arkansas Economic Development Commission will issue a certificate of tax credit that the taxpayer must attach to the income tax return on which the credit is first claimed.

## **VII. Rulemaking Authority**

The Arkansas Economic Development Commission, the Secretary of the Department of Finance and Administration, the Director of the Division of Higher Education, the Director of the Division of Career and Technical Education, and the Commissioner of the Department of Education, are authorized by § 26-51-1105 to promulgate rules necessary to implement Act 469 of 1985, as amended.

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

SENATE BILL 226

5 By: Senator M. Pitsch  
6 By: Representative Wing  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE INCOME TAX CREDIT ALLOWED FOR  
10 DONATIONS OR SALES OF MACHINERY AND EQUIPMENT TO  
11 CERTAIN EDUCATIONAL INSTITUTIONS; TO ALLOW AN INCOME  
12 TAX CREDIT FOR CASH DONATIONS TO CERTAIN EDUCATIONAL  
13 INSTITUTIONS FOR THE PURCHASE OF MACHINERY AND  
14 EQUIPMENT; TO CREATE AN APPLICATION PROCESS FOR BEING  
15 GRANTED AN INCOME TAX CREDIT FOR A DONATION OR SALE  
16 TO CERTAIN EDUCATIONAL INSTITUTIONS; AND FOR OTHER  
17 PURPOSES.  
18  
19

## Subtitle

21 TO AMEND THE INCOME TAX CREDIT ALLOWED  
22 FOR DONATIONS OR SALES OF MACHINERY AND  
23 EQUIPMENT TO CERTAIN EDUCATIONAL  
24 INSTITUTIONS.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

29 SECTION 1. Arkansas Code § 26-51-1101(2), concerning the definitions  
30 used in relation to the treatment of donations or sales of equipment to  
31 educational institutions for income tax purposes, is amended to read as  
32 follows:

33 (2) "Cost" means:

34 (A) In the case of a donation or sale below cost by a  
35 wholesale or retail business, the amount actually paid by the wholesaler or  
36 retailer to the supplier for the machinery ~~or~~ and equipment; ~~or~~



1 (B) In the case of a donation or sale below cost by a  
 2 manufacturer of machinery ~~or~~ and equipment, the enhanced value of the  
 3 materials used to produce the machinery ~~or~~ and equipment, which shall be  
 4 deemed to be the lowest price at which the manufacturer sells the machinery  
 5 ~~or~~ and equipment; or

6 (C) In the case of a cash donation by a taxpayer to a  
 7 qualified educational institution for the purchase of new machinery and  
 8 equipment, the amount actually paid by the qualified educational institution  
 9 to the wholesale, retail, or manufacturing business, as documented by  
 10 itemized receipts;

11  
 12 SECTION 2. Arkansas Code § 26-51-1101(5)-(6), concerning the  
 13 definitions used in relation to the treatment of donations or sales of  
 14 equipment to educational institutions for income tax purposes, are amended to  
 15 read as follows:

16 (5) “Qualified education program” means a program conducted by a  
 17 qualified educational institution under rules prescribed by the Department of  
 18 Higher Education for programs in colleges, universities, or junior colleges,  
 19 by the Department of ~~Workforce~~ Career Education for programs in vocational  
 20 technical training schools and by the Department of Education for programs in  
 21 ~~elementary~~ ~~or~~ secondary schools, all of which programs are for the purpose of  
 22 promoting the use of new machinery and equipment for classroom, laboratory,  
 23 and other educational instruction;

24 (6) “Qualified educational institution” means:

25 (A) ~~Any~~ A public university, college, junior college, or  
 26 vocational technical training school located in and supported by the State of  
 27 Arkansas;

28 (B) ~~Any~~ A private university, college, junior college, or  
 29 vocational technical training school located in Arkansas and qualified for  
 30 tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; ~~or~~  
 31 and

32 (C) ~~Any~~ A public ~~elementary~~ ~~or~~ secondary school;

33  
 34 SECTION 3. Arkansas Code § 26-51-1101(8), concerning the definitions  
 35 used in relation to the treatment of donations or sales of equipment to  
 36 educational institutions for income tax purposes, is amended to read as

1 follows:

2 (8) "Qualified research program" means a program of applied or  
3 basic research undertaken by a qualified educational institution ~~pursuant to~~  
4 under rules jointly prescribed promulgated by the ~~Division of Science and~~  
5 ~~Technology~~ Executive Director of the Arkansas Economic Development Commission  
6 and the Department of Higher Education under § 15-3-110;

7  
8 SECTION 4. Arkansas Code § 26-51-1102(a), concerning the income tax  
9 credit granted in relation to donations or sales of equipment to educational  
10 institutions, is amended to read as follows:

11 (a)(1) There is granted a credit against a taxpayer's Arkansas  
12 corporate income tax or Arkansas individual income tax for ~~donations by any~~  
13 ~~taxpayer~~ the following types of donations or sales, or both, of new machinery  
14 and equipment to a qualified educational institution in connection with a  
15 qualified education program or a qualified research program:

16 (A) Donations of new machinery ~~or~~ and equipment; ~~and for~~  
17 ~~sales~~

18 (B) Sales below cost of machinery and equipment by  
19 ~~taxpayers to qualified educational institutions in connection with a~~  
20 ~~qualified education program or a qualified research program; and~~

21 (C) Cash donations for the purchase of new machinery and  
22 equipment by a qualified educational institution.

23 (2) The amount of the credit granted by this section shall be:

24 (A) In the case of a donation, thirty-three percent (33%)  
25 of the cost of the machinery and equipment donated; ~~and~~

26 (B) In the case of a sale below cost, thirty-three percent  
27 (33%) of the amount by which the cost is reduced; and

28 (C) In the case of a cash donation, thirty-three percent  
29 (33%) of the amount of the cash donation used by the qualified educational  
30 institution to purchase new machinery and equipment from a wholesale, retail,  
31 or manufacturing business.

32  
33 SECTION 5. Arkansas Code §§ 26-51-1104 and 26-51-1105 are amended to  
34 read as follows:

35 26-51-1104. Documentation required.

36 (a) To claim the credit granted by § 26-51-1102, the taxpayer ~~must~~



1 shall provide the following for each piece of machinery and equipment  
 2 donated, ~~or~~ sold below cost, or purchased by a qualified educational  
 3 institution with a cash donation:

4 (1) ~~A statement~~ An affidavit from the receiving qualified  
 5 educational institution that ~~it~~:

6 (A) The qualified educational institution has received the  
 7 machinery ~~or~~ and equipment; ~~that the~~

8 (B) The machinery ~~or~~ and equipment is new machinery ~~or~~ and  
 9 equipment within the meaning of this subchapter; ~~that it~~

10 (C) The qualified educational institution received the  
 11 machinery ~~or~~ and equipment as a donation or, if ~~it~~ the qualified educational  
 12 institution purchased the machinery ~~or~~ and equipment ~~below cost~~, a statement  
 13 of the amount paid for the machinery ~~or~~ and equipment; and ~~that the~~

14 (D) The machinery ~~or~~ and equipment has been donated,  
 15 purchased by the qualified educational institution with a cash donation  
 16 provided by a taxpayer, or sold to the qualified educational institution for  
 17 use in a qualified education program or a qualified research program; and

18 (2)(A) In the case of a donation or sale by a retail or  
 19 wholesale business, a copy of the invoice from the business' supplier showing  
 20 the actual cost of the machinery ~~or~~ and equipment.

21 (B) In the case of a donation or sale below cost by a  
 22 manufacturer, a copy of the manufacturer's wholesale price list showing the  
 23 lowest price of the machinery ~~or~~ and equipment for which credit is claimed.

24 (C) In the case of a purchase by a qualified educational  
 25 institution with a cash donation, itemized receipts documenting the amount of  
 26 the cash donation and the purchase costs of the new machinery and equipment.

27 (b) To claim the credit granted by § 26-51-1102, the taxpayer ~~must~~  
 28 shall show that the ~~Division of Science and Technology~~ Executive Director of  
 29 the Arkansas Economic Development Commission and the Director of the  
 30 Department of Higher Education have approved the qualified research  
 31 expenditure as a part of a qualified research program.

32 (c) Copies of each of the above documents shall be filed by the  
 33 taxpayer with the Arkansas Economic Development Commission and with his or  
 34 her return as an attachment to the form prescribed by the Director of the  
 35 Department of Finance and Administration.

36

1           26-51-1105. Rules ~~and regulations~~.

2           The Director of the Department of Finance and Administration, the  
3 Director of the Department of Higher Education, the Director of the  
4 Department of Career Education, ~~the Director of the Department of Workforce~~  
5 ~~Education~~ the Commissioner of the Department of Education, and the Executive  
6 Director of the Arkansas Economic Development Commission shall jointly  
7 promulgate ~~such reasonable rules as they shall deem necessary and appropriate~~  
8 to carry out the purposes of this subchapter.

9  
10           SECTION 6. Arkansas Code Title 26, Chapter 51, Subchapter 11, is  
11 amended to add an additional section to read as follows:

12           26-51-1106. Application for credit approval.

13           (a) To apply for a credit under this subchapter, a taxpayer shall  
14 submit an original application and one (1) copy to the Executive Director of  
15 the Arkansas Economic Development Commission on the forms prescribed by the  
16 executive director.

17           (b) The executive director shall review each application submitted  
18 under this subchapter and shall either:

19                   (1) Approve the application; or

20                   (2) Reject the application and notify the applicant of the  
21 deficiencies in the application.

22           (c) An applicant that receives approval from the executive director  
23 under this section shall sign a financial incentive agreement outlining the  
24 terms and conditions of the credit granted under this subchapter.

25           (d) An applicant may resubmit a rejected application after addressing  
26 any deficiencies identified by the executive director.

27           (e) For an application submitted on or after the effective date of  
28 this act, an expenditure incurred before the approval date of the financial  
29 incentive agreement required under subsection (b) of this section shall be  
30 denied a credit under this subchapter.

31  
32  
33                                   **APPROVED: 2/26/19**  
34  
35  
36