Department of Finance and Administration

Legislative Impact Statement

Bill: HB1768
Bill Subtitle: TO CREATE AN INCOME TAX CREDIT FOR INVESTMENTS IN SMALL ARKANSAS-BASED HIGH-TECHNOLOGY BUSINESSES.

Basic Change :

Sponsor: Representative Tucker

HB1768 would add a new section to the Arkansas Code, § 26-51-515, to provide an income tax credit for investments in small Arkansas-based high-technology businesses. Under the bill, a “small business” is defined as having less than 225 employees with at least 75% of the employees being Arkansas-based employees filling a position or job in this state. The income tax credit is equal to 10% of the qualified amount invested in the initial year or during any three subsequent taxable years. The income tax credit cannot exceed $50,000 in a taxable year for all qualified investments made by a taxpayer and is limited to the amount of income tax due. The total credits allowed for all tax credits each tax year cannot exceed $1.5 million and unused tax credits can be carried forward indefinitely. If the business ceases to be based in Arkansas during the 3-year period the credit is allowed, then the taxpayer has to repay any credit claimed. This bill is effective for tax years beginning on and after January 1, 2017.

Revenue Impact :

FY2018 $1.5 million reduction to General Revenue.

Taxpayer Impact :

Taxpayers will be able to claim a new income tax credit if they can document that a valid investment has been made equal to 10% of a qualified investment. The credit may offset the income tax liability up to $50,000 per year and unused credits may be carried forward indefinitely.

Resources Required :

Computer programming changes, booklet changes, form changes, changes to the procedures manual, and changes to training manuals will be needed. Additional personnel may be needed to verify credits and monitor the annual cap.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Auditors and other employees will need training on the requirements of the new credit.

Other Comments :

- In the definition of qualified businesses, there is the reference to industries classified as an emerging technology but "emerging technology" is not defined.
- The bill allows any unused income tax credit to be carried forward indefinitely.

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- Bill does not provide for approval of credits and does not provide for any state agency to monitor the $1.5 million annual cap and to notify taxpayers after the cap has been met that the credit is no longer available.
- The bill does not specify certain NAICS codes to identify qualified investments.
- Cap language should identify that it applies to either a calendar year or a fiscal year instead of a tax year. The bill is effective for tax years beginning on or after January 1, 2017.
- Since no agency is required to approve credits, there is no agency that can verify that a company has less than 225 employees and that at least 75% are employed in Arkansas or whether the company is based in Arkansas or moves from Arkansas.

Legal Analysis :

HB1768 creates an income tax credit for investments in small Arkansas-based high-tech businesses for qualified businesses. There are several administrative difficulties with the bill as introduced.
A “small business” is defined as having less than 225 employees and that at least 75% of those employees are in Arkansas. The income tax credit is equal to 10% of the qualified amount invested in the initial year or during any three (3) subsequent taxable years and shall not exceed $50,000 per taxpayer. Total credits allowed cannot exceed $1.5 million per year for all taxpayers. Unused tax credit can be carried forward indefinitely. If the business ceases to be based in Arkansas during the three (3) year period the credit is allowed, then the taxpayer has to repay any credit claimed.

The limitation of $1.5M of credits to be allowed per year may result in the Department issuing assessments for companies that claimed this credit when more than $1.5M is claimed in a tax year. There is no guidance for DFA on how to approach more than $1.5M in credits being claimed in a year regarding disapproval, pro rata reduction, or other methods in addition to the assessments that would be issued when all or part of a credit is denied.