Department of Finance and Administration

Legislative Impact Statement

Bill: HB1956 As Engrossed: 3/14/2017
Bill Subtitle: TO DEFINE THE PAYROLL CALCULATIONS FOR MEETING THE PAYROLL REQUIREMENTS OF EMPLOYERS RECEIVING INCENTIVES UNDER THE CONSOLIDATED INCENTIVE ACT OF 2003.

Basic Change :

Sponsor: Representative M. Gray

This bill amends the Consolidated Incentive Act of 2003 by adding an additional section for "payroll calculations". Under existing law, certain economic development programs provide incentives to businesses that create new job positions at their new or existing business facility. These incentives are based on the payroll of the businesses' "new full-time permanent employee(s)" hired as a result of a financial incentive agreement approved by the Arkansas Economic Development Commission (AEDC). These incentives include the job-creation income tax credit, ACA 15-4-2705, aka the Advantage Arkansas program; the payroll rebate, ACA 15-4-2707, aka the Create Rebate program; the income tax credit for new targeted business, ACA 15-4-2709, aka the Targeted Business Payroll program; and the income tax credit for technology based enterprises, ACA 15-4-2706(b)(7).

Additionally, there are investment incentive programs under the Consolidated Incentive Act for which AEDC signs financial incentive agreements for which eligibility for those incentives are contingent on the business reaching a requisite payroll amount for its "new full-time permanent employee(s)". These incentives include the investment income tax incentive program, ACA 15-4-2706(b), aka the ArkPlus program; the sales and use tax refund for new and existing business, ACA 15-4-2706(d), aka the TaxBack program; the sales and use tax refund for targeted businesses, ACA 15-4-2706(e);

The amendment directly conflicts with and contradicts the job and payroll calculation requirements found in the existing law. It is unclear how this proposed amendment to the Consolidated Incentive Program will interact with other provisions found in the law. For example, "new full-time permanent employee" is defined in part as "... a position or job that was created pursuant to the signed financial incentive agreement and that is filled by one (1) or more employees or contractual employees ..." and "... the position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week."

As written, the amendment would have an adverse effect on state revenues when calculating incentive amounts or determining if payroll threshold amounts have been reached. As the amendment is written, all salaried, all permanent employees who are paid on an hourly basis, and possibly all part-time employees paid on an hourly basis would be included in the payroll requirements to receive incentives under the various programs provided by the Consolidated Incentive Act of 2003. With this amendment to the Consolidated Incentive Act, it is possible that the entire payroll, including all existing employees of the business would be counted for purposes of the payroll incentives even though there have been no new jobs created by a project. By counting all executive positions, officers, office staff and field employees of a business that have not been hired as the result of a project, this would almost automatically qualify all eligible businesses in Arkansas having business expansion for tax incentives for which they would not have otherwise qualified.

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Revenue Impact :

Based on the history of the payroll incentive benefits allowed in accordance with the Consolidated Incentive Act, the annual benefits granted have averaged $12.5 million per year. The benefits are granted based on increased full-time employees hired to fulfill the needs of the business that result directly from the AEDC approved project. The bill could increase the amount of the payroll benefits allowed by several times the current amounts.

Under current law, this $12.5 million is earned by businesses that create new jobs filled with "new full-time permanent employees" who work at least 26 consecutive weeks with an average of at least 30 hours per week. The proposed changes to payroll calculations would allow incentives not only for new job creation, but for all salaried employees, all permanent employees who are paid on an hourly basis, and part-time employees who are paid on an hourly basis if paid an average wage equal to or greater than the state average wage.

The proposed amendment would allow basically all eligible businesses in the State, as defined under the current law, to receive economic development incentives, including: manufacturers, computer and software development companies; motion picture production companies; distribution centers or intermodal facilities; office sector businesses such as customer service providers, telemarketing, claims processing, etc.; national or regional corporate headquarters; firms engaged in commercial, physical, and biological research; scientific and technical services businesses; and any nonretail business that are approved if certain requirements are met. In addition to payroll incentive benefits, investment incentives for which a payroll threshold for net new permanent employees is required will be eased and will allow many more businesses to qualify for benefits.

Under current law, to receive Advantage Arkansas benefits, the required annual payroll thresholds are $125,000; $100,000; $75,000; and $50,000, with the higher thresholds belonging to businesses that locate in the more economically prosperous counties. To receive Create Rebate benefits, the requisite annual payroll threshold is $2,000,000. To receive the Targeted Business Payroll incentive, the requisite annual payroll is $100,000.

The proposed amendment will allow additional payroll to be included in the payroll calculation to meet the requisite payroll of various economic development incentive programs. The revenue loss attributed to this amendment cannot be calculated since it is unknown how many more companies and how many more employees will qualify under this new payroll calculation method.

Taxpayer Impact :

Many other companies will now qualify for incentives, and those who could qualify in the past will now enjoy a substantial increase in benefits.

Resources Required :

A substantial increase in field tax auditors, accountants, and support staff would be required to calculate payroll of all companies approved under the Consolidated Incentive Act.

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Time Required :

At least 6 months to promulgate new rules and to modify existing audit guidelines.

Procedural Changes :

Substantial procedure changes to conduct audits for the purpose of calculating payroll of all companies approved under the Consolidated Incentive Act.

Other Comments :

None.

Legal Analysis :

None.