Department of Finance and Administration

Legislative Impact Statement

Bill: SB566 **Amendment Number: S3**
Bill Subtitle: TO AMEND THE DEFINITION OF "PROJECT COSTS" UNDER THE CONSOLIDATED INCENTIVE ACT OF 2003; AND TO EXTEND THE TIME PERIOD DURING WHICH PROJECT COSTS MAY BE INCURRED FOR CERTAIN RETENTION TAX CREDIT PROJECTS.

Basic Change :

Sponsors: Sen. D. Wallace
Reps. Jett, M. Hodges, and Rye

Senate Amendment No. 3 --- SB566-S3 (engrossed 4/14/21) clarifies that the definition of "eligible costs" includes purchases within six years of the date of the signed financial incentive agreement for agreements dated on or after June 22, 2017.

Senate Amendment No. 2 --- SB566-S2 (engrossed 4/13/21) clarifies that a company that qualified for a retention tax credit (InvestARK) by an application approved by the Arkansas Economic Development Commission (AEDC) between June 22 and June 28, 2017, may incur eligible project costs within six years rather than four years of the date of the incentive agreement.

SB566-S2 specifies that the InvestARK credits for companies subject to the amendment:

- May only be claimed after July 1, 2023;
- Are contingent on a positive economic analysis by the Director of AEDC; and
- May only be claimed up to $750,000 in any fiscal year.

Original Bill --- SB566 amends the date by which a company must incur a project cost for a retention tax credit (InvestARK) under the Consolidated Incentive Act of 2003. Under current law, eligible project costs must be incurred within four years of the date of the approved incentive agreement. SB566 will allow eligible project costs to be incurred within six years of the date of the incentive agreement if the agreement between the company and the Arkansas Economic Development Commission (AEDC) was signed after January 1, 2017.

Revenue Impact :

Each qualifying project would result in up to $750,000 in tax credits redeemed in one year beginning in FY2024. No tax credits would be issued to a taxpayer unless Arkansas Economic Development Commission (AEDC) determines the investment in the part of the qualified project to be completed during the extended period will generate a return that will likely be equal to or greater than the amount of retention credits earned.

FY2022 and FY2023 – No Revenue Impact

FY2024 - FY2028 – Up to $5.2 million in state sales and use tax loss ($3.4 million loss to General Revenue).

[InvestArk is a sales and use tax credit program available to businesses established in Arkansas for at least two years that invest $5 million or more in plant or equipment for new construction, expansion or modernization. Participants are approved by AEDC prior to beginning construction or incurring eligible project costs. The business must obtain a direct-pay sales and use tax permit from DFA. Each year the

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participant files an annual expenditure report to DFA. DFA establishes a tax credit amount based on the eligible annual project expenditures. The program participant may use the credit to offset up to 50% of the business' monthly state sales and use tax liability on purchases. Unused credits may be carried forward for a period of up to five years beyond the year in which the credit was first earned. All InvestArk projects with dates between June 22, 2017 and June 28, 2017 were researched. Out of the 7 projects for that time period, 1 has not met the investment threshold and has had $0 in expenditures to date. Revenue Impact above assumes that all 7 projects will be completed based on the total estimated project costs $514 million.]

Taxpayer Impact :

InvestArk participants with approved projects dated on June 22 -28, 2017 will have six years to incur eligible project costs instead of four years and use retention tax credits, if AEDC determines the investment in the part of the qualified project to be completed during the extended period will generate a return that will likely be equal to or greater than the amount of retention credits earned. They will need to complete the documentation required for any credits earned or transferred and records will need to be maintained for audit.

Resources Required :

Computer programming, manual updates and employee training will be required.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Computer programs and training manuals will need to be updated. Department employees and will need to be educated on changes as well as the taxpayer community.

Other Comments :

None.

Legal Analysis :

None.