State of Arkansas
Department of Finance and Administration
Fiscal Impact Statement

Bill: HB1935
Bill Subtitle: TO CREATE A MODERNIZATION AND AUTOMATION TAX CREDIT TO ENCOURAGE INVESTMENT BY EXISTING BUSINESSES WITHIN THE STATE.

Sponsors:

Rep. Eaves and Sen. Gilmore

Basic Change:

HB1935 amends the Consolidated Incentive Act of 2003 to create a "modernization and automation tax credit." A business seeking to qualify for this credit must:

- Execute a financial incentive agreement for the project with the Arkansas Economic Development Commission (Commission) before incurring any project costs;
- Complete the project within six years of executing the agreement;
- Maintain the current average level of payroll and employment during the project and for at least 24 months after the project ends; and
- Be required to return any credits claimed if the business breaches the agreement.

To qualify for the credit, a business must:

- Have been in continuous operation in the state for at least two years;
- Incur at least $5,000,000 in project costs; and
- Hold a direct pay sales and use tax permit.

A credit of up to 5% of the eligible project costs may be awarded by the Commission. A business may not use more than $2,000,000 of credit in a year. Unused credits may be carried forward for up to five years before expiring.

HB1935 is effective on and after October 1, 2025.

Fiscal Impact:

FY2026 - $10,000,000 Revenue Reduction

FY2027 and after - $40,000,000 Revenue Reduction

[Fiscal impact is based on FY2017 InvestArk tax credits claims. The InvestArk program required a business to have a direct-pay permit and invest $5,000,000 in buildings and equipment within the state. Of 454 registered direct-pay permit holders, 92 approved companies claimed InvestArk sales and use tax credit totaling $40,000,000 in FY2017.]

Taxpayer Impact:

A qualified business may claim a modernization and automation tax credit if they meet the criteria under § 15-4-2706(c). A taxpayer must submit an application prior to incurring project costs (excluding preconstruction costs) and enter into a financial incentive agreement. Lease payments for buildings or equipment for five years may count toward the minimum investment threshold. Businesses are

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required to certify yearly expenditures to the Department of Finance and Administration to determine credit eligibility.

Resources Required:

Arkansas Integrated Revenue System (AIRS) programming costs are estimated to be $12,000 to implement the tax credit. Tax forms and instructions will need to be updated.

Time Required:

Adequate time is provided for implementation.

Procedural Changes:

Department employees will require training and the tax community will need to be educated.

Other Comments:

Under § 15-4-2706(a)(10), the business shall elect to receive the tax credits as either a sales and use tax credit or an income tax credit. The determination must be made before Commission approval of a financial incentive agreement.

One of the criteria for the new credit is that the taxpayer hold a direct-pay sales and use permit from the Department of Finance and Administration (DFA) before applying for the incentives. The bill provides a $2M cap on each taxpayer per year but does not provide for an aggregate cap on all credits. The invest ark program before sunset averaged $35M per year with $27.5M in claims or about 78% of credits claimed over a 20-year period. The state currently has about 450 direct pay permit holders. The Invest Ark Sales Tax credit averaged $33.75M claimed per year the last five years after the retention credit was sunset in 2017 by Act 465 of 2017 and $35M established per year over the life of the credit.

Legal Analysis:

None.