

# Replacement and Repair of Manufacturing Machinery and Equipment Sales and Use Tax Refund

## (Act 1404 of 2013, as amended)

### Rules

#### I. Introduction

##### Overview

Act 1404 of 2013, as amended and codified in §§ 26-52-447, 26-53-149 and 15-4-3501, establishes two options by which certain state sales and use taxes relating to the partial replacement and repair of machinery and equipment used directly in manufacturing may be refunded to eligible taxpayers beginning July 1, 2014.

Act 465 of 2017 amended the refund options by:

- Increasing the refund available for taxes paid on purchases related to the repair and partial replacement of manufacturing machinery and equipment;
- Sunsetting the tax refund for major maintenance and improvement programs;  
and
- Phasing in an exemption from tax for purchases related to the repair and partial replacement of manufacturing machinery and equipment.

The first option, which provides for a graduated refund and subsequent exemption of one percentage point (1%) of the 5.875% sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, may be claimed by a taxpayer for the purchase and installation of certain machinery and equipment used directly in manufacturing and processing. To qualify for this refund, a taxpayer shall hold a direct pay or a limited direct pay sales and use tax permit from the Arkansas Department of Finance and Administration (DFA). Taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107 subject to refund under this option are the taxes in excess of the following rates:

1. Beginning July 1, 2014, four and seven-eighths percent (4.875%);
2. Beginning July 1, 2018, three and seven-eighths percent (3.875%);
3. Beginning July 1, 2019, two and seven-eighths percent (2.875%);
4. Beginning July 1, 2020, one and seven-eighths percent (1.875%);
5. Beginning July 1, 2021, seven-eighths percent (0.875%); and

6. Beginning July 1, 2022, sales qualifying for the tax refund under this option are fully exempt from taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107.

The second option, which provides for an increased refund of all sales and use taxes (5.875%) levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, is a discretionary incentive that may be offered by the Executive Director of the Arkansas Economic Development Commission (AEDC) to a taxpayer who undertakes a major maintenance and improvement project to purchase and install certain machinery and equipment used directly in manufacturing and processing.

A taxpayer may apply for an increased refund for major maintenance and improvement projects under the second option through June 30, 2022. An application for an increased refund for major maintenance and improvement projects under the second option shall not be accepted on or after July 1, 2022.

To qualify for this discretionary refund, a taxpayer shall:

1. Be eligible for a refund of taxes under §§ 26-52-447 or 26-53-149 (partial replacement and repair of certain machinery and equipment);
2. Hold a direct pay or a limited direct pay sales and use tax permit from the DFA; and when claiming the refund, shall file their monthly direct pay sales and use tax report using the Department's electronic tax report filing system;
3. Enter into a financial incentive agreement with the AEDC for the major maintenance and improvement project prior to incurring project expenditures;
4. Expend at least \$3 million on an approved major maintenance and improvement project that includes the purchase of tangible personal property and services that are either exempt or subject to partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149;
5. File a completed Manufacturing Replacement and Repair Sales and Use Tax Refund Application with the AEDC; and
6. Receive approval from the Executive Director of the AEDC to receive the increased refund of sales and use taxes for the major maintenance and improvement project.

All existing excise tax exemptions, including without limitation exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect and are not limited by this refund.

## II. Rulemaking Authority

The AEDC and DFA have authority, at § 15-4-3501(h), to promulgate rules necessary to implement Act 1404 of 2013, as amended.

## III. Effective Date

The effective date of Act 1404 of 2013 was July 1, 2014. The AEDC began accepting applications requesting an increased refund of all sales and use taxes levied pursuant to the replacement and repair of manufacturing machinery and equipment under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, beginning July 1, 2014.

## IV. Definitions

1. "Certain machinery and equipment" means items taxable under §§ 26-52-301 and 26-52-302 on the sale of, and §§ 26-53-106 and 26-53-107 on the privilege of storing, using, distributing, or consuming within this state, the following :
  - A. Machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery or equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at a manufacturing or processing plant or facility in this state; and
  - B. Service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of machinery or equipment as defined in IV. 1(A) above;
2. "Commission" means the Arkansas Economic Development Commission;
3. "Major maintenance and improvement project" means a project with a defined scope and beginning and ending dates, the range of which shall not exceed twenty-four (24) consecutive months, in which the taxpayer expends at least \$3 million on the purchase of tangible personal property and services subject to §§ 26-52-447 and 26-53-149 that are either exempt from or subject to a partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149. The ending date of the project may be extended so that the range of dates is increased to forty-eight (48) consecutive months only with the written approval of the Executive Director of the AEDC and the Director of the Arkansas Department of Finance and Administration;
4. "Manufacturing" or "processing" means the same as defined under § 26-53-114(b) for items taxable under §§ 26-53-106 and 26-53-107 and the same as defined under § 26-52-402(b) for items taxable under §§ 26-52-301 and 26-52-302;

5. “Positive return on taxpayer’s investment” means information provided by the taxpayer requesting an increased refund of all sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107 that reasonably proves that any or all of the following dollar amounts, when calculated cumulatively, will offset the amount of taxes refunded as a result of the major maintenance and improvement project:
  - a. Enhanced or retained productivity (expressed in dollars);
  - b. Enhanced or retained revenue, sales or output (expressed in dollars);
  - c. Enhanced or retained employee compensation (expressed in dollars);
  - d. Enhanced or retained taxes paid (expressed in dollars); or
  - e. Any other quantifiable information requested by the AEDC that the taxpayer may provide as reasonable proof of positive return of the taxpayer’s investment in the major maintenance and improvement project;
6. “Used directly” means the same as defined under § 26-52-402(c), § 26-53-114(c) and Arkansas Gross Receipts Tax Rule GR-55.

## **V. Application and Approval Process for Discretionary 5.875% State Sales and Use Tax Refund)**

**Prerequisite: Taxpayers shall hold a direct pay or a limited direct pay sales and use tax permit from the DFA prior to filing an application with the AEDC requesting approval of an increased tax refund for major maintenance and improvement projects.**

1. A taxpayer submits to the AEDC Incentives Manager, a completed, signed Manufacturing Replacement and Repair Sales and Use Tax Refund Application, consisting of the following sections:
  - A. Applicant information including:
    - (i) The name, address, physical location and contact of the company for which the application is being submitted; and
    - (ii) A Statement of Project Need.
  - B. A Project Plan consisting of:
    - (i) Estimated start and completion dates of project;
    - (ii) A description of the project scope;
    - (iii) Project cost estimates; and
    - (iv) Data providing reasonable proof that there will be a positive return on the taxpayer’s investment in the major maintenance and improvement project that is sufficient to offset the refunded taxes.

- C. Certifications
    - (i) Signature of company official; and
    - (ii) Contract disclosure.
- 2. The AEDC Incentives Manager reviews the application to determine that:
  - A. The taxpayer holds a direct pay or a limited direct pay sales and use tax permit from the DFA;
  - B. The taxpayer is eligible for the increased refund for major maintenance and improvement projects provided for by Act 1404 of 2013, as amended;
  - C. The taxpayer has provided reasonable proof that there will be a positive return on the taxpayer's investment in the major maintenance and improvement project that is sufficient to offset the costs of the refund;
  - D. The taxpayer has provided a defined scope, beginning date, and ending date for the major maintenance and improvement project;
  - E. The refund is reasonably necessary for the taxpayer to remain competitive and preserve Arkansas jobs; and
  - F. Major maintenance and improvement eligible project expenditures will be at least \$3 million.
- 3.
  - A. If the AEDC determines that the application is complete and meets all requirements, the AEDC Incentives Manager prepares a financial incentive agreement and forwards one copy to the approved applicant for signature and return.
  - B. Unapproved applicants will be notified of the reasons for disapproval in writing by the AEDC.
- 4. Upon receipt of the signed financial incentive agreement from the approved applicant, the AEDC Incentives Manager prepares an approval letter and forwards the financial incentive agreement and the approval letter to the Executive Director of the AEDC for signature.
- 5. The Executive Director of the AEDC signs the financial incentive agreement and the approval letter and forwards each to the AEDC Incentives Manager for distribution.
- 6. The AEDC Incentives Manager, on behalf of the Executive Director of the AEDC:
  - A. Forwards the taxpayer's approved application, financial incentive agreement, signed approval letter, and any other pertinent documentation to the DFA Director;
  - B. Forwards a copy of the executed financial incentive agreement and approval letter to the approved applicant; and
  - C. Retains copies of all original documents in AEDC files.
- 7. The taxpayer shall contact DFA with questions regarding refund claims.
- 8. A taxpayer that has been approved for the increased refund for major maintenance and improvement projects may request changes to the project plan only by written amendment submitted to and approved by the Executive Director of the AEDC.

## **VI. Combinability of Expenditures**

An expenditure shall not qualify for both the increased refund for major maintenance and improvement projects and the retention tax credit provided for in § 15-4-2706(c).

1 State of Arkansas

2 91st General Assembly

3 Regular Session, 2017

*As Engrossed: S2/23/17*

## A Bill

SENATE BILL 362

4  
5 By: Senators L. Eads, Bledsoe, J. Dismang, J. English, J. Hendren, Hester, Irvin, B. Johnson, Standridge

6 By: Representatives Davis, Ballinger, Bentley, Bragg, Coleman, Collins, Dotson, D. Douglas, Gonzales,

7 Holcomb, Maddox, Richmond, Tucker, J. Williams, *Eaves*

### For An Act To Be Entitled

10 AN ACT CONCERNING ECONOMIC INCENTIVES FOR CERTAIN  
11 BUSINESSES AND INDUSTRIES; TO SUNSET THE RETENTION  
12 TAX CREDIT; TO SUNSET THE TAX REFUND FOR MAJOR  
13 MAINTENANCE AND IMPROVEMENT PROJECTS; TO CLARIFY THE  
14 EXISTING PROCEDURE FOR CLAIMING A REFUND OF TAX PAID  
15 ON PURCHASES RELATED TO THE REPAIR AND PARTIAL  
16 REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT  
17 AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR MAKING  
18 SUCH CLAIMS; TO INCREASE THE REFUND AVAILABLE FOR  
19 TAXES PAID ON PURCHASES RELATED TO THE REPAIR AND  
20 PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND  
21 EQUIPMENT; TO PHASE IN AN EXEMPTION FROM TAX FOR  
22 PURCHASES RELATED TO THE REPAIR AND PARTIAL  
23 REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT;  
24 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

### Subtitle

25  
26  
27  
28 TO SUNSET CERTAIN TAX INCENTIVES; TO  
29 AMEND THE LAW CONCERNING THE SALES AND  
30 USE TAX REFUND FOR THE REPAIR AND PARTIAL  
31 REPLACEMENT OF MANUFACTURING MACHINERY  
32 AND EQUIPMENT; AND TO DECLARE AN  
33 EMERGENCY.

34  
35  
36 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:



1  
2 SECTION 1. Arkansas Code § 15-4-2706(c), concerning investment tax  
3 credits under the Consolidated Incentive Act of 2003, is amended to add an  
4 additional subdivision to read as follows:

5 (7)(A) A qualified business may apply for the retention tax  
6 credit under this subsection through June 30, 2017.

7 (B)(i) An application for the retention tax credit under  
8 this subsection shall not be accepted on or after July 1, 2017.

9 (ii) However, projects that qualify for a retention  
10 tax credit based on an application filed through June 30, 2017, shall  
11 continue to earn credits as provided in this section.

12 (iii) Retention tax credits issued on a project that  
13 qualifies for retention tax credits based on an application filed through  
14 June 30, 2017, shall remain in effect and shall be taken and carried forward  
15 as otherwise provide in this section.

16  
17 SECTION 2. Arkansas Code § 15-4-3501, concerning the increased tax  
18 refund for major maintenance and improvement projects, is amended to add an  
19 additional subsection to read as follows:

20 (i)(1) A taxpayer may apply for an increased refund for major  
21 maintenance and improvement projects under this section through June 30,  
22 2022.

23 (2) An application for an increased refund for major maintenance  
24 and improvement projects under this section shall not be accepted on or after  
25 July 1, 2022.

26  
27 SECTION 3. Arkansas Code § 26-52-447(b), concerning the sales tax  
28 refund for partial replacement and repair of certain machinery and equipment,  
29 is amended to read as follows:

30 (b)(1) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and  
31 26-52-302 that are subject to a refund under this section are the taxes in  
32 excess of four and seven-eighths percent (4.875%).

33 (2) The taxes levied under §§ 26-52-301 and 26-52-302 that are  
34 subject to a refund under this section are the taxes in excess of the  
35 following rates:

36 (A) Beginning July 1, 2018, three and seven-eighths



1 percent (3.875%);

2 (B) Beginning July 1, 2019, two and seven-eighths percent  
3 (2.875%);

4 (C) Beginning July 1, 2020, one and seven-eighths percent  
5 (1.875%); and

6 (D) Beginning July 1, 2021, seven-eighths percent  
7 (0.875%).

8 (3) Beginning July 1, 2022, sales qualifying for the tax refund  
9 under this section are exempt from the taxes levied under this chapter.

10  
11 SECTION 4. Arkansas Code § 26-52-447(f) and (g), concerning the sales  
12 tax refund for partial replacement and repair of certain machinery and  
13 equipment, are amended to read as follows:

14 (f) To A taxpayer may claim the benefit of the tax refund under this  
15 section, a taxpayer shall hold only by using one (1) of the following  
16 methods:

17 (1)(A) Both:

18 (i) Obtaining a direct pay or a limited direct pay  
19 sales and use tax permit from the Department of Finance and Administration;  
20 and shall claim the tax refund under the direct pay or limited direct pay  
21 permit.

22 (ii) Self-refunding:

23 (a) At the time the taxpayer files his or her  
24 original sales and use tax report; or

25 (b) By later filing an amended sales or use  
26 tax report with the department.

27 (B) The statutes of limitation stated in § 26-18-306 apply  
28 to claims made under this subdivision (f)(1).

29 (C) Interest shall not accrue or be paid on a refund  
30 claimed under this subdivision (f)(1); or

31 (2)(A) Beginning July 1, 2018, for a taxpayer that does not hold  
32 a direct pay or limited direct pay permit, holds an active Arkansas sales and  
33 use tax permit, and files sales and use tax reports with the department,  
34 filing a claim for a credit or rebate with the department.

35 (B)(i) The credit or rebate authorized under this  
36 subdivision (f)(2) shall be obtained only by offsetting the amount of the

1 claimed credit or rebate against the state tax to be remitted with the  
2 taxpayer's sales and use tax reports.

3 (ii) If the total amount of the credit or rebate  
4 authorized under this subdivision (f)(2) is greater than the amount of the  
5 state tax to be remitted with the taxpayer's sales and use tax reports, the  
6 taxpayer is entitled to a refund of the difference between the amount of the  
7 tax owed and the amount of the credit or rebate authorized under this  
8 subdivision (f)(2).

9 (C) A taxpayer claiming a credit or rebate under this  
10 subdivision (f)(2) shall electronically file all sales and use tax reports.

11 (D) A claim for credit or rebate under this subdivision  
12 (f)(2) shall not be paid for a claim filed more than one (1) year following  
13 the date of the qualifying sale or more than one (1) year following the date  
14 of payment, whichever is later.

15 (E) Interest shall not accrue or be paid on an amount  
16 subject to a claim for a credit or rebate under this subdivision (f)(2).

17 (g) A claim for a credit or rebate shall not be paid under subsection  
18 (f)(2) of this section for a sale made before July 1, 2018.

19 (h) A taxpayer shall not claim the benefit of the refund under this  
20 section by filing a verified claim for refund with the department.

21 (g)(i) The following provisions of the Arkansas Tax Procedure Act, §  
22 26-18-101 et seq., apply to claims for a refund under this section:

23 (1) The time limitations that apply to claims for a refund of an  
24 overpayment of state tax; and

25 (2) The procedures that apply to the disallowance or proposed  
26 disallowance of claims for a refund.

27  
28 SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 7, is  
29 repealed.

30 Subchapter — Economic Investment Tax Credit Act

31  
32 26-52-701. Title.

33 This subchapter may be referred to and cited as the "Economic  
34 Investment Tax Credit Act".

35  
36 26-52-702. Definitions.

1       ~~As used in this subchapter:~~

2               ~~(1) "Corporate headquarters" means the home or center of~~  
3 ~~operations, including research and development, of a national or~~  
4 ~~multinational corporation;~~

5               ~~(2) "Defense industry project" means an investment of at least~~  
6 ~~five million dollars (\$5,000,000) and an increase in employment of at least~~  
7 ~~two hundred fifty (250) full-time permanent employees by a company which~~  
8 ~~manufactures components for the defense industry and whose unit cost exceeds~~  
9 ~~five hundred thousand dollars (\$500,000);~~

10              ~~(3) "Distribution center" means a facility for the reception,~~  
11 ~~storage, or shipping of:~~

12                   ~~(A) A business' own products which the business wholesales~~  
13 ~~to retail businesses or ships to its own retail outlets;~~

14                   ~~(B) Products owned by other companies with which the~~  
15 ~~business has contracts for storage and shipping if seventy-five percent (75%)~~  
16 ~~of the sales revenue is from out-of-state customers; or~~

17                   ~~(C) Products for sale to the general public if seventy-~~  
18 ~~five percent (75%) of the sales revenue is from out-of-state customers;~~

19               ~~(4) "Eligible business" means a business eligible for sales and~~  
20 ~~use tax credits under the provisions of this subchapter that has been in~~  
21 ~~continuous operation in Arkansas for at least two (2) years prior to the~~  
22 ~~initial application to the Director of the Arkansas Economic Development~~  
23 ~~Commission, has obtained a direct pay sales and use tax permit from the~~  
24 ~~Revenue Division of the Department of Finance and Administration under the~~  
25 ~~provisions of § 26-52-509, and is classified as one (1) or more of the~~  
26 ~~following types of businesses:~~

27                   ~~(A) Manufacturers classified in federal Standard~~  
28 ~~Industrial Classification codes 20-39, including semiconductor and~~  
29 ~~microelectronic manufacturers;~~

30                   ~~(B)(i) Computer businesses primarily engaged in providing~~  
31 ~~computer programming services, the design and development of prepackaged~~  
32 ~~software, businesses engaged in digital content production and preservation,~~  
33 ~~computer processing and data preparation services, information retrieval~~  
34 ~~services, and computer and data processing consultants and developers.~~

35                   ~~(ii) All businesses in this group must derive at~~  
36 ~~least seventy-five percent (75%) of their revenue from out-of-state sales and~~

1 ~~have no retail sales to the public;~~

2 ~~(C)(i) Businesses primarily engaged in motion picture~~  
3 ~~production.~~

4 ~~(ii) All businesses in this group must derive at~~  
5 ~~least seventy-five percent (75%) of their revenue from out-of-state sales and~~  
6 ~~have no retail sales to the public;~~

7 ~~(D) Businesses primarily engaged in commercial physical~~  
8 ~~and biological research as classified by Standard Industrial Classification~~  
9 ~~code 8731;~~

10 ~~(E) A distribution center with no retail sales to the~~  
11 ~~general public, unless seventy-five percent (75%) of the sales revenue is~~  
12 ~~from out-of-state customers;~~

13 ~~(F) An office sector business with no retail sales to the~~  
14 ~~general public;~~

15 ~~(G) A corporate or regional headquarters with no retail~~  
16 ~~sales to the general public; and~~

17 ~~(H) A coal mining operation that employs twenty-five (25)~~  
18 ~~or more net full-time permanent positions;~~

19 ~~(5) "Modernization" means to increase efficiency or to increase~~  
20 ~~productivity of the business through investment in machinery or equipment, or~~  
21 ~~both, and shall not include costs for routine maintenance;~~

22 ~~(6) "Office sector" means control centers that influence the~~  
23 ~~environment in which data processing, customer service, credit accounting,~~  
24 ~~telemarketing, claims processing, and other administrative functions that act~~  
25 ~~as production centers;~~

26 ~~(7) "Person" means a person as defined by § 26-18-104;~~

27 ~~(8)(A) "Project" means any construction, expansion, or~~  
28 ~~modernization in Arkansas by an eligible business.~~

29 ~~(B) The investment must exceed five million dollars~~  
30 ~~(\$5,000,000) or six million dollars (\$6,000,000) for projects involving~~  
31 ~~multiple locations within the State of Arkansas, including the cost of the~~  
32 ~~land, buildings, and equipment used in the construction, expansion, or~~  
33 ~~modernization and which construction, expansion, or modernization has been~~  
34 ~~approved by the Arkansas Economic Development Commission as a construction,~~  
35 ~~expansion, or modernization project which qualifies for the credit under the~~  
36 ~~provisions of this subchapter;~~

1           ~~(9) "Regional headquarters" means the center of operations for a~~  
2 ~~specific geographic area; and~~

3           ~~(10) "Routine maintenance" means the replacement of existing~~  
4 ~~machinery parts with like parts.~~

5  
6           ~~26-52-703. Precluded provisions supplemental.~~

7           ~~(a) A recipient of benefits under this subchapter is precluded from~~  
8 ~~receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-~~  
9 ~~1701 et seq., for the same project.~~

10           ~~(b) A recipient of benefits under this subchapter is precluded from~~  
11 ~~receiving benefits under the Manufacturer's Investment Tax Credit Act, § 26-~~  
12 ~~51-2001 et seq., for the same project.~~

13  
14           ~~26-52-704. Credit granted.~~

15           ~~There is granted a credit against the state sales and use tax liability~~  
16 ~~of an eligible business of seven percent (7%) of the amount of the total~~  
17 ~~project cost of any project, subject to the limit set out in § 26-52-705.~~

18  
19           ~~26-52-705. Qualification and determination of credit.~~

20           ~~(a)(1) In order to qualify for and receive the credits afforded by~~  
21 ~~this subchapter, any eligible business undertaking a project shall submit a~~  
22 ~~project plan to the Director of the Arkansas Economic Development Commission~~  
23 ~~thirty (30) days prior to the start of construction.~~

24           ~~(2) The plan submitted to the Arkansas Economic Development~~  
25 ~~Commission shall contain such information as may be required by the Director~~  
26 ~~of the Arkansas Economic Development Commission to determine eligibility.~~

27           ~~(b)(1) Upon determination by the Director of the Arkansas Economic~~  
28 ~~Development Commission that the project qualifies for credit under this~~  
29 ~~subchapter, the Director of the Arkansas Economic Development Commission~~  
30 ~~shall certify to the Director of the Department of Finance and Administration~~  
31 ~~that the project is qualified and transmit with his or her certification the~~  
32 ~~documents upon which the certification was based or copies of the documents.~~

33           ~~(2) Upon receipt by the Director of the Department of Finance~~  
34 ~~and Administration of a certification from the Director of the Arkansas~~  
35 ~~Economic Development Commission that an eligible business as defined by § 26-~~  
36 ~~52-702 is entitled to credit under this subchapter, the Director of the~~

1 ~~Department of Finance and Administration shall provide forms to the eligible~~  
2 ~~business on which to claim the credit.~~

3 ~~(c)(1) At the end of the calendar year in which the application was~~  
4 ~~made to the Director of the Arkansas Economic Development Commission and at~~  
5 ~~the end of each calendar year thereafter until the project is completed, the~~  
6 ~~eligible business shall certify, on the form provided by the Director of the~~  
7 ~~Department of Finance and Administration, the amount of expenditures on the~~  
8 ~~project during the preceding calendar year.~~

9 ~~(2)(A) Upon receipt of the form certifying expenditures, the~~  
10 ~~Director of the Department of Finance and Administration shall determine the~~  
11 ~~amount due as a credit for the preceding calendar year and issue a memorandum~~  
12 ~~of credit to the eligible business in the amount of seven percent (7%) of the~~  
13 ~~expenditure.~~

14 ~~(B)(i)(a)(1) The credit shall then be applied against the~~  
15 ~~eligible business' state sales or use tax liability in the year following the~~  
16 ~~year of the expenditure.~~

17 ~~(2) However, if the credit is not used~~  
18 ~~in the calendar year following the expenditure, it may be carried over to the~~  
19 ~~next succeeding calendar year for a total period of six (6) years following~~  
20 ~~the year in which the credit was first available for use or until the credit~~  
21 ~~is exhausted, whichever occurs first.~~

22 ~~(b) For eligible defense projects, if the~~  
23 ~~credit is not used in the calendar year following the expenditure, the credit~~  
24 ~~may be carried over to the next succeeding calendar year for a total of nine~~  
25 ~~(9) years following the year in which the credit was first available for use~~  
26 ~~or until the credit is exhausted, whichever occurs first.~~

27 ~~(ii)(a) The credit shall be used by the eligible~~  
28 ~~business as a credit against the regular direct-pay sales or use tax return~~  
29 ~~of the business.~~

30 ~~(b) In no event shall the credit used on any~~  
31 ~~regular return be more than fifty percent (50%) of the eligible business'~~  
32 ~~total state sales or use tax liability for the reporting period, except that~~  
33 ~~a company with an eligible defense industry project may claim a credit for~~  
34 ~~one hundred percent (100%) of the sales and use tax liability for the~~  
35 ~~reporting period.~~

36 ~~(iii) The Director of the Department of Finance and~~

1 ~~Administration may require proof of these expenditures.~~

2 ~~(iv)(a) The Director of the Department of Finance~~  
3 ~~and Administration may examine those records necessary and specific to the~~  
4 ~~project to determine credit eligibility.~~

5 ~~(b) Any credits disallowed will be subject to~~  
6 ~~payment in full.~~

7 ~~(d) For all projects approved after July 1, 1997, in order to receive~~  
8 ~~credit for project costs, the project costs must be incurred within five (5)~~  
9 ~~years from the date of certification of the project plan by the Director of~~  
10 ~~the Arkansas Economic Development Commission.~~

11 ~~(e)(1) If project costs exceed the initial project cost estimate~~  
12 ~~included in the financial incentive plan, the business shall amend the~~  
13 ~~financial incentive plan to include updated cost figures.~~

14 ~~(2) Amendments that exceed fifty percent (50%) of the original~~  
15 ~~financial incentive plan estimate shall be submitted as a new project.~~

16 ~~(3) An amendment shall not change the start date of the original~~  
17 ~~project.~~

18  
19 ~~26-52-706. Administration.~~

20 ~~(a) A person claiming credit under a provision of this subchapter is a~~  
21 ~~"taxpayer" within the meaning of § 26-18-104 and shall be subject to all~~  
22 ~~applicable provisions of § 26-18-104.~~

23 ~~(b) Administration of the provisions of this subchapter shall be under~~  
24 ~~the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

25 ~~(c) The Director of the Arkansas Economic Development Commission may~~  
26 ~~promulgate such rules and regulations as are necessary to carry out the~~  
27 ~~intent and purposes of this subchapter.~~

28  
29 SECTION 6. Arkansas Code § 26-53-149(b), concerning the use tax refund  
30 for partial replacement and repair of certain machinery and equipment, is  
31 amended to read as follows:

32 ~~(b)(1)~~ Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and  
33 26-53-107 that are subject to a refund under this section are the taxes in  
34 excess of four and seven-eighths percent (4.875%).

35 (2) The taxes levied under §§ 26-53-106 and 26-53-107 that are  
36 subject to a refund under this section are the taxes in excess of the

1 following rates:

2 (A) Beginning July 1, 2018, three and seven-eighths  
3 percent (3.875%);

4 (B) Beginning July 1, 2019, two and seven-eighths percent  
5 (2.875%);

6 (C) Beginning July 1, 2020, one and seven-eighths percent  
7 (1.875%); and

8 (D) Beginning July 1, 2021, seven-eighths percent  
9 (0.875%).

10 (3) Beginning July 1, 2022, purchases qualifying for the tax  
11 refund under this section are exempt from the taxes levied under this  
12 chapter.

13  
14 SECTION 7. Arkansas Code § 26-53-149(f) and (g), concerning the use  
15 tax refund for partial replacement and repair of certain machinery and  
16 equipment, are amended to read as follows:

17 (f) ~~To A taxpayer may~~ claim the benefit of the tax refund under this  
18 section, a taxpayer shall hold only by using one (1) of the following  
19 methods:

20 (1)(A) Both:

21 (i) Obtaining a direct pay or a limited direct pay  
22 sales and use tax permit from the Department of Finance and Administration;  
23 and shall claim the tax refund under the direct pay or limited direct pay  
24 permit.

25 (ii) Self-refunding:

26 (a) At the time the taxpayer files his or her  
27 original sales and use tax report; or

28 (b) By later filing an amended sales or use  
29 tax report with the department.

30 (B) The statutes of limitation stated in § 26-18-306 apply  
31 to claims made under this subdivision (f)(1).

32 (C) Interest shall not accrue or be paid on a refund  
33 claimed under this subdivision (f)(1); or

34 (2)(A) Beginning July 1, 2018, for a taxpayer that does not hold  
35 a direct pay or limited direct pay permit, holds an active Arkansas sales and  
36 use tax permit, and files sales and use tax reports with the department.



1 filing a claim for the credit or rebate with the department.

2 (B)(i) The credit or rebate authorized under this  
3 subdivision (f)(2) shall be obtained only by offsetting the amount of the  
4 claimed credit or rebate against the state tax to be remitted with the  
5 taxpayer's sales and use tax reports.

6 (ii) If the total amount of the credit or rebate  
7 authorized under this subdivision (f)(2) is greater than the amount of the  
8 state tax to be remitted with the taxpayer's sales and use tax reports, the  
9 taxpayer is entitled to a refund of the difference between the amount of the  
10 tax owed and the amount of the credit or rebate authorized under this  
11 subdivision (f)(2).

12 (C) A taxpayer claiming a credit or rebate under this  
13 subdivision (f)(2) shall electronically file all sales and use tax reports.

14 (D) A claim for credit or rebate under this subdivision  
15 (f)(2) shall not be paid for a claim filed more than one (1) year following  
16 the date of the qualifying purchase or more than one (1) year following the  
17 date of payment, whichever is later.

18 (E) Interest shall not accrue or be paid on an amount  
19 subject to a claim for a credit or rebate under this subdivision (f)(2).

20 (g) A claim for a credit or rebate shall not be paid under subsection  
21 (f)(2) of this section for a purchase made before July 1, 2018.

22 (h) A taxpayer shall not claim the benefit of the refund under this  
23 section by filing a verified claim for refund with the department.

24 (g)(i) The following provisions of the Arkansas Tax Procedure Act, §  
25 26-18-101 et seq., apply to claims for a refund under this section:

26 (1) The time limitations that apply to claims for a refund of an  
27 overpayment of state tax; and

28 (2) The procedures that apply to the disallowance or proposed  
29 disallowance of claims for a refund.

30  
31 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
32 General Assembly of the State of Arkansas that most states exempt from sales  
33 and use tax the sale of property and labor associated with the modification,  
34 partial replacement, and repair of manufacturing machinery and equipment;  
35 that other states apply a reduced tax rate to the sale of property and labor  
36 associated with the modification, partial replacement, and repair of

1 manufacturing machinery and equipment; that Arkansas taxes the sale of  
2 property and labor associated with the modification, partial replacement, and  
3 repair of manufacturing machinery and equipment at a tax rate of four and  
4 seven-eighths percent (4.875%) after application of the refund of tax paid  
5 for property and labor associated with the modification, partial replacement,  
6 and repair of manufacturing machinery and equipment; that the Arkansas  
7 Business and Economic Development Incentives Study conducted by Fluor Global  
8 Location Strategies and presented to the Bureau of Legislative Research in  
9 2006 classified Arkansas as the worst of the twelve states in the southeast  
10 region on the taxation of sales of industrial materials used in  
11 manufacturing; that Alabama, Mississippi, North Carolina, and other states  
12 have phased in exemptions for sales of property and labor associated with the  
13 modification, partial replacement, and repair of manufacturing machinery and  
14 equipment over time; that under the Streamlined Sales and Use Tax Agreement  
15 to which Arkansas is a party, reductions in sales and use tax must be  
16 implemented through a refund or rebate mechanism until a complete exemption  
17 is achieved; and that this act is immediately necessary because Arkansas, in  
18 imposing an effective tax rate of four and seven-eighths percent (4.875%)  
19 after application of the refund of tax paid for property and labor associated  
20 with the modification, partial replacement, and repair of manufacturing  
21 machinery and equipment, is not competitive with surrounding states and  
22 states in the southeast region, which costs the state present and future  
23 jobs. Therefore, an emergency is declared to exist, and this act being  
24 immediately necessary for the preservation of the public peace, health, and  
25 safety shall become effective on:

26 (1) The date of its approval by the Governor;

27 (2) If the bill is neither approved nor vetoed by the Governor,  
28 the expiration of the period of time during which the Governor may veto the  
29 bill; or

30 (3) If the bill is vetoed by the Governor and the veto is  
31 overridden, the date the last house overrides the veto.

32  
33 */s/L. Eads*

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35 **APPROVED: 03/13/2017**