

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: S3/24/97

# A Bill

SENATE BILL 697

4  
5 By: Senator Smith  
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## For An Act To Be Entitled

9 "AN ACT TO PROVIDE AN INCOME TAX EXEMPTION FOR CERTAIN  
10 INVESTMENT INCOME OF AN OWNER OF A NEW OR EXPANDED  
11 AGRICULTURAL COMMODITY PROCESSING FACILITY; TO PROVIDE A  
12 TAX CREDIT FOR CERTAIN INVESTMENTS IN CERTAIN AGRICULTURAL  
13 PROCESSING COOPERATIVES; AND FOR OTHER PURPOSES."

## Subtitle

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15 "INCENTIVES FOR NEW OR EXPANDED  
16 AGRICULTURAL COMMODITY PROCESSING  
17 FACILITY AND AGRICULTURAL PROCESSING  
18 COOPERATIVES."  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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### SECTION 1. For purposes of this act:

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24 (1) "Agricultural commodity processing facility" means building,  
25 structures, fixtures and improvements used or operated primarily for the  
26 processing or production of marketable products from agricultural commodities.  
27 The term does not include a facility that provides only, storage, cleaning,  
28 drying or transportation of agricultural commodities.

29 (2) Arkansas agricultural producer means an individual who produces  
30 agricultural commodities by new processes in this state and employs twenty-  
31 five (25) or less employees.

32 (3) Agricultural commodities means a farm or ranch producer of catfish  
33 or rice as classified under Standard Industrial Classification 0273 and 0112.

34 (4) "Arkansas producer-owned agricultural processing cooperative" means  
35 a legal entity in the nature of a partnership or business undertaking  
36 agricultural transactions or agricultural commercial enterprises for mutual

1 profit which are owned and controlled by Arkansas agricultural producers. An  
2 Arkansas producer-owned agricultural processing cooperative requires a  
3 community of interest in the performance of the undertaking, transaction or  
4 enterprise, a right to direct and govern the policy in connection therewith  
5 and the duty, which may be altered by agreement, to share both in profit and  
6 losses. The term does not include a cooperative that provides only storage,  
7 cleaning, drying, or transportation of agricultural commodities.

8 (5) "Arkansas producer-owned agricultural processing marketing  
9 association" means a legal entity owned by Arkansas producers of agricultural  
10 commodities and organized to jointly market agricultural commodities,  
11 facilitate the marketing process and to promote and stimulate the processing,  
12 sales, and marketing of agricultural commodities. The term does not include a  
13 marketing association that provides only storage, cleaning, drying, or  
14 transportation of agricultural commodities.

15 (6) "Arkansas producer-owned agricultural processing venture" means a  
16 legal entity in the nature of a corporation or company organized to invest in  
17 or operate an agricultural commodity processing facility operated primarily  
18 for the processing or production of marketable products from agricultural  
19 commodities. The term does not include a venture that provides only storage,  
20 cleaning, drying, or transportation of agricultural commodities.

21 (7) "Direct investment" means the payment of money in an Arkansas  
22 producer-owned agricultural processing cooperative, venture, or marketing  
23 associations or the transfer of any form of economic value, whether tangible  
24 or intangible, other than money.

25 (8) "Facility" means each part of the facility which is used in a  
26 process primarily for:

27 (A) The processing of agricultural commodities, including  
28 receiving or storing agricultural commodities;

29 (B) Transporting the agricultural commodities or product before,  
30 during or after the processing; or

31 (C) Packaging or otherwise preparing the product for sale or  
32 shipment.

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34 SECTION 2. (a) The owner of a new or expanded agricultural commodity  
35 processing facility in this state may claim a tax credit from Arkansas taxable  
36 income, or in the case of an individual, the Arkansas adjusted gross income,

1 in the amount of five percent (5%) of the investment by the owner in the new  
2 or expanded agricultural commodity processing facility.

3 (b) The Revenue Division of the Department of Finance and  
4 Administration shall compile the total amount of tax credits used pursuant to  
5 the provisions of this act for each calendar year.

6 (c)(1) When the total amount of tax credits used pursuant to the  
7 provisions of this act exceeds one million dollars (\$1,000,000) in any taxable  
8 year, the tax credits established by this act shall expire on December 31 of  
9 the taxable year following the taxable year in which the tax credits were used  
10 pursuant to the provisions of this act exceed one million dollars  
11 (\$1,000,000).

12 (2) However, any taxpayer having been issued a certificate of tax  
13 credit approval on or prior to December 31 may complete the project and shall  
14 be entitled to the tax credits provided under this subchapter without regard  
15 to the fact that the availability of the tax credits has otherwise expired.

16 (d) Any amount of the exemption permitted to be excluded pursuant to  
17 the provisions of this paragraph but not used in any year may be carried  
18 forward as an exemption from income pursuant to the provisions of this act for  
19 a period not to exceed six (6) years after the date the original investment  
20 was made.

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22 SECTION 3. (a) For purposes of this section, an agricultural commodity  
23 shall be deemed to be produced within this state if it is substantially  
24 produced, by any person or legal entity:

25 (1) Authorized to do and doing business under the laws of this state;

26 (2) Paying all taxes duly assessed; and

27 (3) Domiciled within this state by having a location of production  
28 within this state.

29 (b) There shall be allowed a credit against the tax imposed by Arkansas  
30 Code §26-51-101 et seq. for direct investments by Arkansas agricultural  
31 producers in Arkansas producer-owned agricultural processing cooperatives,  
32 Arkansas producer-owned agricultural processing ventures, or Arkansas  
33 producer-owned agricultural processing marketing associations created and  
34 designed to develop and advance the production, processing, handling and  
35 marketing of agricultural commodities grown, made or manufactured in Arkansas.

36 (1) The amount of the credit shall be five percent (5%) of the amount

1 of the investment by the Arkansas agricultural producer in Arkansas producer-  
2 owned agricultural processing cooperatives, ventures, or marketing  
3 associations.

4 (2) The Revenue Division of the Department of Finance and  
5 Administration shall compile the total amount of tax credits used pursuant to  
6 the provisions of this subchapter for each calendar year.

7 (3)(A) When the total amount of tax credits used pursuant to the  
8 provisions of this act exceeds one million dollars (\$1,000,000) in any taxable  
9 year, the tax credits established by the act shall expire on December 31 of  
10 the taxable year following the taxable year in which the tax credits used  
11 pursuant to the provisions of this act exceed one million dollars  
12 (\$1,000,000).

13 (B) However, any taxpayer having been issued a certificate of tax  
14 credit approval on or prior to December 31 may complete the project and shall  
15 be entitled to the tax credits provided under this subchapter without regard  
16 to the fact that the availability of the tax credits has otherwise expired.

17 (c) If the credit allowed pursuant to this section exceeds the amount  
18 of state income taxes due or if there are no state income taxes due on the  
19 income of the taxpayer, the amount of credit allowed but not used in any  
20 taxable year may be carried forward as a credit against subsequent income tax  
21 liability for a period not exceeding six (6) years after the date the original  
22 investment was made.

23 (d)(1) For any taxable year during which a taxpayer sells or otherwise  
24 disposes of the ownership interest for which a tax credit has previously been  
25 allowed to the taxpayer or for which a tax credit will be allowed to the  
26 taxpayer for the year in which the sale or other disposition of the ownership  
27 interest is made, the taxpayer shall be required to reduce the cost of the  
28 ownership interest in the Arkansas producer-owned agricultural processing  
29 cooperative, venture, or marketing association, as reported upon the  
30 applicable income tax return, by the amount of the tax credit which has  
31 previously been granted or for which the taxpayer is claiming credit if the  
32 credit is allowable for the year during which the sale or other disposition is  
33 made.

34 (2) If a taxpayer sells or otherwise disposes of an ownership interest  
35 in the Arkansas producer-owned agricultural processing cooperative, venture,  
36 or marketing association for which the tax credit authorized by this section

1 may be taken in a taxable year after the year in which the ownership interest  
2 in the Arkansas producer-owned agricultural processing cooperative, venture,  
3 or marketing association is sold or otherwise disposed of, the credit  
4 authorized by this section shall be reduced to account for the prior sale or  
5 other disposition.

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7 SECTION 4. (a) To claim the benefits of this act, a taxpayer must  
8 obtain certification from the Director of the Arkansas Industrial Development  
9 Commission certifying to the Revenue Division of the Department of Finance and  
10 Administration that the taxpayer is engaged in Arkansas producer-owned  
11 agricultural processing cooperatives, Arkansas producer-owned agricultural  
12 processing ventures, or Arkansas producer-owned agricultural processing  
13 marketing associations created and designed to develop and advance the  
14 production, processing, handling and marketing of agricultural commodities  
15 grown, made or manufactured in Arkansas.

16 (b) The Arkansas Development Commission, or its successor, and the  
17 Revenue Division of the Department of Finance and Administration shall  
18 promulgate regulations as necessary to administer this act. These rules or  
19 regulations may include, but are not limited to, the establishment of  
20 technical specifications and requirements for information and documentation  
21 for taxpayers seeking a credit under this act.

22 (c) The Revenue Division of the Department of Finance and  
23 Administration shall establish a form which it shall make available for  
24 purposes of claiming the credits authorized by this act. The Revenue Division  
25 shall be authorized to conduct an investigation of the relevant facts as may  
26 be required in order to verify the eligibility of a claimant to receive a  
27 credit for any applicable income tax year.

28 (d) The Revenue Division of the Department of Finance and  
29 Administration, on or before January 31 of each year, shall submit a report  
30 regarding the tax credits authorized by this act to the Speaker of the House  
31 of Representatives and the President Pro Tempore of the Senate of the Arkansas  
32 Legislature. The report shall summarize the total amount of tax credits  
33 claimed and likely to be claimed and allowed pursuant to this act.

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35 SECTION 5. The income tax provisions of this act shall be in full force  
36 and effect for all taxable years beginning on and after January 1, 1998.

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SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/Smith*