Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas *As Engrossed: H2/12/99*

82nd General Assembly

A Bill

Regular Session, 1999 HOUSE BILL 1468

By: Representative Bush

For An Act To Be Entitled

"AN ACT TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995 TO REDEFINE THE SCOPE OF ELIGIBLE BUSINESSES WHICH MAY QUALIFY FOR BENEFITS UNDER THIS ACT; TO SPECIFY TIME LIMITATIONS FOR FILING CLAIMS FOR TAX REFUNDS; TO CLARIFY THE DEFINITION OF 'AVERAGE HOURLY WAGE'; TO CLARIFY THE DEFINITION OF 'NET NEW FULL-TIME PERMANENT EMPLOYEE'; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

"TO AMEND THE ARKANSAS ECONOMIC DEVELOPMENT ACT OF 1995."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1: Arkansas Code Title 15, Chapter 4, Subchapter 19 is amended to read as follows:

"15-4-1902. Definitions.

As used in this subchapter:

(1) 'Average hourly wage' means the average wage of the net new full-time permanent employees based on payroll for the most recent quarter reported to the Employment Security Department, and is computed by using the total of the net new full-time permanent employees' reported taxable earnings, including overtime pay, divided by the number of weeks worked, divided by the average hours worked per week per net new full-time permanent employee~~;~~. One quarter of the new employee's annual bonus amount may be added to the reported taxable earnings;

(2) 'Corporate headquarters' means the home or center of operations, including research and development, of a national or multinational corporation;

(3) 'Department' means the Department of Economic Development;

(4) 'Director' means the director of the department;

(5) 'Distribution center' means a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets;

(6) 'Financial incentive plan' means an agreement entered into by a business and the department to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas;

(7) 'Governing authority' means the quorum court of a county or the governing body of a municipality;

(8) 'High unemployment' means an unemployment rate in excess of ten percent (10%), or more than three percent (3%) above the state's average unemployment rate, for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department;

(9)~~(A)~~ 'Net new full-time permanent employee' means a position or job which was created as a result of a project, and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned ~~or claimed.~~;

~~(B)~~ (A) The position or job held by such employee or employees must have ~~had someone working in it~~ been filled for at least twenty-six (26) consecutive weeks, with an average of at least thirty (30) hours per week~~.~~;

~~(C)~~ (B) Provided, however, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this subchapter;

(10)~~(A)~~ 'Office sector business' means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers~~.~~;

~~(B) 'Office sector business' is also referred to as 'back office industry';~~

(11) 'Program' means this subchapter; and

(12)(A) 'Project' means the construction or expansion of ~~a plant or facility~~ an eligible business as defined in paragraph 17 below in Arkansas costing at least five million dollars ($5,000,000), including the cost of land, buildings, and equipment used in the construction or expansion, which has been approved by the department as a construction or expansion qualifying for tax benefits under this subchapter.

(B) The project cost shall include:

(i) All activities and costs associated with the construction of a new plant or facility;

(ii) All activities and costs associated with the expansion of an established plant or facility by adding to the building or production equipment or support infrastructure, or both;

(iii) All activities and costs associated with the replacement of production or processing equipment or support infrastructure, or both.

(13) ~~[As enacted by Act 1997, No. 807, § 15]~~ 'Regional headquarters' means the center of operations for a specific geographical area.

~~(13) [As enacted by Acts 1997, No. 807, § 23]~~ (14) The sales factor of a project plant or facility is a fraction, the numerator of which is the total sales of the project plant or facility in this state during the tax period, and the denominator of which is the total sales of the taxpayer's Arkansas operations during the tax period.

~~(14)~~(15) The payroll factor of a project plant or facility is a fraction, the numerator of which is the total amount paid in this state during the tax period by the project plant or facility for compensation to employees working in the plant or facility, and the denominator of which is the total compensation paid in the taxpayer's Arkansas operations during the tax period.

~~(15)~~(16) The property factor of a project plant or facility is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used at the project plant or facility during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period in Arkansas.

(17) 'Eligible business' is defined as one or more of the following:

(A) Manufacturers classified in Federal Standard Industrial Classification (SIC) codes 20-39, including semiconductor and microelectronic manufacturers;

(B) Computer businesses primarily engaged in providing computer programming services; the design and development of prepackaged software; businesses engaged in digital content production and preservation; computer processing and data preparation services; information retrieval services; computer and data processing consultants and developers. All businesses in this group must derive at least 60% of their revenue from out of state sales and have no retail sales to the general public;

(C) Businesses primarily engaged in commercial physical and biological research as classified by SIC code 8731;

(D) Businesses primarily engaged in motion picture productions. All businesses in this group must derive at least 60% of their revenue from out of state sales and have no retail sales to the general public;

(E) A distribution center, with no retail sales to the general public;

(F) An office sector business, with no retail sales to the general public; *and*

(G) A corporate or regional headquarters with no retail sales to the general public."

SECTION 2. Arkansas Code 15-4-1903 is amended to read as follows:

"15-4-1903. Powers and duties of the department. The department shall administer the provisions of this subchapter and shall have the following powers and duties in addition to those mentioned in this subchapter and in other laws of this state:

(1) To promulgate rules and regulations in accordance with the Arkansas Administrative Procedure Act, as amended, § 25-15-201 et seq., necessary to carry out the provisions of this subchapter;

(2)(A) To negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility, or expanding an existing facility, that would employ at least one hundred (100) net new full-time permanent employees and expend at least five million dollars ($5,000,000) on the project.

(B)(i) The department is authorized to negotiate with a business a financial incentive plan granting an income tax credit based upon the business' annual amount of debt service, principal and interest, paid to a lender in connection with the project financing.

(ii) The amount of credit that may be claimed each year will depend on the average hourly wage of the net new full-time permanent employees.

(iii) The amount of the income tax credit that may be claimed each year shall be negotiated in accordance with the following:

~~Average Hourly Wage~~	~~Annual Income Tax Credit~~
~~Less than $7.00 per hour~~	~~None~~
~~$7.00 to $7.99 per hour~~	~~Up to 70% of the income tax liability~~
~~$8.00 to $8.99 per hour~~	~~Up to 85% of the income tax liability~~
~~$9.00 per hour and above~~	~~Up to 100% of the income tax liability~~

(a) When the average hourly wage of the net new fulltime permanent employee is between one hundred and twenty-five percent (125%) and one hundred and forty nine percent (149%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of fifty percent (50%) of the employer’s state income tax liability;

(b) When the average hourly wage of the net new fulltime permanent employee is between one hundred and fifty percent (150%) and one hundred and seventy four percent (174%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of seventy-five percent (75%) of the employer’s state income tax liability;

(c) When the average hourly wage of the net new fulltime permanent employee is one hundred and seventy-five percent (175%) or more of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of one hundred percent (100%) of the employer’s state income tax liability;

(d) If the average hourly wage of the net new fulltime permanent employee is less than one hundred and twenty-five percent (125%) of the lesser of the county or state annual average weekly wage per employee the employer shall receive no tax credit under this section.

(iv) If the project is located in a high unemployment area ~~and the average hourly wage exceeds seven dollars ($7.00) per hour~~, the director of the department will consider all the factors of the project and negotiate with

~~may authorize~~ the business an ~~to claim the~~ income tax credit in an amount up to one hundred percent (100%) of the state income tax liability;

(3)(A) To provide the Department of Finance and Administration with a copy of each financial incentive plan entered into by the department with each of the qualifying businesses, so that the Department of Finance and Administration will know the maximum amount of income tax credit the qualified business may claim during the term of the agreement.

(B) The financial incentive plan shall specify the annual amount of payments, including principal and interest, the business will make to the lender in connection with the project financing, and attach copies of the business' loan documents which reflect the amount of the annual payments; and

(4) To collect a one-time fee of two thousand five hundred dollars ($2,500) for the department's administrative and legal fees associated with the preparation of the financial incentive plan."

SECTION 3. Arkansas Code 15-4-1904 is amended to read as follows:

"15-4-1904. Qualifications.

To qualify for the benefits of this subchapter, the business must:

(1) Be ~~either~~ an eligible business as defined in §15-4-1902:

~~(A) An industry that comes within the standard industrial classification numbers 20-39, 7375, or 7376; or~~

~~(B) An office sector business, corporate headquarters, regional headquarters, or distribution center which will not make retail sales to the general public;~~

(2) Hire at least one hundred (100) net new full-time permanent employees within twenty-four (24) months of the date the financial incentive plan was signed by the department and the business;

(3) Expend at least five million dollars ($5,000,000) on the project covered by the financial incentive plan;

(4) Agree to certify to the Department of Finance and Administration the number of net new full-time permanent employees and the average hourly wage of the net new full-time permanent employees once the number of net new full-time permanent employees reaches one hundred (100); and

(5) Agree to certify to the Department of Finance and Administration within thirty (30) days after the number of net new full-time permanent employees falls below one hundred (100) or the average hourly wage falls below

the amount specified in the financial incentive plan."

SECTION 4. Arkansas Code 15-4-1906 is amended to read as follows:

"15-4-1906. Refund of sales and use tax - Income tax credit.

(a) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use taxes imposed by the state and a municipality or county, if the municipality or county authorized the refund of its local tax, on the purchases of the material used in the construction of a building or buildings, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment to be located in or in connection with such building.

(b)(1) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized, provided that:

(A) ~~The qualified business is~~ ~~an~~ ~~industry~~ <u>The company is a business as defined in §15-4-1902</u> ~~that fits into Standard Industrial Classification numbers 20-39, 7375, or 7376, or is a distribution center, corporate headquarters, regional headquarters, or office sector business located within Arkansas~~;

(B) The business and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except where it is not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency; and

(C)(i) The business:

(a) Files an endorsement resolution with the department and the Department of Finance and Administration; and

(b) Files with the Department of Finance and Administration a copy of the financial incentive plan the business entered into with the department.

(ii) The endorsement resolution must be approved by the governing body of a municipality or county in whose jurisdiction the facility is located and must:

(a) Approve the specific entity's participation in the program; and

(b)(1) Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program.

(2) A municipality or county can authorize the refund of all or part of a tax levied by it, but cannot authorize the refund of any tax not levied by it.

~~(2) For an office sector business, a corporate headquarters, regional headquarters, or a distribution center to qualify for the benefits of this subchapter, it must not make retail sales to the general public.~~

~~(3)~~ (2)(A) The requisite number of net new full-time permanent employees must be employed by the business within twenty-four (24) months ~~of~~ following the date the financial incentive plan was signed.

(B) In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four-month period, the business can file a written application with the department explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the director and the Chief Fiscal Officer of the State determine that the need for additional time is due to:

(i) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired;

(ii) The project as originally planned will require more than twenty-four (24) months to complete; or

(iii) A change in the business ownership or business structure due to a merger or acquisition.

(c)(1)(A) The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit for the project debt service payments made by the business during that tax year.

(B) The amount of income tax credit taken during any tax year shall not exceed the Arkansas income tax liability resulting from the project plant or facility. The income tax liability of the project plant or facility shall be determined by adding the sales factor, payroll factor and property factor of the plant or facility and dividing the sum by three (3) to arrive at the project apportionment percentage. The total Arkansas corporate income tax liability of the corporation shall be multiplied by the project apportionment percentage to arrive at the income tax liability arising from the project. The income tax credit available may then be used to offset the income tax liability arising from the project as agreed ~~for~~ upon in the financial incentive plan.

(2) However, if the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding nine (9) tax years, or until the financial incentive plan expires, whichever occurs first.

(d) An income tax credit as provided for in subsection (c) of this section shall be authorized provided that:

(1) The request for such credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located and a copy of the financial incentive plan the business entered into with the department; and

(2) All of the <u>net</u> new <u>full-time</u> permanent employees are employed at the facility.

<u>(3) Benefits for the same project are not being claimed under the Arkansas Economic Development Incentive Act of 1993, as amended.</u>

(e)(1)(A) If the number of <u>net</u> new <u>full-time</u> permanent employees drops below one hundred (100) after twenty-four (24) months from the date the financial incentive plan is signed, all benefits under the financial incentive plan will be terminated, unless the Chief Fiscal Officer of the State approves a written request filed by the business explaining why the number of <u>net</u> new <u>full-time</u> permanent employees fell below one hundred (100).

(B) The Chief Fiscal Officer of the State may grant the business up to twenty-four (24) months to bring the number of <u>net</u> new <u>full-time</u> permanent employees back up to at least one hundred (100), and may approve the continuation of the benefits during that period.

(2) In the event that a business fails to notify the Department of Finance and Administration that the number of employees has fallen below one hundred (100), or that the average hourly wage has fallen below the amount specified in the financial incentive plan, the business will be liable for the repayment of all benefits which were received by the business, plus penalty and interest.

(f)(1) Any business receiving benefits under this program shall be liable for the repayment of any benefits received, plus penalty and interest, if it does not comply with:

(A) The terms of the financial incentive plan;

(B) The requirements of this subchapter; or

(C) Any rule or regulation promulgated pursuant to this subchapter.

(2) The Chief Fiscal Officer of the State may bring any lawful action to recover any amount for which the recipient is liable."

SECTION 5. 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 6. 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 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. <u>EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that existing Arkansas businesses must remain competitive in today's global economy; that the tax incentive provided by this act is necessary to provide businesses with the incentive to invest in Arkansas and hire Arkansans; that other states compete with Arkansas for the location or expansion of business activity and this incentive is also necessary to offer the companies a business environment compatible with other states; and that without this incentive companies considering locations or expansions of their businesses may choose to locate in another state, depriving Arkansans of these jobs and the economic benefit that the jobs bring to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the</u>

veto.

/s/ Bush