

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

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S2/10/99 S2/12/99

A Bill

SENATE BILL 354

5 By: Senator Webb
6 By: Representative Haak
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For An Act To Be Entitled

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10 "AN ACT TO AMEND THE MANUFACTURER'S INVESTMENT SALES
11 AND USE TAX CREDIT ACT OF 1985 TO REDEFINE THE SCOPE
12 OF ELIGIBLE BUSINESSES WHICH MAY QUALIFY FOR BENEFITS
13 UNDER THIS ACT AND REVISE THE NAME OF THE ACT
14 ACCORDINGLY; TO CLARIFY THE DEFINITION OF 'PROJECT';
15 TO PERMIT THE DEPARTMENT OF FINANCE AND
16 ADMINISTRATION TO EXAMINE RECORDS SPECIFIC TO THE
17 PROJECT AND REMAND TAX PAYMENTS DUE FOR INELIGIBLE
18 PROJECT EXPENDITURES; TO DECLARE AN EMERGENCY; AND FOR
19 OTHER PURPOSES."

Subtitle

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22 "TO AMEND THE MANUFACTURER'S INVESTMENT
23 TAX CREDIT ACT OF 1985."
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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code 26-52-701 is amended to read as follows:

29 "26-52-701. Title.

30 This subchapter may be referred to and cited as the ~~'Manufacturer's~~
31 ~~Investment Sales and Use Tax Credit Act of 1985'~~ 'Economic Investment Tax
32 Credit Act'."
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34 SECTION 2. Arkansas Code 26-52-702 is amended to read as follows:

35 "26-52-702. Definitions.

36 As used in this subchapter, unless the context otherwise requires:

1 ~~(1) "Manufacturer" or "manufacturing operation" means any person~~
2 ~~engaged in a business classified as manufacturing in the Federal Standard~~
3 ~~Industrial Classification Codes 20-39 who has been in continuous operation in~~
4 ~~Arkansas for at least two (2) years prior to the initial application to the~~
5 ~~Director of the Arkansas Economic Development Commission for the credit~~
6 ~~granted by this subchapter and who has obtained a direct-pay sales and use tax~~
7 ~~permit from the Revenue Division of the Department of Finance and~~
8 ~~Administration under the provisions of § 26-52-509;~~

9 (1) 'Eligible business' means a business eligible for sales and use tax
10 credits under the provision of this Act that has been in continuous operation
11 in Arkansas for at least two (2) years prior to the initial application to the
12 director of the Arkansas Department of Economic Development and has obtained a
13 direct-pay sales and use tax permit from the Revenue Division of the
14 Department of Finance and Administration under the provisions of §26-52-509
15 and is classified as one or more of the following types of businesses:

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

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

26 (C) Businesses primarily engaged in motion picture production.
27 All businesses in this group must derive at least sixty percent (60%) of their
28 revenue from out-of-state sales and have no retail sales to the public.

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

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

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

35 (G) A corporate or regional headquarters with no retail sales to
36 the general public;

1 (2) 'Project' means any ~~manufacturing plant~~ construction, ~~or~~
 2 expansion or modernization in Arkansas by a ~~manufacturer costing more than~~
 3 five million dollars (\$5,000,000) an eligible business as defined by paragraph
 4 (1) above. The investment must exceed five million dollars (\$5,000,000), or
 5 six million dollars (\$6,000,000) for projects involving multiple locations
 6 within the State of Arkansas, including the cost of land, buildings, and
 7 equipment used in the construction, ~~or~~ expansion or modernization and which
 8 construction, ~~or~~ expansion or modernization has been approved by the ~~Arkansas~~
 9 ~~Economic Development Commission~~ Arkansas Department of Economic Development as
 10 a construction, ~~or~~ expansion or modernization project which qualifies for the
 11 credit under the provisions of this subchapter.

12 (3) 'Person' means a person as defined by § 26-18-104(10).

13 (4) 'Modernization' means to increase efficiency or to increase
 14 productivity of the business through investment in machinery and/or equipment
 15 and shall not include costs for routine maintenance.

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

19 (6) 'Office sector' means control centers that influence the
 20 environment in which data processing, customer service, credit accounting,
 21 telemarketing, claims processing, and other administrative functions that act
 22 as production centers.

23 (7) 'Corporate headquarters' means the home or center of operations,
 24 including research and development, of a national or multinational
 25 corporation.

26 (8) 'Regional headquarters' means the center of operations for a
 27 specific geographic area.

28 (9) 'Routine Maintenance' means the replacement of existing machinery
 29 parts with like parts."

30
 31 SECTION 3. Arkansas Code 26-52-703 is amended to read as follows:

32 "26-52-703. Precluded Provisions provisions supplemental.

33 ~~The tax credit provided by this subchapter shall be supplemental and in~~
 34 addition to other tax credits provided by law. Recipients of benefits under
 35 this act are precluded from receiving benefits under the Arkansas Enterprise
 36 Zone Act of 1993 beginning at § 15-4-1701 for the same project."

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SECTION 4. Arkansas Code 26-52-704 is amended to read as follows:

"26-52-704. Credit granted.

There is granted a credit against a ~~manufacturer's~~ an eligible business, as defined by § 26-52-702, state sales and use tax liability of seven percent (7%) of the amount of the total project cost of any project subject to the limit set out in § 26-52-705."

SECTION 5. Arkansas Code 26-52-705 is amended to read as follows:

"26-52-705. Qualification and determination of credit.

(a)(1) In order to qualify for and receive the credits afforded by this subchapter, any ~~manufacturer~~ eligible business, as defined by § 26-52-702, undertaking a project shall submit a project plan to the Director of the ~~Arkansas Economic Development Commission~~ Arkansas Department of Economic Development thirty (30) days prior to the start of construction.

(2) The plan submitted to the ~~commission~~ department shall contain such information as may be required by the director to determine eligibility.

(b)(1) Upon determination by the director that the project qualifies for credit under this subchapter, the director shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his certification the documents upon which the certification was based or copies thereof.

(2) On receipt by the Director of the Department of Finance and Administration of a certification from the Director of the ~~Arkansas Economic Development Commission~~ Arkansas Department of Economic Development that a ~~manufacturer~~ an eligible business as defined by § 26-52-702 is entitled to credit under this subchapter, the Director of the Department of Finance and Administration shall provide forms to the ~~manufacturer~~ eligible business on which to claim the credit.

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

1 (2)(A) On receipt of the form certifying expenditures, the Director of
 2 the Department of Finance and Administration shall determine the amount due as
 3 a credit for the preceding calendar year and issue a memorandum of credit to
 4 the ~~manufacturer~~ eligible business in the amount of seven percent (7%) of the
 5 expenditure.

6 (B)(i) The credit shall then be applied against the
 7 ~~manufacturer's~~ eligible business' state sales or use tax liability in the year
 8 following the year of the expenditure. However, if the credit is not used in
 9 the calendar year following the expenditure, it may be carried over to the
 10 next succeeding calendar year for a total period of six (6) years following
 11 the year in which the credit was first available for use or until the credit
 12 is exhausted, whichever occurs first.

13 (ii)(a) The credit shall be used by the ~~manufacturer~~
 14 eligible business as a credit against ~~his~~ the regular direct-pay sales or use
 15 tax return of the business.

16 (b) In no event shall the credit used on any regular
 17 return be more than fifty (50%) percent of the ~~manufacturer's~~ eligible
 18 business' total state sales or use tax liability for the reporting period.

19 (iii) The Director of the Department of Finance and
 20 Administration may require proof of these expenditures ~~as he deems necessary~~.

21 (iv) The Commissioner of Revenue may examine those records
 22 necessary and specific to the project to determine credit eligibility. Any
 23 credits disallowed will be subject to payment in full.

24 (d) For all projects approved after July 1, 1997, in order to receive
 25 credit for project costs, such costs must be incurred within five (5) years
 26 from the date of certification of the project plan by the Director of the
 27 ~~Arkansas Industrial Development Commission~~ Arkansas Department of Economic
 28 Development. "

29
 30 SECTION 6. Arkansas Code 26-52-706 is amended to read as follows:

31 "26-52-706. Administration.

32 (a) Persons claiming credit under the provisions of this subchapter are
 33 'taxpayers' within the meaning of § 26-18-104(14) and shall be subject to all
 34 applicable provisions of that statute.

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

1 (c) The Director of the ~~Arkansas Economic Development Commission~~
2 Arkansas Department of Economic Development shall also have authority to
3 promulgate such rules and regulations as are necessary to carry out the intent
4 and purposes of this subchapter."

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6 SECTION 7. All provisions of this act of a general and permanent nature
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
8 Revision Commission shall incorporate the same in the Code.

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10 SECTION 8. If any provision of this act or the application thereof to
11 any person or circumstance is held invalid, such invalidity shall not affect
12 other provisions or applications of the act which can be given effect without
13 the invalid provision or application, and to this end the provisions of this
14 act are declared to be severable.

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16 SECTION 9. All laws and parts of laws in conflict with this act are
17 hereby repealed.

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19 SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the
20 Eighty-second General Assembly that existing Arkansas businesses must remain
21 competitive in today's global economy; that the tax incentive provided by this
22 act is necessary to provide businesses with the incentive to invest in
23 Arkansas and hire Arkansans; that other states compete with Arkansas for the
24 location or expansion of business activity and this incentive is also
25 necessary to offer the companies a business environment compatible with other
26 states; and that without this incentive companies considering locations or
27 expansions of their businesses may choose to locate in another state,
28 depriving Arkansans of these jobs and the economic benefit that the jobs bring
29 to the state. Therefore, an emergency is declared to exist and this act being
30 immediately necessary for the preservation of the public peace, health and
31 safety shall become effective on the date of its approval by the Governor. If
32 the bill is neither approved nor vetoed by the Governor, it shall become
33 effective on the expiration of the period of time during which the Governor
34 may veto the bill. If the bill is vetoed by the Governor and the veto is
35 overridden, it shall become effective on the date the last house overrides the
36 veto.

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/s/ Webb