

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 1094

4
5 By: Senators Altes, Baker
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For An Act To Be Entitled

8
9 AN ACT TO AMEND THE ELIGIBILITY REQUIREMENTS FOR
10 THE ARKANSAS INCOME TAX CREDIT FOR THE PURCHASE
11 OF WASTE REDUCTION EQUIPMENT; TO ENCOURAGE THE
12 USE OF ARKANSAS WASTE FOR RECYCLING AND FUEL BY
13 THOSE RECEIVING THE CREDIT; TO REQUIRE REFUND OF
14 THE CREDIT IN CERTAIN INSTANCES; AND FOR OTHER
15 PURPOSES.
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Subtitle

17
18 AN ACT TO AMEND THE ARKANSAS INCOME TAX
19 CREDIT FOR THE PURCHASE OF WASTE
20 REDUCTION EQUIPMENT AND TO ENCOURAGE THE
21 USE OF ARKANSAS WASTE AND RECYCLING
22 FUEL.
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 26-51-506 is amended to read as follows:
28 26-51-506. Tax credit for waste reduction, reuse, or recycling
29 equipment – Eligibility.

30 (a) The intent and purpose of this section is to increase capacity in
31 the State of Arkansas for the use of recovered materials.

32 (b) For the purposes of this section:

33 (1) "Cost", in the case of a transfer of title or a finance
34 lease, means the amount of the purchase price, and, in the case of a lease
35 which is not a finance lease but which otherwise qualifies as a purchase
36 under this section, means the amount of the lease payments due to be paid



1 during the term of the lease after deducting any portion of the lease
2 payments attributable to interest, insurance, and taxes;

3 (2) "Energy recovery" means the systematic collecting, sorting,
4 decontaminating, and use of waste materials as a fuel for commerce;

5 ~~(2)~~(3) "Equipment to service waste reduction, reuse, or
6 recycling equipment" means expenditures, machinery, or equipment that keeps
7 existing machinery or equipment in running order by providing repair,
8 maintenance, adjustment, inspection, or supplies;

9 ~~(3)~~(4) "Finance lease" means a lease agreement which is treated
10 as a purchase by a lessee for Arkansas income tax purposes;

11 (5) "Fuel" means any raw material used for the generation of
12 energy;

13 ~~(4)~~(6) "Home scrap" means materials or by-products generated
14 from and commonly reused within an original manufacturing process;

15 (7) "Landfill gas" means the natural gas generated as the normal
16 decomposition of material in a landfill;

17 ~~(5)~~(8) "Maintenance" means expenditures, machinery, or equipment
18 used to keep existing machinery or equipment in a condition that approaches
19 or equates to its original condition;

20 ~~(6)~~(9) "Motor vehicle" means a vehicle or trailer that is
21 licensed, or that normally would be licensed, for use on highways in
22 Arkansas;

23 ~~(7)~~(10) "Postconsumer waste" means products or other materials
24 generated by a business, governmental entity, or consumer which have served
25 their intended end use and have been recovered from or otherwise diverted
26 from the solid waste stream for the purpose of recycling or energy recovery;

27 ~~(8)~~(11) "Preconsumer material" means material generated during
28 any step in the production of a product and recovered or otherwise diverted
29 from the solid waste stream for the purpose of recycling or energy recovery
30 but does not include home scrap;

31 ~~(9)~~(12) "Purchase" means a transaction under which title to an
32 item is transferred for consideration or a lease contract for a period of at
33 least three (3) years regardless of whether title to the item is transferred
34 at the end of such period;

35 ~~(10)~~(13)A) "Recovered materials" means those materials which
36 have been separated, diverted, or removed from the waste stream for the

1 purpose of recycling or energy recovery and includes preconsumer material,
 2 ~~and~~ postconsumer waste, and landfill gas but not home scrap.

3 (B) "Recovered materials" may come from any class solid
 4 waste landfill;

5 ~~(11)~~(14) "Recycling" means the systematic collecting, sorting,
 6 decontaminating, and returning of waste materials to commerce as commodities
 7 for use or exchange;

8 ~~(12)~~(15) "Repair" means expenditures, machinery, or equipment
 9 used to restore existing machinery or equipment to its original or similar
 10 condition and capacity after damage or after deterioration from use;

11 ~~(13)~~(16) "Solid waste" means all putrescible and nonputrescible
 12 wastes in solid or semisolid form, including, but not limited to, yard or
 13 food waste, waste glass, waste metals, waste plastics, wastepapers, waste
 14 paperboard, and all other solid or semisolid wastes resulting from
 15 industrial, commercial, agricultural, community, and residential activities;
 16 and

17 ~~(14)(A)~~(17)(A) "Waste reduction, reuse, or recycling equipment"
 18 means new or used machinery or equipment located in Arkansas on the last day
 19 of the taxable year which is operated or used exclusively in Arkansas to
 20 collect, separate, process, modify, convert, or treat solid waste so that the
 21 resulting product may be used;

22 (i) as As a raw material;

23 (ii) As a fuel;

24 (iii) for For productive use;

25 (iv) or to To manufacture products containing
 26 recovered materials; or

27 (v) For equipment that utilizes recovered waste as
 28 fuel.

29 (B) The term "Waste reduction, reuse, or recycling
 30 equipment" also includes devices which are directly connected with or are an
 31 integral and necessary part of such machinery or equipment and are necessary
 32 for such collection, separation, processing, modification, conversion,
 33 treatment, or manufacturing.

34 ~~(B)~~(C) "Waste reduction, reuse, or recycling equipment"
 35 does not include motor vehicles.

36 (c) There shall be allowed a credit against the tax imposed by the

1 Income Tax Act of 1929, § 26-51-101 et seq., as amended, in an amount as
 2 determined in subsection (e) of this section for any taxpayer engaged in the
 3 business of reducing, reusing, or recycling solid waste for commercial
 4 purposes who purchases waste reduction, reuse, or recycling equipment used
 5 exclusively for the purpose of reducing, reusing, or recycling solid waste.

6 (d) To claim the benefits of this section, a taxpayer must obtain a
 7 certification from the Director of the Arkansas Department of Environmental
 8 Quality or the Director of the Department of Economic Development certifying
 9 to the Revenue Division of the Department of Finance and Administration that:

10 (1) The taxpayer is engaged in the business of reducing,
 11 reusing, or recycling solid waste material for commercial purposes, whether
 12 or not for profit;

13 (2) The machinery or equipment purchased is waste reduction,
 14 reuse, or recycling equipment;

15 (3) The machinery or equipment is being used in the collection,
 16 separation, processing, modification, conversion, treatment, or manufacturing
 17 of:

18 (A) Fuel; or

19 (B) ~~products~~ Products containing at least fifty percent
 20 (50%) recovered materials, provided that at least ten percent (10%) of the
 21 recovered materials shall be post-consumer waste; and

22 (4) The taxpayer has filed a statement with:

23 (A) ~~the~~ The Director of the Arkansas Department of
 24 Environmental Quality acknowledging that the taxpayer will make a good faith
 25 effort to utilize post-consumer waste for recycled products generated in
 26 Arkansas as at least ten percent (10%) of the post-consumer waste being used
 27 in the equipment, to the extent available at a competitive price; or

28 (B) The Department of Economic Development acknowledging
 29 that the material for fuel is coming from a source not currently being
 30 recovered and will be used for a fuel.

31 (e)(1) The amount of the credit allowed under subsection (c) of this
 32 section shall be equal to thirty percent (30%) of the cost of waste
 33 reduction, reuse, or recycling equipment, including the cost of installation.

34 (2) The cost of installation shall not include the cost of:

35 (A) Feasibility studies;

36 (B) Engineering costs of a building to house the equipment

1 and related machinery; or

2 (C) Equipment used to service the waste reduction, reuse,
3 or recycling equipment.

4 (3) The cost of replacement parts which serve only to keep
5 existing waste reduction, reuse, or recycling equipment in its ordinary
6 efficient operating condition shall not be included in determining the amount
7 of the credit. The cost of replacement of existing waste reduction, reuse,
8 or recycling equipment shall not be included in determining the amount of the
9 credit unless the replacement provides greater capacity for recycling or
10 provides the capability to collect, separate, process, modify, convert,
11 treat, or manufacture additional or a different type of solid waste.

12 (4) The cost of service contracts, sales tax, maintenance, and
13 repairs shall not be included in determining the amount of the credit.

14 (f)(1) The taxpayer shall refund the amount of the tax credit
15 determined by subdivision (f)(2) of this section if, within three (3) years
16 of the taxable year for which a credit is allowed:

17 (A) The waste reduction, reuse, or recycling equipment is
18 removed from Arkansas, is disposed of, is transferred to another person, or
19 the taxpayer otherwise ceases to use the required materials or operate in the
20 manner required by this section;

21 (B) The Director of the Arkansas Department of
22 Environmental Quality finds that the taxpayer has demonstrated a pattern of
23 intentional failure to comply with final administrative or judicial orders
24 which clearly indicates a disregard for environmental regulation or a pattern
25 of prohibited conduct which could reasonably be expected to result in adverse
26 environmental impact.

27 (2) If the provisions of subdivision (f)(1) of this section
28 apply, the taxpayer shall refund the amount of the tax credit which was
29 deducted from income tax liability which exceeds the following amounts:

30 (A) Within the first year, zero dollars (\$0);

31 (B) Within the second year, an amount equal to thirty-
32 three percent (33%) of the amount of credit allowed; and

33 (C) Within the third year, an amount equal to sixty-seven
34 percent (67%) of the credit allowed.

35 (3) Any refund required by subdivision (f)(1)(A) of this section
36 shall apply only to the credit given for the particular waste reduction,

1 reuse, or recycling equipment to which that subdivision applies.

2 (4) Any taxpayer who is required to refund part of a credit
3 pursuant to this subsection shall no longer be eligible to carry forward any
4 amount of that credit which had not been used as of the date such refund is
5 required.

6 (5)(A) This subsection shall apply to all credits which are
7 certified as a result of applications for certification filed with the
8 Arkansas Department of Environmental Quality or Department of Economic
9 Development on or after July 1, ~~1993~~ 2005.

10 (B) This subsection shall not apply to credits which are
11 certified as a result of applications for certification filed with the
12 Arkansas Department of Environmental Quality or Department of Economic
13 Development prior to July 1, ~~1993~~ 2005.

14 (C) Taxpayers who file written notice and a project plan
15 with the Arkansas Department of Environmental Quality or Department of
16 Economic Development prior to July 1, ~~1993~~ 2005, shall be deemed to have
17 filed an application for certification for purposes of subdivision (f)(5) of
18 this section, provided that all the information necessary to complete the
19 application for certification is provided to the department on or before
20 December 31, ~~1993~~ 2005.

21 (g) Waste reduction, reuse, or recycling equipment shall only be
22 eligible for one (1) tax credit. The sale or transfer of such equipment
23 shall not recreate the eligibility for a tax credit.

24 (h)(1) In the case of a proprietorship or partnership engaged in the
25 business of waste reduction, reuse, or recycling of solid waste, the amount
26 of the credit determined under this section for any taxable year shall be
27 apportioned to each proprietor or partner in proportion to the amount of
28 income from the entity which the proprietor or partner is required to include
29 as gross income.

30 (2) In the case of a Subchapter S corporation, as allowed by §
31 26-51-409, the amount of the credit determined under this section for any
32 taxable year shall be apportioned among the persons who are shareholders of
33 the corporation on the last day of the taxable year based on each person's
34 percentage of ownership.

35 (3) In the case of an estate or trust:

36 (A) The amount of the credit determined under this section

1 for any taxable year shall be apportioned between the estate or trust and the
2 beneficiaries on the basis of the income of the estate or trust allocable to
3 each; and

4 (B) Any beneficiary to whom any amount has been
5 apportioned under this subsection shall be allowed, subject to limitations
6 contained in this section, a credit under this section for the amount.

7 (i) The amount of the credit that may be used by a taxpayer for a
8 taxable year may not exceed the amount of state, individual, or corporate
9 income tax otherwise due. Any unused credit may be carried over for a
10 maximum of three (3) consecutive years following the taxable year in which
11 the credit originated.

12 (j) A taxpayer who receives a credit under this section shall not be
13 entitled to claim any other state or local tax credit or deduction based on
14 the purchase of the machinery or equipment, except for the deduction for
15 normal depreciation.

16 (k)(1) The Arkansas Department of Environmental Quality, the
17 Department of Economic Development, and the Revenue Division of the
18 Department of Finance and Administration shall promulgate rules or
19 regulations as are necessary to administer this section. These rules or
20 regulations may include, but are not limited to, the establishment of
21 technical specifications and of requirements for information and
22 documentation for taxpayers seeking a credit under this section and shall
23 encourage, but not require, the use of Arkansas contractors and post-consumer
24 waste generated in Arkansas in recycling projects which qualify for credits
25 provided by this section.

26 (2) In order to determine eligibility for the credit or to
27 ensure that the machinery or equipment is being utilized in the required
28 manner, each agency shall have the right to inspect facilities and records of
29 a taxpayer requesting or receiving a credit under this section.

30 (l) Any person or legal entity aggrieved by a decision of the Director
31 of the Arkansas Department of Environmental Quality or Department of Economic
32 Development under subsection (d) or subdivision (f)(1)(B) of this section may
33 appeal to the Arkansas Pollution Control and Ecology Commission or Arkansas
34 Economic Development Commission through administrative procedures adopted by
35 the respective commission and to the courts in the manner provided in §§ 8-4-
36 222 – 8-4-229.

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SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
General Assembly of the State of Arkansas that energy prices have climbed
dramatically; that energy resources in this country have become limited; and
that recycling is encouraged by the residents of the State of Arkansas.
Therefore, an emergency is declared to exist and this act being necessary for
the preservation of the public peace, health, and safety shall become
effective on July 1, 2005.