

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/12/07 H3/15/07 H3/28/07

A Bill

HOUSE BILL 2521

5 By: Representative Dunn
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT TO
10 PROVIDE FOR EXISTING EMPLOYEES TO BE CLASSIFIED
11 AS NEW EMPLOYEES; TO ALLOW FOR FLEXIBILITY IN THE
12 USE OF EARNED TAX CREDITS; TO ALLOW TECHNOLOGY
13 BASED ENTERPRISES TO QUALIFY FOR PAYROLL REBATES
14 AND INVESTMENT TAX CREDITS; TO REVISE THE
15 RESEARCH AND DEVELOPMENT TAX CREDIT FOR EXISTING
16 BUSINESSES; TO MAKE TECHNICAL CORRECTIONS; AND
17 FOR OTHER PURPOSES.

Subtitle

18
19 AN ACT TO AMEND THE CONSOLIDATED
20 INCENTIVE ACT TO ADAPT TO A CHANGING
21 ECONOMY.
22
23
24

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

26
27 *"SECTION 1. Arkansas Code § 15-4-2703 is amended to read as*
28 *follows:*

29 *15-4-2703. Definitions.*

30 *As used in this subchapter:*

31 *(1) "Applied research" means any activity that seeks to utilize,*
32 *synthesize, or apply existing knowledge, information, or resources to the*
33 *resolution of a specific problem, question, or issue;*

34 *(2) "Average hourly wage" means the weekly earnings, excluding*
35 *overtime, bonuses, and company-paid benefits, of all new full-time permanent*
36 *employees hired after the date of the signed financial incentive agreement,*



1 divided by the number of new full-time permanent employees, divided by forty
2 (40);

3 (3) "Basic research" means any original investigation for the
4 advancement of scientific or technological knowledge;

5 (4) "Contractual employee" means an employee who:

6 (A) May be included in the payroll calculations of a
7 business qualifying for benefits under this subchapter and is under the
8 direct supervision of the business receiving benefits under this subchapter,
9 but is an employee of a business other than the one receiving benefits under
10 this subchapter;

11 (B) Otherwise meets the requirements of a new full-time
12 permanent employee of the business receiving benefits under this subchapter;
13 and

14 (C) Receives a benefits package comparable to direct
15 employees of the business receiving benefits under this subchapter;

16 (5)(A) "Corporate headquarters" means the facility or portion of
17 a facility where corporate staff employees are physically employed and where
18 the majority of the company's financial, personnel, legal, planning,
19 information technology, or other headquarters-related functions are handled
20 either on a regional basis or a national basis.

21 (B) A corporate headquarters must be a regional corporate
22 headquarters or a national corporate headquarters;

23 (6)(A) "County or state average hourly wage" means the weighted
24 average weekly earnings for Arkansans in all industries, both statewide and
25 countywide, as calculated by the Department of Workforce Services in its most
26 recent "Annual Covered Employment and Earnings" publication, divided by forty
27 (40).

28 (B) The average hourly wage threshold determined at the
29 signing date of the financial incentive agreement shall be the threshold for
30 the term of the agreement;

31 (7) "Department" means the Department of Economic Development;

32 (8) "Director" means the Director of the Department of Economic
33 Development;

34 (9) "Distribution center" means a facility for the reception,
35 storage, and shipping of:

36 (A) A business's own products or products that the

1 *business wholesales to retail businesses or ships to its own retail outlets,*
2 *if seventy-five percent (75%) of the sales revenues are from out-of-state*
3 *customers;*

4 (B) *Products owned by other companies with which the*
5 *business has contracts for storage and shipping if seventy-five percent (75%)*
6 *of the sales revenues of the product owner are from out-of-state customers;*
7 *or*

8 (C) *Products for sale to the general public if seventy-*
9 *five percent (75%) of the sales revenues are from out-of-state customers;*

10 (10) *"Eligible businesses" means nonretail businesses engaged in*
11 *commerce for profit that meet the eligibility requirements for the applicable*
12 *incentive offered by this subchapter and fall into one (1) or more of the*
13 *following categories:*

14 (A) *Manufacturers classified in sectors 31-33 in the North*
15 *American Industry Classification System, as in effect January 1, 2003;*

16 (B)(i) *Businesses primarily engaged in the design and*
17 *development of prepackaged software, digital content production and*
18 *preservation, computer processing and data preparation services, or*
19 *information retrieval services.*

20 (ii) *All businesses in this group shall derive at*
21 *least seventy-five percent (75%) of their sales revenue from out of state;*

22 (C)(i) *Businesses primarily engaged in motion picture*
23 *productions.*

24 (ii) *All businesses in this group shall derive at*
25 *least seventy-five percent (75%) of their sales revenue from out of state;*

26 (D) *Distribution centers or intermodal facilities;*

27 (E) *Office sector businesses;*

28 (F) *National or regional corporate headquarters, North*
29 *American Industry Classification System Code 551114, as in effect January 1,*
30 *2005;*

31 (G) *Firms primarily engaged in commercial, physical, and*
32 *biological research as classified in the North American Industry*
33 *Classification System Code 541710, as in effect January 1, 2005;*

34 (H)(i) *Scientific and technical services businesses.*

35 (ii)(a) *All businesses in this group shall derive at*
36 *least seventy-five percent (75%) of their sales revenue from out of state.*

1 The average hourly wages paid by businesses in this group shall exceed
2 one hundred fifty percent (150%) of the county or state average hourly wage,
3 whichever is less.

4 (2) The average hourly wage threshold determined at the signing
5 date of the financial incentive agreement shall be the threshold for the term
6 of the agreement; and

7 (I) The director may classify a nonretail business as an
8 eligible business if the following conditions exist:

9 (i) The business receives at least seventy-five
10 percent (75%) of its sales revenue from out of state; and

11 (ii) The business proposes to pay wages in excess of
12 one hundred ten percent (110%) of the county or state average hourly wage,
13 whichever is less;

14 (11) "Equity investment" means capital invested in common or
15 preferred stock, royalty or intellectual property rights, limited partnership
16 interests, limited liability company interests, and any other securities or
17 rights that evidence ownership in private businesses, including a federal
18 agency's award of a Small Business Innovative Research grant or a Small
19 Business Technology Transfer grant;

20 (12)(A) "Existing employees" means those employees hired by the
21 business before the date the financial incentive agreement was signed.

22 (B) Existing employees may be considered new full-time
23 permanent employees only if:

24 (i) The position or job filled by the existing
25 employee was created in accordance with the signed financial incentive
26 agreement; and

27 (ii) The position vacated by the existing employee
28 was either filled by a subsequent employee or no subsequent employee will be
29 hired because the business no longer conducts the particular business
30 activity requiring that classification.

31 (C) If the Director of the Department of Economic
32 Development and the Director of the Department of Finance and Administration
33 find that a significant impairment of Arkansas job opportunities for existing
34 employees will otherwise occur, they may jointly authorize the counting of
35 existing employees as new full-time permanent employees;

36 (13) "Facility" means a single physical location at which the

1 eligible business is conducting its operations;

2 (14) "Financial incentive agreement" means an agreement entered
3 into by an eligible business and the department to provide the business an
4 incentive to locate a new business or to expand an existing business in
5 Arkansas;

6 (15) "Fund" means the Economic Development Incentive Fund;

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

9 (17)(A)(i) "In-house research" means applied research supported
10 by the business through the purchase of supplies for research activities and
11 payment of wages and usual fringe benefits for employees of the business who
12 conduct research activities in research facilities:

13 (a) Dedicated to the conduct of research
14 activities;

15 (b) Operated by the business; and

16 (c) Performed primarily under laboratory,
17 clinical, or field experimental conditions for the purpose of reducing a
18 concept or idea to practice or to advance a concept or idea or improvement
19 thereon to the point of practical application.

20 (ii) "In-house research" includes experimental or
21 laboratory activity to develop new products, improve existing products, or
22 develop new uses of products, but only to the extent that activity is
23 conducted in Arkansas.

24 (B) "In-house research" does not include tests or
25 inspections of materials or products for quality control, efficiency surveys,
26 management studies, other market research, or any other ordinary and
27 necessary expenses of conducting business;

28 (18) "Intellectual property" means an invention, discovery, or
29 new idea that the legal entity responsible for commercialization has decided
30 to legally protect for possible commercial gain, based on the disclosure of
31 the creator;

32 (19) "Intermodal facility" means a facility with more than one
33 (1) mode of interconnected movement of freight, commerce, or passengers;

34 (20) "Investment threshold" means the minimum amount of
35 investment in project costs that must be incurred in order to qualify for
36 eligibility;

1 (21) "Invests" or "investment" means money expended by or on
2 behalf of an approved eligible business that seeks to begin or expand
3 operations in Arkansas, and without this infusion of capital, the location or
4 expansion may not take place;

5 (22) "Lease" means a right to possession of real property for a
6 specific term in return for consideration, as determined in a lease agreement
7 by both parties;

8 (23)(A) "Modernization" means an increase in efficiency or
9 productivity of a business through investment in machinery or equipment, or
10 both.

11 (B) "Modernization" does not include costs for routine
12 maintenance or the installation of equipment that does not improve efficiency
13 or productivity, except for expenditures for pollution control equipment
14 mandated by state or federal laws or regulations;

15 (24) "National corporate headquarters" means the sole corporate
16 headquarters in the nation that handles headquarters-related functions on a
17 national basis;

18 (25)(A)(i) "New full-time permanent employee" means a position
19 or job that was created pursuant to the signed financial incentive agreement
20 and that is filled by one (1) or more employees or contractual employees who:

21 (a) Were Arkansas taxpayers during the year in
22 which the tax credits or incentives were earned;

23 (b) Work at the facility identified in the
24 financial incentive agreement; and

25 (c) Are not existing employees, except as
26 allowed under subdivision (12) of this section.

27 (ii) The position or job held by the employee or
28 employees shall have been filled for at least twenty-six (26) consecutive
29 weeks with an average of at least thirty (30) hours per week.

30 (B) However, to qualify under this subchapter, a
31 contractual employee shall be offered a benefits package comparable to a
32 direct employee of the business seeking incentives under this subchapter;

33 (26) "Nonretail business" means a business that derives less
34 than ten percent (10%) of its total Arkansas revenue from sales to the
35 general public;

36 (27)(A) "Office sector business" means business operations that

1 support primary business needs, including, but not limited to, customer
2 service, credit accounting, telemarketing, claims processing, and other
3 administrative functions.

4 (B) All businesses in this group must be nonretail
5 businesses and derive at least seventy-five percent (75%) of their sales
6 revenue from out of state;

7 (28) "Payroll" means the total taxable wages, including overtime
8 and bonuses, paid during the preceding tax year of the eligible business to
9 new full-time permanent employees hired after the date of the signed
10 financial incentive agreement;

11 (29)(A) "Person" means an individual, trust, estate, fiduciary,
12 firm, partnership, limited liability company, or corporation.

13 (B) "Person" includes:

14 (i) The directors, officers, agents, and employees
15 of any person;

16 (ii) Beneficiaries, members, managers, and partners;
17 and

18 (iii) Any county or municipal subdivision of the
19 state;

20 (30) "Preconstruction costs" means the cost of eligible items
21 incurred before the start of construction, including:

22 (A) Project planning costs;

23 (B) Architectural and engineering fees;

24 (C) Right-of-way purchases;

25 (D) Utility extensions;

26 (E) Site preparations;

27 (F) Purchase of mineral rights;

28 (G) Building demolition;

29 (H) Builders risk insurance;

30 (I) Capitalized start-up costs;

31 (J) Deposits and process payments on eligible machinery
32 and equipment; and

33 (K) Other costs necessary to prepare for the start of
34 construction;

35 (31)(A) "Project" means costs associated with the:

36 (i) Construction of a new plant or facility

1 including, but not limited to, land, building, production equipment, or
2 support infrastructure;

3 (ii) Expansion of an established plant or facility
4 by adding to the building, production equipment, or support infrastructure;
5 or

6 (iii) Modernization of an established plant or
7 facility through the replacement of production or processing equipment or
8 support infrastructure that improves efficiency or productivity.

9 (B) "Project" does not include:

10 (i) Expenditures for routine repair and maintenance
11 that do not result in new construction or expansion;

12 (ii) Routine operating expenditures;

13 (iii) Expenditures incurred at multiple facilities;

14 or

15 (iv) The purchase or acquisition of an existing
16 business unless:

17 (a) There is sufficient documentation that the
18 existing business was closed; and

19 (b) The purchase of the existing business will
20 result in the retention of the jobs that would have been lost due to the
21 closure.

22 (C) Eligible project costs must be incurred within four
23 (4) years from the date a financial incentive agreement was signed by the
24 department;

25 (32) "Project plan" means a plan:

26 (A) Submitted to the department containing such
27 information as may be required by the director to determine eligibility for
28 benefits; and

29 (B) That if approved is a supplement to the financial
30 incentive agreement;

31 (33) "Qualified business" means an eligible business that:

32 (A) Has met the qualifications for one (1) or more
33 economic development incentives authorized by this subchapter; and

34 (B) Has signed a financial incentive agreement with the
35 department or is involved in a research and development program administered
36 by the Arkansas Science and Technology Authority;

1 (34) "Qualified research expenditures" means the sum of any
2 amounts which are paid or incurred by an Arkansas taxpayer during the taxable
3 year in funding a qualified research program that has been approved for tax
4 credit treatment under rules and regulations promulgated by the department;

5 (35) "Region" or "regional" means a geographic area comprising
6 two (2) or more states, including this state;

7 (36) "Regional corporate headquarters" means a site that:

8 (A) Is the sole corporate headquarters within the region;
9 and

10 (B) Handles headquarters-related functions on a regional
11 basis;

12 (37) "Research and development programs of the Arkansas Science
13 and Technology Authority" means statutory programs operated by the Arkansas
14 Science and Technology Authority under § 15-3-101 et seq.;

15 (38) "Research area of strategic value" means research in fields
16 having long-term economic or commercial value to the state and that have been
17 identified in the research and development plan approved from time to time by
18 the Board of Directors of the Arkansas Science and Technology Authority;

19 (39) "Scientific and technical services business" means a
20 business:

21 (A) Primarily engaged in performing scientific and
22 technical activities for others, including:

23 (i) Architectural and engineering design;

24 (ii) Computer programming and computer systems
25 design; and

26 (iii) Scientific research and development in the
27 physical, biological, and engineering sciences;

28 (B) Selling expertise;

29 (C) Having production processes that are almost wholly
30 dependent on worker skills;

31 (D) Deriving at least seventy-five percent (75%) of its
32 sales revenue from out of state; and

33 (E) Paying average hourly wages that exceed one hundred
34 fifty percent (150%) of the county or state average hourly wage, whichever is
35 less;

36 (40) "Start of construction" means any activity that causes a

1 physical change to the building or property, or both, identified as the site
2 of the approved project, but excluding engineering surveys, soil tests, land
3 clearing, and extension of roads and utilities to the project site;

4 (41) "Strategic research" means research that has strategic
5 economic or long-term commercial value to the state and that is identified in
6 the research and development plan approved from time to time by the Board of
7 Directors of the Arkansas Science and Technology Authority;

8 (42) "Support infrastructure" means physical assets necessary
9 for the business to operate, including, but not limited to, water systems,
10 wastewater systems, gas and electric utilities, roads, bridges, parking lots,
11 and communication infrastructure;

12 (43)(A) "Targeted businesses" means a grouping of growing
13 business sectors, not to exceed six (6), that include the following:

14 (i) Advanced materials and manufacturing systems;
15 (ii) Agriculture, food, and environmental sciences;
16 (iii) Biotechnology, bioengineering, and life
17 sciences;

18 (iv) Information technology;
19 (v) Transportation logistics; and
20 (vi) Bio-based products.

21 (B) In order to receive benefits as a targeted business,
22 the business must:

23 (i) Have been operating in the state for less than
24 five (5) years;

25 (ii) Pay not less than one hundred fifty percent
26 (150%) of the lesser of the county or state average hourly wage; and

27 (iii) Have been selected to receive special
28 benefits; and

29 (44) "Tiers" means the ranking of the seventy-five (75) counties
30 of Arkansas into four (4) divisions that delineate the economic prosperity of
31 the counties and allow for different levels of benefits.

32
33 SECTION 2. Arkansas Code § 15-4-2706 is amended to read as follows:

34 15-4-2706. Investment tax incentives.

35 (a) There are established investment tax incentives to:

36 (1) Encourage capital investment for the long-term viability of

1 *businesses in the state; and*

2 *(2) Create new jobs.*

3 *(b)(1) The award of this incentive shall be at the discretion of the*
4 *Director of the Department of Economic Development.*

5 *(2) If offered, an application for an income tax credit under*
6 *this section shall be submitted to the Department of Economic Development.*

7 *(3) Eligibility for this incentive is dependent upon the tier in*
8 *which the project is located, as follows:*

9 *(A) For tier 1 counties, the business shall invest five*
10 *million dollars (\$5,000,000) or more and have an annual payroll for new full-*
11 *time permanent employees in excess of two million dollars (\$2,000,000);*

12 *(B) For tier 2 counties, the business shall invest three*
13 *million seven hundred fifty thousand dollars (\$3,750,000) or more and have an*
14 *annual payroll for new full-time permanent employees in excess of one million*
15 *five hundred thousand dollars (\$1,500,000);*

16 *(C) For tier 3 counties, the business shall invest three*
17 *million dollars (\$3,000,000) or more and have an annual payroll for new full-*
18 *time permanent employees in excess of one million two hundred thousand*
19 *dollars (\$1,200,000); or*

20 *(D) For tier 4 counties, the business shall invest two*
21 *million dollars (\$2,000,000) or more and have an annual payroll for new full-*
22 *time permanent employees in excess of eight hundred thousand dollars*
23 *(\$800,000).*

24 *(4) Upon approval by the department, the director shall transmit*
25 *an approved financial incentive agreement to the approved company and the*
26 *Revenue Division of the Department of Finance and Administration.*

27 *(5) The qualified business shall reach the investment threshold*
28 *within four (4) years from the date of the signing of the financial incentive*
29 *agreement, except for lease payments authorized by subdivision (b)(6)(D) of*
30 *this section or subdivision (c)(6) of this section.*

31 *(6)(A)(i) After receiving an approved financial incentive*
32 *agreement from the Department of Economic Development, the approved company*
33 *shall certify eligible project costs annually at the end of each calendar*
34 *year for the term of the agreement to the Revenue Division.*

35 *(ii) Upon verification of eligible project costs,*
36 *the Revenue Division shall authorize an income tax credit of ten percent*

1 (10%) based on the total investment in land, buildings, equipment, and costs
2 related to licensing and protecting intellectual property.

3 (B) The amount of income tax credit taken during any tax
4 year shall not exceed fifty percent (50%) of the business's income tax
5 liability resulting from the project or facility.

6 (C) Unused tax credits may be carried forward for up to
7 nine (9) years after the year in which the credit was first earned.

8 (D) A qualified business that enters into a lease for a
9 building or equipment for a period in excess of five (5) years may count the
10 lease payments for five (5) years as a qualifying expenditure for the
11 investment threshold required for this investment incentive.

12 (7) Technology-based enterprises, as defined by § 14-164-
13 203(12), may earn, at the discretion of the Director of the Department of
14 Economic Development, an income tax credit or sales and use tax credit, based
15 on new investment, provided that the technology-based enterprise:

16 (A) Creates a new payroll of at least two hundred fifty
17 thousand dollars (\$250,000); and

18 (B) Pays wages that are at least one hundred seventy-five
19 percent (175%) of the state or county average hourly wage, whichever is less.

20 (8)(A) The income tax credit or sales and use tax credit that
21 may be earned by a technology-based enterprise shall be based on the level of
22 investment as follows:

23 (i) The income tax credit or sales and use tax
24 credit will be equal to two percent (2%) of the investment for an investment
25 that is between two hundred fifty thousand dollars (\$250,000) and five
26 hundred thousand dollars (\$500,000);

27 (ii) The income tax credit or sales and use tax
28 credit will be equal to four percent (4%) of the investment for that part of
29 the investment that is over five hundred thousand dollars (\$500,000) and less
30 than one million dollars (\$1,000,000);

31 (iii) The income tax credit or sales and use tax
32 credit will be equal to six percent (6%) of the investment for that part of
33 the investment that is over one million dollars (\$1,000,000) and less than
34 two million dollars (\$2,000,000); and

35 (iv) The income tax credit or sales and use tax
36 credit will be equal to eight percent (8%) of the investment for that part of

1 the investment that is over two million dollars (\$2,000,000).

2 (B) The percentage of the investment used to determine the
3 amount of credit earned shall be established based upon the project cost
4 estimate at the time of signing the financial incentive agreement.

5 (9) All investments by a technology-based enterprise must be
6 made within four (4) years of the date of the signed financial incentive
7 agreement.

8 (10) Prior to execution of the financial incentive agreement,
9 the approved company shall elect to receive the tax credits as either:

10 (i) A sales and use tax credit; or

11 (ii) An income tax credit.

12 (11)(A) The income tax credit or sales and use tax credit earned
13 by a technology-based enterprise may offset income tax liabilities or sales
14 and use tax liabilities as follows:

15 (i) A technology-based enterprise that pays at least
16 one hundred seventy-five percent (175%) of the state or county average hourly
17 wage, whichever is less, may offset fifty percent (50%) of its income tax
18 liability or sales and use tax liability;

19 (ii) A technology-based enterprise that pays at
20 least two hundred percent (200%) of the state or county average hourly wage,
21 whichever is less, may offset seventy-five percent (75%) of its income tax
22 liability or sales and use tax liability; and

23 (iii) A technology-based enterprise that pays at
24 least two hundred twenty-five percent (225%) of the state or county average
25 hourly wage, whichever is less, may offset one hundred percent (100%) of its
26 income tax liability or sales and use tax liability.

27 (B) The average hourly wage proposed to be paid by the
28 approved company as provided in the signed financial incentive agreement
29 shall be the average hourly wage to determine the percentage of credit that
30 may be used against the approved company's tax liability for the term of the
31 financial incentive agreement.

32 (12) After receiving an approved financial incentive agreement
33 from the Department of Economic Development, the approved company shall
34 certify eligible project costs annually at the end of each tax year for the
35 term of the financial incentive agreement to the Revenue Division of the
36 Department of Finance and Administration.

1 (13) Unused income tax credits or sales and use tax credits may
2 be carried forward for a period not to exceed nine (9) years after the year
3 in which the credit was first earned.

4 (c)(1)(A) An application for a retention tax credit under this
5 subsection shall be submitted to the Department of Economic Development.

6 (B)(i) The application shall be submitted to the
7 Department of Economic Development before incurring any project costs.

8 (ii) With the exception of preconstruction costs,
9 only those costs incurred after the Department of Economic Development's
10 approval are eligible for the tax credit.

11 (2) The tax credit against the qualified business' sales and use
12 tax liability is available only to Arkansas businesses that:

13 (A) Have been in continuous operation in the state for at
14 least two (2) years;

15 (B) Invest a minimum of five million dollars (\$5,000,000)
16 in a project, including land, buildings, and equipment used in the
17 construction, expansion, or modernization; and

18 (C) Hold a direct-pay sales and use tax permit from the
19 Revenue Division before submitting an application for benefits.

20 (3)(A) If allowed, the credit shall be a percentage of the
21 eligible project costs.

22 (B) The amount of the credit shall be one-half percent
23 (0.5%) above the state sales and use tax rate in effect at the time a
24 financial incentive agreement is signed with the Department of Economic
25 Development.

26 (C) In any one (1) year following the year of the
27 expenditures, credits taken cannot exceed fifty percent (50%) of the direct
28 pay sales and use tax liability of the business for taxable purchases.

29 (D) Unused credits may be carried forward for a period of
30 up to five (5) years beyond the year in which the credit was first earned.

31 (4)(A) Upon determination by the Director of the Department of
32 Economic Development that the project qualifies for credit under this
33 subsection, the Director of the Department of Economic Development shall
34 certify to the Director of the Department of Finance and Administration that
35 the project qualifies and shall transmit with his or her certification the
36 documents or copies of the documents upon which the certification was based.

1 (B) The Director of the Department of Finance and
2 Administration shall provide forms to the qualified business on which to
3 claim the credit.

4 (C) At the end of the calendar year in which the
5 application is made and at the end of each calendar year thereafter until the
6 project is completed, the qualified business shall certify on the form
7 provided by the Director of the Department of Finance and Administration the
8 amount of expenditures on the project during the preceding calendar year.

9 (D) 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 qualified business.

13 (E) The credit against the qualified business' sales and
14 use tax liability shall be a percentage of the eligible project costs equal
15 to one-half percent (0.5%) above the state sales and use tax rate in effect
16 at the time the financial incentive agreement was signed by the Department of
17 Economic Development.

18 (5) If a business plans to apply for benefits under this
19 subsection and also plans to apply for benefits under § 15-4-2705, the
20 financial incentive agreement under § 15-4-2705 must be signed within twenty-
21 four (24) months after signing the financial incentive agreement under this
22 subsection.

23 (6) A qualified business that enters into a lease for a building
24 or equipment for a period in excess of five (5) years may count the lease
25 payments for five (5) years as a qualifying expenditure for the investment
26 threshold required for this investment incentive.

27 (d)(1)(A) An application for a state and local sales and use tax
28 refund for a new and expanding eligible business shall be filed with the
29 department contingent upon the approval of an endorsement resolution from the
30 governing authority of a municipality or county, or both, in whose
31 jurisdiction the business will be located.

32 (B) The resolution shall:

33 (i) Endorse the applicant's participation in this
34 sales and use tax refund program; and

35 (ii)(a) Specify that the Department of Finance and
36 Administration is authorized to refund local sales taxes to the qualified

1 *business.*

2 *(b) A municipality or county, or both, may*
3 *authorize the refund of any sales or use tax levied by the municipality or*
4 *county but may not authorize the refund of any sales or use tax not levied by*
5 *the municipality or county in which the qualified business is located.*

6 *(C) Any eligible business that applies for a sales and use*
7 *tax refund under this subsection shall invest in excess of one hundred*
8 *thousand dollars (\$100,000) in order to qualify for the sales and use tax*
9 *refund.*

10 *(2)(A)(i) A sales and use tax refund of state and local sales*
11 *and use taxes, excepting the sales and use taxes dedicated to the Educational*
12 *Adequacy Fund created in § 19-5-1227 and the Conservation Tax Fund as*
13 *authorized by § 19-6-484, on the purchases of the material used in the*
14 *construction of a building or buildings or any addition, modernization, or*
15 *improvement thereon for housing any new or expanding qualified business and*
16 *machinery and equipment to be located in or in connection with such a*
17 *building shall be authorized by the Director of the Department of Finance and*
18 *Administration.*

19 *(ii) The local sales and use tax may be refunded*
20 *only from the municipality or county, or both, in which the qualified*
21 *business is located.*

22 *(B) A refund shall not be authorized for:*

23 *(i) Routine operating expenditures; or*

24 *(ii) The purchase of replacements of items*
25 *previously purchased as part of a project under this subsection unless the*
26 *items previously purchased are necessary for the implementation or completion*
27 *of the project.*

28 *(3) Subject to the approval of the Department of Economic*
29 *Development, a program participant may make changes in a project by written*
30 *amendment to the project plan filed with the Department of Economic*
31 *Development.*

32 *(4) All claims for sales and use tax refunds under this*
33 *subsection shall be denied unless they are filed with the Revenue Division of*
34 *the Department of Finance and Administration within three (3) years from the*
35 *date of the qualified purchase or purchases.*

36 *(5)(A) In order to be eligible for the benefits under this*

1 subsection, a business shall sign a job creation financial incentive
2 agreement under § 15-4-2705, § 15-4-2707, or subsection (b) of this section
3 and comply with the eligibility requirements of the incentive agreements.

4 (B) The financial incentive agreement under § 15-4-2705, §
5 15-4-2707, or subsection (b) of this section shall be signed within twenty-
6 four (24) months after signing the financial incentive agreement under this
7 subsection.

8 (e)(1) A new targeted business shall be eligible for a refund of state
9 and local sales and use taxes for qualified expenditures identified in the
10 project plan if:

11 (A) The annual payroll of the business for Arkansas
12 taxpayers is greater than one hundred thousand dollars (\$100,000); and

13 (B) The business shows proof of an equity investment of at
14 least four hundred thousand dollars (\$400,000).

15 (2)(A) An application for the targeted business state and local
16 sales and use tax refund program for a new targeted business shall be filed
17 with the Department of Economic Development contingent upon the approval of
18 an endorsement resolution from the governing authority of a municipality or
19 county, or both, in whose jurisdiction the business will be located.

20 (B) The resolution shall:

21 (i) Endorse the applicant's participation in this
22 sales and use tax refund program; and

23 (ii)(a) Specify that the Department of Finance and
24 Administration is authorized to refund local sales and use taxes to the
25 targeted business.

26 (b) A municipality or county, or both, can
27 authorize the refund of any sales tax levied by the municipality or county
28 but cannot authorize the refund of any sales or use tax not levied by the
29 municipality or county in which the targeted business is located.

30 (3) After the Director of the Department of Economic Development
31 has determined that the project is eligible for the sales and use tax refund,
32 this determination accompanied by the financial incentive agreement and any
33 other pertinent documentation shall be forwarded to the Director of the
34 Department of Finance and Administration.

35 (4)(A)(i) A sales and use tax refund of state and local sales
36 and use taxes, excepting the sales and use taxes dedicated to the Educational

1 Adequacy Fund as authorized by § 26-57-1002(d)(1)(A)(ii)(a) and the
2 Conservation Tax Fund as authorized by § 19-6-484, on the purchases of the
3 material used in the construction of a building or buildings or any addition,
4 modernization, or improvement thereon for housing any new or expanding
5 qualified business and machinery and equipment to be located in or in
6 connection with such a building shall be authorized by the Director of the
7 Department of Finance and Administration.

8 (ii) The local sales and use tax may be refunded
9 only from the municipality or county, or both, in which the qualified
10 business is located.

11 (B) A refund shall not be authorized for:

12 (i) Routine operating expenditures; or

13 (ii) The purchase of replacement items under this
14 subsection unless the items are necessary for the implementation or
15 completion of the project.

16 (5) Subject to the approval of the Department of Economic
17 Development, a program participant may make changes in a project by written
18 amendment to the project plan filed with the Department of Economic
19 Development.

20 (6) All claims for sales and use tax refunds under this
21 subsection shall be denied unless they are filed with the Revenue Division of
22 the Department of Finance and Administration within three (3) years after the
23 date of the qualified purchase or purchases.

24 (7) If a targeted business plans to apply for benefits under
25 this subsection and also plans to apply for benefits under § 15-4-2709, the
26 financial incentive agreement under § 15-4-2709 must be signed within twenty-
27 four (24) months of signing the financial incentive agreement under this
28 subsection and comply with the eligibility requirements of the agreements.

29
30 SECTION 3. Arkansas Code § 15-4-2707 is amended to read as follows:
31 15-4-2707. Payroll rebate.

32 (a) There is established on the books of the Treasurer of State, the
33 Auditor of State, and the Chief Fiscal Officer of the State a fund to be
34 known as the "Economic Development Incentive Fund" of the Department of
35 Economic Development.

36 (b) The fund shall consist of revenues designated for this fund by the

1 Revenue Division of the Department of Finance and Administration pursuant to
2 agreements entered into by the Department of Economic Development with
3 eligible businesses.

4 (c) After the Department of Finance and Administration has received
5 the certification of the payrolls of the businesses that have entered into
6 financial incentive agreements with the Department of Economic Development
7 for the payroll rebate authorized by this section, the Department of Finance
8 and Administration shall transfer the appropriate amount of money designated
9 by the financial incentive agreements out of general revenues into a special
10 account designated as special revenue for the fund.

11 (d)(1) The award of this incentive is at the discretion of the
12 Director of the Department of Economic Development and may be offered for a
13 period of up to ten (10) years.

14 (2) Benefits are conditioned upon the hiring of new full-time
15 permanent employees with an annual payroll threshold of two million dollars
16 (\$2,000,000) and certifying to the Department of Finance and Administration
17 that the requisite payroll threshold has been met.

18 (A) The eligible business receiving benefits under this
19 subsection (d) must certify annually to the Department of Finance and
20 Administration that the requisite payroll threshold has been met.

21 (B) Failure to certify payroll thresholds annually may
22 result in:

23 (i) A denial in payment of benefits; or

24 (ii) A delay in the payment of benefits.

25 (3) Payments are subject to the following conditions:

26 (A) For tier 1 counties, the benefit is three and nine-
27 tenths percent (3.9%) of the annual payroll of new full-time permanent
28 employees;

29 (B) For tier 2 counties, the benefit is four and one-
30 quarter percent (4.25%) of the annual payroll of new full-time permanent
31 employees;

32 (C) For tier 3 counties, the benefit is four and one-half
33 percent (4.5%) of the annual payroll of new full-time permanent employees;

34 (D) For tier 4 counties, the benefit is five percent (5%)
35 of the annual payroll of new full-time permanent employees; and

36 (E) The director may authorize benefits to a prospective

1 eligible business up to five percent (5%) of the payroll of new full-time
2 permanent employees if the following conditions exist:

3 (i) The prospective eligible business is considering
4 a location in another state;

5 (ii) The prospective eligible business receives at
6 least seventy-five percent (75%) of its sales revenues from out of state; and

7 (iii) The prospective eligible business is proposing
8 to pay wages in excess of one hundred percent (100%) of the county average
9 hourly wage of the county in which it locates.

10 (e)(1) Technology-based enterprises, as defined in § 14-164-203(11),
11 may earn, at the discretion of the Director of the Department of Economic
12 Development, a payroll rebate equal to five percent (5%) of the payroll for
13 new full-time permanent employees for a period not to exceed ten (10) years.

14 (2) In order to qualify for the payroll rebate:

15 (A) The average hourly wage of the payroll for new full-
16 time permanent employees must be at least one hundred seventy-five percent
17 (175%) of the state or county average hourly wage, whichever is less, for the
18 county in which the technology-based enterprise locates or expands;

19 (B) The payroll for new full-time permanent employees must
20 exceed two hundred fifty thousand dollars (\$250,000); and

21 (C) The payroll rebate authorized by this subsection (e)
22 may not be used in combination with the income tax credit based on payroll
23 authorized by § 15-4-2709.

24
25 SECTION 4. Arkansas Code § 15-4-2708 is amended to read as follows:

26 15-4-2708. Research and development tax credits.

27 (a) A taxpayer who contracts with one (1) or more Arkansas colleges or
28 universities in performing basic or applied research may qualify for the tax
29 credit established under § 26-51-1102(b) for qualified research expenditures,
30 subject to the limitations established under § 26-51-1103 and the
31 documentation requirements of § 26-51-1104.

32 (b)(1) ~~New Eligible~~ eligible businesses that conduct in-house research
33 in a research facility operated by the business and that qualify for federal
34 research and development tax credits may qualify for an income tax credit
35 equal to ~~ten percent (10%)~~ twenty percent (20%) of the amount spent on in-
36 house research that exceeds the base year for a period of three (3) years and

1 the incremental increase in qualified research expenditures for the
2 succeeding two (2) years, subject to the limitations established under § 26-
3 51-1103.

4 (A) For a new research facility, the base year is zero
5 (0). Therefore, in the first three (3) years following the date of the
6 financial incentive agreement, all eligible expenditures will qualify for the
7 credit.

8 (B) Qualified research and development expenditures in the
9 third year shall be used as a base to calculate the tax credit in the fourth
10 year.

11 (C) Qualified research and development expenditures in the
12 fourth year shall be used as a base to calculate the tax credit in the fifth
13 year.

14 ~~(2) However, the maximum tax credit for in-house research for~~
15 ~~each qualified business shall not exceed ten thousand dollars (\$10,000) per~~
16 ~~year.~~

17 (2) Existing eligible businesses that conduct in-house research
18 in a research facility operated by the business and that qualify for federal
19 research and development tax credits may qualify for an income tax credit
20 equal to twenty percent (20%) of the amount spent on in-house research that
21 exceeds the base year for a period of three (3) years and the incremental
22 increase in qualified research expenditures for the succeeding two (2) years,
23 subject to the limitations established under § 26-51-1103.

24 (A) For an existing research facility, the base year
25 amount shall be the amount of eligible research and development expenditures
26 incurred in the year prior to the year in which the financial incentive
27 agreement was signed by the department.

28 (B) Qualified research and development expenditures in the
29 third year shall be used as a base to calculate the tax credit in the fourth
30 year.

31 (C) Qualified research and development expenditures in the
32 fourth year shall be used as a base to calculate the tax credit in the fifth
33 year.

34 (3) The income tax credit may be used to offset one hundred
35 percent (100%) of an eligible business's annual income tax liability.

36 (4) Unused credits may be carried forward for a period not to

1 exceed nine (9) years.

2 ~~(3)(5)~~ A business claiming tax credits earned under this
3 subsection may not receive the credit granted by § 26-51-1102(b) for the same
4 expenditures.

5 ~~(4)(6)~~(A) The term of the financial incentive agreement for in-
6 house research authorized by this subsection shall be for a period not to
7 exceed five (5) years.

8 (B) The financial incentive agreement may be renewed for a
9 period not to exceed five (5) years upon the submittal and approval of a new
10 application and project plan for benefits under this subsection.

11 (C) The business claiming a tax credit under this
12 subsection shall certify annually to the department the amount expended on
13 in-house research.

14 (c)(1) Targeted businesses may qualify for an income tax credit equal
15 to thirty-three percent (33%) of the amount spent on in-house research per
16 year for the first five (5) tax years following the business' signing a
17 financial incentive agreement with the Department of Economic Development,
18 subject to the limitations established under § 15-4-2709(d)(3).

19 (2) The credits earned by targeted businesses may be sold as
20 authorized in § 15-4-2709.

21 (d)(1) An Arkansas taxpayer may qualify for an income tax credit equal
22 to thirty-three percent (33%) of the amount spent on the research for the
23 first five (5) tax years following the business' signing a financial
24 incentive agreement with the Department of Economic Development, subject to
25 the limitations established under § 26-51-1103(a) and (c) if the taxpayer
26 invests in:

27 (A) In-house research in a strategic research area; or

28 (B) Projects under the research and development programs
29 of the Arkansas Science and Technology Authority when the projects directly
30 involve an Arkansas business and are approved by the Board of Directors of
31 the Arkansas Science and Technology Authority under rules promulgated by the
32 authority for those programs.

33 (2) However, the maximum tax credit for a qualified business
34 engaged in a research area of strategic value or involved in research and
35 development programs sponsored by the authority shall not exceed fifty
36 thousand dollars (\$50,000) per year.

1 (3) A business claiming tax credits earned under this subsection
2 shall be prohibited from receiving the credit granted by § 26-51-1102(b) for
3 the same expenditures.

4 (4)(A) A business claiming tax credits earned under this
5 subsection may offset fifty percent (50%) of the business's Arkansas income
6 tax liability in any one (1) year.

7 (B) Any unused income tax credits may be carried forward
8 for nine (9) years after the year in which the credit was first earned or
9 until exhausted, whichever event occurs first.

10 (e) To claim the credit granted under subsections (b)-(d) of this
11 section, the taxpayer shall file with his or her return, as an attachment to
12 the form prescribed by the Director of the Department of Finance and
13 Administration, copies of documentation to show that the authority has
14 approved the research expenditure as a part of a qualified in-house research
15 program or under the research and development programs of the authority.

16
17 SECTION 5. Arkansas Code § 15-4-2709 is amended to read as follows:
18 15-4-2709. Targeted business special incentive.

19 (a) A special incentive based on the payroll of the new targeted
20 businesses in the state is established to:

21 (1) Encourage the development of jobs that pay significantly
22 more than the county average hourly wage in the county in which the business
23 locates or the state average hourly wage if the state average hourly wage is
24 less than the county average hourly wage; and

25 (2) Provide an incentive to assist with the start-up of
26 businesses targeted for growth.

27 (b) In order to qualify for the special incentive provided by
28 subsection (c) of this section, a new business shall:

29 (1) Be identified by the Department of Economic Development as
30 being one of those business sectors targeted for growth under § 15-4-2703;

31 (2) Have an annual payroll of the business for Arkansas
32 taxpayers of not less than one hundred thousand dollars (\$100,000) or more
33 than one million dollars (\$1,000,000);

34 (3) Show proof of an equity investment of four hundred thousand
35 dollars (\$400,000) or more; and

36 (4) Pay average hourly wages in excess of one hundred fifty

1 percent (150%) of the county or state average hourly wage, whichever is less.

2 (c)(1) A new targeted business may earn an income tax credit equal to
3 ten percent (10%) of its annual payroll, with the maximum payroll credit not
4 to exceed one hundred thousand dollars (\$100,000) in any year during the term
5 of the financial incentive agreement.

6 (2)(A) The term of the financial incentive agreement shall be
7 established by the Director of the Department of Economic Development for a
8 period not to exceed five (5) years.

9 (B) The term of the financial incentive agreement for new
10 targeted businesses earning a tax credit under this subsection (c) or under §
11 15-4-2708(c) shall begin on January 1 of the year in which the financial
12 incentive agreement was signed.

13 ~~(B)(C)~~ The director may allow a qualified targeted
14 business to sell any income tax credits earned through one (1) or more
15 incentives authorized by this subchapter.

16 (d)(1) In order to sell income tax credits earned through incentives
17 authorized by this subchapter, the new targeted business must apply to the
18 department and furnish information necessary to facilitate the sale of income
19 tax credits.

20 (2)(A) Any unused tax credits may be carried forward for nine
21 (9) years after the year in which the credit was first earned or until
22 exhausted, whichever occurs first.

23 (B) The ultimate recipient of the tax credits shall be
24 subject to the same carry-forward provisions as the targeted business that
25 earned the credits.

26 (C) The purchase of the tax credits will not establish a
27 new carry-forward period for the ultimate recipient.

28 (e) A targeted business claiming or selling tax credits earned under
29 this section or § 15-4-2708 shall be prohibited from receiving the credit
30 granted by § 26-51-1102(b) for the same expenditures.

31 (f)(1) There is established on the books of the Treasurer of State,
32 the Auditor of State, and the Chief Fiscal Officer of the State a fund to be
33 known as the "Innovate Arkansas Fund" for the support of a contract to
34 provide support and assistance to the development and growth of knowledge-
35 based and technology-based companies in the State of Arkansas.

36 (2) This fund shall be for the sole support of a contract

1 between the department and the entity selected to provide direct support and
2 assistance to knowledge-based companies in the State of Arkansas.

3 (3) Moneys deposited into the Innovate Arkansas Fund by the
4 Arkansas General Assembly shall be used only through a contractual
5 relationship between the department and the entity selected to provide needed
6 services to knowledge-based companies.

7
8 SECTION 6. The provisions of this act shall not be effective until the
9 Chief Fiscal Officer of the State certifies that additional funding has been
10 provided to state general revenues from other funding sources and is
11 available for use during fiscal year 2008 and fiscal year 2009 in an amount
12 sufficient to replace the general revenue reduction for each of the fiscal
13 years 2008 and 2009 that would result from the adoption of this act.

14
15 /s/ Dunn
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