

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/26/09 H4/3/09

A Bill

HOUSE BILL 1910

5 By: Representatives Ingram, Lindsey, Barnett
6 By: Senator D. Johnson
7
8

For An Act To Be Entitled

10 AN ACT TO MAKE CHANGES TO THE EQUITY INVESTMENT
11 INCENTIVE TAX CREDIT; TO ENCOURAGE THE CREATION
12 OF REGIONAL OR COMMUNITY-BASED ALLIANCE FUNDS; TO
13 MAKE TECHNICAL CORRECTIONS; TO SPECIFY THAT THE
14 DECISION TO AWARD A TAX CREDIT IS THE JOINT
15 RESPONSIBILITY OF THE ARKANSAS ECONOMIC
16 DEVELOPMENT COMMISSION, THE ARKANSAS SCIENCE AND
17 TECHNOLOGY AUTHORITY, AND THE ARKANSAS
18 DEVELOPMENT FINANCE AUTHORITY; AND FOR OTHER
19 PURPOSES.
20

Subtitle

21 AN ACT TO ENCOURAGE THE CREATION OF
22 REGIONAL OR COMMUNITY-BASED ALLIANCE
23 FUNDS AND TO MAKE TECHNICAL CORRECTIONS
24 TO THE EQUITY INVESTMENT INCENTIVE TAX
25 CREDIT.
26
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code § 15-4-3302 is amended to read as follows:

32 15-4-3302. Equity investment incentives – Creation – Purpose – Tax
33 credit.

34 (a) Equity investment incentives in the form of tax credits to
35 persons, ~~or companies,~~ or regional or community-based alliance funds
36 investing in certain types of eligible businesses are created.



1 (b) The equity investment incentives shall:

2 (1) Encourage capital investment in certain types of businesses
3 including:

4 (A) Early-stage businesses and start-up businesses in this
5 state;

6 (B) Businesses paying wages in excess of prevailing wages
7 in the state or the county where the company is located; and

8 (C) Businesses that are invested in by venture capital
9 funds and regional or community-based alliance funds; ~~and~~

10 (2) Create new jobs; ~~and~~

11 (3) Encourage the formation of regional or community-based
12 alliance funds.

13 (c)(1) An equity investment incentive tax credit is created that shall
14 *be equal to thirty-three and one-third percent (33 1/3%)* of the approved
15 amount invested by an investor in an eligible business, as identified in §
16 15-4-3303(a).

17 (2) Effective July 1, 2010, an equity investment incentive tax
18 credit is created that shall be equal to fifty percent (50%) of the approved
19 amount invested by an investor in an eligible business, as identified in §
20 15-4-3303(a).

21 (3) A tax credit not to exceed fifty thousand dollars (\$50,000)
22 is created that shall be equal to one hundred percent (100%) of the approved
23 amount of start-up organizational and educational costs associated with
24 forming a regional or community-based alliance fund, as identified in § 15-4-
25 3303(b).

26 (4) The tax credit, if awarded, is available to the investor.
27

28 SECTION 2. Arkansas Code § 15-4-3303 is amended to read as follows:

29 15-4-3303. Eligibility for equity investment incentive.

30 (a) Eligibility for the equity investment incentive tax credit under
31 ~~this subchapter~~ § 15-4-3302(c)(1) and (2) is limited to investments in:

32 ~~(1) Targeted businesses as defined in § 15-4-2703(43)~~ A business
33 in a targeted business sector under § 15-4-2703(43)(A) that pays not less
34 than one hundred fifty percent (150%) of the lesser of the county average
35 wage or the state average wage; ~~or~~

36 (2) A nonretail business identified by the Executive Director of

1 the Arkansas Economic Development Commission as the type of business targeted
 2 for recruitment, retention, or growth within the state that:

3 (A) Pays not less than one hundred fifty percent (150%) of
 4 the lesser of the county average wage or the state average wage; and

5 (B) Has its corporate headquarters located in this state;
 6 or

7 ~~(2)(3) Businesses that receive~~ A business that receives
 8 assistance in the form of equity investments from capital investment funds
 9 that target early-stage businesses and start-up businesses, if the business:

10 (A) Pays not less than one hundred fifty percent (150%) of
 11 the lesser of the county average wage or the state average wage; and

12 (B) Meets at least two (2) of the following conditions:

13 ~~(i) The business is in one (1) of the business~~
 14 ~~sectors set forth in § 15-4-2703(43)(A)(i)-(vi);~~

15 ~~(ii)~~ (ii) The business is identified in a local or
 16 regional economic development plan as the type of business targeted for
 17 recruitment, retention, or growth within the community or region;

18 ~~(iii)~~ (iii) The business is supported by a resolution
 19 of the city council or quorum court in the municipality or county in which
 20 the business is located or plans to locate;

21 ~~(iv)~~ (iv) The business is supported by business
 22 incubators certified under § 26-51-815(d);

23 ~~(v)~~ (v) The business is supported by federal small
 24 business innovation research grants; or

25 ~~(vi)~~ (vi) The business is supported by technology
 26 development or seed capital investments made by instrumentalities of the
 27 state.

28 (b)(1) Eligibility for the tax credit under § 15-4-3302(c)(2) is
 29 limited to investments made after July 1, 2010, to an approved regional or
 30 community-based alliance fund that is:

31 (A) A for-profit investment company eligible to do
 32 business in this state;

33 (B) Formed for the purposes of making investments in:

34 (i) A qualified business primarily located in a
 35 designated community, municipality, or county as defined by the regional or
 36 community-based alliance fund; and

1 (ii) Conjunction with other investment funds to make
2 investments in qualified companies located in Arkansas;

3 (C) Supported by a resolution from the city council or
4 quorum court in the municipality or county which have been identified as the
5 designated geographical area for investment by the regional or community-
6 based alliance fund; and

7 (D) Formed by not less than three (3) citizens or an
8 organization in the designated community, municipality, or county that has:

9 (i) Significant business leadership experience or
10 meaningful exposure covering multiple businesses and industries; and

11 (ii) Strong background in corporate finance and
12 experience in working with or implementing business models that efficiently
13 utilize capital.

14 (2) A regional or community-based alliance fund seeking a tax
15 credit under § 15-4-3302(c)(2) shall be required to:

16 (A) Hold any investment in a qualified company for not
17 less than four (4) years;

18 (B) Reinvest any returns from qualified investments back
19 into the regional or community-based alliance fund if those returns are
20 collected within four (4) years of initial investment;

21 (C) Hold a diversified portfolio of investments with one
22 (1) investment equaling not more than twenty percent (20%) of the total
23 capitalization of the regional or community-based alliance fund; and

24 (D) Secure finances sufficient for the purpose of
25 offsetting initial organizational costs associated with the formation of the
26 regional or community-based alliance fund. Specifically, these finances
27 should compensate for but should not be limited to:

28 (i) The cost of hiring legal counsel associated with
29 establishing the organization and governance of the regional or community-
30 based alliance fund;

31 (ii) The cost of hiring or contracting with a
32 qualified group or individual to manage the regional or community-based
33 alliance fund;

34 (iii) The cost of a security-related counsel,
35 including the formation of a private placement memorandum; and

36 (iv) Any other costs associated with the

1 organization and establishment of the regional or community-based alliance
2 fund.

3 (3) Specific requirements set forth jointly by the Arkansas
4 Economic Development Commission, Arkansas Development Finance Authority, and
5 Arkansas Science and Technology Authority must be met by the applying
6 regional or community-based alliance fund.

7 ~~(b)(1)(c)(1)~~ The award of the equity investment incentive tax credit
8 to a qualified business under ~~subsection~~ subsections (a) and (b) of this
9 section shall be determined jointly ~~be~~ at the discretion of the Executive
10 Director of the Arkansas Economic Development Commission, the President of
11 the Arkansas Development Finance Authority, and the President of the Arkansas
12 Science and Technology Authority.

13 (2) Only cash investments shall qualify for the equity
14 investment incentive tax credit under this subchapter.

15 (3) A business that seeks eligibility for an equity investment
16 incentive tax credit under this subchapter shall sign an equity investment
17 incentive agreement with the commission.

18
19 SECTION 3. Arkansas Code § 15-4-3304 is amended to read as follows:
20 15-4-3304. Application for an equity investment incentive tax credit.

21 (a)(1) A business that seeks eligibility for an equity investment
22 incentive tax credit under ~~this subchapter~~ § 15-4-3302(c)(1) shall file an
23 application with the Arkansas Economic Development Commission.

24 ~~(b)(2)~~ The application shall include:

25 ~~(1)(A)~~ A business plan describing the proposed business for
26 which an equity investment incentive tax credit is sought;

27 ~~(2)(B)~~ A projection of the amount of capital being sought for
28 the proposed business; and

29 ~~(3)(C)~~ Other information requested jointly by the Executive
30 Director of the Arkansas Economic Development Commission, the President of
31 the Arkansas Development Finance Authority, and the President of the Arkansas
32 Science and Technology Authority.

33 (b)(1) A regional or community-based alliance fund that intends to
34 invest in a qualified business as defined by § 15-4-3303(a) and seeks to
35 qualify for the tax credit under § 15-4-3302(c)(2) shall file an application
36 with the Arkansas Economic Development Commission.

1 (2) The application shall include:

2 (A) A business plan describing the proposed regional or
3 community-based alliance fund;

4 (B) A projection of the amount of capital being sought for
5 the proposed regional or community-based alliance fund;

6 (C) A projection of the total organizational and
7 educational costs associated with forming the proposed regional or community-
8 based alliance fund;

9 (D) A strategy for garnering commitments for the projected
10 amount of capital being sought for the regional or community-based alliance
11 fund; and

12 (E) Other information requested jointly by the Executive
13 Director of the Arkansas Economic Development Commission, the President of
14 the Arkansas Development Finance Authority, and the President of the Arkansas
15 Science and Technology Authority.

16 (c)(1)(A) The commission shall gather information necessary to
17 determine the eligibility of a business that seeks an equity investment
18 incentive tax credit under § 15-4-3302(c)(1) and process the application.

19 (B) The commission shall gather information necessary to
20 determine the eligibility of a regional or community-based alliance fund that
21 seeks qualification for the tax credit under § 15-4-3302(c)(2) and process
22 the application.

23 ~~(2)(A)~~ The commission shall share the application and all
24 information concerning the business or regional or community-based alliance
25 fund with the Arkansas Development Finance Authority and the Arkansas Science
26 and Technology Authority for review and concurrence on whether an equity
27 investment incentive is offered to the business.

28 ~~(B) The Arkansas Science and Technology Authority shall~~
29 ~~decide whether an equity investment incentive shall be offered to the~~
30 ~~business.~~

31 (d)(1) If a business is notified of approval of an application for an
32 equity investment incentive tax credit under § 15-4-3302(c)(1), the business
33 shall sign an equity investment incentive agreement with the commission.

34 (2) After the equity investment incentive agreement has been
35 signed by the business and the commission, the business may solicit investors
36 and offer the equity investment incentive tax credit to the investors.

1 (3) If a regional or community-based alliance fund is notified
2 of approval for the tax credit under § 15-4-3302(c)(2), the regional or
3 community-based alliance fund shall sign an incentive agreement with the
4 commission.

5 (e)(1) For the equity investment tax credit under § 15-4-3302(c)(1) to
6 be awarded to an investor, the eligible business shall verify that all
7 conditions to the award of an equity investment incentive tax credit stated
8 in the equity investment incentive agreement have been met within the time
9 set forth in the agreement.

10 (2) For the tax credit under § 15-4-3302(c)(2) to be awarded to
11 a regional or community-based alliance fund, the eligible regional or
12 community-based alliance fund shall verify that all conditions to the award
13 of the tax credit stated in the incentive agreement have been met within the
14 time set forth in the agreement.

15
16 SECTION 4. Arkansas Code § 15-4-3305(a) and (b) (As amended by Act 481
17 of 2009), concerning an award of an equity investment incentive tax credit,
18 is amended to read as follows:

19 (a) A person or company that purchases an equity interest in a
20 qualified business under § 15-4-3303(a) or invests in a qualified regional or
21 community-based alliance fund under § 15-4-3303(b) in any of the calendar
22 years ~~2007—2019~~ 2009 - 2019 is entitled to a credit against any state
23 income tax liability that may be imposed on the person or company for any tax
24 year commencing on or after the date of the purchase.

25 (b) The credit against state income tax liability shall be determined
26 in the following manner:

27 (1) ~~The~~ If approved under § 15-4-3303(a), the credit shall not
28 ~~exceed thirty three and one third percent (33 1/3%)~~ fifty percent (50%) of
29 the actual purchase price paid for the equity interest to the business, less
30 any fees or commissions to underwriters or sales agents paid by the business;

31 (2) If approved under § 15-4-3303(b), the credit shall not
32 exceed one hundred percent (100%) of the actual costs incurred through
33 forming a regional or community-based alliance fund;

34 (3) In any one (1) tax year, the credit allowed by this section
35 shall not exceed fifty percent (50%) of the net Arkansas state income tax
36 liability or premium tax liability of the taxpayer after all other credits

1 and reductions in tax have been calculated;

2 ~~(3)(A)~~(4)(A) Any credit in excess of the amount allowed by
3 subdivision ~~(b)(2)~~ (b)(3) of this section for any one (1) tax year may be
4 carried forward and applied against Arkansas state income tax for the next-
5 succeeding tax year and annually thereafter for a total period of nine (9)
6 years next succeeding the year in which the equity interest in a business was
7 purchased, subject to the provisions of subdivision ~~(b)(2)~~ (b)(3) of this
8 section or until the credit is exhausted, whichever occurs first.

9 (B) In no event may the credit allowed by this section be
10 allowed for any tax year ending after December 31, 2028; and

11 ~~(4)~~(5) An original purchaser of equity interests who seeks to
12 qualify for the income tax credit or premium tax credit provided in this
13 section shall obtain and attach to the income tax return or premium tax
14 return for the years the credit is claimed a certified statement from the
15 business stating:

16 (A) The name and address of the original purchaser;

17 (B) The tax identification number of the person entitled
18 to the credit;

19 (C) The original date of purchase of the equity interest;

20 (D) The number and type of equity interests purchased;

21 (E) The amount paid by the original purchaser for the
22 equity interest;

23 (F) The amount of the tax credit associated with the
24 purchase of the equity interest; and

25 (G) The amount of dividends and distributions previously
26 paid by the business to the purchaser.

27

28 SECTION 5. Arkansas Code § 15-4-3306 is amended to read as follows:
29 15-4-3306. Rules.

30 The Arkansas Economic Development Commission, Arkansas Development
31 Finance Authority, and Arkansas Science and Technology Authority shall
32 jointly promulgate guidelines and rules to implement this subchapter.

33

34 /s/ Ingram

35

36