Consolidated Incentive Act of 2003 (Act 182 of 2003, as amended) Rules

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I. Introduction

Act 182 of 2003, "Consolidated Incentive Act of 2003," as amended and codified at § 15-4-2701, et seq., consolidated six (6) previously-existing incentives into one (1) incentive package. The consolidated incentives include:

- Enterprise Zone (Advantage Arkansas);
- Economic Investment Tax Credit (InvestArk);
- Economic Development Incentive Act (Create Rebate);
- Arkansas Economic Development Act (AEDA);
- Emerging Technology Development Act; and
- Biotechnology Training and Development Act.

The Consolidated Incentive Act of 2003, as amended, also provides incentives for targeted businesses that allow earned income tax credits to be sold, which will allow these targeted businesses to realize the benefits of the incentive earlier. In addition, it expands the opportunities for qualified businesses to earn income tax credits based on research and development expenditures.

Other benefits of consolidating incentives include uniformity of definitions and administration of the various incentives.

A financial incentive agreement will be signed with each eligible business that qualifies for an incentive under this Act and is approved by the Arkansas Economic Development Commission (Commission). The financial incentive agreement will be the primary document outlining the benefits to be received and the start and end dates of the project. It will also serve as the primary source document when the Department of Finance and Administration (DFA) audits the business to verify compliance.

The financial incentive agreement shall specify the:

- Effective date of the agreement;
- Term of the agreement, which shall be calculated from the date the agreement is signed by the business and the Commission;
- Incentive the business is to receive;
- Investment, wage and/or payroll threshold requirements necessary to qualify for eligibility;

- Eligible business's responsibilities for certifying eligibility requirements; and
- Approved business's responsibilities for failure to meet or maintain eligibility requirements.

II. Definitions

1. "Applied research" means any activity that ~~seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue~~ applies the findings of basic research or other existing knowledge toward discovering new scientific knowledge that has specific commercial objectives with respect to new products, services, processes, or methods;
2. "Average hourly wage" means "Payroll" as defined in § 15-4-2703(~~28~~26), divided by the number of hours worked to earn the "payroll". For purposes of counting the number of hours worked for salaried employees, forty (40) hours per week shall be used. The "average hourly wage" threshold determined at the signing of the agreement shall be the threshold for the term of the agreement;
3. "Basic research" means the pursuit of new scientific knowledge or understanding that does not have specific, immediate commercial objectives, although the pursuit may be in fields of present or potential commercial interest ~~any original investigation for the advancement of scientific or technological knowledge~~;
4. "Board" means the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission;
5. "Business component" means any product, process, computer software, technique, formula, or invention held for sale, lease, or license or used in trade or business of the taxpayer;
6. "Contractual employee" means an employee who:
   A. May be included in the payroll calculations of a qualified business under this rule ~~Act~~ and is under the direct supervision of the qualified business receiving incentives under this rule ~~Act~~, but is an employee of a business other than the one receiving ~~benefits~~ incentives under this rule ~~Act~~;
   B. Otherwise meets the requirements of a new full-time permanent employee of the qualified business receiving ~~benefits~~ incentives under this rule ~~Act~~; and

   C. Receives a benefits package comparable to direct employees of the qualified business receiving ~~benefits~~ incentives under this ~~Act~~rule;

7~~8~~. "Corporate headquarters" means:
   A. ~~The~~ A facility or portion of a facility where ~~corporate staff employees are~~ the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions

are effectuated on either a regional basis or a national basis under the direction of principal executive officers, including without limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility.

B. A corporate headquarters ~~must~~ shall be either a regional corporate headquarters or a national corporate headquarters;

C. The Executive Director of the Arkansas Economic Development Commission, with advice from the Director of the Department of Finance and Administration, may determine eligibility for a corporate headquarters facility if a difference exists between a business's disclosed corporate headquarters functions and its North American Industry Classification System primary business activity code;

8~~9~~. "Council" means the Arkansas Economic Development Council as defined at § 15-4-201 et seq.;

9~~10~~. "County or state average hourly wage" means:

A. The weighted average weekly earnings for Arkansans in all industries, both statewide and county-wide, as calculated by the Arkansas Department of Workforce Services in their most recent Annual Covered Employment and Earnings publication, divided by forty (40).

B. The average hourly wage threshold determined at the ~~signing~~ approval date of the financial incentive agreement ~~shall be~~ is the threshold for the term of the agreement;

10~~11~~. "Distribution center" means a facility for the reception, storage, and shipping of:

A. A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets if seventy-five percent (75%) of the sales revenue~~s are~~is from out-of-state customers;

B. Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenue~~s~~ of the product owner is~~are~~ from out-of-state customers; or

C. Products for sale to the general public if seventy-five percent (75%) of the sales revenue~~s are~~is from out-of-state customers;

11~~12~~. "Division" means the Division of Science and Technology of the Arkansas Economic Development Commission;

12~~13~~. "Eligible businesses" means non-retail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter, and fall into one (1) or more of the following categories in effect on the effective date of the incentive agreement:

A. (i) Manufacturers classified in sectors 31-33 of the ~~2012~~2017 North American Industrial Classification System (NAICS);

(ii) Manufacturers classified in sectors 20-39 according to the Standard Industrial Classification (SIC) standards but which are classified under NAICS in another sector;

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

(ii) All businesses in this group shall derive at least ~~seventy-five~~ fifty-one percent (~~75~~51%) of their sales revenue from out of state;

(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

C. (i) Businesses primarily engaged in ~~motion picture~~ film and digital product productions and postproductions.

(ii) All businesses in this group shall derive at least ~~seventy-five~~fifty-one percent (~~75~~51%) of their sales revenue from out of state;

(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

D. A distribution center or intermodal facility;

E. An office sector business;

F. A national or regional corporate headquarters, as classified in sector 551114 of the ~~2012~~ 2017 North American Industrial Classification System (NAICS), or as determined by the Executive Director of the Arkansas Economic Development Commission under subdivision (7)(C) of this section;

G. ~~Firms~~ Businesses primarily engaged in ~~commercial, physical and biological~~ research and development in the physical, engineering, and life sciences, as classified in the ~~2012~~ North American Industry~~ial~~ Classification System (NAICS) codes ~~541711 or 541712~~ 54173, 541714, and 541715, as in effect January 1, 2017;

H. (i) Scientific and technical services business.

(ii)(a) All businesses in this group shall derive at least ~~seventy-five~~fifty-one percent (~~75~~51%) of their sales revenue from out of state; and

(b) (1) The average hourly ~~wages~~wage paid by businesses in this group to employees whose payroll is subject to incentives under this Act shall exceed one hundred fifty percent (150%) of the lesser of the county or state average hourly wage~~, whichever is less~~ for the county in which the business locates or expands;~~.~~

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

I. The Executive Director may classify a non-retail business as an eligible business if the following conditions exist:

(i) The business must derive at least ~~seventy-five~~fifty-one percent (~~75~~51%) of its sales revenue from out of state; and

(ii) ~~The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less~~ The average hourly wage paid by the business to employees whose payroll is subject to incentives under this Act shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

(J)(i) Businesses primarily engaged in other support activities for air transportation, as classified in the North American Industry Classification System Code 488190, as in effect on January 1, 2017.

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

(K)(i) Businesses primarily engaged in support activities for rail transportation, as classified in the North American Industry Classification System Code 488210, as in effect on January 1, 2017.

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

13~~14~~. “Endorsement resolution” means a resolution approved by the governing body of the municipality or county within whose jurisdiction the project facility is located which:

A. Approves the business’s participation in the program; and

B. Specifies that the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the approved business. A municipality or county can authorize the refund of a tax levied by it but may not authorize a refund of any tax not levied by it;

14~~15~~. “Equity investment” means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency’s award of a Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) grant. For the purposes of this Act, subordinated debt may also be considered an equity investment;

16. ~~“Executive Director” means the Executive Director of the Arkansas Economic Development Commission;~~

~~17~~15. “Existing employees” means:

A. Those employees hired by a~~the~~ business before the date the financial incentive agreement was ~~signed~~approved.

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

(ii)(a) The position or job filled by the existing employee was created in accordance with the ~~signed~~ approved financial incentive agreement; and

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

C. If the Executive Director and the Director of the Department of Finance and Administration find that a significant impairment of job opportunities for existing employees will otherwise occur, they may jointly authorize existing employees to qualify as new full-time permanent employees;

16~~18~~. “Facility” means a single physical location, which may consist of multiple structures of an eligible business that are conducting similar or complementary activities located on noncontiguous property within the same county, at which the eligible business is conducting its operations. ~~A physical location may consist of more than one (1) facility of the eligible business, that is conducting similar or complimentary activity, located on non-contiguous property within the same incorporated county~~;

17. "Film and digital product" means video images and other visual media entertainment content in digital format, film, or videotape, if the video images and other visual media entertainment content meet all the underlying criteria of a qualified production under the Digital Product and Motion Picture Industry Development Act of 2009, § 15-4-2001 et seq., including without limitation:

    (A) A motion picture;
    (B) A documentary;
    (C) A long-form program;
    (D) A special;
    (E) A mini-series;
    (F) A series;
    (G) A music video;
    (H) Television programming;
    (I) Interactive television;
    (J) An interactive game;
    (K) A video game;
    (L) A commercial;
    (M) Digital media for distribution or exhibition to the general public; and
    (N) A trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment

18~~19~~. "Financial incentive agreement" means an agreement entered into by an eligible business and the Commission to provide the business an incentive to locate a new business or expand or retain an existing business in Arkansas;

~~20. "Fund" means the Arkansas Economic Development Incentive Fund;~~

19~~21~~. "Governing authority" means the quorum court of a county or the governing body of a municipality;

20~~22~~. "In-house research" means:

A. (i) Applied research supported by the business through the ~~purchase of supplies for research activities and~~ payment of wages and usual fringe benefits ~~for~~ specific to research activities of employees of the business ~~who conduct research activities in research facilities~~ or for wages and usual fringe benefits paid through contractual agreements, approved in writing by the Executive Director of the Arkansas Economic Development Commission, with an Arkansas state college, an Arkansas state university, or other Arkansas-based research organization to perform research for a targeted business~~:~~

~~(a) Dedicated to the conduct of research activities;~~

~~(b) Operated by the business; and~~

~~(c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea~~

~~to practice, or to advance a concept or idea, or improvement thereon, to the point of practical application~~.

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

~~(iii) "In-house research" may also include contractual agreements with one or more Arkansas colleges or universities, or other research organizations to perform research for a "targeted business" as defined in § 15-4-2703, provided that the Executive Director of the Arkansas Economic Development Commission, with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission, determines in writing, in advance of the research being performed, that the research by the college or university or other research organization is essential to the core function of the targeted business~~.

B. "In-house research" does not include tests or inspection of materials or products for quality control, efficiency surveys, management studies, other market research, supplies, the purchase of land, the purchase or rehabilitation of production machinery and equipment, the construction or renovation of buildings, or any other ordinary and necessary expenses of conducting business;

21~~23~~. "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has ~~decided to legally protect~~ legally protected for possible commercial gain, based on the disclosure of the creator;

22~~24~~. "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight~~,~~ or commerce~~, or passengers~~;

23~~25~~. "Invest" or "Investment" means money expended by or on behalf of ~~an approved eligible~~ a qualified business that seeks to begin or expand operations in Arkansas, and without the infusion of capital, the location or expansion may not occur;

24~~26~~. "Investment threshold" means the minimum amount of investment in project cost that must be incurred ~~in order~~ to qualify for eligibility;

25~~27~~. "Lease" means a right to possession of real property for a specific term in return for consideration, as determined in a lease agreement by both parties;

26~~28~~. "Modernization" means:

A. An increase in efficiency or productivity of a business through investment in machinery, equipment, or both.

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

27~~29~~. "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

<ins>28</ins>~~30~~. “New full-time permanent employee” means:

A. (i) A position or job that was created pursuant to ~~the signed~~ <ins>an approved</ins> financial incentive agreement and that is filled by one (1) or more employees or contractual employees who:

(a) (1) Were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

(2) Existing employees may not be considered new full-time permanent employees unless certain conditions are met as defined herein; and

(b) (1) Work at the facility identified in the financial incentive agreement.

(2) New employees who do not work at the facility identified in the financial incentive agreement may be counted as new full-time permanent employees if they:

(A) Otherwise meet the definition of “new full-time permanent employee”;

(B) Are subject to the Arkansas Income Tax Withholding Act, Ark. Code Ann. § 26-51-901 et seq.; and

(C) Meet an average hourly wage threshold equal to or greater than the state average hourly wage for the preceding calendar year.

(ii) <ins>For an employee of a qualified business with a regular, standardized work schedule,</ins> ~~The~~ <ins>the</ins> position or job held by the employee or employees shall have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week each tax year during the term of the agreement. <ins>For an employee of a qualified business with an irregular, non-standardized work schedule, (i) the position or job held by the employee or employees had been filled for at least one hundred thirty (130) days during any twenty-six (26) week period of a tax year and (ii) the employee or employees filling the position worked at least seven hundred eighty (780) hours within the tax year.</ins>

B. A contractual employee may qualify as a new full-time permanent employee only when offered a benefits package comparable to a direct employee of the business seeking incentives;

<ins>29</ins>~~31~~. “Non-retail business” means a business that ~~derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public~~ <ins>is not classified in North American Industry Classification System sectors 44-45, as in effect on January 1, 2017</ins>;

<ins>30</ins>~~32~~. “Office sector business” means:

A. Business operations that support primary business needs, including~~, but not limited to,~~ <ins>without limitation</ins> customer service, credit accounting, telemarketing, claims processing, and other administrative functions.

B. All businesses in this group ~~must~~ <ins>shall</ins> be non-retail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;

3133. "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full- time permanent employees hired after the date of the ~~signed~~ approved financial incentive agreement;

3234. "Person" means:

A. An individual, trust, estate, fiduciary, firm, joint venture, proprietorship, partnership, limited liability company, or corporation.

B. "Person" includes:

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

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

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

3335. "Preconstruction costs" means the cost of eligible items incurred before the start of construction, including:

A. Project planning costs;

B. Architectural and engineering fees;

C. Right-of-way purchases;

D. Utility extensions;

E. Site preparations;

F. Purchase of mineral rights;

G. Building demolition;

H. Builder's risk insurance;

I. Capitalized start-up costs;

J. Deposits and process payments on eligible machinery and equipment; and

K. Other costs necessary to prepare for the start of construction;

3436. "Project costs" means costs associated with the:

A. (i) Construction of a new plant or facility;

(ii) Expansion of an established plant or facility by adding to the building, ~~production~~ machinery and equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of ~~production or processing~~ machinery and equipment or support infrastructure that improves efficiency or productivity.

B. "Project costs" does not include:

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

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

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

(a) There is sufficient documentation that the existing business was closed or will close; and

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

C. Eligible project costs must be incurred within four (4) years from the date the financial incentive agreement was ~~signed~~ approved by the Commission;

35~~37~~. "Project plan" means a plan~~:~~

~~A. Submitted~~submitted to the Commission containing ~~such~~ the information ~~as may be~~ required by the Executive Director to determine eligibility for ~~benefits~~incentives; ~~and~~

. ~~B. That, if approved, is a supplement to the financial incentive agreement;~~

36~~38~~. "Qualified business" means an eligible business that:

A. Has met the qualifications for one (1) or more economic development incentives authorized by this ~~Act~~rule; and

B. (i) Has signed a financial incentive agreement ~~with~~ that has been approved by the Commission; ~~or~~

~~(ii) Is involved in a research and development program administered by the Commission;~~

37~~39~~. "Qualified research expenditures" means the sum of any amounts paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program which has been approved for tax credit treatment under rules promulgated by the Commission;

38~~40~~. "Region" or "regional" means a geographic area comprised of this state and ~~a~~ at least one (1) ~~contiguous~~ state contiguous to Arkansas;

39~~41~~. "Regional corporate headquarters" means:

A. a facility or portion of the facility in which the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions are effectuated on a regional basis under the direction of principal executive officers, including without limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility~~The location where a headquarters staff performs functions on a regional basis that involve the services of administration, planning, research and development, marketing, personnel, legal, computer, or telecommunications~~;

B. A function on a regional basis does not include a function involving manufacturing, processing, warehousing, distributing, wholesaling activities or the operations of a call center;

~~42. "Research and development programs of the Division of Science and Technology of the Arkansas Economic Development Commission" means statutory programs operated by the Commission under §§ 15-3-101 to 15-3- 135;~~

~~43. "Research area of strategic value" means research in fields having long-term economic or commercial value to the state, and that have been identified in the research and development plan approved from time to time by the Executive Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission;~~

40~~44~~. "Scientific and technical services business" means a business:

A. Primarily engaged in performing scientific and technical activities for others, including:

(i) Architectural and engineering design; or
(ii) Computer programming and computer systems design; or
(iii) Scientific research and development in the physical, biological, and engineering sciences;

B. ~~Selling expertise;~~

~~C. Having production processes that are almost wholly dependent on worker skills;~~

~~D.~~ Deriving at least ~~seventy-five~~ fifty-one percent (~~75~~51%) of ~~their~~ its sales revenue from out of state; and

~~E~~C. Paying ~~average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less~~ employees whose payroll is subject to incentives under this subchapter average hourly wages exceeding one hundred fifty percent (150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

41~~45~~. "Start of construction" means any activity that causes a physical change to the building, property, or both, identified as the site of the approved project, but excluding ~~engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site~~ preconstruction costs;

42~~46~~. "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved ~~from time to time~~ by the Executive Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission;

~~47~~43. "Support infrastructure" means physical assets necessary for the business to operate, including, ~~but not limited to~~without limitation, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and ~~communication~~ communications infrastructure;

44~~48~~. "Targeted businesses" means:

A. A grouping of growing business sectors, not to exceed six (6) ~~the businesses of which:~~

~~(i) Have been operating in the state for less than five (5) years. For purposes of determining this criterion, the targeted business is considered operating in Arkansas when the minimum annual payroll threshold is met and the minimum equity investment has been constructively received. Once these thresholds are met, the business has five (5) years in which it is eligible to apply as a targeted business;~~

~~(ii) Pay at least one hundred and fifty percent (150%) of the lesser of the county or state average wage; and~~

~~(iii) That have been selected to receive special benefits;~~

~~B. Those groupings, not to exceed six (6),~~ which include the following:

(i) Advanced materials and manufacturing systems;
(ii) Agriculture, food and environmental sciences;
(iii) Biotechnology, bioengineering, and life sciences;
(iv) Information technology;
(v) Transportation logistics; and

(vi) Bio-based products;

45~~49~~. “Technological information” means information derived from basic or applied research that provides an improved practical understanding of the business component; and

~~50~~46. “Tiers” means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of ~~benefits~~incentives under the rule.

III. Tiers

Except for the retention investment credits (InvestArk) in § 15-4-2706(c), the research and development credits in § 15-4-2708, and the payroll income tax credit for targeted businesses in § 15-4-2709; all benefits provided in this Act are determined in relation to the tier of the county in which the project is located. The state’s seventy-five (75) counties are divided into four (4) tiers, with Tier 1 counties being the most prosperous counties and Tier 4 counties being the least prosperous counties. Tiers are determined annually by the Commission by ranking four variables: poverty rate, population ~~growth~~change, per capita personal income, and unemployment rate. A county ranking is determined for each of these variables using a consistent source and the four (4) rankings are totaled and divided by four (4) to obtain an overall ranking. It is the intention of the Commission to place fifteen (15) counties in Tier 1 and twenty (20) counties in Tiers 2, 3, and 4 respectively. If there is a tie between two (2) or more counties for overall rankings at the break point for tiers, the counties with a tie score will be placed in the higher tier.

A county’s tier ranking, determined on the effective date of any incentive agreement under the Consolidated Incentive Act of 2003, as amended, shall establish the thresholds and benefits for the term of the agreement, regardless of any subsequent change to the tier.

A county’s tier might be moved to one (1) higher tier if the county has experienced a sudden and severe period of economic distress~~,~~ caused by a closure of one (1) or more businesses or a mass layoff at one (1) or more businesses, or both, as documented by notice provided under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., as it existed on January 1, 2019, ~~as indicated by~~that results in a loss of ~~more than~~ a minimum of five percent (5%) of the county’s total employed labor force. ~~The most recent Labor Market Information publication, published by the Arkansas Department of Workforce Services, is used as the reference to determine a loss of five percent (5%) of the employed labor force.~~ The movement to a ~~higher~~ lower tier is authorized ~~by action of the Arkansas Economic Development Council (Council) after having received a request from the county judge of the county in question.~~ upon written request by the county judge of the affected county and approval by the Executive Director of the Arkansas Economic Development Commission. A business that had signed a financial incentive agreement with the Commission prior to the action of the

~~Council~~ Commission to move a county to a ~~higher~~ lower tier, shall receive the benefit assigned to it at the time of the signing of the financial incentive agreement for the duration of the agreement, regardless of any subsequent change of a county's tier assignment. A tier modification approved under this subsection remains in effect until the annual tier rankings are updated in accordance with this section.

The five-percent threshold stated in the immediately preceding paragraph shall be evidenced by calculating the highest percentage difference in employment between the county's: (A) Current monthly, not seasonally, adjusted total employed labor force; and (B) Each of the following: (i) the previous monthly, not seasonally, adjusted total employed labor force; (ii) the most recent annually, not seasonally, adjusted total employed labor force; or (iii) the monthly, not seasonally, adjusted total employed labor force for the same month of the previous year.

IV. Powers and Duties of the Arkansas Economic Development Commission

The Commission shall administer the provisions of the Consolidated Incentive Act of 2003, as amended, and shall have the following powers and duties in addition to those mentioned in other laws of the state:

1. To promulgate rules in accordance with the Administrative Procedures Act, § 25-15-201 et seq., necessary to carry out the provisions of the Consolidated Incentive Act of 2003, as amended;
2. To provide the DFA with a copy of each financial incentive agreement entered into by the Commission with each qualifying business;
3. To assist governing authorities in obtaining assistance from any other department of state government to promote new businesses and industries;
4. To assist any employer or prospective employer with a qualifying project in obtaining the benefits of any incentive or inducement program authorized by state law;
5. To act as a liaison between other state agencies and businesses and industries to assure that both the spirit and intent of this ~~Act~~ rule are met;
6. To make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in § 15-4-2707 of the Consolidated Incentive Act of 2003, as amended; and
7. The Executive Director is authorized to negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility or expanding an existing facility that would seek the ~~benefits of §§ 15-4-2706(b), 15-4-2706(e), 15-4-2707, 15-4-2708(c), or 15-4-2709~~discretionary programs under the Consolidated Incentives Act.

V. Administration

1. A. If the annual payroll threshold of the business applying for ~~benefits~~ incentives under this Act is not met within ~~twenty-four (24) months~~two

years after the signing of the approved financial incentive agreement, the business may request, in writing, an extension of time to reach the required payroll threshold.

B. (i) If the Executive Director and the Director of the Department of Finance and Administration (Director) find that the ~~approved~~ qualified business has presented compelling reasons for an extension of time, the Executive Director may grant an extension of time not to exceed ~~forty-eight (48) months~~four (4) years from the effective date of the financial incentive agreement.

(ii) However, the extension on projects applying for benefits under § 15-4- 2705 is limited to a ~~twenty-four (24)~~two (2) year ~~month~~ extension.

C. (i) If a qualified business fails to reach the annual payroll threshold ~~before the expiration of the twenty-four (24) months, or the time period established by a subsequent extension of time~~ required under the approved financial incentive agreement, that qualified business ~~will be~~is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the payroll threshold had not been met.

(ii) (a) ~~After a business has failed~~ If a qualified business fails to reach the annual payroll threshold ~~in a timely manner~~ required under an approved financial incentive agreement, the DFA ~~shall have~~has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business or file a lawsuit to enforce the repayment provisions.

(b) (1) If the annual payroll of a qualified business receiving benefits under this Act falls below the payroll threshold for qualification in a year subsequent to the ~~one~~ year in which it initially qualified for the incentive, the ~~benefits~~ incentives outlined in the financial incentive agreement ~~will~~ shall be terminated unless ~~the business files~~ a written application for an extension of ~~benefits~~ incentives explaining why the payroll has fallen below the level required for qualification has been filed with and approved by ~~with~~ the Commission ~~explaining why the payroll has fallen below the level required for qualification~~.

(2) The Executive Director and the Director may approve the request for extension of time, not to exceed ~~twenty-four (24) months~~two (2) years, for the qualified business to bring the payroll back up to the requisite threshold amount and may approve the continuation of ~~benefits~~ incentives during the period the extension is granted.

(3) If the business fails to reach the payroll threshold before the expiration of the time period established by a subsequent extension of time, the qualified business ~~shall be~~is liable for the repayment of all ~~benefits~~ incentives paid to the business after it no longer qualified for the ~~benefits~~incentives.

(c) (1) If a qualified business fails to reach the investment threshold before the expiration of the four (4) year time limit, that qualified business ~~will be~~is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold was not met.

(2) ~~After a business has failed~~If a qualified business fails to reach the investment threshold of this rule ~~Act in a timely manner~~under an approved financial incentive agreement, the ~~DFA shall have~~department has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold has not been met or file a lawsuit to enforce the repayment provisions.

(d) (1) If a qualified business fails to reach the average hourly wage ~~requirement~~ threshold for ~~benefits~~ incentives under this rule ~~Act within twenty-four (24) months of the effective date of the~~as specified in an approved financial incentive agreement, the qualified business ~~will be~~is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business for which the average hourly wage threshold has not been met.

(2) ~~After a business has failed~~If a qualified business fails to meet the hourly wage ~~requirements~~threshold, the DFA ~~shall have~~has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the average hourly wage threshold has not been met or file a lawsuit to enforce the repayment provisions.

~~(e) (1) If a business fails to meet the non-retail business requirements of this Act, the business will be liable for the repayment of all benefits previously received by the business.~~

~~(2) After a business has failed to meet the non-retail business requirements, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.~~

(~~f~~e)(1) Eligible businesses whose qualification depends on deriving either fifty-one percent (51%) or seventy-five percent (75%) of their sales from out-of-state customers shall meet this requirement within three (3) years from the approval date of their financial incentive agreement.

(2)(A) If the requirement is not met within three (3) years of the ~~signed~~ approved financial incentive agreement, the qualified business may request, in writing, an extension of time to reach the required sales threshold.

(B) If the Executive Director finds that the qualified business has presented compelling reasons for an extension of time, the

Executive Director may grant an extension of time not to exceed ~~twenty-four (24) months~~an additional two (2) years.

(~~g~~f) (1) If a qualified business fails to ~~timely~~ meet the out-of-state sales requirements of this rule ~~Act~~ under the specified deadlines in the approved financial incentives agreement, the qualified business ~~will be~~is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met.

(2) ~~After~~ If a qualified business ~~has failed~~fails to meet the out-of-state sales requirements, the DFA ~~shall have~~has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met or file a lawsuit to enforce the repayment provisions.

(~~h~~g) (1) If a qualified business fails to notify the DFA that the annual payroll of the qualified business has fallen below the threshold for qualification for and retention of any incentive authorized by this rule ~~Act~~, that qualified business will be liable for the repayment of all ~~benefits~~ incentives which were paid to the qualified business and that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met after it no longer qualified for the ~~benefits~~incentives.

(2) ~~After a business has failed~~If a qualified business fails to notify the DFA that the qualified business has fallen below the payroll threshold, the DFA ~~shall have~~has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business and that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met or file a lawsuit to enforce the repayment provisions.

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

(~~i~~h) The DFA may obtain whatever information is necessary from a participating qualified business and from the Arkansas Department of Workforce Services (ADWS) to verify that a qualified business ~~that has entered into financial incentive agreements with the Commission~~ is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, wages, and out-of-state revenues to the DFA. The DFA shall provide the information obtained to the Executive Director upon request.

(~~j~~i) The DFA may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a ~~program participant~~qualified business is located, to enforce the repayment provisions of this rule ~~Act~~.

(~~k~~j) (1) If a qualified business fails to satisfy or maintain any other requirement or threshold of this rule ~~Act~~, that qualified business ~~will be~~is liable for the repayment of all ~~benefits~~ incentives received after it no longer qualified.

(2) ~~After a business has failed~~If a qualified business fails to comply with the requirements or thresholds of this rule ~~Act~~, the DFA ~~shall have~~has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business for noncompliant financial incentive agreements or file a lawsuit to enforce the repayment provisions.

(~~l~~k) If a repayment is required as a result of not complying with the requirements or thresholds of this rule ~~Act~~, interest shall be due at the rate of ten percent (10%) per annum.

VI. Transfer and Assignment of Financial Incentive Agreements

No Consolidated Incentive Act financial incentive agreement shall be transferrable or assignable without the written consent of the Executive Director and the Director.

VII. Incentive Programs Contained Within the Consolidated Incentive Act of 2003, as Amended

The incentive programs below require that a potentially~~-~~eligible business submit an application and a project plan to the Commission prior to incurring project costs or hiring new employees associated with the project. In some cases, once an application is processed and signed by the Commission, the application, with supporting information, becomes a financial incentive agreement.

The date an application is received by the Commission is the earliest date benefits may be accrued.

- **Job-Creation Tax Credit § 15-4-2705.**

A. Job Creation Income Tax Credit (Advantage Arkansas) – Act 182 of 2003, as amended, § 15-4-2705.

The *Advantage Arkansas* program provides an Arkansas income tax credit based upon a percentage of the annual payroll paid to the new full-time permanent employees hired as a result of an approved project. The tier in which the project is located determines the qualifying payroll threshold as well as the income tax benefit calculation.

Pursuant to Act 716 of 2009, for agreements with an effective date on or after July 31, 2009, in all tiers, in order to qualify for the ~~benefits of~~incentives under this program, the proposed average hourly wage of the eligible business applying for these ~~benefits~~ incentives ~~must~~ shall be at least equal to~~, or~~ the greater ~~than,~~of the lowest county average hourly wage calculated by the Commission based on the most recent calendar year data published by the ADWS, or twelve dollars and fifty cents ($12.50).

The date of the approved financial incentive agreement is the beginning date in determining when the payroll threshold must be met. Only those employees hired after the date of the approved financial incentive agreement are eligible for the income tax credits (except as provided in Section II (~~17~~15)).

The income tax credit earned cannot be used to offset ~~more than~~ up to fifty percent (50%) of a business's income tax liability ~~in any one (1) tax year~~annually. Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

Income tax credits are earned in the tax year in which the new full-time permanent employees qualify after the financial incentive agreement was ~~signed with~~approved by the Commission. At the end of each tax year, during the term of the agreement, it is the responsibility of the qualified business to file the *Advantage Arkansas Program Employee Payroll Certification Audit Request* with the DFA. This certification provides the number of new permanent employees and their payroll during the preceding tax year and is the mechanism to initiate the verification audit. Upon verification of the reported payroll amounts, the DFA shall authorize the appropriate income tax credit. Therefore, the business must certify annually at the end of each tax year to the DFA.

The qualified business shall be entitled to receive income tax credits for which it has remained eligible under the rule ~~Act~~ and for which has provided timely certification in support thereof, for each subsequent tax year during the term of the agreement. The term of the financial incentive agreement shall be for a period of ~~sixty (60) months~~five (5) years, beginning on the date of the approved financial incentive agreement.

The income tax credit for the tax year in which new employees qualify will be based on the payroll paid to each new full-time permanent employee from their hire date to the end of the tax year. ~~To be counted as a new full-time permanent employee during any tax year, the employee must have worked a minimum of twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.~~ The payroll threshold of the new full-time permanent employees must be met by the business within ~~twenty-four (24) months~~two (2) years following the date the financial incentive agreement was ~~signed~~ approved (except as provided in Section V (1)).

The threshold for qualifying for the Advantage Arkansas job creation income tax credit and the benefit received is dependent upon the tier in which the project is located on the ~~effective~~ date ~~of~~ the financial incentive agreement was approved:

- **Tier 1 Counties** – An eligible business must have a payroll of new full-time permanent employees ~~in excess~~ of at least one hundred twenty-five thousand dollars ($125,000) in order to qualify. The benefit is a tax credit equal to one percent

(1%) of the payroll paid to the new full-time permanent employees for the term of the agreement;

- **Tier 2 Counties** – An eligible business must have a payroll of new full-time permanent employees ~~in excess~~ of at least one hundred thousand dollars ($100,000) in order to qualify. The benefit is a tax credit equal to two percent (2%) of the payroll paid to the new full-time permanent employees for the term of the agreement;
- **Tier 3 Counties** – An eligible business must have a payroll of new full-time permanent employees ~~in excess~~ of at least seventy-five thousand dollars ($75,000) in order to qualify. The benefit is a tax credit equal to three percent (3%) of the payroll paid to the new full-time permanent employees for the term of the agreement; and
- **Tier 4 Counties** – An eligible business must have a payroll of new full-time permanent employees ~~in excess~~ of at least fifty thousand dollars ($50,000) in order to qualify. The benefit is a tax credit equal to four percent (4%) of the payroll paid to the new full-time permanent employees for the term of the agreement.
  - A qualified business shall receive an additional tax credit of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives under this Act exceeds one hundred twenty-five percent (125%) of the lesser of the county or state average hourly wage for the county in which the qualified business locates or expands.

Example: An eligible business intends to expand its operation in a Tier 3 county and will be adding twenty-five (25) new full-time permanent employees earning fifteen dollars ($15) per hour. In a Tier 3 county, a payroll threshold of seventy-five thousand dollars ($75,000) must be met to qualify for the job creation tax credit equal to three percent (3%) of payroll. ($15 per hour X 2080 hours = $31,200 per employee X 25 jobs = $780,000 annual payroll X 3% = $23,400 income tax credit earned for each of the next five (5) years.) This example assumes that all twenty-five (25) new full-time permanent employees were hired at the beginning of the first year and worked forty (40) hours per week.

Notes: Benefit calculations for the above example could change given the following circumstances:

- The number of jobs is increased or decreased;
- If all of the new jobs are not filled at the beginning of the first year;
- The pay level is decreased or increased; and
- If the payroll falls below the seventy-five thousand dollars ($75,000) required for qualification in a Tier 3 county, the business may request an extension of up to ~~twenty-four (24) months~~two (2) years to regain the minimum payroll threshold. If the business fails to regain the threshold amount, the business shall be liable for repayment of any benefits received after it no longer qualified.

Combination with other incentives: The job creation income tax credit (Advantage Arkansas) authorized in § 15-4-2705 may be combined with:

- ~~The research and development income tax credit for university-based research authorized by § 15-4-2708(a);~~
- The research and development income tax credit for in-house research authorized by § 15-4-2708(~~b~~a); and
- Either the retention investment incentive (InvestArk) authorized in § 15-4-2706(c); or
- The sales and use tax refund investment incentive (Tax Back) authorized by § 15-4-2706(d).

Advantage Arkansas shall not be combined with the payroll rebate incentive (Create Rebate) authorized by §15-4-2707.

2. Economic Development Incentive Fund – Payroll Rebate § 15-4-2707.

A. Payroll Rebate (Create Rebate) – Act 182 of 2003, as amended, § 15-4-2707.

The payroll rebate incentive, also known as "Create Rebate", is offered only at the discretion of the Executive Director. Like the Advantage Arkansas job creation income tax credit, the payroll rebate is based on the payroll of new full-time permanent employees.

The date of the approved financial incentive agreement is the beginning date in determining when the payroll threshold must be met. Only the payroll of those employees hired after the date of the financial incentive agreement is eligible for the rebate (except as provided in Section II (~~17~~15)). ~~A minimum payroll of two million dollars ($2 million) (payroll threshold) for new full-time permanent employees is required to qualify for this incentive.~~To qualify for this incentive, a business shall meet minimum annual payroll thresholds for new full-time permanent employees for the county tier in which the project is located.

The payroll rebate for the tax year in which new employees qualify will be based on the payroll paid to each new full-time permanent employee from their hire date to the end of the tax year. To be counted as a new full-time permanent employee during any tax year, the employee must have worked a minimum of twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week. The payroll threshold of the new full-time permanent employees must be met by the business within twenty-four (24) months following the date the financial incentive agreement was signed (except as provided in Section V (1)).

The incentive payment amount shall be subject to the terms provided in the financial incentive agreement and may be reduced based upon the audited performance of the eligible business.

It is the responsibility of the qualified business to file the *Create Rebate Program New Full-Time Permanent Employee Payroll Certification* with the DFA when the requisite ~~two million dollar ($2 million)~~ payroll threshold has been attained. This certification provides the number of new full-time permanent employees hired, together with the dollar amount of their payroll. Thereafter, the qualified business shall recertify the number of new full-time permanent employees and payroll amounts annually at the end of each tax year. The certification to the DFA is the mechanism to initiate the verification audit. Therefore, the business must certify annually at the end of each tax year to the DFA.

Pursuant to Act 625 of 2009, for financial incentive agreements with an effective date on or after July 31, 2009, failure of the business to certify and recertify payroll amounts annually to the DFA will result in the DFA reducing the amount of rebate earned by ten percent (10%) if not claimed within ~~twelve (12) months~~ one (1) year from the end of the tax year in which the rebate was earned, or a one hundred percent (100%) forfeiture of the earned rebate if not claimed within ~~twenty-four (24) months~~ two (2) years from the end of the tax year in which the rebate was earned. If a qualified business has failed to submit an initial certification with DFA within four (4) years after the date of the approved financial incentive agreement the agreement will be terminated, unless the date has been extended by the Executive Director. The offering of this incentive is intended to provide benefits to businesses locating or expanding in Arkansas. In the event the approved business ceases the operations of the facility for which the incentives are offered, the incentive agreement will be terminated and any benefits accrued and not claimed as of the date of closure will be forfeited.

The payroll rebate (Create Rebate) benefit can only be authorized at the discretion of the Executive Director in the form of a written proposal and may be offered for up to ten (10) years. The term of the agreement depends on the benefit to the state as determined by a cost-benefit analysis performed by the Commission. If the proposal is accepted by the qualified business, a financial incentive agreement is signed by the Commission and the business. The provisions of the financial incentive agreement will be based upon the eligible business's proposed job creation and average hourly wage information provided in the written proposal from the Executive Director. With the exception of targeted businesses, the ~~benefit~~ incentive allowed is dependent upon the tier in which the business locates. The qualifying annual payroll thresholds and incentive payment allowed are as follows:

- **Tier 1 Counties** – The annual payroll threshold is at least two million dollars ($2,000,000). An incentive payment equal to three and nine-tenths percent (3.9%) of the payroll of the new full-time permanent employees for the term of the agreement;
- **Tier 2 Counties** – The annual payroll threshold is at least one million seven hundred fifty thousand dollars ($1,750,000). An incentive payment equal to four and one-quarter percent (4.25%) of the payroll of the new full-time permanent employees for the term of the agreement;
- **Tier 3 Counties** – The annual payroll threshold is at least one million five hundred thousand dollars ($1,500,000). An incentive payment equal to

four and one-half percent (4.5%) of the payroll of the new full-time permanent employees for the term of the agreement; and

- **Tier 4 Counties** – The annual payroll threshold is at least one million two hundred fifty thousand dollars ($1,250,000). An incentive payment equal to five percent (5~~.0~~%) of the payroll of the new full-time permanent employees for the term of the agreement.
- At the discretion of the Executive Director, an eligible business located in a ~~T~~tier 1, 2, ~~or~~ 3, or 4 county may be authorized to receive an ~~increased benefit~~ enhanced incentive, up to five percent (5~~.0~~%), of the payroll of the new full-time permanent employees if the following conditions are met:
    - The business is considering a location in another state;
    - The business derives at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of its sales from out of state; and
    - The business proposes to pay wages in excess of one hundred percent (100%) of the average wage of the county in which it locates.

To qualify for this incentive, except for the enhanced incentive, the average hourly wage paid to employees whose payroll is subject to incentives shall be at least equal to the **greater** of the lowest county average hourly wage as calculated by the commission based on the most recent calendar year data published by the Department of Workforce Services, or twelve dollars and fifty cents ($12.50).

A qualified business shall receive an additional incentive of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives exceeds the lesser of one hundred twenty-five percent (125%) of the county or state hourly wage for the county in which the business locates or expands.

The benefits provided by this section shall be calculated based upon the provisions of the financial incentive agreement. The financial incentive agreement may contain language that will adjust the benefit based upon the audited performance of the eligible business.

> **Example:** An eligible business plans on locating in a Tier 2 county and plans to hire sixty-five (65) employees at an average wage of nineteen dollars ($19) per hour. In Tier 2, a payroll rebate of four and one-quarter percent (4.25%) of payroll of new full-time permanent employees may be granted. A minimum annual payroll of ~~two~~ one million seven hundred fifty thousand dollars ($~~2,000,000~~ 1,750,000) is required to qualify for this incentive. In this example, the Executive Director agrees to award the payroll rebate for a period of three (3) years. ($19 per hour X 2080 = $39,520 per employee X 65 jobs = $2,568,800 annual payroll X 4.25% = $109,174 payroll rebate for each of the next three (3) years.) This example assumes that all sixty-five (65) new full-time permanent employees were hired at the beginning of the first year and worked forty (40) hours per week.

Notes: Benefit calculations could change given any of the following circumstances:

- The business decided to locate in another tier;
- The Executive Director awards a shorter or longer term for the benefit;
- The payroll increases due to either raises being given or new employees being added to the payroll;
- The payroll decreases (if the payroll falls below the ~~two~~ one million seven hundred fifty thousand dollar [$~~2,000,000~~ 1,750,000] threshold for qualification, the business may request an extension of up to ~~twenty-four (24) months~~ two years to regain the payroll threshold); and
- If the business fails to regain the payroll threshold amount, the business shall be liable for repayment of all benefits previously received.

Combination with other incentives: The payroll rebate (Create Rebate) incentive authorized in § 15-4-2707, if offered by the Executive Director, may be combined with:

- Either the retention investment incentive (InvestArk) authorized by § 15-4-2706(c) ***or*** the sales and use tax refund incentive (Tax Back) authorized by § 15-4-2706(d), the approved business would choose between these two, but cannot take both;
  - The ArkPlus investment incentive authorized by § 15-4-2706(b), if approved by the Executive Director;
  - ~~The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and~~
  - The research and development income tax incentive for in-house research authorized by § 15-4-2708(~~b~~a).

B. Payroll Rebate for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2707(e).

The payroll rebate incentive payment for targeted businesses is equal to five percent (5%) of the payroll of the new full-time permanent employees for a period not to exceed ten (10) years provided that the following conditions are met:

- The average hourly wage of the new full-time permanent employees must be at least one hundred ~~seventy-five~~fifty percent (~~175~~150%) of the lesser of the state or county average hourly wage~~, whichever is less~~; and
- The payroll of the new full-time permanent employees exceeds two hundred fifty thousand dollars ($250,000).

The payroll rebate for targeted businesses may not be used in conjunction with the income tax credit based on payroll authorized by § 15-4-2709.

3. Investment Tax Incentives § 15-4-2706.

- **Retention Sales and Use Tax Credit (InvestArk) – Act 182 of 2003, as amended, § 15-4-2706(c).**

A qualified business may apply for the Retention Sales and Use Tax Credit (InvestArk) through June 30, 2017. InvestArk applications shall not be accepted on or after July 1, 2017. However, any projects that qualify for InvestArk based on applications filed through June 30, 2017, shall continue to earn credits. InvestArk tax credits issued on a project that qualified for InvestArk tax credits based on an application filed through June 30, 2017, shall remain in effect and shall be taken and carried forward as otherwise provided under § 15-4-2706(c).

The qualifications and benefits for this incentive are the same in all four (4) tiers. To qualify, a business must: 1) Have been in continuous operation in the state for at least two (2) years; 2) Invest a minimum of five million dollars ($5,000,000) in a project (including land, buildings and equipment); and 3) Hold a direct-pay sales and use tax permit from the DFA.

To obtain ~~benefits~~ incentives under the InvestArk program, a business must apply to the Commission, using forms provided by the Commission, and be approved based on the qualifications submitted in the application and the accompanying project plan. With the exception of preconstruction costs, only those costs incurred after the Commission's approval are eligible in calculating the benefit of this program.

The project plan shall clearly identify the scope of the project, the time frame in which the project is to be started and completed and a complete listing of estimated project expenditures. All project costs must be incurred within four (4) years from the date the project is approved by the Commission. However, a qualified business that enters into a lease for building or equipment for a period ~~in excess of~~of at least five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures. The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.

The project plan may be revised by written amendment filed with the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. Amendments that exceed twenty-five percent (25%) of the original project plan's estimated cost will not be considered and shall be submitted as a new project.

The benefit of the InvestArk program is a sales and use tax credit based on a percentage of qualified expenditures. The percentage used to determine the amount of sales and use tax credits earned is ~~one-half of one~~five-tenths percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement is signed with the Commission.

The credit may be applied against the business's direct-pay state sales and use tax liability in the year following the year of expenditure. Any unused credits may be carried forward for a period of up to five (5) years. In any year, tax credits taken under this program cannot exceed fifty percent (50%) of the business's sales and use tax liability on taxable purchases.

Once a business has qualified for ~~the benefits of~~ the InvestArk incentive, the Executive Director will notify the DFA that the project has been approved and will transmit the documents upon which the qualification was based.

The Commission's approval of any application is for content only. It does not constitute approval of all items listed on the application or the project plan. These items will be reviewed and either approved or ruled ineligible by an audit by the Revenue Division of the DFA.

The DFA is authorized to conduct an audit to determine eligibility of reported project expenditures. The audit may be conducted after credits have been issued and used. If expenditures upon which credits have been issued are determined to be ineligible, the amount of credit will be adjusted, which may result in the repayment of all taxes.

It is the responsibility of the qualified business to file an *Annual Project Expenditure Report (Form InvestArk 2000)* annually at the end of each calendar year with the DFA to report the eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of credit earned during that calendar year, the DFA shall issue a memorandum of credit to the qualified business. The issuance of the credit does not imply the eligibility of the expenditures, which are subject to audit at a later date.

Example: A manufacturer is adding a new product line and will require additional space and new processing equipment. The total cost of the project, with land, building and equipment, totals seven million seven hundred and fifty-four thousand dollars ($7,754,000). The business has been in operation for over fifteen (15) years in Arkansas, meeting the two-year residency requirement of this incentive. After being approved by and signing a financial incentive agreement with the Commission, the manufacturer is eligible for a sales and use tax credit of seven percent (7%) (one-half of one percent over the rate of 6.5% as of July 1, 2013). At the end of each calendar year, until project completion, the business shall certify to the DFA the amount of project expenditures incurred during the previous calendar year and shall be granted a sales and use tax credit. If the business had spent seven million seven hundred and fifty-four thousand dollars ($7,754,000) in eligible expenditures in the previous calendar year, the total sales and use tax credit based upon a sales tax rate of 6.5% ($7,754,000 X 7%) would be $542,780, which could be used the following year and any unused credit could be carried forward for an additional five (5) years. In any year, the amount of the sales and use tax credit used cannot exceed fifty percent (50%) of the business's sales and use tax liability on taxable purchases.

Notes: The benefit calculations above could change given any of the following circumstances:

- The sales tax rate was increased or decreased prior to the signing of a financial incentive agreement with the Commission. Once a business has signed a financial incentive agreement with the Commission, the sales tax rate and benefit will be "locked in" regardless of any subsequent change to the sales tax rate during the term of the project.
- The project fails to reach the minimum investment threshold of five million dollars ($5,000,000). Should benefits be received for project expenditures and the threshold expenditure of five million dollars ($5,000,000) not be met, the recapture provisions of Section V of these rules may be invoked by the DFA.

Combination with other incentives: The retention tax credit (InvestArk) authorized in § 15-4-2706(c) may be combined with:

- The job creation tax credit (Advantage Arkansas) as authorized in § 15-4- 2705;
- The payroll rebate (Create Rebate), if offered by the Executive Director, as authorized in § 15-4-2707; and
- ~~The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and~~
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(~~b~~a).

This incentive shall not be combined with the sales and use tax refund authorized in §15-4-2706(d) for the same project.

B. Investment Income Tax Credit (ArkPlus) – Act 182 of 2003, as amended, § 15-4- 2706(b).

This incentive is awarded only at the discretion of the Executive Director. To qualify, the business must meet both the investment and payroll thresholds for the tier in which it locates.

The benefit is an income tax credit equal to ten percent (10%) of ~~the investment in land, buildings, equipment, and costs relating to licensing and protecting intellectual property (which would include license fees, patent fees and attorney fees to maintain or enhance the patent's or trademark's application)~~total audited eligible project costs. The benefit is the same regardless of the tier in which the business locates.

The business must reach the investment threshold for the tier in which it is located within four (4) years from the date of the ~~signing~~ approved ~~of the~~ financial incentive agreement. All project costs must be incurred within four (4) years from the date the project is approved by the Commission; however, a qualified business that enters into a lease for building or equipment for a period ~~in excess~~ of at least five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures. The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.

The business must reach the payroll threshold for the tier in which it is located within ~~twenty-four (24)~~two (2) ~~months~~ years from the date of the ~~signing of the~~approval of the financial incentive agreement.

It is the responsibility of the qualified business to file an *ArkPlus Program Annual Incentive Plan Expenditure Report* and an *ArkPlus Program New Full-Time Permanent Employee Payroll Certification* with the DFA when the investment threshold is met. This certification provides the amount of eligible project costs incurred in the previous tax year and the number of new full-time permanent employees hired, together with the dollar amount of their payroll. Thereafter, the business shall recertify eligible project costs and the number of new full-time permanent employees and payroll amounts annually at the end of each tax year. The certification to the DFA is the mechanism to initiate the verification audit.

The income tax credit earned can~~not~~ be used to offset ~~more than~~ up to fifty percent (50%) of the business's income tax liability annually ~~in any one (1) tax year~~. Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

To qualify for this incentive, the business must meet the investment and payroll thresholds for the tier in which the business locates or expands:

- **Tier 1** – The business must invest at least five million dollars ($5,000,000) and have an annual payroll of new full-time permanent employees of at least two million dollars ($2,000,000);
- **Tier 2** – The business must invest at least three million seven hundred fifty thousand dollars ($3,750,000) and have an annual payroll of new full-time permanent employees of at least one million five hundred thousand dollars ($1,500,000);
- **Tier 3** – The business must invest at least three million dollars ($3,000,000) and have an annual payroll of new full-time permanent employees of at least one million two hundred thousand dollars ($1,200,000); and
- **Tier 4** – The business must invest at least two million dollars ($2,000,000) and have an annual payroll of new full-time permanent employees of at least eight hundred thousand dollars ($800,000).

Example: A new eligible business plans to begin operations in a Tier 4 county. It plans on hiring fifty (50) new full-time permanent employees at an average wage of fifteen dollars ($15) per hour. ($15/hour X 2080 hours = $31,200 average annual salary X 50 employees = $1,560,000 annual payroll.) It will invest three million five hundred thousand dollars ($3,500,000) in land, buildings and equipment for the new operation. The one million five hundred and sixty thousand dollar ($1,560,000) annual payroll exceeds the eight hundred thousand dollar ($800,000) payroll threshold for a Tier 4 county and the capital investment of three and one-half million dollars ($3,500,000) exceeds the two million dollar ($2,000,000) investment threshold, allowing the business to meet minimum qualifications for the incentive. Should the Executive Director approve the business's application for this incentive program, and should the business spend precisely three and one-half million dollars ($3,500,000), it would earn an income tax credit of three hundred and fifty thousand dollars ($350,000) that could be carried forward for up to nine (9) years beyond the year it was first earned. This example assumes all new full-time permanent employees were hired at the beginning of the first year and work forty (40) hours per week.

Notes: The benefit calculation noted above could change given any of the following circumstances:

- The business fails to reach either the investment or payroll threshold required to receive the benefit of this incentive program.

Failure to meet investment or payroll requirements could necessitate the implementation of recapture provisions provided for in Section V of these rules.

Combination with other incentives: The investment income tax credit authorized by § 15-4-2706(b), if approved by the Executive Director, may be combined with:

- The payroll rebate (Create Rebate) authorized by § 15-4-2707, if approved by the Executive Director; and
- ~~The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and~~
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(~~b~~a).

C. Technology-Based Enterprises Investment Income Tax and Sales and Use Tax Credit (Targeted ArkPlus) – Act 182 of 2003, as amended, § 15-4-2706(b)(7).

At the discretion of the Executive Director, a targeted business may earn an income tax credit or a sales and use tax credit based upon new investment. Thetargeted business must:

- Invest a minimum of two hundred fifty thousand dollars ($250,000) within four (4) years of the effective date of the financial incentive agreement;

- Create a new payroll of at least two hundred fifty thousand dollars ($250,000); and
- Pay wages that are at least one hundred ~~seventy-five~~ fifty percent (~~175~~150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands~~, whichever is less~~.

The credit earned by the targeted business ~~shall be~~ is based upon a percentage of the investment as follows:

- The credit amount ~~shall be~~ is two percent (2%) of investment~~s~~ from two hundred fifty thousand dollars ($250,000) up to five hundred thousand dollars ($500,000);
- The credit amount ~~shall be~~is two percent (2%) of the investment up to five hundred thousand dollars ($500,000) plus four percent (4%) of the investment in excess of five hundred thousand dollars ($500,000) up to one million dollars ($1,000,000);
- The credit amount is~~shall be~~ two percent (2%) of the investment up to five hundred thousand dollars ($500,000) plus four percent (4%) of the investment in excess of five hundred thousand dollars ($500,000) up to one million dollars ($1,000,000) plus six percent (6%) of the investment in excess of one million dollars ($1,000,000) up to two million dollars ($2,000,000); and
- The credit amount ~~shall be~~is two percent (2%) of the investment up to five hundred thousand dollars ($500,000) plus four percent (4%) of the investment in excess of five hundred thousand dollars ($500,000) up to one million dollars ($1,000,000) plus six percent (6%) of the investment in excess of one million dollars ($1,000,000) up to two million dollars ($2,000,000) plus eight percent (8%) of the investment in excess of two million dollars ($2,000,000).

Prior to ~~the execution~~commission approval of ~~the~~ a financial incentive agreement, the targeted business must elect to receive the tax credits as sales and use tax credits or income tax credits.

The percentage of the targeted business's tax liability that may be offset is determined by the average hourly wage paid to the new full-time permanent employees as follows:

- A targeted business that pays at least one ~~-~~hundred ~~seventy-five~~fifty percent (~~175~~150%) of the lesser of the state or county average hourly wage~~, whichever is less,~~ for the county in which the business locates or expands may offset up to fifty percent (50%) of its tax liability annually.
- A targeted business that pays at least ~~two~~ one hundred seventy-five percent (~~200~~175%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands~~, whichever is less,~~ may offset up to seventy-five percent (75%) of its tax liability

annually.

- A targeted business that pays at least two hundred ~~twenty-five~~ percent (~~225~~200%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands~~, whichever is less,~~ may offset up to one hundred percent (100%) of its tax liability annually.

The approved targeted business must certify eligible project expenditures and average hourly wages annually with the DFA. Upon verification of eligibility, the DFA shall issue the credit according to the tax type specified in the financial incentive agreement.

The income tax credit may be applied against the approved business's Arkansas income tax liability. Any unused credit may be carried forward for ~~a period not to exceed~~up to nine (9) tax years after the tax year in which it was first earned or until the tax credits are exhausted, whichever occurs first.

The sales and use tax credit may be applied against the business's state sales and use tax liability as reported on its monthly sales and use tax report in the calendar year following the calendar year of expenditure.

The tax liability reported on the business's monthly sales and use tax that may be offset by the credit may be derived from:

- Sales made by the approved business and collected from the customer;
- Use taxes accrued by the business for out-of state purchases; and
- Sales and use taxes accrued and reported on the business's monthly direct-pay report.

The credit may not be applied against any taxes collected from the business by the seller. Any unused credit may be carried forward for a period ~~not to exceed~~up to nine (9) calendar years after the calendar year in which it was first earned.

D. Sales and Use Tax Refund for New and Expanding Eligible Businesses (Tax Back) – Act 182 of 2003, as amended, § 15-4-2706(d).

This incentive program is available to any eligible business that meets the qualifications for investment and payroll thresholds for the tier in which it locates or expands and is approved for benefits by the Commission. The Commission's approval is contingent upon receipt of a completed application and a local endorsement resolution from the city, county, or both which authorizes the refund of its local taxes to the eligible business.

To qualify for a refund under this program, the ~~eligible~~ qualified business must ~~invest in excess of one hundred thousand dollars ($100,000) and~~ meet the eligibility criteria of the Advantage Arkansas (§ 15-4-2705) or Create Rebate (§ 15-4-2707) job creation incentive programs and meet the minimum investment thresholds for the tier in which the qualified business expands or locates, as follows:

(i) For tier 1 counties, the minimum investment threshold is at least five hundred thousand dollars ($500,000);

(ii) For tier 2 counties, the minimum investment threshold is at least four hundred thousand dollars ($400,000);

(iii) For tier 3 counties, the minimum investment threshold is at least three hundred thousand dollars ($300,000); and

(iv) For tier 4 counties, the minimum investment threshold is at least two hundred thousand dollars ($200,000).

The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be ~~signed~~ approved within ~~twenty-four (24) months~~two (2) years of ~~signing~~ the approval of a financial incentive agreement for a sales and use tax refund unless the eligible business has met the requirements of a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the previous ~~forty-eight (48)~~four (4) ~~months~~years.

In the event an eligible business has an existing Tax Back agreement, the business may apply for additional Tax Back if it has signed a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the previous ~~forty-eight~~four (~~48~~4) ~~months~~years.

In the event the business does not have an existing Tax Back agreement, the business may apply for Tax Back benefits if it has signed a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the previous ~~forty-eight~~four (~~48~~4) ~~months~~years.

An application, accompanied by local endorsement resolution(s), must be filed with the Commission. The application should clearly identify the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. The local endorsement resolution(s) from the governing authority (city council, quorum court, or both) in which the project is located must authorize the refund of its local sales and use taxes.

The purpose of the resolution is to: A) approve the business's participation in the program; and B) specify that the municipality or county authorizes the DFA to refund all or part of any sales and use tax levied at the local level. The municipality or county in which the eligible business is located may authorize the refund of any sales or use tax levied by it but may not authorize the refund of any sales and use tax not levied by it.

This incentive program grants a refund of state and local sales and use taxes paid on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement to a new or expanding eligible business. A sales and use tax refund is also allowed for the purchases of taxable machinery or equipment associated with the building or project.

A refund shall not be authorized for:

- routine operating expenditures;
- the purchase of replacements of items previously purchased as part of a project unless the items previously purchased will not enable the project to function as originally intended;
- licensed motor vehicles; or
- expenditures for routine repair and maintenance that do not result in new construction or expansion.

For projects approved on or after July 1, 2005, the refund of state sales and use taxes shall not include the refund of taxes dedicated to the Educational Adequacy Fund (.875%) ~~provided in § 19-5-1227~~ or the taxes dedicated to the Conservation Tax Fund (.125%) ~~provided in § 19-6-484~~.

All project costs must be incurred within four (4) years from the date the project is approved by the Commission. The project plan may be revised by written amendment filed with <u>and approved by</u> the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. Amendments that exceed twenty-five percent (25%) of the original project plan's estimated cost will not be ~~considered~~ <u>approved by the Commission</u> and shall be submitted as a new project.

Eligible Business Tax Back Refunds

For an eligible business to receive a refund, the business must file an *Annual Sales and Use Tax Refund Request Form (Form Tax Back 1000)* and schedule *(Schedule A)* listing the qualified purchases at the end of each calendar year.

An approved eligible business may receive a sales and use tax refund on eligible purchases made by a contractor or developer performing work, or building a structure for lease or sale to the approved eligible business provided the eligible business submits to the DFA Tax Credits/Special Refunds Section a notarized *Contractor's/Developer's Waiver of Refund Form (Form Tax Back 1100)* completed by the contractor or developer waiving any and all rights to claim a refund of sales and use taxes.

An approved business is prohibited from claiming a refund for the same amount of local tax that:

- The approved business has received, or will be receiving, for a local tax cap rebate on qualifying Tax Back purchases, either on the approved business's Sales and Use Tax Report or as a refund from the Sales and Use Tax Section; or
- The contractor or developer has received, or will be receiving, a local tax

cap rebate on qualifying Tax Back purchases, either on the contractor's or developer's Sales and Use Tax Report or as a refund from the Sales and Use Tax Section.

Example: An eligible business approved for the Tax Back program makes a purchase of eligible items on an invoice totaling ten thousand dollars ($10,000). Assuming a local tax rate of one percent (1%), the total local tax due is one hundred dollars ($100). The local tax cap for business purposes is limited to the tax due on two thousand five hundred dollars ($2,500). If the business claims a local tax cap rebate for the seventy-five dollars ($75) (the tax paid in excess of the tax due on two thousand five hundred dollars [$2,500]) on its Sales and Use Tax Report or as a refund from the Sales and Use Tax Section; the business's Tax Back refund is limited to twenty-five dollars ($25) for this invoice. If the business has not claimed, or does not plan to claim, the local tax cap rebate, it may claim the full amount of local tax paid on its Tax Back Sales and Use Tax Refund Request.

Refunds to Developers/Contractors

Developers building a structure for lease to an approved eligible business and contractors performing work for an approved eligible business may be permitted to receive a sales and use tax refund on eligible purchases directly from the state only when the approved eligible business requests the DFA Tax Credits/Special Refunds Section, in writing, that this be permitted and states the basis for this request. This request must be approved by the DFA prior to the signing of the financial incentive agreement.

The DFA Revenue Division will authorize this procedure only when it is satisfied that:

- The written request sufficiently states the basis for this request and provides a satisfactory explanation why this arrangement is crucial to the success of the project;
- All requirements of the Consolidated Incentive Act of 2003, as amended, and AEDC rules will be adhered to;
- A *notarized affidavit (Form Tax Back 1400)* is presented to the DFA Revenue Division from the contractor or developer stating the eligible business will receive the benefit of the sales and use tax refunds by having the cost of construction or lease payments reduced by the amount of the tax refund;
- A *notarized affidavit (Form Tax Back 1300)* is presented to the DFA Revenue Division from the approved eligible business waiving the right to claim a refund of sales and use taxes, and passing on the right to claim refunds to the contractor or developer. The affidavit must state that the eligible business acknowledges that if the eligible business fails to comply with the conditions contained in the Act or this rule, that the business will be liable for the payment of all sales and use taxes which were refunded to the contractors and developers under this Act, plus interest; and

- The eligible business's incentive agreement with the Commission must include a provision for recapture of the sales and use tax refunds from the contractor or developer if the eligible business closes and ceases operations within a short period.

If a developer or contractor has been authorized by the DFA to receive the refund, the developer or contractor must file an *Annual Sales and Use Tax Refund Request by Developer Form (Form Tax Back 1200)* and schedule *(Schedule A)* listing the qualified purchases.

A developer or contractor is prohibited from claiming the same amount of local tax that it has received, or will be receiving, for a local tax cap rebate on qualifying Tax Back purchases, either on its Sales and Use Tax Report or as a refund from the Sales and Use Tax Section.

Example: A developer or contractor makes a purchase of eligible items on an invoice totaling ten thousand dollars ($10,000). Assuming a local tax rate of one percent (1%), the total local tax due is one hundred dollars ($100). The local tax cap for business purposes is limited to the tax due on two thousand five hundred dollars ($2,500). If the developer or contractor claims a local tax cap rebate for the seventy-five dollars ($75) (the tax paid in excess of the tax due on two thousand five hundred dollars [$2,500]) on its Sales and Use Tax Report or as a refund from the Sales and Use Tax Section, its Tax Back refund is limited to twenty-five dollars ($25) for this invoice. If the contractor or developer has not claimed, or does not plan to claim, the local tax cap rebate, it may claim the full amount of local tax paid on its Tax Back Sales and Use Tax Refund Request.

Filing Requirements

It is the responsibility of the eligible business to file an *Annual Sales and Use Tax Refund Request Form (Tax Back 1000)* and supporting schedule *(Schedule A)* with the DFA at the end of each calendar year.

Upon determining the amount of eligible refund, the DFA shall issue a refund to the eligible business.

All claims for sales and use tax refunds under this incentive program must be filed within three (3) years from the date of the qualified purchase or purchases or those claims will be denied.

Example: An eligible business is planning to expand its operations in a Tier 3 county and has signed an Advantage Arkansas agreement with the AEDC. The business plans to hire seven (7) new full-time permanent employees at twelve dollars ($12) per hour ($12/hour X 2080 hours = $24,960 average annual wage X seven (7) new employees = $174,720 annual payroll). The business would meet the seventy-five thousand dollar ($75,000) payroll threshold for a Tier 3 county.

The business will renovate an existing building in the community and will spend approximately ~~one~~ three hundred and twenty-five thousand dollars ($~~1~~325,000) in renovation costs. This investment is above the ~~one~~ three hundred thousand dollar ($~~1~~300,000) threshold required. The sales tax paid on all renovation costs subject to the sales tax is eligible to be refunded at the sales or use tax rate in effect at the time of the purchase, excluding the taxes dedicated to the Educational Adequacy Fund and the Conservation Tax Fund. The eligible business must file for the sales and use tax refund within three (3) years of purchase or the claim will be denied. This example assumes all new full-time permanent employees are hired at the beginning of the first year and work forty (40) hours per week.

Notes: The refund of sales and use tax for eligible businesses is dependent upon the following conditions:

- The refund is made contingent upon the signing of a financial incentive agreement for a jobs creation incentive (Advantage Arkansas or Create Rebate) within ~~twenty-four (24) months~~ two (2) years of signing a financial incentive agreement for a sales and use tax refund for new and expanding eligible businesses;
- The items purchased being subject to the sales or use tax;
- The payroll threshold under the Advantage Arkansas or Create Rebate job creation financial incentive agreements being met within two (2) years ~~twenty-four (24) months~~ of the signing of the financial incentive agreement; and
- The documentation of the minimum investment ~~of one hundred thousand dollars ($100,000)~~ needed to qualify for the sales and use tax refund.

Combination with other incentives: The sales and use tax refund for new and expanding eligible businesses, authorized by § 15-4-2706(d), may be combined with:

- Advantage Arkansas as authorized by § 15-4-2705 or Create Rebate as authorized by § 15-4-2707, if approved by the Executive Director; and
- ~~The research and development income tax credit for university-based research authorized by § 15-4-2708(a); and~~
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(~~b~~a).

E. Sales and Use Tax Refund for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2706(e).

This incentive program extends the benefits of the Tax Back sales and use tax refund program to a category of new and expanding eligible businesses referred to as "targeted businesses". This incentive is offered only at the discretion of the Executive Director. Targeted businesses are found within six (6) growing business sectors that include:

(i) Advanced materials and manufacturing systems, with emphases on the following:
  (a) Photonics;
  (b) Nanotechnology;
  (c) Electronics manufacturing;
  (d) Environmental issues related to material and manufacturing;
  (e) Photovoltaics; and
  (f) Energy efficient storage devices.

(ii) Agriculture, food, and environmental sciences, with emphases on the following:
  (a) Rice;
  (b) Poultry;
  (c) Aquaculture;
  (d) Toxicology;
  (e) Agricultural medicine;
  (f) Forestry;
  (g) Nutrition;
  (h) Waste minimization;
  (i) Energy reduction;
  (j) Distributed energy generation; and
  (k) Spatial technology.

(iii) Biotechnology, bioengineering, and life sciences, with emphases on the following:
  (a) Genetics;
  (b) Oncology;
  (c) Geriatrics;
  (d) Neuroscience;
  (e) Medical devices;
  (f) Rehabilitation;
  (g) Biopharmaceuticals and drug discovery;
  (h) Protein structure and function;
  (i) Cell molecular biology; and
  (j) Sensor technology.

(iv) Information technology, with emphases on the following:
  (a) Knowledge and data engineering;
  (b) Database systems;
  (c) Distributed systems;
  (d) Wireless systems;
  (e) Software development; and
  (f) State-of-the-art applications of information technology to:
    (1) Bioinformatics, and
    (2) Healthcare.

(v) Transportation logistics, with emphases on the following:
  a) Intelligent material handling;
  b) Automated systems; and
  c) Transportation management systems.

(vi) Bio-based products, with emphases on the following:
  (a) Biodiesel;
  (b) Ethanol;
  (c) Methanol;
  (d) Synthetic transportation fuels;
  (e) Adhesives;
  (f) Polymers;
  (g) Automotive components; and
  (h) Engineered products from non-traditional biomass sources.

To qualify as a targeted business, the Commission must determine that ~~the business falls within one (1) of the six (6) categories noted above, the business must have been in operation for five (5) years or less and must pay average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less. In addition,~~ the targeted business must have an annual payroll of at least one hundred thousand dollars ($100,000) and demonstrate evidence of an equity investment in the targeted business of at least two hundred fifty thousand dollars ($250,000). A targeted business with an annual payroll in excess of one million dollars ($1,000,000) will not qualify for the targeted business sales and use tax refund, but may be eligible for other incentives offered through the Consolidated Incentive Act of 2003 (Act 182 of 2003), as amended. The preceding payroll requirements apply only to the initial eligibility determination and do not preclude a targeted business from receiving incentives if, at any time after the financial incentive agreement is approved, the actual payroll of the targeted business does not satisfy the payroll requirements.

In addition to meeting the targeted business eligibility requirements, the business must meet the eligibility criteria of the Targeted Business payroll income tax credit incentive program (§ 15-4-2709). A signed financial incentive agreement for targeted payroll income tax credits must be signed within two (2) years ~~twenty-four (24) months~~ of signing a financial incentive agreement for a sales and use tax refund.

To be eligible for the incentives under this program, the targeted business shall meet all payroll creation requirements of an approved financial incentive agreement under § 15-4-2707 or § 15-4-2709 within two (2) years of the date of the approved financial incentive agreement under this subsection or other subsequent date if approved by the Executive Director of the Arkansas Economic Development Commission.

An application accompanied by a local endorsement resolution must be filed with the Commission. The application should clearly identify the intent of the project, the expenditures planned, the start and end date of the project and an estimate of the total project costs. The local endorsement resolution from the governing authority (city council, quorum court, or both) in which the project is located must authorize the refund of its local sales and use taxes.

The purpose of the resolution is to: A) approve the specific entity's participation in the program; and B) specify that the municipality or county authorizes the DFA to refund all or part of any sales and use tax levied at the local level. The municipality or county in which the eligible business is located may authorize the refund of any sales or use tax levied by it but may not authorize the refund of any sales and use taxes not levied by it.

This incentive program grants a refund of state and local sales and use taxes paid on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement to a new or expanding eligible business. A sales and use tax refund is also allowed for the purchases of taxable machinery or equipment associated with the building or project.

A refund shall not be authorized for:

- routine operating expenditures;
- the purchase of replacement items previously purchased as part of a project unless the items previously purchased will not enable the project to function as originally intended;
- licensed motor vehicles; or
- expenditures for routine repair and maintenance that do not result in new construction or expansion.

For projects approved on or after July 1, 2005, the refund of state sales and use taxes shall not include the refund of taxes dedicated to the Educational Adequacy Fund (.875%) ~~provided in § 19-5-1227~~ or the taxes dedicated to the Conservation Tax Fund (.125%) ~~provided in § 19-6-484~~.

All project costs must be incurred within four (4) years from the date the project is approved by the Commission. The project plan may be revised by written amendment filed with and approved by the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. Amendments that exceed twenty-five percent (25%) of the original project plan's estimated cost will not be ~~considered~~ approved by the Commission and shall be submitted as a new project.

It is the responsibility of the qualified targeted business to file a *Targeted Business Tax Back Program Annual Sales and Use Tax Refund Request (Form TB 1000)* annually at the end of each calendar year to the DFA to request a refund of sales and use taxes paid on eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of the eligible refund, the DFA shall issue a refund to the qualified business.

All claims for sales and use tax refunds under this incentive program must be filed within three (3) years from the date of the qualified purchase or purchases or those claims will be denied.

Example: A new start-up computer software design firm is beginning business. It has received an equity investment from a venture capital firm in the amount of seven hundred fifty thousand dollars ($750,000), which exceeds the two hundred and fifty thousand dollar ($250,000) threshold, to help it get started. It plans on hiring six (6) new full-time permanent employees at an average hourly wage of twenty-eight dollars ($28) per hour. ~~The average hourly wage for the Tier 1 county in which the business plans to locate is fifteen dollars ($15) per hour. ($15/hour X 150% = $22.50 per hour.) The business's average hourly wage of twenty-eight dollars ($28) per hour is above the threshold wage to qualify in this Tier 1 county.~~ ($28/hour X 2080 hours = $58,290 average annual salary X six (6) employees = $349,440 annual payroll.) The business's annual payroll exceeds the threshold of one hundred thousand dollars ($100,000) so the business meets the payroll~~,~~ and investment ~~and average wage~~ requirements necessary to qualify for the sales and use tax refund. Eligibility is also dependent upon being approved by the Executive Director. The eligible targeted business must file for the sales and use tax refund within three (3) years of purchase or the claim will be denied. This example assumes all new full-time permanent employees are hired at the beginning of the first year and work forty (40) hours per week.

Notes: The refund of sales and use tax for eligible targeted businesses is dependent upon the following conditions:

- The refund is made contingent upon the signing of a financial incentive agreement for a targeted payroll income tax credit for targeted businesses incentive within two (2) years ~~twenty-four (24) months~~ of signing a financial incentive agreement for a sales and use tax refund for a targeted business;
- The items purchased being subject to the sales or use tax;
- The business meeting the average wage requirement;
- The payroll threshold being met within two (2) years ~~twenty-four (24) months~~ of the signing of the financial incentive agreement; and
- The documentation that the targeted business has received an equity investment in excess of two hundred fifty thousand dollars ($250,000).

Combination with other incentives: The sales and use tax refund for targeted businesses authorized by § 15-4-2706(e) may be combined with, if approved by the Executive Director:

- The targeted job creation income tax credit as authorized by § 15-4-2709; and
- The targeted research and development tax credit authorized by § 15-4- 2708(c).

4. Targeted Business Special Incentive § 15-4-2709.

A. Payroll Income Tax Credit for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2709.

The payroll income tax credit for targeted businesses assists the start-up of businesses in targeted sectors that pay significantly more than the state or county average wage of the county in which the business locates. This incentive is offered only at the discretion of the Executive Director. To qualify for this incentive, the business must be included in one of six (6) targeted business sectors that include:

(i) Advanced materials and manufacturing systems, with emphases on the following:
- (a) Photonics;
- (b) Nanotechnology;
- (c) Electronics manufacturing;
- (d) Environmental issues related to material and manufacturing;
- (e) Photovoltaics; and
- (f) Energy efficient storage devices.

(ii) Agriculture, food, and environmental sciences, with emphases on the following:
- (a) Rice;
- (b) Poultry;
- (c) Aquaculture;
- (d) Toxicology;
- (e) Agricultural medicine;
- (f) Forestry;
- (g) Nutrition;
- (h) Waste minimization;
- (i) Energy reduction;
- (j) Distributed energy generation; and
- (k) Spatial technology.

(iii) Biotechnology, bioengineering, and life sciences, with emphases on the following:
- (a) Genetics;
- (b) Oncology;
- (c) Geriatrics;
- (d) Neuroscience;
- (e) Medical devices;
- (f) Rehabilitation;
- (g) Biopharmaceuticals and drug discovery;
- (h) Protein structure and function;
- (i) Cell molecular biology; and
- (j) Sensor technology.

(iv) Information technology, with emphases on the following:
   (a) Knowledge and data engineering;
   (b) Database systems;
   (c) Distributed systems;
   (d) Wireless systems;
   (e) Software development; and
   (f) State-of-the-art applications of information technology to:
      (1) Bioinformatics, and
      (2) Healthcare.

(v) Transportation logistics, with emphases on the following:
   (a) Intelligent material handling;
   (b) Automated systems; and
   (c) Transportation management systems.

(vi) Bio-based products, with emphases on the following:
   (a) Biodiesel;
   (b) Ethanol;
   (c) Methanol;
   (d) Synthetic transportation fuels;
   (e) Adhesives;
   (f) Polymers;
   (g) Automotive components; and
   (h) Engineered products from non-traditional biomass sources.

The business must also have an annual payroll of not less than one hundred thousand dollars ($100,000) or more than one million dollars ($1,000,000).~~,~~This requirement only applies to the initial eligibility determination and does not preclude qualified businesses from receiving incentive if, at any time after the financial incentive agreement has been approved, actual payroll does not satisfy the requirements. A business must show proof of an equity investment of at least two hundred fifty thousand dollars ($250,000) and pay average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.

The benefit for a targeted business is an income tax credit equal to ten percent (10%) of its annual payroll, with a cap of one hundred thousand dollars ($100,000) per year in earned income tax credits for a business that qualifies and is approved for this incentive. Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

The incentive may be offered for a period not to exceed five (5) years. The five-year period begins on January 1st of the following year in which the financial incentive agreement is ~~signed~~ approved and may not extend beyond ~~sixty (60) months~~ five (5) years from that date. Unlike the other incentives, the calculation of this income tax credit may include existing employees in the calculation of payroll to qualify for this benefit. To claim these benefits, the targeted business must sign a financial incentive agreement with the Commission.

Income tax credits are earned in the tax year in which the new full-time permanent employees qualify after the financial incentive agreement was signed with the Commission. At the end of each tax year, during the term of the agreement, it is the responsibility of the qualified targeted business to file the *Targeted Business Payroll Tax Credit Employee Annual Payroll Certification* with the DFA. This certification provides the number of new permanent employees and their payroll during the preceding tax year and is the mechanism to initiate the verification audit. Therefore, the business must certify annually at the end of each tax year to the DFA.

A unique feature of this incentive is the ability of the business that earns the targeted business income tax credit to sell the credits upon approval of the Executive Director. The business must make application to the Commission for the sale of credits. The original holder of tax credits under this section may sell its tax credits only one (1) time, in whole or in part, the balance of which shall be used by the holder within the time frame allowed. The Commission may assist the business in finding a buyer for the tax credits. Any sale of tax credits through this incentive will be fully documented by the Commission and that information will be transmitted to the DFA Revenue Division.

The buyer of the tax credit shall be subject to the same provisions for carry forward of the tax credits as the business that originally earned the credits. Since one of the allowable costs under the research and development tax credits is the salary of a person performing research, a business earning payroll income tax credits for targeted businesses is prohibited from earning research and development tax credits, as authorized by § 15-4-2708 or by § 26-51-1102(b), for the same expenditure.

Example: A new biotechnology firm, which is a client of the BioVentures Incubator, is leaving the incubator to expand its business. It has received a Small Business Innovation Research (SBIR) grant of seven hundred thousand dollars ($700,000) to continue its efforts with assistance from the National Institutes of Health. Currently, the business has one (1) employee, a former UAMS research scientist who holds the patent on the biomedical device that is to be the business's first product. The business plans on hiring four (4) new full-time permanent employees for a total of five (5) full-time permanent employees. The average hourly wage of the five (5) employees will be forty-five dollars ($45) per hour. ($45/hour X 2080 = $93,600 average annual salary X 5 employees = $468,000 annual payroll.) The SBIR grant allows the new business to meet the two hundred fifty thousand dollar ($250,000) equity investment threshold and the annual payroll is well above the one hundred thousand dollar ($100,000) minimum to qualify. The forty-five dollar ($45) per hour wage is more than the one hundred fifty percent (150%) wage requirement for the tier of the county in which the targeted business locates. The new targeted business would earn a tax credit of forty-six thousand eight hundred dollars ($46,800) which may be sold to a willing buyer. If this business was granted the payroll income tax credit for the maximum time allowable (5 years), the credit in subsequent years would be equal to 10% of the annual payroll in years two (2) through five (5). This example assumes all new full-time permanent employees are hired at the beginning of the first year and work forty (40) hours per week.

Notes: The calculation of the benefit for an income tax credit for new targeted businesses is dependent upon the following conditions:

- A minimum payroll of one hundred thousand dollars ($100,000) being maintained during the term of the agreement;
- The business operations' continuing in one (1) of the six (6) targeted areas;
- The average hourly wage threshold being maintained; and
- The business's continuing to operate in accordance with the qualification requirements throughout the term of the financial incentive agreement.

Combination with other incentives: The payroll income tax credit for targeted businesses authorized by § 15-4-2709 may be combined with, if approved by the Executive Director:

- The sales and use tax refund for targeted businesses as authorized by § 15-4-2706(e); and
- The research and development income tax credit for targeted businesses as authorized by § 15-4-2708(c).

5. Research and Development Income Tax Credits § 15-4-2708.

Section 5 deals with incentives for research and development. The different tax credits are intended to provide incentives for ~~university-based research,~~ in-house research of several kinds, and research and development in start-up, technology-based enterprises. It is important for the applicant to understand the different incentives and to select the most appropriate for the eligible research and development activity. In summary:

- ~~The incentive for research and development with universities is intended for firms of virtually every size and stage of development, may complement in-house research, and may be combined with in-house research incentives;~~
- The incentives for in-house research are intended for (a) the on-going in-house research programs of mature firms, (b) younger, "targeted" firms engaged in in-house research over limited five-(5) year periods, and (c) emerging firms engaged in strategic research and development over limited five-(5) year periods; generally these incentives may not be combined with one another (i.e., with other in-house research

incentives), but may be combined with incentives for research with universities;

- The incentive for research and development under programs of the Division of Science and Technology of the Arkansas Economic Development Commission is intended for companies in the earliest stages of development and for knowledge-based companies that require a continuing research and development program to remain competitive; generally, this incentive may not be combined with other research and development incentives.

Unless otherwise specified, the research and development application and project plan shall be the basis for the Commission's decision to approve tax credit treatment for research and development expenditures. It is the responsibility of the business to claim any research and development income tax credits that may have been earned under authority granted by Act 182 of 2003, as amended. At the discretion of the Commission, an approved application and project plan may serve as the financial incentive agreement. Claims for research and development tax credits shall require the business to file with its tax return a Certificate of Tax Credit issued by the Commission.

The term of the research and development financial incentive agreements under § 15-4-2708 is five (5) years beginning on the first day of the business's tax year in which the financial incentive agreement is signed and may not extend beyond five (5) years ~~sixty (60) months~~ from that date. The specific requirements to qualify for research and development incentives follow.

A. ~~Research and Development with Universities – Act 182 of 2003, as amended, § 15-4-2708(a)~~

~~An eligible business that contracts with one or more Arkansas colleges or universities in performing research may qualify for a thirty-three percent (33%) income tax credit as authorized in § 26-51-1102(b) for qualified research expenditures. The income tax credit may be carried forward for nine (9) years beyond the year in which the credit was earned.~~

~~To qualify for the income tax credit for research and development with universities, an eligible business must submit an application and project plan to the Commission. The Division of Science and Technology of the Arkansas Economic Development Commission will review the application and project plan and, if eligible, recommend approval and execution of a financial incentive agreement.~~

~~To claim a credit earned through this incentive, the business shall file with its income tax return the Certificate of Tax Credit issued by the Commission.~~

~~If approved, the thirty-three percent (33%) income tax credit for research and development expenditures with an Arkansas college or university will be granted~~

~~regardless of the business location or other qualifications.~~

~~**Example:** An Arkansas seed business contracts with the Division of Agriculture at the University of Arkansas to engineer a new drought-resistant soybean seed. The seed business spends one million dollars ($1,000,000) with the University of Arkansas to research and develop a soybean seed with the characteristics desired by the seed business. This expenditure for this project could result in an earned income tax credit of three hundred thirty-three thousand dollars ($333,000) that could be taken over a ten-year period (the year in which it was earned, plus nine (9) years of carry forward).~~

~~**Notes:** It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help insure the success of the research and development effort. It should also be noted that this incentive is subject to the limitations established in § 26-51-1103:~~

- ~~The amount of credit which may be claimed in any year is limited to one hundred percent (100%) of tax liability;~~
- ~~The credits may be used in the year earned, plus a nine-year carry forward period; and~~
- ~~This incentive cannot be used with other income tax benefits for the same expenditure.~~

~~This incentive must also adhere to the documentation requirements of § 26-51-1104:~~

- ~~Must demonstrate proof of approval by the Commission as a qualified research project;~~
- ~~Must document expenditures with the university or college; and~~
- ~~Must file copies of the two (2) above-mentioned documents with the DFA when claiming the credit.~~

~~**Combination with other incentives:** The income tax credit for research and development with universities authorized by § 15-4-2708(a):~~

- ~~May be used with the in-house research and development incentive as authorized by § 15-4-2708(b), (c), and (d)(1)(A); but~~
- ~~May not be used with any other incentive authorized in Act 182 of 2003, as amended (Consolidated Incentive Act of 2003) for the same expenditures.~~

~~B~~A. In-House Research – Act 182 of 2003, as amended, § 15-4-2708

(i) ~~New~~ In-House Research and Development Facilities § 15-4-2708~~(b)~~(a)(1):

In-house research includes experimental, clinical, or laboratory activities to develop new uses of products, but only to the extent that activity is conducted in Arkansas. A ~~new~~ eligible business that has not been previously approved for incentives under this subsection and that conducts ~~"~~in-house~~"~~ research ~~within a~~

~~research facility that is operated by the eligible business that qualifies for~~ that has been approved for federal research and development tax credits may qualify, at the discretion of the Executive Director, for in-house research income tax credits. The eligible business must make an application to the Commission generally describing the research to be undertaken and the estimated expenditures to be made on in-house research. The credit allowed for approved in-house research is up to twenty percent (20%) of the incremental amount spent on qualified in-house research expenditures that exceeds the ~~base year, for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years~~ baseline established in the preceding year, for a period of five (5) years, subject to extension at the discretion of the Executive Director.

The initial baseline for a qualified business new to the incentives offered under this subsection is the amount of research conducted in the state as claimed for federal research and development tax credits during the most recent year.

Tax credits for the first year shall be calculated based on the incremental eligible expenditures for research and development at the end of the first year minus the research and development expenditures as reported by the qualified business for research and development tax credits initial baseline.

Tax credits for succeeding years shall be calculated as the difference between the current year’s research conducted in the state and the previous year’s research conducted in the state.

Example: For a ~~new~~ in-house research facility that did not claim any research conducted in the state for federal research and development tax credits during the most recent year, the base year is zero (0). Therefore, in the first ~~three (3)~~ year~~s~~ following the date of the financial incentive agreement, all eligible expenditures will qualify for credit.

The tax credits for the second year will be calculated by the amount of qualified research expenditures incurred in the ~~third~~ second year minus the amount incurred in the first ~~shall be used to calculate the tax credit in the fourth~~ year.

The tax credits for the third year will be calculated by the amount of qualified research expenditures incurred in the ~~fourth~~ third year minus the amount incurred in the second ~~shall be used to calculate the tax credit in the fifth~~ year.

The tax credits for the fourth year will be calculated by the amount of qualified research expenditures incurred in the fourth year minus the amount incurred in the third year.

The tax credits for the fifth year will be calculated by the amount of qualified research expenditures incurred in the fifth year minus the amount incurred in the fourth year.

(ii) ~~Existing In-House Research and Development Facilities §15-4-2708(b)(2):~~

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

Example: For a~~n existing~~ in-house research facility that claimed research conducted in the state for federal research and development tax credits during the most recent year, the base ~~year~~ line amount shall be the amount the business claimed for that year. ~~of eligible research expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Commission.~~

The tax credits for the first year will be calculated by the amount of qualified research expenditures in the first year minus the amount of the baseline a~~mount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.~~

The tax credits for the second year will be calculated by the amount of qualified research expenditures in the second year minus the amount ~~of qualified research expenditures~~ incurred in the ~~fourth~~ first year ~~shall be used to calculate the tax credit in the fifth year~~.

The tax credits for the third year will be calculated by the amount of qualified research expenditures in the third year minus the amount incurred in the second year.

The tax credits for the fourth year will be calculated by the amount of qualified research expenditures in the fourth year minus the amount incurred in the third year.

The tax credits for the fifth year will be calculated by the amount of qualified research expenditures in the fifth year minus the amount incurred in the fourth year.

Term of the In-House Research and Development Incentive Agreement

The term of the financial incentive agreement for in-house research and development shall be for a period not to exceed five (5) years beginning on the first day of the business's tax year in which the financial incentive agreement is signed. The financial incentive agreement may be renewed for ~~a period not to exceed five (5) years~~ additional five (5) year periods upon the submittal and approval of a new application and project plan by the Executive Director.

The approved business shall certify annually at the end of each tax year, to the Commission, the amount expended on in-house research.

The income tax credit earned for in-house research and development may be used to offset up to one hundred percent (100%) of the ~~eligible~~ qualified business's state income tax liability. Any unused tax credits may be carried forward for a period ~~not to exceed~~ up to nine (9) years after the year in which the credit was first earned or until the tax credits are exhausted, whichever occurs first.

To claim the credit earned through this incentive, the business shall file with its return, the Certificate of Tax Credit issued by the Commission. The Commission will adhere to some of the federal guidelines for qualifying research for federal tax credits as a guide in determining eligibility for this state income tax credit.

Qualified research expenditures include in-house expenses for taxable wages paid~~,~~ and usual fringe benefits~~, and supplies used in the conduct of qualified~~ specific to research activities of employees of the business or for wages and usual fringe benefits paid through contractual agreements, approved in writing by the Executive Director, with a state college, an Arkansas state university, or other Arkansas-based research organization to perform research for a targeted business. Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Purchase of supplies;
- Purchase of land;
- Purchase or rehabilitation of production machinery and equipment;
- Construction or renovation of buildings;
- Any ordinary and necessary expenses of conducting business;
- Any research conducted after the beginning of commercial production;
- Research adapting an existing product or process to a particular customer's need;
- Duplication of an existing product or process;
- Surveys or studies;

- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive Director may make an exception for research and development activities occurring outside of Arkansas for an agreed upon transition period if the following conditions exist:
    - The business qualifies as a Targeted Business;
    - The Commission and the business have entered into a Targeted In-House Research and Development incentive agreement;
    - The business is located in another state and has decided to relocate its research and development activities to Arkansas within a specified transition period, not to exceed eighteen (18) months; and
    - The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
        - Has incorporated as a business in the State of Arkansas;
        - Has physically relocated to Arkansas; and
        - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to an employee for performing qualified services. Qualified services are services of employees who are:

- Engaging in qualified research, which means the actual conduct of qualified research;
- Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and
- Engaging in the direct support of research activities which constitute qualified research.

Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.

~~**Notes:**~~

- ~~The carry forward for this income tax credit is limited to nine (9) years beyond the year in which the credit was earned.~~
- ~~It is the intent of the Commission to adhere to some of the federal guidelines for research conducted within an eligible business.~~

Combination with other incentives: The in-house research income tax credit may **not** be combined with:

- Other in-house research and development incentives as authorized by § 15-4-2708(~~c~~b) or § 15-4-2708(~~d~~c)(1)(A); ~~or~~
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003), as amended, for the same expenditures~~.~~; or
- A qualified business claiming tax credits earned under this subsection shall not receive the credit granted by §26-51-1102(2) for the same expenditure.

C. In-House Research by a Targeted Business – Act 182 of 2003, as amended, § 15-4-2708(~~c~~b)

Businesses deemed by the Commission to fit within the six (6) business sectors classified as "targeted businesses" may enter into a financial incentive agreement for income tax credits based on qualified in-house research and development expenditures.

A targeted business may be approved for an income tax credit each year equal to thirty-three percent (33%) of the qualified research and development expenditures incurred each year for the first (5) years of the financial incentive agreement. This incentive is offered only at the discretion of the Executive Director. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs. ~~The targeted business applying for in-house research and development income tax credits shall comply with all of the qualifications required of targeted businesses to qualify for a job creation income tax credit:~~

- ~~In operation for less than five (5) years;~~
- ~~Annual payroll of not less than one hundred thousand dollars ($100,000) or more than one million dollars ($1,000,000);~~
- ~~An equity investment of at least two hundred fifty thousand dollars ($250,000); and~~
- ~~Pay at least one hundred fifty percent (150%) of the lesser of the county or state average wage.~~

The Commission will adhere to some of the federal guidelines for qualifying research for federal tax credits as a guide in determining the eligibility for this state income tax credit.

Qualified research expenditures include in-house expenses for taxable wages paid, and usual fringe benefits~~, and supplies used in the conduct of qualified~~ specific to research activities of employees of the business. Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Purchase of supplies;

- Purchase of land;
- Purchase or rehabilitation of production machinery and equipment;
- Construction or renovation of buildings;
- Any ordinary and necessary expenses of conducting business;
- Any research conducted after the beginning of commercial production;
- Research adapting an existing product or process to a particular customer's need;
- Duplication of an existing product or process;
- Surveys or studies;
- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive Director may make an exception for research and development activities occurring outside of Arkansas for an agreed upon transition period if the following conditions exist:
    - The business qualifies as a Targeted Business;
    - The Commission and the business have entered into a Targeted In- House Research and Development incentive agreement;
    - The business is located in another state and has decided to relocate its research and development activities to Arkansas within a specified transition period, not to exceed eighteen (18) months; and
- The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
    - Has incorporated as a business in the State of Arkansas;
    - Has physically relocated to Arkansas; and
    - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to a full-time permanent employee or "contractual employee", as defined in the Act, for performing qualified services. Qualified services are services of employees who are:

- Engaging in qualified research, which means the actual conduct of qualified research;
- Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and
- Engaging in the direct support of research activities which constitute qualified research.

Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.

As with the payroll income tax credits for targeted businesses, the income tax credit for research and development earned by targeted businesses may be sold.

The income tax credits earned under this program may be sold upon approval by the Commission. Any sale of tax credits through this program must be fully documented by the Commission and that information will be transmitted to the DFA.

The purchaser of the tax credits provided by this program shall obtain certification from the Commission and attach the appropriate documentation provided by the Commission to the tax return on which the credit is first claimed.

The tax credit must be sold within one (1) year of its being issued by the Commission. The original holder of tax credits under this section may sell its tax credits only one (1) time, in whole or in part, the balance of which shall be used by the holder within the time frame allowed.

To claim a credit earned through this incentive, the business shall file with its income tax return the Certificate of Tax Credit issued by the Commission.

The buyer of the tax credit shall be subject to the same provisions for carry forward of the tax credits as the business that originally earned the credits. A targeted business earning research and development tax credits is prohibited from earning job creation tax credits, as authorized by § 15-4-2709~~, or research tax credits as authorized by § 15-4-2708(a),~~ for the same expenditure.

Example: A new photonics business that has recently left the Genesis Technology Business Incubator and has applied for and been approved for in-house research income tax credits as a targeted business, is in need of further research to refine a process for using lasers in space applications. It plans to spend two hundred thousand dollars ($200,000) on qualified expenditures ~~on~~ for an in-house research and development project that has been approved by the Commission as a qualified research program. The two hundred thousand dollar ($200,000) expenditure would be eligible for a thirty-three percent (33%) tax credit, entitling the photonics business to earn sixty-six thousand dollars ($66,000) in income tax credits in the year of the expenditure. The credits may be carried forward up to nine (9) years. At the discretion of the photonics business and with the approval of the Commission, the credits may be sold within one (1) year of issuance by the Commission to allow the photonics business to realize the benefit of the credit.

The purchaser of the credits would be able to carry the credit forward for nine (9) years.

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- A buyer of the credit is limited to the same carry forward period. A sale of the tax credit does not alter the time frame for using the credits.

- It is the intent of the Commission to adhere to some of the federal guidelines for research conducted by an eligible targeted business.

Combination with other incentives: The income tax credit for research by a targeted business authorized by § 15-4-2708(~~c~~b) may **not** be used with:

- Other in-house research and development incentives as authorized by § 15- 4-2708(~~b~~a) or § 15-4-2708(~~d~~c)(1)(A); or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.

D. Research Area of Strategic Value – Act 182 of 2003, as amended, § 15-4-2708(~~d~~c)(1)(A) and Research Under Programs of the Division of Science and Technology of the Arkansas Economic Development Commission – Act 182 of 2003, as amended, § 15-4-2708(~~d~~c)(1)(B).

An income tax credit equal to thirty-three percent (33%) of qualified research expenditures may be ~~allowed for~~offered, at the discretion of the Executive Director, to an Arkansas taxpayer that invests in:

- In-house research in an area of strategic value; or
- A project under the research and development programs offered by the Commission.

(i) In-house Research in an Area of Strategic Value – Act 182 of 2003, as amended, § 15-4-2708(d)(1)(A).

The business must apply to the Commission to qualify for the income tax credit for research in an area of strategic value. Research area of strategic value means research in fields having long-term economic or commercial value to the state, and that have been identified in the research and development plan approved from time to time by the Executive Director with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission (Board). The tax credit for research in an area of strategic value may be earned for the first five (5) years following the signing of a financial incentive agreement with the Commission. The income tax credit earned can~~not~~ offset ~~more than~~ up to one hundred percent (100%) of a business's income tax liability ~~in any one tax year~~ annually and the benefits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars ($50,000) per tax year. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs.

To claim a credit earned through this incentive, the business shall file the

Certificate of Tax Credit issued by the Commission with the tax return on which the credit is first claimed.

Qualified research expenditures for research in an area of strategic value include in-house expenses for taxable wages paid (wages subject to withholding), and usual fringe benefits specific to ~~and supplies used in the conduct of qualified~~ research activities of employees of the business. Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Purchase of supplies;
- Purchase of land;
- Purchase or rehabilitation of production machinery and equipment;
- Construction or renovation of buildings;
- Any ordinary and necessary expenses of conducting business;
- Any research conducted after the beginning of commercial production;
- Research adapting an existing product or process to a particular customer's need;
- Duplication of an existing product or process;
- Surveys or studies;
- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive Director may make an exception for research and development activities occurring outside of Arkansas for an agreed upon transition period if the following conditions exist:
    - The business qualifies as a Targeted Business;
    - The Commission and the business have entered into a Targeted In-House Research and Development incentive agreement;
    - The business is located in another state and has decided to relocate its research and development activities to Arkansas within a specified transition period, not to exceed eighteen (18) months; and
    - The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
    - Has incorporated as a business in the State of Arkansas;
    - Has physically relocated to Arkansas; and
    - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to a new full-time permanent employee for performing qualified services. Qualified services are services of employees who are:

- Engaging in qualified research, which means the actual conduct of qualified research;
- Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and
- Engaging in the direct support of research activities which constitute qualified research.

Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.

A business claiming a credit through this incentive shall be prohibited from receiving the research tax credit authorized by § 26-51-1102(b) for the same expenditures.

Example: A defense contractor located in Arkansas has decided to conduct research in the state to improve the function of microelectronic components in advanced weapons systems. The business has been approved for this research as being "research in an area of strategic value." The defense contractor will spend one million dollars ($1,000,000) in qualified research expenditures in Arkansas in conjunction with the approved program of in-house research. Assuming the entire one million dollars ($1,000,000) is expended on qualified items over the five-year period at the rate of two hundred thousand dollars ($200,000) per year, the defense contractor would generate a potential credit on the qualified annual expenditure of ($200,000 X 33% = $66,000) and earn an actual income tax credit of fifty thousand dollars ($50,000) per tax year, due to the limit established. The credits earned in each year may be carried forward for nine (9) years beyond the tax year in which they were first earned.

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- The Executive Director ~~Commission~~ must approve any research for which a business is seeking a credit under this incentive.
- It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help ~~insure~~ ensure the success of the research and development effort.

Combination with other incentives: The income tax credit for research in an area of strategic value may **not** be used in combination with:

- Any other research and development incentive as authorized by § 15-4-2708; or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.

(ii) Research Under Programs of the Division of Science and Technology of the Arkansas Economic Development Commission – Act 182 of 2003, as amended, §

15-4-2708(~~d~~c)(1)(B).

The business must ~~apply to the Commission~~ receive approval from the Executive Director to qualify for the income tax credit for research under programs of the Division of Science and Technology of the Arkansas Economic Development Commission. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs. The Division of Science and Technology of the Arkansas Economic Development Commission specifies the application format for its programs. The tax credit may be earned for the first five (5) years following the signing of a financial incentive agreement with the Commission. The income tax credit earned can~~not~~ offset ~~more than~~ up to one hundred percent (100%) of a business's income tax liability annually ~~in any one (1) tax year~~ and the benefits can be carried forward for up to nine (9) years beyond the tax year in which they were earned or until exhausted, whichever occurs first. The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars ($50,000) per tax year.

To claim a credit earned through this incentive, the business shall file the Certificate of Tax Credit issued by the Commission with the tax return on which the credit is first claimed.

~~**Example:** A new medical device business had only a few assets and employees and it did not qualify for any of the other research and development incentives. As a start-up business, it had been seeking outside investors in its revolutionary circulatory system implant. The business received a three thousand dollar ($3,000) technology transfer assistance grant from the Division of Science and Technology of the Arkansas Economic Development Commission to help the business prepare its first Small Business Innovation Research (SBIR) proposal to a federal agency. As part of its assistance to the business the Division's staff encouraged the business to prepare an application and project plan (which was actually the business's commercialization and business plan) for the research and development incentive under programs of the Division. The application and project plan were approved by the~~ Executive Director ~~Commission and became the five-year financial incentive agreement with the business. The agreement includes a timetable for commercializing the business's technology that would begin with the notice of the SBIR phase I award.~~

~~The financial incentive agreement includes a twenty thousand dollar ($20,000) university research project under the Division's Applied Research Grant Program in support of the phase I SBIR effort, a fifty thousand dollar ($50,000) product development project under the Technology Development Program, one hundred eighty thousand dollars ($180,000) under the Applied Research Grant and Technology Development Programs in support of a future SBIR phase II award, and a three hundred thousand dollar ($300,000) investment under the Seed Capital Investment Program in support of SBIR phase III. Qualification for tax credit consideration for these R&D activities is contingent on the business's performance~~

~~under the federal SBIR program and decisions to fund phase I and II projects by the federal agency. It is also dependent on raising risk capital investments from individual investors who must decide that the potential benefit from sales of the implant is worth the risk.~~

~~The medical device business has been notified that it has been approved for its first SBIR award of sixty thousand dollars ($60,000). A local individual investor has decided, on the strength of the SBIR award and the financial incentive agreement, to become part of the business. In the first year after the SBIR award notice, the investor put twenty thousand dollars ($20,000) into university research and fifty thousand dollars ($50,000) into product development. The Commission has approved both projects. The seventy thousand dollars ($70,000) qualifies under the financial incentive agreement for a thirty-three percent (33%) tax credit equal to twenty three thousand one hundred dollars ($23,100), which is under the fifty thousand dollar ($50,000) per year cap.~~

~~The business submitted an application for a phase II SBIR project to extend its commercialization work. Tax credits in the remaining four (4) years will depend on decisions by the federal agency regarding the phase II application and the investor (or investors) regarding additional investments.~~

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- Applications for tax credit approval under this incentive must be approved by the Executive Director ~~with the advice of the Board~~.
- It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help ~~insure~~ ensure the success of the research and development effort.

Combination with other incentives: The income tax credit for research and development under programs of the Division of Science and Technology of theArkansas Economic Development Commission may **not** be used in combination with:

- Any other research and development incentive as authorized by § 15-4-2708 or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1490

By: Representative Wing
By: Senator M. Pitsch

For An Act To Be Entitled

AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT OF 2003; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE CONSOLIDATED INCENTIVE ACT OF 2003.

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

SECTION 1. Arkansas Code §§ 15-4-2703 — 15-4-2712 are amended to read as follows:

15-4-2703. Definitions.

As used in this subchapter:

(1) "Applied research" means any activity that ~~seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue~~ <u>applies the findings of basic research or other existing knowledge toward discovering new scientific knowledge that has specific commercial objectives with respect to new products, services, processes, or methods</u>;

(2)(A) "Average hourly wage" means the amount obtained when payroll, as defined in this section, is divided by the number of hours worked to earn the payroll.

(B) For the purpose of subdivision (2)(A) of this section, forty (40) hours per week shall be used as the number of hours worked for a salaried employee;

(3) "Basic research" means ~~any original investigation for the~~

~~advancement of scientific or technological knowledge~~ the pursuit of new scientific knowledge or understanding that does not have specific, immediate commercial objectives, although the pursuit may be in fields of present or potential commercial interest;

(4) ~~"Commission" means the Arkansas Economic Development Commission;~~

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

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

(B) Otherwise meets the requirements of a new full-time permanent employee of the qualified business receiving ~~benefits~~ incentives under this subchapter; and

(C) Receives a benefits package comparable to direct employees of the qualified business receiving ~~benefits~~ incentives under this subchapter;

~~(6)(A)~~(5)(A) "Corporate headquarters" means ~~the~~ a facility or portion of a facility where ~~corporate staff employees are physically employed and where the majority of the company's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or a national basis~~ the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions are effectuated on either a regional basis or a national basis under the direction of principal executive officers, including without limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility.

(B) A corporate headquarters ~~must~~ shall be either a regional corporate headquarters or a national corporate headquarters.

(C) The Executive Director of the Arkansas Economic Development Commission, with advice from the Director of the Department of Finance and Administration, may determine eligibility for a corporate headquarters facility if a difference exists between a business's disclosed corporate headquarters functions and its North American Industry Classification System primary business activity code;

~~(7)(A)~~(6)(A) "County or state average hourly wage" means the weighted average weekly earnings for Arkansans in all industries, both statewide and countywide, as calculated by the Department of Workforce Services in its most recent "Annual Covered Employment and Earnings" publication, divided by forty (40).

(B) The average hourly wage threshold determined at the ~~signing~~ approval date of the financial incentive agreement ~~shall be~~ is the threshold for the term of the financial incentive agreement;

~~(8)~~(7) "Distribution center" means a facility for the reception, storage, and shipping of:

(A) A business's own products or products that the business wholesales to retail businesses or ships to its own retail outlets if seventy-five percent (75%) of the sales ~~revenues are~~ revenue is from out-of-state customers;

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

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

~~(9)~~(8) "Eligible businesses" means nonretail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter and fall into one (1) or more of the following categories:

(A) Manufacturers classified in sectors 31-33 in the North American Industry Classification System, as in effect January 1, ~~2003~~ 2017;

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

(ii) All businesses in this group shall derive at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of their sales revenue from out of state.

(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

(C)(i) Businesses primarily engaged in ~~motion picture~~ film and digital product productions and postproductions.

(ii) All businesses in this group shall derive at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of their sales revenue from out of state.

(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

(D) Distribution centers or intermodal facilities;

(E) Office sector businesses;

(F) National or regional corporate headquarters, as classified by the North American Industry Classification System Code 551114, as in effect January 1, ~~2005~~ 2017, or as determined by the Executive Director of the Arkansas Economic Development Commission under subdivision (5)(C) of this section;

(G) ~~Firms~~ Businesses primarily engaged in ~~commercial, physical, and biological~~ research and development in the physical, engineering, and life sciences, as classified in the North American Industry Classification System ~~Code 541710~~ Codes 541713, 541714, and 541715, as in effect January 1, ~~2005~~ 2017;

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

(ii)(a) All businesses in this group shall derive at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of their sales revenue from out of state.

(b)~~(1)~~ The average hourly ~~wages~~ wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred fifty percent (150%) of the lesser of the county or state average hourly wage~~, whichever is less~~ for the county in which the business locates or expands~~.~~;

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

(I) The Executive Director of the Arkansas Economic Development Commission may classify a nonretail business as an eligible business if the following conditions exist:

(i) The business receives at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of its sales revenue from out of state; and

(ii) The ~~business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average hourly wage, whichever is less~~ average hourly wage paid by the business to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

(J)(i) Businesses primarily engaged in other support activities for air transportation, as classified in the North American Industry Classification System Code 488190, as in effect on January 1, 2017.

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

(K)(i) Businesses primarily engaged in support activities for rail transportation, as classified in the North American Industry Classification System Code 488210, as in effect on January 1, 2017.

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

~~(10)~~(9) "Equity investment" means capital invested in common or preferred stock, royalty or intellectual property rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private businesses, including a federal agency's award of a Small Business ~~Innovative~~ Innovation Research grant or a Small Business Technology Transfer grant;

~~(11) "Executive director" means the Executive Director of the Arkansas Economic Development Commission;~~

~~(12)(A)~~(10)(A) "Existing employees" means those employees hired by ~~the~~ a business before the date the financial incentive agreement was

~~signed~~ approved.

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

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

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

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

~~(13)~~(11) "Facility" means a single physical location, which may consist of multiple structures of an eligible business that are conducting similar or complementary activities located on noncontiguous property within the same county, at which the eligible business is conducting its operations;

~~(14)~~(12) "Film and digital product" means video images and other visual media entertainment content in digital format, film, or videotape, if the video images and other visual media entertainment content meet all the underlying criteria of a qualified production under the Digital Product and Motion Picture Industry Development Act of 2009, § 15-4-2001 et seq., including without limitation:

(A) A motion picture;

(B) A documentary;

(C) A long-form program;

(D) A special;

(E) A mini-series;

(F) A series;

(G) A music video;

(H) Television programming;

(I) Interactive television;

(J) An interactive game;

(K) A video game;

(L) A commercial;

(M) Digital media for distribution or exhibition to the general public; and

(N) A trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment;

(13) "Financial incentive agreement" means an agreement entered into by an eligible business and the commission to provide the business an incentive to locate a new business or to expand or retain an existing business in Arkansas;

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

~~(16)~~(14) "Governing authority" means the quorum court of a county or the governing body of a municipality;

~~(17)(A)(i)~~(15)(A)(i) "In-house research" means applied research supported by the business through the ~~purchase of supplies for research activities and~~ payment of wages and usual fringe benefits ~~for~~ specific to research activities of employees of the business ~~who conduct research activities in research facilities~~ or for wages and usual fringe benefits paid through contractual agreements, approved in writing by the Executive Director of the Arkansas Economic Development Commission, with an Arkansas state college, an Arkansas state university, or other Arkansas-based research organization to perform research for a targeted business~~:~~

~~(a) Dedicated to the conduct of research activities;~~

~~(b) Operated by the business; and~~

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

(ii) "In-house research" includes~~:~~

~~(a) Experimental~~ experimental, clinical, or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas~~; and~~

~~(b) A contractual agreement with a state~~

~~college, state university, or other research organization to perform research for a targeted business if the Executive Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission makes a written determination before the research is performed that the research is essential to the core function of the targeted business~~.

(B) "In-house research" does not include tests or inspections of materials or products for quality control, efficiency surveys, management studies, other market research, supplies, the purchase of land, the purchase or rehabilitation of production machinery and equipment, the construction or renovation of buildings, or any other ordinary and necessary expenses of conducting business;

~~(18)~~(16) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has ~~decided to legally protect~~ legally protected for possible commercial gain, based on the disclosure of the creator;

~~(19)~~(17) "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight~~,~~ or commerce~~, or passengers~~;

~~(20)~~(18) "Investment threshold" means the minimum amount of investment in project costs that must be incurred ~~in order~~ to qualify for eligibility;

~~(21)~~(19) "Invests" or "investment" means money expended by or on behalf of ~~an approved eligible~~ a qualified business that seeks to begin or expand operations in Arkansas, and without this infusion of capital, the location or expansion may not take place;

~~(22)~~(20) "Lease" means a right to possession of real property for a specific term in return for consideration, as determined in a lease agreement by both parties;

~~(23)(A)~~(21)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in machinery or equipment, or both.

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

~~(24)~~(22) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;

~~(25)(A)(i)~~(23)(A)(i) "New full-time permanent employee" means a position or job that was created pursuant to ~~the signed~~ an approved financial incentive agreement and that is filled by one (1) or more employees or contractual employees who:

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

(b)(1) Work at the facility identified in the financial incentive agreement.

(2) New employees who do not work at the facility may be counted if they:

(A) Otherwise meet the definition of "new full-time permanent employee";

(B) Are subject to the Arkansas Income Tax Withholding Act of 1965, § 26-51-901 et seq.; and

(C) Meet an average hourly wage threshold equal to or greater than the state average hourly wage for the preceding calendar year; and

(c) Are not existing employees, except as allowed under subdivision ~~(12)~~ (10) of this section.

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

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

~~(26)~~(24) "Nonretail business" means a business that ~~derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public~~ is not classified in North American Industry Classification System sectors 44-45, as in effect on January 1, 2017;

~~(27)(A)~~(25)(A) "Office sector business" means business operations that support primary business needs, including~~, but not limited to,~~ without limitation customer service, credit accounting, telemarketing, claims processing, and other administrative functions.

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

~~(28)~~(26) "Payroll" means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible business to new full-time permanent employees hired after the date of the ~~signed~~ approved financial incentive agreement;

~~(29)(A)~~(27)(A) "Person" means an individual, trust, estate, fiduciary, firm, joint venture, proprietorship, partnership, limited liability company, or corporation.

(B) "Person" includes:

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

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

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

~~(30)~~(28) "Preconstruction costs" means the cost of eligible items incurred before the start of construction, including:

(A) Project planning costs;

(B) Architectural and engineering fees;

(C) Right-of-way purchases;

(D) Utility extensions;

(E) Site preparations;

(F) Purchase of mineral rights;

(G) Building demolition;

(H) Builders risk insurance;

(I) Capitalized start-up costs;

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

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

~~(31)(A)~~(29)(A) "Project costs" means costs associated with the:

(i) Construction of a new plant or facility including~~, but not limited to,~~ without limitation land, building, ~~production~~ machinery and equipment, or support infrastructure;

(ii) Expansion of an established plant or facility by adding to the building, ~~production~~ machinery and equipment, or support infrastructure; or

(iii) Modernization of an established plant or facility through the replacement of ~~production or processing~~ machinery and equipment or support infrastructure that improves efficiency or productivity.

(B) "Project costs" does not include:

(i) Expenditures for routine repair and maintenance that do not result in new construction, ~~or~~ expansion, or modernization;

(ii) Routine operating expenditures;

(iii) Expenditures incurred at multiple facilities; or

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

(a) There is sufficient documentation that the existing business was closed or will close; and

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

(C) Eligible project costs must be incurred within four (4) years from the date a financial incentive agreement was ~~signed~~ approved by the commission;

~~(32)~~(30) "Project plan" means a plan~~:~~

~~(A) Submitted~~ submitted to the commission containing ~~such~~ the information ~~as may be~~ required by the Executive Director of the Arkansas Economic Development Commission to determine eligibility for ~~benefits~~ incentives under this subchapter; ~~and~~

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

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

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

(B) Has signed a financial incentive agreement ~~with~~ that has been approved by the commission ~~or is involved in a research and development program administered by the commission~~;

~~(34)~~(32) "Qualified research expenditures" means the sum of any amounts that are paid or incurred by an Arkansas taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules ~~and regulations~~ promulgated by the commission;

~~(35)~~(33) "Region" or "regional" means a geographic area ~~comprising~~ comprised of two (2) or more states, including this state and at least one (1) state that is contiguous to this state;

~~(36)(A)~~(34)(A) "Regional corporate headquarters" means ~~the location where a headquarters staff performs functions on a regional basis that involve the services of administration, planning, research and development, marketing, personnel, legal, computer, or telecommunications~~ a facility or portion of the facility in which the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions are effectuated on a regional basis under the direction of principal executive officers, including without limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility.

(B)~~(i) As used in subdivision (36)(A) of this section, "regional" means a geographic area composed of this state and a contiguous state.~~

~~(ii)~~ However, a function on a regional basis does not include a function involving manufacturing, processing, warehousing, distributing, or wholesaling activities or the operation of a call center;

~~(37) "Research and development programs of the Division of Science and Technology of the Arkansas Economic Development Commission" means statutory programs operated by the Division of Science and Technology of the Arkansas Economic Development Commission under § 15-3-101 et seq.;~~

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

~~(39)~~(35) "Scientific and technical services business" means a business:

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

(i) Architectural and engineering design;

(ii) Computer programming and computer systems design; and

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

(B) ~~Selling expertise;~~

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

~~(D)~~ Deriving at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of its sales revenue from out of state; and

~~(E)~~(C) Paying ~~average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less~~ employees whose payroll is subject to incentives under this subchapter average hourly wages exceeding one hundred fifty percent (150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;

~~(40)~~(36) "Start of construction" means any activity that causes a physical change to the building or property, or both, identified as the site of the approved project, but excluding ~~engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site~~ preconstruction costs;

~~(41)~~(37) "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved ~~from time to time~~ by the Executive Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission;

~~(42)~~(38) "Support infrastructure" means physical assets necessary for the business to operate, including~~, but not limited to,~~ without limitation water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and ~~communication~~ communications infrastructure;

~~(43)(A)~~(39) "Targeted businesses" means a grouping of growing business sectors, not to exceed six (6), that include the following:

~~(i)~~(A) Advanced materials and manufacturing systems;

~~(ii)~~(B) Agriculture, food, and environmental sciences;

~~(iii)~~(C) Biotechnology, bioengineering, and life sciences;

~~(iv)~~(D) Information technology;

~~(v)~~(E) Transportation logistics; and

~~(vi)~~(F) Bio-based products~~.~~

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

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

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

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

~~(44)~~(40) "Tiers" means the ranking of the seventy-five (75) counties of Arkansas into four (4) divisions that delineate the economic prosperity of the counties and allow for different levels of ~~benefits~~ incentives under this subchapter.

15-4-2704. Tier system.

(a) The Arkansas Economic Development Commission shall establish a tier system that shall rank all seventy-five (75) counties of this state into four (4) divisions on the basis of economic prosperity.

(b) Tier 4 ~~will~~ shall be the least prosperous division and tier 1 ~~will~~ shall be the most prosperous division.

(c) The assignment of a county to a tier shall be based on a ranking of:

(1) Unemployment rate;

(2) Poverty rate;

(3) Per capita personal income; and

(4) Population ~~growth~~ change.

(d) The commission shall:

(1) Update ranking statistics annually; and

(2) Place counties into tiers based on the updated statistics.

(e)(1) A county that has experienced a sudden and severe period of economic distress caused by ~~the closing of a business entity~~ a closure of one

(1) or more businesses or a mass layoff at one (1) or more businesses, or both, as documented by notice provided under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., as it existed on January 1, 2019, that results in the loss of a minimum of five percent (5%) of the county's employed labor force~~, as determined by the most recent Labor Market Information publication published by the Department of Workforce Services,~~ may be moved ~~up~~ down one (1) tier upon ~~submitting a request to and being approved by the Arkansas Economic Development Council~~ written request by the county judge of the affected county and approval by the Executive Director of the Arkansas Economic Development Commission.

(2) The five-percent threshold stated in subdivision (e)(1) of this section shall be evidenced by calculating the highest percentage difference in employment between the county's:

(A) Current monthly, not seasonally, adjusted total employed labor force; and

(B) Each of the following:

(i) The previous monthly, not seasonally, adjusted total employed labor force;

(ii) The most recent annually, not seasonally, adjusted total employed labor force; or

(iii) The monthly, not seasonally, adjusted total employed labor force for the same month of the previous year.

(3) If the ~~council~~ executive director approves a county's move to a higher tier, ~~any~~ a qualified business ~~having~~ that has signed a financial incentive agreement with the commission dated before the ~~council's~~ executive director's action shall receive the ~~benefits for the duration of the term of the financial incentive agreement~~ incentives that were assigned to the county to which it located at the time the financial incentive agreement was signed, ~~by the commission~~ regardless of any subsequent change to the tier ~~in which the county is assigned~~.

(4) A tier increase approved under this subsection remains in effect until the annual tier rankings are updated under subsection (d) of this section.

15-4-2705. Job-creation tax credit.

(a) There is established a job-creation tax credit to encourage:

(1) The creation of new jobs; and

(2) Business growth and expansion.

(b) An application for the income tax credit under this section shall be submitted to the Arkansas Economic Development Commission.

(c) To ~~qualify for~~ receive this credit, ~~an eligible~~ a qualified business shall ~~have an~~ meet minimum annual payroll thresholds for new full-time permanent employees ~~in excess of the payroll threshold~~ for the county tier in which the project is located, as follows:

(1) For tier 1 counties, the annual payroll threshold is at least one hundred twenty-five thousand dollars ($125,000);

(2) For tier 2 counties, the annual payroll threshold is at least one hundred thousand dollars ($100,000);

(3) For tier 3 counties, the annual payroll threshold is at least seventy-five thousand dollars ($75,000); and

(4) For tier 4 counties, the annual payroll threshold is at least fifty thousand dollars ($50,000).

(d)(1) The credit earned under this section is a percentage of the payroll of the new full-time permanent employees hired following the date of the approved financial incentive agreement.

(2) The percentage shall be determined by the county tier in which the project is located, as follows:

(A) For tier 1 counties, the credit is one percent (1%) of the payroll for the new full-time permanent employees of the business;

(B) For tier 2 counties, the credit is two percent (2%) of the payroll for the new full-time permanent employees of the business;

(C) For tier 3 counties, the credit is three percent (3%) of the payroll for the new full-time permanent employees of the business; and

(D) For tier 4 counties, the credit is four percent (4%) of the payroll for the new full-time permanent employees of the business.

(3) To qualify for a credit under this subsection, the ~~proposed~~ average hourly wage ~~of a company applying for the benefit~~ paid to employees whose payroll is subject to incentives under this subchapter shall ~~equal or~~ be ~~greater than~~ at least equal to the greater of the lowest county average hourly wage as calculated by the commission based on the most recent calendar year data published by the Department of Workforce Services, or twelve dollars and fifty cents ($12.50).

(4) A qualified business shall receive an additional tax credit of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives under this subchapter exceeds one hundred twenty-five percent (125%) of the lesser of the county or state average hourly wage for the county in which the qualified business locates or expands.

(e) The term of the financial incentive agreement shall be for a period of ~~sixty (60) months~~ five (5) years, beginning on the date of the approved financial incentive agreement.

(f)(1) After receiving an approved financial incentive agreement from the commission, ~~the~~ a qualified business shall certify to the ~~Revenue Division of the~~ Department of Finance and Administration the payroll of the new full-time permanent employees annually at the end of each tax year during the term of the financial incentive agreement.

(2) Upon verification of the reported payroll amounts, the ~~division~~ Department of Finance and Administration shall authorize the appropriate income tax credit.

(g)(1) The tax credits earned under this section may offset up to fifty percent (50%) of the business's tax liability ~~in any one (1) year~~ annually.

(2) Any unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned or until exhausted, whichever ~~event~~ occurs first.

(h)(1) If a qualified business fails to meet the payroll threshold within two (2) years after the ~~signing~~ date of the approved financial incentive agreement or within the time period established by an extension approved by the Director of the Department of Finance and Administration and the Executive Director of the Arkansas Economic Development Commission, ~~that~~ the qualified business ~~will be~~ is liable for repayment of all ~~benefits previously received by the business~~ incentives previously received under § 15-4-2706(d) that were conditioned on an approved financial incentive agreement under this section for which the payroll threshold has not been met.

(2) ~~After a business has failed~~ If a qualified business fails to reach the payroll threshold of this section in a timely manner, the Department of Finance and Administration shall have two (2) years to collect

~~benefits~~ incentives previously received by the qualified business or file a lawsuit to enforce the repayment provisions.

15-4-2706. Investment tax incentives.

(a) There are established investment tax incentives to:

(1) Encourage capital investment for the long-term viability of businesses in the state; and

(2) Create new jobs.

(b)(1) The award of ~~this incentive shall be~~ incentives under this section are at the discretion of the Executive Director of the Arkansas Economic Development Commission.

(2) If offered, an application for an income tax credit under this section shall be submitted to the Arkansas Economic Development Commission.

(3) Eligibility for ~~this incentive~~ incentives under this section is dependent upon the tier in which the project is located, as follows:

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

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

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

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

(4) ~~Upon approval by the commission, the Executive Director of the Arkansas Economic Development Commission shall transmit an~~ An approved financial incentive agreement shall be transmitted to the ~~approved company~~ qualified business and the ~~Revenue Division of the~~ Department of Finance and Administration.

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

(6)(A)(i) After receiving an approved financial incentive agreement from the commission, ~~the approved company~~ a qualified business shall certify to the department the eligible project costs annually at the end of each calendar year for the term of the financial incentive agreement ~~to the division~~.

(ii) U~~pon verification of eligible project costs, the division~~ The department shall authorize an income tax credit of ten percent (10%) ~~based on the total investment in land, buildings, equipment, and costs related to licensing and protecting intellectual property~~ of total audited eligible project costs.

(B) The amount of income tax credit ~~taken during any tax year shall not exceed~~ authorized under subdivision (a)(6)(A)(ii) of this section may offset up to fifty percent (50%) of ~~the~~ a qualified business's income tax liability ~~resulting from the project or facility~~ annually.

(C) Unused tax credits may be carried forward for up to nine (9) years after the year in which the credit was first earned or until the tax credits are exhausted, whichever occurs first.

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

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

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

(B) Pays ~~wages~~ an average hourly wage that ~~are~~ is at least ~~one hundred seventy-five percent (175%)~~ one hundred fifty percent (150%) of the lesser of the state or county average hourly wage~~, whichever is less~~ for the county in which the business locates or expands.

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

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

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

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

(iv) The income tax credit or sales and use tax credit ~~will be~~ is equal to eight percent (8%) of the investment for that part of the investment that is over two million dollars ($2,000,000).

(B) The ~~percentage of the investment used to determine the~~ amount of credit earned ~~shall be established~~ is determined based upon the ~~project cost estimate at the time of signing the financial incentive agreement~~ amount invested, as verified by an audit by the department.

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

(10) Prior to ~~execution~~ commission approval of ~~the~~ a financial incentive agreement, the ~~approved company~~ business shall elect to receive the tax credits as either:

(A) A sales and use tax credit; or

(B) An income tax credit.

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

~~(i)~~(A) A technology-based enterprise that pays at least ~~one hundred seventy-five percent (175%)~~ one hundred fifty percent

(150%) of the lesser of the state or county average hourly wage~~, whichever is less,~~ for the county in which the business locates or expands may offset up to fifty percent (50%) of its income tax liability or sales and use tax liability annually;

~~(ii)~~(B) A technology-based enterprise that pays at least ~~two hundred percent (200%)~~ one hundred seventy-five percent (175%) of the lesser of the state or county average hourly wage~~, whichever is less,~~ for the county in which the business locates or expands may offset up to seventy-five percent (75%) of its income tax liability or sales and use tax liability annually; and

~~(iii)~~(C) A technology-based enterprise that pays at least ~~two hundred twenty-five percent (225%)~~ two hundred percent (200%) of the lesser of the state or county average hourly wage~~, whichever is less,~~ for the county in which the business locates or expands may offset up to one hundred percent (100%) of its income tax liability or sales and use tax liability annually.

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

(12) After receiving an approved financial incentive agreement from the commission, ~~the approved company~~ a qualified business shall certify to the department the eligible project costs and average hourly wages annually at the end of each tax year for the term of the financial incentive agreement ~~to the division~~.

(13) Unused income tax credits or sales and use tax credits may be carried forward for ~~a period not to exceed~~ up to nine (9) years after the year in which the credit was first earned or until the tax credits are exhausted, whichever occurs first.

(c)(1)(A) An application for a retention tax credit under this subsection shall be submitted to the commission.

(B)(i) The application shall be submitted to the commission before incurring any project costs.

(ii) With the exception of preconstruction costs, only those costs incurred after the commission's approval are eligible for the tax credit.

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

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

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

(C) Hold a direct-pay sales and use tax permit from the ~~division~~ department before submitting an application for ~~benefits~~ incentives.

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

(B) The amount of the credit shall be five-tenths ~~of one~~ percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the commission.

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

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

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

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

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified 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.

(D) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

(E) The credit against the qualified business's sales and use tax liability shall be a percentage of the eligible project costs equal to five-tenths ~~of one~~ percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement was ~~signed~~ approved by the commission.

(5) If a business plans to apply for ~~benefits~~ incentives under this subsection and also plans to apply for ~~benefits~~ incentives under § 15-4-2705, the financial incentive agreement under § 15-4-2705 ~~must~~ shall be ~~signed~~ approved within ~~twenty-four (24) months~~ two (2) years after signing the financial incentive agreement under this subsection.

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

(7)(A) A ~~qualified~~ business may apply for the retention tax credit under this subsection through June 30, 2017.

(B)(i) An application for the retention tax credit under this subsection shall not be accepted on or after July 1, 2017.

(ii) However, projects that qualify for a retention tax credit based on an application filed through June 30, 2017, shall continue to earn credits as provided in this section.

(iii) Retention tax credits issued on a project that qualifies for retention tax credits based on an application filed through June 30, 2017, shall remain in effect and shall be taken and carried forward as otherwise provided in this section.

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

(B) The resolution shall:

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

(ii)~~(a)~~ Specify that the ~~Department of Finance and Administration~~ department is authorized to refund local sales taxes to the qualified business.

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

(C) ~~Any eligible business that applies for a sales and use tax refund under this subsection shall invest in excess of one hundred thousand dollars ($100,000) in order to qualify for the sales and use tax refund~~ To qualify for a refund under this subsection, a qualified business shall meet the minimum investment thresholds for the tier in which the qualified business expands or locates, as follows:

(i) For tier 1 counties, the minimum investment threshold is at least five hundred thousand dollars ($500,000);

(ii) For tier 2 counties, the minimum investment threshold is at least four hundred thousand dollars ($400,000);

(iii) For tier 3 counties, the minimum investment threshold is at least three hundred thousand dollars ($300,000); and

(iv) For tier 4 counties, the minimum investment threshold is at least two hundred thousand dollars ($200,000).

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

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

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of ~~replacements of~~ replacement items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(3)(A) Subject to the approval of the commission, a ~~program participant~~ qualified business may make changes ~~in~~ to a project by written amendment to the project plan filed with the commission.

(B) The commission shall not approve an amendment under subdivision (d)(3)(A) of this section that results in a cost increase of more than twenty-five percent (25%) of the initial project plan.

(4) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the ~~division~~ department within three (3) years from the date of the qualified purchase or purchases.

(5)(A)(i) ~~In order to~~ To be eligible for the ~~benefits~~ incentives under this subsection, a qualified business shall ~~sign a job creation~~ meet all payroll creation requirements of its approved financial incentive agreement under § 15-4-2705 or § 15-4-2707 ~~and comply with the eligibility requirements of the financial incentive agreement~~.

(ii) However, a business may apply for ~~benefits~~ incentives under this subsection if:

(a) The business has an existing financial incentive agreement approved under this subdivision (d)(5)(A) and the provisions of subdivision (d)(5)(B) of this section have been met within the previous ~~forty-eight (48) months~~ four (4) years; or

(b) The business has signed a ~~job creation~~ financial incentive agreement approved under § 15-4-2705 or § 15-4-2707 within the previous ~~forty-eight (48) months~~ four (4) years.

(B) The financial incentive agreement under § 15-4-2705 or § 15-4-2707 shall be ~~signed~~ approved within ~~twenty-four (24) months~~ two (2) years after ~~signing~~ the financial incentive agreement under this subsection is approved.

(e)(1) A ~~new~~ targeted business ~~shall~~ may be eligible for a refund of state and local sales and use taxes for qualified expenditures ~~identified in the project plan~~ at the discretion of the Executive Director of the Arkansas Economic Development Commission if:

(A)(i) The annual payroll of the targeted business for Arkansas taxpayers is greater than one hundred thousand dollars ($100,000) and less than one million dollars ($1,000,000).

(ii) The payroll requirement in subdivision (e)(1)(A)(i) of this section applies only to the initial eligibility determination and does not preclude a qualified business from receiving incentives if, at any time after the financial incentive agreement is approved, actual payroll does not satisfy the requirements in subdivision (e)(1)(A)(i) of this section; and

(B) The targeted business shows proof of an equity investment of at least two hundred fifty thousand dollars ($250,000).

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

(B) The resolution shall:

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

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

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

(3) ~~After the Executive Director of the Arkansas Economic Development Commission has determined that the project is eligible for the sales and use tax refund, this determination accompanied by the~~ An approved financial incentive agreement and any other pertinent documentation shall be forwarded to the Director of the Department of Finance and Administration.

(4)(A)(i) ~~A~~ The Director of the Department of Finance and Administration shall authorize a sales and use tax refund of state and local sales and use taxes, excepting the sales and use taxes dedicated to the Educational Adequacy Fund ~~as authorized by § 26-57-1002(d)(1)(A)(ii)(b)~~ and the Conservation Tax Fund ~~as authorized by § 19-6-484,~~ on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding qualified business and machinery and equipment to be located in or in connection with such a building ~~shall be authorized by the Director of the Department of Finance and Administration~~.

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

(B) A refund shall not be authorized for:

(i) Routine operating expenditures; or

(ii) The purchase of replacement items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(5)(A) Subject to the approval of the commission, a ~~program participant~~ qualified business may make changes ~~in~~ to a project by written amendment to the project plan filed with the commission.

(B) The commission shall not approve an amendment under subdivision (e)(5)(A) of this section that results in a cost increase of more than twenty-five percent (25%) of the initial project plan.

(6) All claims for sales and use tax refunds under this subsection shall be denied unless they are filed with the ~~division~~ department within three (3) years after the date of the qualified purchase or purchases.

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

(8) To be eligible for the incentives under this subsection, a targeted business shall meet all payroll creation requirements of an approved financial incentive agreement under § 15-4-2707 or § 15-4-2709 within two (2) years of the date of the approved financial incentive agreement under this subsection or other subsequent date if approved by the Executive Director of the Arkansas Economic Development Commission.

15-4-2707. Economic Development Incentive Fund — Payroll rebate.

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

(b) The fund shall consist of revenues designated for this fund by the ~~Revenue Division of the~~ Department of Finance and Administration pursuant to approved financial incentive agreements entered into by the commission with ~~eligible~~ qualified businesses.

(c) After the Department of Finance and Administration has received and verified the certification of the payrolls of the ~~eligible~~ qualified businesses ~~that have entered into financial incentive agreements with the commission~~ for the payroll rebate authorized by this section, the ~~department~~ Department of Finance and Administration shall transfer the appropriate amount of money designated by the financial incentive agreements out of general revenues into a special account designated as special revenue for the fund.

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

(2)(A) ~~Benefits are conditioned upon the hiring of new full-time permanent employees with an annual payroll threshold of two million dollars ($2,000,000) and certifying to the department that the requisite payroll threshold has been met~~ To receive an incentive under this section, a qualified business shall meet minimum annual payroll thresholds for new full-time permanent employees for the county tier in which the project is located, as follows:

(i) For tier 1 counties, the annual payroll threshold is at least two million dollars ($2,000,000);

(ii) For tier 2 counties, the annual payroll threshold is at least one million seven hundred fifty thousand dollars ($1,750,000);

(iii) For tier 3 counties, the annual payroll threshold is at least one million five hundred thousand dollars ($1,500,000); and

(iv) For tier 4 counties, the annual payroll threshold is at least one million two hundred fifty thousand dollars ($1,250,000).

(B) ~~The eligible~~ A qualified business ~~receiving benefits~~ approved for an incentive under this subsection ~~must~~ shall certify or recertify payroll annually ~~to~~ by filing the appropriate documents with the ~~department that the requisite payroll threshold has been met~~ Department of Finance and Administration.

(C) The ~~eligible~~ qualified business ~~receiving benefits~~ claiming incentives under this subsection ~~must~~ shall claim the rebate payment on an annual basis by certifying or recertifying payroll figures ~~and~~ meeting the requisite threshold by filing the appropriate claim forms with the ~~department~~ Department of Finance and Administration.

(D) Failure to certify or recertify payroll figures and claim the earned rebate payment annually shall result in:

(i) A ten-percent reduction of the earned rebate if not claimed within twelve (12) months from the end of the tax year in which the rebate was earned; ~~or~~

(ii) A one hundred-percent forfeiture of the earned rebate if not claimed within twenty-four (24) months from the end of the tax year in which the rebate was earned; or

(iii) Termination of the financial incentive agreement if an initial certification has not been filed with the Department of Finance and Administration within four (4) years after the date of the approved financial incentive agreement, unless the date has been extended by the executive director.

(3) Payments are subject to the following conditions:

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

(B) For tier 2 counties, the ~~benefit~~ incentive is four and twenty-five-hundredths percent (4.25%) of the annual payroll of new full-time permanent employees;

(C) For tier 3 counties, the ~~benefit~~ incentive is four and five-tenths percent (4.5%) of the annual payroll of new full-time permanent employees;

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

(E) The executive director may authorize ~~benefits~~ an enhanced incentive to a prospective eligible business of up to five percent (5%) of the payroll of new full-time permanent employees if the following conditions exist:

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

(ii) The prospective eligible business receives at least ~~seventy-five percent (75%)~~ fifty-one percent (51%) of its sales revenues from out of state; and

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

(4) To qualify for an incentive under this subsection, except for the enhanced incentive in subdivision (d)(3)(E) of this section, the average hourly wage paid to employees whose payroll is subject to incentives shall be at least equal to the greater of the lowest county average hourly wage as calculated by the commission based on the most recent calendar year data published by the Department of Workforce Services, or twelve dollars and fifty cents ($12.50).

(5) A qualified business shall receive an additional incentive of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives exceeds the lesser of one hundred twenty-five percent (125%) of the county or state average hourly wage for the county in which the business locates or expands.

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

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

(A) The average hourly wage of the payroll for new full-time permanent employees must be at least ~~one hundred seventy-five percent (175%)~~ one hundred fifty percent (150%) of the lesser of the state or county average hourly wage~~, whichever is less,~~ for the county in which the technology-based enterprise locates or expands;

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

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

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

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

~~(b)~~(1)(A) ~~New eligible~~ Eligible businesses that have not previously been approved for incentives under this subsection and that conduct in-house research ~~in a research facility operated by the business and that qualify~~ that has been approved for federal research and development tax credits may qualify, at the discretion of the Executive Director of the Arkansas Economic Development Commission, for an income tax credit ~~equal~~ of up to twenty percent (20%) of the incremental amount spent on in-house research that exceeds the ~~base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years, subject to the limitations established under § 26-51-1103~~ baseline established in the preceding year, for a period of five (5) years, subject to extension at the discretion of the Executive Director of the Arkansas Economic Development Commission.

(B) ~~For a new research facility, the base year is zero (0). Therefore, in the first three (3) years following the date of the financial incentive agreement, all eligible expenditures will qualify for the credit~~ The initial baseline for a qualified business new to the incentives offered under this subsection is the amount of research conducted in the state as claimed for federal research and development tax credits during the most recent year.

(C) ~~Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year~~ Tax credits for the first year shall be calculated based on the incremental eligible expenditures for research and development at the end of the first year minus the research and development expenditures as reported by the qualified business for research and development tax credits under subdivision (a)(1)(B) of this section.

(D) ~~Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year~~ Tax credits for succeeding years shall be calculated as the difference between the current year’s research conducted in the state and the previous year’s research conducted in the state.

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

~~(B) For an existing research facility, the base year amount shall be the amount of eligible research and development expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Arkansas Economic Development Commission.~~

~~(C) Qualified research and development expenditures in the third year shall be used as a base to calculate the tax credit in the fourth year.~~

~~(D) Qualified research and development expenditures in the fourth year shall be used as a base to calculate the tax credit in the fifth year.~~

~~(3)~~(2) The income tax credit may be used to offset up to one hundred percent (100%) of ~~an eligible~~ a qualified business’s annual income tax liability.

~~(4)~~(3) Unused tax credits may be carried forward for ~~a period not to exceed~~ up to nine (9) years after the year in which the credit was first earned or until the tax credits are exhausted, whichever occurs first.

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

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

(B) The financial incentive agreement may be renewed for ~~a period not to exceed five (5) years~~ additional five-year periods upon the submittal to and approval of the Executive Director of the Arkansas Economic Development Commission of a new application and project plan for ~~benefits~~ incentives under this subsection.

(C) The qualified business claiming a tax credit under this subsection shall certify annually to the ~~commission~~ Arkansas Economic Development Commission the amount expended on in-house research.

~~(c)(1)~~(b)(1) Targeted businesses may qualify for an income tax credit equal to thirty-three percent (33%) of the amount spent on in-house research per year for the first five (5) tax years following the targeted business's signing a financial incentive agreement with the commission~~, subject to the limitations established under § 15-4-2709(d)(2)~~.

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

~~(d)(1)~~(c)(1) An Arkansas taxpayer may ~~qualify for~~ be offered, at the discretion of the Executive Director of the Arkansas Economic Development Commission, an income tax credit equal to thirty-three percent (33%) of the amount spent on the research for the first five (5) tax years following the business's signing a financial incentive agreement with the commission, subject to the limitations established under § 26-51-1103 if the taxpayer invests in:

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

(B) Projects under the research and development programs of the Division of Science and Technology of the Arkansas Economic Development Commission when the projects directly involve an Arkansas business and are approved by the Executive Director of the Arkansas Economic Development Commission with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission under rules promulgated by the ~~division~~ commission for those programs.

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

(3) A qualified business claiming tax credits earned under this

subsection shall ~~be prohibited from receiving~~ not receive the credit granted by § 26-51-1102(b) for the same expenditures.

(4)(A) A qualified business claiming tax credits earned under this subsection may offset up to one hundred percent (100%) of the business's Arkansas income tax liability ~~in any one (1) year~~ annually.

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

~~(e)~~(d) To claim the credit granted under subsections ~~(b)-(d)~~ (a)-(c) of this section, the taxpayer shall file with his or her return, as an attachment to the form prescribed by the Director of the Department of Finance and Administration, copies of documentation to show that the ~~Executive Director of the Arkansas Economic Development Commission~~ commission has approved the research expenditure as a part of a qualified in-house research program or under the research and development programs of the division.

15-4-2709. Targeted business special incentive.

(a) A special incentive based on the payroll of ~~the new~~ targeted businesses in the state ~~is established~~ may be offered, at the discretion of the Executive Director of the Arkansas Economic Development Commission, to:

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

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

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

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

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

(B) The payroll requirement under subdivision (b)(2)(A) of this section applies only to the initial eligibility determination and does not preclude qualified businesses from receiving incentives if, at any time after the financial incentive agreement has been approved, actual payroll does not satisfy the requirements in subdivision (b)(2)(A) of this section;

(3) Show proof of an equity investment of two hundred fifty thousand dollars ($250,000) or more; and

(4) Pay average hourly wages in excess of the lesser of one hundred fifty percent (150%) of the county or state average hourly wage~~, whichever is less~~ for the county in which the targeted business locates or expands.

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

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

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

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

(d)(1) ~~In order to~~ To sell income tax credits earned through incentives authorized by this subchapter, the ~~new~~ targeted business ~~must~~ shall apply to the commission and furnish information necessary to facilitate the sale of income tax credits.

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

(B) ~~The ultimate recipient of the~~ Taxpayers purchasing tax credits under this subsection shall be subject to the same carry-forward provisions as the targeted business that earned the credits.

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

(e) A targeted business claiming or selling tax credits earned under this section or § 15-4-2708 shall ~~be prohibited from receiving~~ not receive the credit granted by § 26-51-1102(b) for the same expenditures.

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

~~(2) This fund shall be for the sole support of a contract between the commission and the entity selected to provide direct support and assistance to knowledge-based companies in the State of Arkansas.~~

~~(3) Moneys deposited into the fund by the General Assembly shall be used only through a contractual relationship between the commission and the entity selected to provide needed services to knowledge-based companies.~~

15-4-2710. Powers and duties of the Arkansas Economic Development Commission.

The Arkansas Economic Development Commission shall administer this subchapter and in addition to powers and duties mentioned in other laws may:

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

(2) Provide the Department of Finance and Administration with a copy of each financial incentive agreement entered into by the commission with each ~~qualifying~~ qualified business;

(3) Assist the governing authority in obtaining assistance from any other agency of state government, including assistance to new businesses and industries;

(4) Assist any employer or prospective employer with a qualifying project in obtaining the benefits of any incentive or inducement program authorized by state law;

(5) Act as a liaison between other state agencies and businesses and industries to ensure that both the spirit and intent of this subchapter are met;

(6) Make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in § 15-4-2707; and

(7) Negotiate proposals on behalf of the state with prospective businesses that are considering locating new facilities or expanding existing facilities that would seek the ~~benefits~~ incentives of ~~§ 15-4-2706(b), § 15-4-2706(c), § 15-4-2707, § 15-4-2708(c), or § 15-4-2709~~ the discretionary programs under this subchapter.

15-4-2711. Administration.

(a) A person claiming credit under ~~the provisions of~~ § 15-4-2706(c) is a "taxpayer" within the meaning of § 26-18-104(16) and ~~shall be~~ is subject to all applicable provisions of that section.

(b) Administration of ~~the provisions of~~ § 15-4-2706(c) shall be under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(c)(1) All claims for sales and use tax refunds under § 15-4-2706(d) and (e) shall be filed annually with the ~~Revenue Division of the~~ Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(2) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be ~~disallowed~~ denied.

(d)(1) The time limitation for § 15-4-2706(d) and (e) for filing claims shall be tolled if:

(A) A ~~program participant~~ qualified business fails to pay sales tax on an item that was taxable; and

(B) The applicable tax is subsequently assessed as a result of an audit by the ~~division~~ department.

(2) All claims for sales and use tax refunds relating to an audited purchase ~~shall be~~ are entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(e) A qualified business ~~must~~ shall reach the investment thresholds under § 15-4-2706 within four (4) years from the date of the ~~signed~~ approved financial incentive agreement.

(f)(1) All claims for payroll rebate payments under § 15-4-2707 shall be certified to the ~~Department of Finance and Administration~~ department and shall be recertified annually thereafter during the term of the financial incentive agreement.

(2) Failure to annually certify or recertify payroll figures and

claim the rebate payment shall result in:

(A) A ten percent (10%) reduction of the earned rebate if not claimed within ~~twelve (12) months~~ one (1) year from the end of the tax year in which the rebate was earned; ~~or~~

(B) A one hundred percent (100%) forfeiture of the earned rebate if not claimed within ~~twenty-four (24) months~~ two (2) years from the end of the tax year in which the rebate was earned; or

(C) Termination of the financial incentive agreement if an initial certification has not been filed with the department within four (4) years after the date of the approved financial incentive agreement, unless the date has been extended by the Executive Director of the Arkansas Economic Development Commission.

(g)(1) If the annual payroll of the business applying for ~~benefits~~ incentives under this subchapter is not met within ~~twenty-four (24) months~~ two (2) years after signing the financial incentive agreement, the business may request in writing an extension of time to reach the required payroll threshold.

(2)(A) If the Executive Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the ~~approved~~ qualified business has presented compelling reasons for an extension of time, the Executive Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed ~~forty-eight (48) months~~ four (4) years from the effective date of the financial incentive agreement.

(B) However, the extension on projects applying for ~~benefits~~ incentives under § 15-4-2705 is limited to a ~~twenty-four-month~~ two-year extension.

(3)(A) If a qualified business fails to reach the annual payroll threshold ~~before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time~~ required under the approved financial incentive agreement, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met.

(B) ~~After a business has failed~~ If a qualified business fails to reach the annual payroll threshold ~~in a timely manner~~ required under an approved financial incentive agreement, the Department of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business or file a lawsuit to enforce the repayment provisions.

(h)(1) If a qualified business fails to reach the investment threshold before the expiration of the four-year time limit, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold was not met.

(2) ~~After a business has failed~~ If a qualified business fails to reach the investment threshold of this subchapter ~~in a timely manner~~ under an approved financial incentive agreement, the ~~Department of Finance and Administration shall have~~ department has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold has not been met or file a lawsuit to enforce the repayment provisions.

(i)(1) If the annual payroll of a qualified business receiving ~~benefits~~ incentives under this subchapter falls below the payroll threshold for qualification in a year subsequent to the ~~one~~ year in which it initially qualified for the incentive, the ~~benefits~~ incentives outlined in the financial incentive agreement ~~will~~ shall be terminated unless ~~the business files~~ a written application for an extension of ~~benefits with~~ incentives explaining why the payroll has fallen below the level required for qualification has been filed with and approved by the ~~Arkansas Economic Development Commission explaining why the payroll has fallen below the level required for qualification~~ commission.

(2) The Executive Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration may approve the request for extension of time, not to exceed ~~twenty-four (24) months~~ two (2) years, for the qualified business to bring the payroll back up to the requisite threshold amount and may approve the continuation of ~~benefits~~ incentives during the period the extension is granted.

(3)(A) If a qualified business fails to reach the payroll threshold before the expiration of the ~~twenty-four (24) months~~ two (2) years or the time period established by a subsequent extension of time, the qualified business ~~shall be~~ is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met.

(B) ~~After a business has failed~~ If a qualified business fails to reach the payroll threshold ~~in a timely manner~~ required under an approved financial incentive agreement, the Department of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business or file a lawsuit to enforce the repayment provisions.

(j)(1) If a qualified business fails to reach the average hourly wage ~~requirement~~ threshold for ~~benefits~~ incentives under this subchapter ~~within twenty-four (24) months of the effective date of the~~ as specified in an approved financial incentive agreement, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business for which the average hourly wage threshold has not been met.

(2) ~~After a business has failed~~ If a qualified business fails to meet the hourly wage ~~requirements~~ threshold, the Department of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the average hourly wage threshold has not been met or file a lawsuit to enforce the repayment provisions.

(k)(1) ~~If a business fails to meet the nonretail business requirements of this subchapter, the business will be liable for the repayment of all benefits previously received by the business.~~

~~(2) After a business has failed to meet the nonretail business requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.~~

~~(l)(1)~~ Eligible businesses whose qualification depends on receiving either fifty-one percent (51%) or seventy-five percent (75%) of their sales revenue from out-of-state customers shall meet this requirement within three (3) years from the approval date of their financial incentive agreement.

(2)(A) If the requirement under subdivision (k)(1) of this section is not met within three (3) years of the ~~signed~~ approved financial incentive agreement, the qualified business may request in writing an extension of time to reach the required sales threshold.

(B) If the Executive Director of the Arkansas Economic Development Commission finds that the qualified business has presented compelling reasons for an extension of time, the Executive Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed ~~twenty-four (24) months~~ an additional two (2) years.

~~(m)(1)~~(l)(1) If a qualified business fails to ~~timely~~ meet the out-of-state revenue requirements of this subchapter under the specified deadlines in the approved financial incentives agreement, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met.

(2) ~~After a business has failed~~ If a qualified business fails to meet the out-of-state revenue requirements, the Department of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met or file a lawsuit to enforce the repayment provisions.

~~(n)(1)~~(m)(1) If a qualified business fails to notify the Department of Finance and Administration that the annual payroll of the qualified business has fallen below the payroll threshold for qualification for and retention of any incentive authorized by this subchapter, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives that were paid to the qualified business and that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met after it no longer qualified for the ~~benefits~~ incentives.

(2) ~~After a business has failed~~ If a qualified business fails to notify the Department of Finance and Administration that the qualified business has fallen below the payroll threshold, the Department of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met or file a lawsuit to enforce the repayment provisions.

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

~~(o)(1)~~(n)(1) For a qualified business taking advantage of one (1) or more of the investment incentives offered in § 15-4-2706, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the qualified business shall submit an amended project plan to include updated cost figures as soon as the cost overrun is recognized.

(2)(A) An amendment that exceeds twenty-five percent (25%) of the original financial incentive agreement estimate ~~will~~ shall not be ~~considered~~ approved and shall be submitted as a new project.

(B) An amendment shall not change the start date of the original project.

~~(p)~~(o)(1) The Department of Finance and Administration may obtain whatever information is necessary from a ~~participating~~ qualified business and from the Department of Workforce Services to verify that a qualified business ~~that has entered into financial incentive agreements with the Arkansas Economic Development Commission~~ is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, wages, and out-of-state revenues to the Department of Finance and Administration.

(2) The Department of Finance and Administration shall provide the information obtained under subdivision (o)(1) of this section to the Executive Director of the Arkansas Economic Development Commission upon request by the Executive Director of the Arkansas Economic Development Commission.

~~(q)~~(p) The Department of Finance and Administration may file a lawsuit in the Pulaski County Circuit Court or the circuit court in any county where a ~~program participant~~ qualified business is located to enforce the repayment provisions of this subchapter.

~~(r)(1)~~(q)(1) If a qualified business fails to satisfy or maintain any other requirement or threshold of this subchapter, the qualified business ~~will be~~ is liable for the repayment of all ~~benefits~~ incentives that were paid to the qualified business after it no longer qualified.

(2) ~~After a business has failed~~ If a qualified business fails to comply with the requirements or thresholds of this subchapter, the Department

of Finance and Administration ~~shall have~~ has two (2) years to collect ~~benefits~~ incentives previously received by the qualified business for noncompliant financial incentive agreements or file a lawsuit to enforce the repayment provisions.

~~(s)~~(r) If a repayment is required as a result of not complying with the requirements or thresholds of this subchapter, interest shall be due at the rate of ten percent (10%) per annum.

15-4-2712. Restrictions.

(a) Except as provided in subsection (b) of this section, the incentives established by this subchapter may be combined.

(b)(1) The investment tax credit authorized in § 15-4-2706(c) ~~may~~ shall not be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

(2) ~~The job creation tax credits authorized in § 15-4-2709, the sales and use tax refund authorized in § 15-4-2706(e), and the research and development tax credit authorized in § 15-4-2708(c)~~ The following incentives for targeted businesses may be combined with each other for the same project as long as multiple incentives are not claimed for the same expenditures but ~~may~~ shall not be combined with any other incentives authorized in this subchapter during the period in which the qualified business ~~qualifies for benefits under § 15-4-2709~~ receives incentives under this subchapter:

(A) The investment tax credit authorized under § 15-4-2706(b)(7) may be combined with:

(i) The research and development income tax credits authorized under § 15-4-2708(b); and

(ii) Either the:

(a) Payroll rebate program authorized under § 15-4-2707(e); or

(b) Payroll tax credit program authorized under § 15-4-2709;

(B) The sales and use tax refund authorized under § 15-4-2706(e) may be combined with:

(i) The research and development income tax credits authorized under § 15-4-2708(b); and

(ii) Either the:

(a) Payroll rebate program authorized under § 15-4-2707(e); or

(b) Payroll tax credit program authorized under § 15-4-2709;

(C) The payroll rebate program authorized under § 15-4-2707(e) may be combined with:

(i) The research and development income tax credits authorized under § 15-4-2708(b); and

(ii) Either the:

(a) Investment tax credit program authorized under § 15-4-2706(b)(7); or

(b) Sales and use tax refund program authorized under § 15-4-2706(e);

(D) The payroll income tax credit authorized under § 15-4-2709 may be combined with:

(i) The research and development income tax credits authorized under § 15-4-2708(b); and

(ii) Either the:

(a) Investment tax credit authorized under § 15-4-2706(b)(7); or

(b) Sales and use tax refund program authorized under § 15-4-2706(e); and

(E) The research and development income tax credits authorized under § 15-4-2708(b) may be combined with:

(i) Either the:

(a) Payroll rebate program authorized under § 15-4-2707(e); or

(b) Payroll tax credit program authorized under § 15-4-2709; and

(ii) Either the:

(a) Investment tax credit program authorized under § 15-4-2706(b)(7); or

(b) Sales and use tax refund program authorized under § 15-4-2706(e).

(3) The ~~job creation~~ investment tax credit authorized in ~~§ 15-4-2705 may~~ § 15-4-2706(b) shall not be combined with the ~~investment~~ sales and

use tax credit authorized in ~~§ 15-4-2706(b)~~ § 15-4-2706(e) for the same project.

(4) The job creation tax credit authorized in § 15-4-2705 ~~may~~ shall not be combined with the payroll rebate program authorized in § 15-4-2707.

(5) The investment tax credit authorized in § 15-4-2706(b) ~~may~~ shall not be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

(6) The investment tax credit authorized under § 15-4-2706(b) shall not be combined with the sales and use tax credit authorized under § 15-4-2706(c) for the same project.

(c) The following are discretionary incentives and are not available unless offered by the Arkansas Economic Development Commission:

(1) The payroll rebate program authorized in § 15-4-2707;

(2) The job creation tax credit authorized in § 15-4-2709;

(3) The investment tax credit authorized in § 15-4-2706(b);

(4) The sales and use tax refund authorized in § 15-4-2706(e); and

(5) The research and development tax ~~credit~~ credits authorized in ~~§ 15-4-2708(c)~~ § 15-4-2708(a)-(c).

SECTION 2. Arkansas Code § 15-4-2714 is repealed.

~~15-4-2714. Coordination with other economic development programs.~~

~~(a) Eligible businesses that sign a financial incentive agreement with the Arkansas Economic Development Commission before March 3, 2003, shall be provided only the benefits for which they are qualified under any of the following:~~

~~(1) Arkansas Economic Development Incentive Act of 1993, § 15-4-1601 et seq.;~~

~~(2) Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq.;~~

~~(3) Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.; and~~

~~(4) Economic Investment Tax Credit Act, § 26-52-701 et seq. [repealed].~~

~~(b) Eligible businesses signing a financial incentive agreement with the commission after March 3, 2003, shall receive only the benefits for which~~

~~they are qualified under this subchapter.~~

~~(c)(1) Under no circumstances shall an eligible business be entitled to receive incentives or benefits for a project under this subchapter and the programs listed in subsection (a) of this section.~~

~~(2) It is the specific intent of this subchapter that the incentives provided by this subchapter and the incentives provided by prior laws are mutually exclusive.~~

APPROVED: 3/6/19