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RULES

Economic Development Programs

Administered by Arkansas Economic Development Commission

2016

ARKANSAS

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Programs Administered by
Arkansas Economic Development Commission

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TAX BACK
Program Summary

The Tax Back program provides sales and use tax refunds on the purchase of building materials, machinery and equipment to qualifying businesses that create new jobs as a result of construction, expansion, or facility modernization projects in Arkansas.

To qualify for the Tax Back program, a business must obtain an endorsement resolution from the local governing authority (city and/or county) in which the project is located that authorizes the refund of local taxes and be approved by the Arkansas Economic Development Commission.

The Tax Back program cannot be used by itself. Within two (2) years of signing the Tax Back agreement, the business must sign a job creation agreement under the Advantage Arkansas program (§ 15-4-2705) or the Create Rebate program (§ 15-4-2707).

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **<u>For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.</u>**

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, the eligible 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.

The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be signed within twenty-four (24) months of signing 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) months.

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 (48) months.

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 (48) months.

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 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 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.

Eligible Businesses 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 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 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 DFA prior to the signing of the financial incentive agreement.

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 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 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 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 DFA at the end of each calendar year.

Upon determining the amount of eligible refund, 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 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 hundred and twenty-five thousand dollars ($125,000) in renovation costs. This investment is above the one hundred thousand dollar ($100,000) 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 or 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 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 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).

ADVANTAGE ARKANSAS
Program Summary

The Advantage Arkansas program provides an Arkansas income tax credit, accruable for up to five (5) years, based upon a percentage of the annual payroll paid to 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 and the income tax benefit calculation. The income tax credits may be used to offset fifty percent (50%) of a business's income tax liability in the tax year the credit is earned. Unused credits may be carried forward for nine (9) years beyond the year in which the credit was first earned.

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **<u>For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.</u>**

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, to qualify for the benefits of this program, the proposed average hourly wage of the eligible business applying for these benefits must be equal to, or greater than, the lowest county average hourly wage calculated by the Commission based on the most recent calendar year data published by the Arkansas Department of Workforce Services.

The date of the 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 financial incentive agreement are eligible for the income tax credits (except as provided in Section II (17)).

The income tax credit earned cannot be used to offset more than fifty percent (50%) of a business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for 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 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 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 DFA.

The business shall be entitled to receive income tax credits for which it has remained eligible under the 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, 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 following the date the financial incentive agreement was signed (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:

- **Tier 1 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of 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 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 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 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.

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 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); 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).

INVESTARK
Program Summary

The requirements for InvestArk are the same for all tiers. The InvestArk sales and use tax credit is available to businesses established in Arkansas for two (2) years or longer which invest five million dollars ($5 million) or more at a single location in plant or equipment for new construction, expansion, or modernization. A credit against the business's state direct-pay sales and use tax liability, equal to one-half percent (1/2%) above the state sales and use tax rate in effect at the time of application, is earned based on the total eligible project cost. In any year, tax credits claimed under this program cannot exceed fifty percent (50%) of the business's sales and use tax liability on taxable purchases. All reported expenditures are subject to audit by the Department of Finance and Administration to determine eligibility, which may result in a reduction of credit or a tax liability.

The credit is earned in the year the eligible expenditure is made and can be applied against the business's state direct-pay 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. Total project expenditures must be incurred within four (4) years of the date the project is approved by the Commission.

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.**

A. Retention Sales and Use Tax Credit (InvestArk) – Act 182 of 2003, as amended, § 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 DFA.

To obtain benefits 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 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 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 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 DFA.

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 DFA to report the eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of credit earned during that calendar year, 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 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 million). Should benefits be received for project expenditures and the threshold expenditure of five million dollars ($5 million) not be met, the recapture provisions of Section V of these rules may be invoked by DFA.

Note: the job creation tax credit authorized in § 15-4-2705 cannot be combined with the payroll rebate authorized in 15-4-2707 for the same project.

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;
- 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).

CREATE REBATE
Program Summary

Negotiated by the Arkansas Economic Development Commission in highly competitive situations.

The Create Rebate program requires businesses to create a minimum payroll, comprised of new full-time permanent employees, of two million dollars ($2 million) or greater within twenty-four (24) months of signing a financial incentive agreement with the Arkansas Economic Development Commission (AEDC).

Under terms negotiated by AEDC, Create Rebate provides businesses a financial incentive accruable from one (1) to ten (10) years, equal to three and nine-tenths percent (3.9%) of payroll in Tier 1 counties, four and one-quarter percent (4.25%) of payroll in Tier two counties, four and one-half percent (4.5%) of payroll in Tier 3 counties and five percent (5%) of payroll in Tier 4 counties.

The business is eligible to receive its first incentive payment when it certifies to the Department of Finance and Administration (DFA) that it has attained the requisite payroll and the payroll is verified by DFA. Depending on term of the agreement, additional payments will be made annually after the company has re-certified that it has maintained the two million dollar ($2 million) payroll for new full-time permanent employees and the payroll is verified by DFA.

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.**

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 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)). A minimum payroll of two million dollars ($2 million) (payroll threshold) for new full-time permanent employees is required to qualify for this incentive.

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 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 DFA is the mechanism to initiate the verification audit. Therefore, the business must certify annually at the end of each tax year to 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 DFA will result in DFA reducing the amount of rebate earned by ten percent (10%) if not claimed within twelve (12) months 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 from the end of the tax year in which the rebate was earned. 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 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 allowed is dependent upon the tier in which the business locates as follows:

- **Tier 1 Counties** – 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** – 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** – 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** – 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 Tier 1, 2 or 3 county may be authorized to receive an increased benefit, 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%) 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.

  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 million dollars ($2 million) 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 million dollar ($2 million) threshold for qualification, the business may request an extension of up to twenty-four (24) months 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).

Note: the investment tax credit authorized in § 15-4-2706(b) cannot be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

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

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 percent (175%) 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.

ARKPLUS
Program Summary

Negotiated by the Arkansas Economic Development Commission in highly competitive situations.

The ArkPlus program, offered at the discretion of the AEDC Executive Director, provides a ten percent (10%) income tax credit based upon the total investment of an eligible business in a new location or expansion project. To qualify, a business must meet minimum investment and payroll thresholds based on the payroll of new full-time permanent employees hired after the date a financial incentive agreement is signed with AEDC. The minimum investment and payroll requirements are dependent upon the tier in which the business is located and vary from a two million dollar ($2,000,000) investment and eight hundred thousand dollar ($800,000) payroll in Tier 4 counties to a five million dollar ($5,000,000) investment and two million dollar ($2,000,000) payroll in Tier 1 counties.

Income tax credits may be used to offset fifty percent (50%) of a business's income tax liability in the tax year the credit is earned. Any unused credits may be carried forward for nine (9) years beyond the year in which the credit was first earned. To utilize the ArkPlus program, businesses must sign a financial incentive agreement with AEDC prior to construction.

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.**

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). 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 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 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) months from the date of the signing 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 DFA when the investment threshold is met. This certification provides the amount of eligible project cost 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 DFA is the mechanism to initiate the verification audit.

The income tax credit earned cannot be used to offset more than fifty percent (50%) of the business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for 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 ($1,560,000) annual payroll exceeds the eight hundred thousand ($800,000) payroll threshold for a Tier 4 county and the capital investment of three and one-half million dollar ($3.5 million) exceeds the two million dollar ($2 million) 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 ($3.5 million), it would earn an income tax credit of three hundred and fifty thousand dollars (**$350,000)** that could be carried forward for 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;
- 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).

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).

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. The targeted 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 percent (175%) of the state or county average hourly wage, whichever is less.

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

- The credit amount shall be two percent (2%) of investments from two hundred fifty thousand dollars ($250,000) up to five hundred thousand dollars ($500,000);
- The credit amount 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);
- The credit amount 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 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 of the 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 percent (175%) of the state or county average hourly wage, whichever is less, may offset fifty percent (50%) of its tax liability.
- A targeted business that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its tax liability.
- A targeted business that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its tax liability.

The approved targeted business must certify eligible project expenditures annually with DFA. Upon verification of eligibility, 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 nine (9) tax years after the tax year in which it was first earned.

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 nine (9) calendar years after the calendar year in which it was first earned.

TARGETED BUSINESS INCENTIVES
Program Summary

Offered at the discretion of the AEDC Executive Director.

Businesses that qualify as "targeted businesses" may be offered the following special incentives designed to help new, knowledge-based businesses in their early years.

Companies that are doing business in a targeted business sector (see below), pay wages that are at least 150% of the state or county average wage, whichever is lower, and meet requisite payroll thresholds may qualify for:

- The Targeted Tax Back program, which provides a refund of sales and use taxes paid on the purchase of building materials and machinery and equipment associated with the approved project § 15-4-2706(e).
- A 10% tax credit based on payroll § 15-4-2709.
- A 33 % tax credit on eligible research expenditures § 15-4-2708(c).
- The income tax credits earned under this program may be sold upon approval by AEDC.

Targeted businesses are found within six 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.

For convenience, the section of the Final Rules that contains the major requirements of the program is reproduced below. **<u>For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.</u>**

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 a discretionary incentive and is offered only at the discretion of the Executive Director.

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.

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 twenty-four (24) months of signing a financial incentive agreement for a sales and use tax refund.

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 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 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.
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 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, 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) 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, 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 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 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).

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.

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), 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 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 year in which the financial incentive agreement is signed and may not extend beyond sixty (60) months 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 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 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. 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%) requirement. 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).

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

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 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, usual fringe benefits, and supplies used in the conduct of qualified research. 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:

- 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:
    a. Has incorporated as a business in the State of Arkansas;
    b. Has physically relocated to Arkansas; and
    c. 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 Department of Finance and Administration.

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 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 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 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) may **not** be used with:

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

Targeted businesses may also qualify for special incentives administered under the Create Rebate and InvestArk incentive program.

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

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 percent (175%) 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.

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

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. The targeted 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 percent (175%) of the state or county average hourly wage, whichever is less.

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

- The credit amount shall be two percent (2%) of investments from two hundred fifty thousand dollars ($250,000) up to five hundred thousand dollars ($500,000);
- The credit amount 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);
- The credit amount 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 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 of the 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 percent (175%) of the state or county average hourly wage, whichever is less, may offset fifty percent (50%) of its tax liability.
- A targeted business that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its tax liability.
- A targeted business that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its tax liability.

The approved targeted business must certify eligible project expenditures annually with DFA. Upon verification of eligibility, 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 nine (9) tax years after the tax year in which it was first earned.

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 nine (9) calendar years after the calendar year in which it was first earned.

RESEARCH AND DEVELOPMENT INCENTIVES
Program Summary

The different research and development 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:

1. The incentive for research and development with universities is intended for firms of virtually every size and stage of development, which may complement in-house research and may be combined with in-house research incentives.

2. The incentives for in-house research are intended for: (a) the on-going in-house research programs of existing eligible businesses; (b) eligible "targeted" businesses which have been operating for less than five years that are engaged in in-house research; and (c) eligible businesses engaged in strategic research and development. 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.

3. The incentive for research and development under programs of the Department of Science and Technology of the Arkansas Economic Development Commission (AEDC) 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.

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

For convenience, the sections of the Final Rules that contains the major requirements of the programs are inserted below. **<u>For all the requirements of this and other incentive programs, see the entire Final Rules, particularly the "Definitions" section on pages 2 – 10 and the "Administration" section on pages 12 – 15.</u>**

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. It is the responsibility of the company to apply for research and development income tax credits offered by Act 182 of 2003 (Consolidated Incentive Act of 2003). 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-year periods, and (c) emerging firms engaged in strategic research and development over limited five-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 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~~s~~ 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 million) 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 **($330,000)** 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 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. In-House Research – Act 182 of 2003, as amended, § 15-4-2708

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

A new eligible business that conducts "in-house" research within a research facility that is operated by the eligible business that qualifies for federal research and development tax credits may qualify 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 twenty percent (20%) of the 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.

Example: For a new in-house 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 credit.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth 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 an existing in-house research facility, the base year amount shall be the amount of eligible research expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Commission.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth year.

Term of the In-House Research and Development 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 upon the submittal of a new application and project plan.

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 one hundred percent (100%) of the eligible business's state income tax liability. Any unused credit may be carried forward for a period not to exceed nine (9) years.

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, usual fringe benefits, and supplies used in the conduct of qualified research. 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:

- 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:
        a. Has incorporated as a business in the State of Arkansas;
        b. Has physically relocated to Arkansas; and
        c. 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) or § 15-4-2708(d)(1)(A); or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003), as amended, for the same expenditures.

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

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 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, usual fringe benefits, and supplies used in the conduct of qualified research. 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:

- 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:
        a. Has incorporated as a business in the State of Arkansas;
        b. Has physically relocated to Arkansas; and
        c. 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 Department of Finance and Administration.

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 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 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 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) may **not** be used with:

- Other in-house research and development incentives as authorized by § 15-4-2708(b) or § 15-4-2708(d)(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)

An income tax credit equal to thirty-three percent (33%) of qualified research expenditures may be allowed for 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 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. 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 cannot offset more than one hundred percent (100%) of a business's income tax liability in any one tax year and the benefits can be carried forward for 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), usual fringe benefits and supplies used in the conduct of qualified research. 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:

- 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:
        a. Has incorporated as a business in the State of Arkansas;
        b. Has physically relocated to Arkansas; and
        c. 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 million) in qualified research expenditures in Arkansas in conjunction with the approved program of in-house research. Assuming the entire one million dollars ($1 million) 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 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 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)(1)(B).

The business must apply to the Commission 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 cannot offset more than one hundred percent (100%) of a business's income tax liability in any one (1) tax year and the benefits can be carried forward for 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 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 of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission.
- 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.

Combination with other incentives: The income tax credit for research and development under programs of the Division of Science and Technology of the Arkansas 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.

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

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;
2. "Average hourly wage" means "Payroll" as defined in § 15-4-2703(28), 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 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. "Commission" means the Arkansas Economic Development Commission;
7. "Contractual employee" means an employee who:
   A. May be included in the payroll calculations of a business qualifying for benefits under this Act and is under the direct supervision of the business receiving benefits under this Act, but is an employee of a business other than the one receiving benefits under this Act;
   B. Otherwise meets the requirements of a new full-time permanent employee of the business receiving benefits under this Act; and
   C. Receives a benefits package comparable to direct employees of the business receiving benefits under this Act;
8. "Corporate headquarters" means:
   A. The facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the business's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or

national basis. These facilities include establishments primarily engaged in administering, overseeing, and managing other establishments of the business or enterprise as classified in sector 551114 of the 2012 North American Industrial Classification System (NAICS).

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

9. "Council" means the Arkansas Economic Development Council as defined at § 15-4-201 et seq.;
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 of the financial incentive agreement shall be the threshold for the term of the agreement;
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 revenues are 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 of the product owner are from out-of-state customers; or
    C. Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;
12. "Division" means the Division of Science and Technology of the Arkansas Economic Development Commission;
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 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 percent

(75%) of their sales revenue from out of state;

C. (i) Businesses primarily engaged in motion picture productions.
(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;

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 North American Industrial Classification System (NAICS);

G. Firms primarily engaged in commercial, physical and biological research as classified in the 2012 North American Industrial Classification System (NAICS) codes 541711 or 541712;

H. (i) Scientific and technical services business.
(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state; and
(b) (1) The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.
(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 percent (75%) 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;

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;

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. "Existing employees" means:
    A. Those employees hired by the business before the date the financial incentive agreement was signed.
    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 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;
18. "Facility" means a single physical location 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;
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 an existing business in Arkansas;
20. "Fund" means the Arkansas Economic Development Incentive Fund;
21. "Governing authority" means the quorum court of a county or the governing body of a municipality;
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 employees of the business who conduct research activities in research facilities:
       (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 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, or any other ordinary and necessary expenses of conducting business;

23. "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;
24. "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight, commerce, or passengers;
25. "Invest" or "Investment" means money expended by or on behalf of an approved eligible business that seeks to begin or expand operations in Arkansas and, without the infusion of capital, the location or expansion may not occur;
26. "Investment threshold" means the minimum amount of investment in project cost that must be incurred in order to qualify for eligibility;
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;
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;
29. "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;
30. "New full-time permanent employee" means:

A. (i) A position or job that was created pursuant to the signed 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) 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 each tax year during the term of the agreement.
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;

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;
32. "Office sector business" means:
  A. Business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions.
  B. All businesses in this group must be non-retail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;
33. "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 financial incentive agreement;
34. "Person" means:
  A. An individual, trust, estate, fiduciary, firm, 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;

35. “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;

36. “Project” 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 equipment, or support infrastructure; or

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

B. “Project” 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; 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 by the Commission;

37. “Project plan” means a plan:

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

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

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; and
    B. (i) Has signed a financial incentive agreement with the Commission; or
       (ii) Is involved in a research and development program administered by the Commission;
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;
40. “Region” or “regional” means a geographic area comprised of this state and a contiguous state;
41. “Regional corporate headquarters” means:
    A. 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;
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 percent (75%) of their sales revenue from

out of state; and

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

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;
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. "Support infrastructure" means physical assets necessary for the business to operate, including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots and communication infrastructure;
48. "Targeted businesses" means:
    A. A grouping of growing business sectors, 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), 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;
49. "Technological information" means information derived from basic or applied research that provides an improved practical understanding of the business component; and
50. "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.

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 Arkansas Economic Development Commission (Commission) by ranking four variables: poverty rate, population growth, 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.

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, as indicated by a loss of more than five percent (5%) of the 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 tier is authorized by action of the Arkansas Economic Development Council (Council) after having received a request from a county official from within the county in question. A business that had signed a financial incentive agreement with the Commission prior to the action of the Council to move a county to a higher 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.

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 Department of Finance and Administration with a copy of each financial incentive agreement entered into by the Commission with each qualifying business;
3. To assist the governing authority in obtaining assistance from any other department of state government, including assistance to 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 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.

V. Administration

1. A. If the annual payroll threshold of the business applying for benefits under this Act is not met within twenty-four (24) months after the signing of the 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 find that the approved 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.
      (ii) However, the extension on projects applying for benefits under § 15-4-2705 is limited to a twenty-four (24) month extension.
   C. (i) If a 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, that business will be liable for the repayment of all benefits previously received by the business.
      (ii) (a) After a business has failed to reach the annual payroll threshold in a timely manner, 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.

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

(2) The Executive Director 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, for the business to bring the payroll back up to the requisite threshold amount and may approve the continuation of benefits 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 business shall be liable for the repayment of all benefits paid to the business after it no longer qualified for the benefits.

(c) (1) If a business fails to reach the investment threshold before the expiration of the four (4) year time limit, that business will be liable for the repayment of all benefits previously received by the business.

(2) After a business has failed to reach the investment threshold of this Act in a timely manner, 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.

(d) (1) If a business fails to reach the average hourly wage requirement for benefits under this Act within twenty-four (24) months of the effective date of the financial incentive agreement, 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 hourly wage 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.

(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 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.

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

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

(B) If the Executive Director finds that the 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.

(g) (1) If a business fails to timely meet the out-of-state sales 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 out-of-state sales 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.

(h) (1) If a business fails to notify the Department of Finance and Administration that the annual payroll of the business has fallen below the threshold for qualification for and retention of any incentive authorized by this Act, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits.

(2) After a business has failed to notify the Department of Finance and Administration that the business has fallen below the payroll threshold, 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.

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

(i) The Department of Finance and Administration may obtain whatever information is necessary from a participating business and from the

Arkansas Department of Workforce Services to verify that a 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, and out-of-state revenues to the Department of Finance and Administration.

(j) The Department of Finance and Administration may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a program participant is located, to enforce the repayment provisions of this Act.

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

(2) After a business has failed to comply with the requirements or thresholds of this Act, 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) If a repayment is required as a result of not complying with the requirements or thresholds of this Act, interest shall be due at the rate of ten percent (10%) per annum.

VI. Coordination with Other Economic Development Incentives

To provide an orderly transition between the Consolidated Incentive Act of 2003 and the six incentive programs it incorporated from previous legislative actions, § 15-4-2714 specifies that any eligible business that signs a financial incentive agreement with the Commission prior to the effective date of the Consolidated Incentive Act of 2003 (March 3, 2003) shall be provided only the benefits authorized under one of the following six existing incentives:

1. Biotechnology Training and Development Act, §§ 2-8-101 to 2-8-109;
2. Economic Development Incentive Act of 1993 (Create Rebate), §§ 15-4-1601 to 15-4-1609;
3. Arkansas Enterprise Zone Act of 1993, §§ 15-4-1701 to 15-4-1709;
4. Arkansas Economic Development Act of 1995, §§ 15-4-1901 to 15-4-1908;
5. Economic Investment Tax Credit Act, §§ 26-52-701 to 26-52-706; and
6. Arkansas Emerging Technology Development Act of 1999, §§ 15-4-2101 to 15-4-2107.

Eligible businesses signing an agreement after the effective date of the Consolidated Incentive Act of 2003 (March 3, 2003) shall receive only the benefits for which they qualify, or are approved for, under the Consolidated Incentive Act of 2003, as amended. Benefits for the same project cannot be obtained under the Consolidated Incentive Act of 2003, as amended, and any of the incentives, enumerated above, which it replaced.

In the section that follows, each incentive program will be addressed individually and restrictions on the use of that incentive with other incentives will be noted.

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.

1. 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 this program, the proposed average hourly wage of the eligible business applying for these benefits must be equal to, or greater than, the lowest county average hourly wage calculated by the Commission based on the most recent calendar year data published by the Arkansas Department of Workforce Services.

The date of the 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 financial incentive agreement are eligible for the income tax credits (except as provided in Section II (17)).

The income tax credit earned cannot be used to offset more than fifty percent (50%) of a business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for 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 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 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 DFA.

The business shall be entitled to receive income tax credits for which it has remained eligible under the 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, 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 following the date the financial incentive agreement was signed (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:

- **Tier 1 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of 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 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 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 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.

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 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); 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).

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 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)). A minimum payroll of two million dollars ($2 million) (payroll threshold) for new full-time permanent employees is required to qualify for this incentive.

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 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 DFA is the mechanism to initiate the verification audit. Therefore, the business must certify annually at the end of each tax year to 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 DFA will result in DFA reducing the amount of rebate earned by ten percent (10%) if not claimed within twelve (12) months 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 from the end of the tax year in which the rebate was earned. 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 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 allowed is dependent upon the tier in which the business locates as follows:

- **Tier 1 Counties** – 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** – 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** – 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** – 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

Tier 1, 2 or 3 county may be authorized to receive an increased benefit, 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%) 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.

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 million dollars ($2 million) 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 million dollar ($2 million) threshold for qualification, the business may request an extension of up to twenty-four (24) months 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).

Note: the investment tax credit authorized in § 15-4-2706(b) cannot be combined with the sales and use tax refund authorized in § 15-4-2706(d) for the same project.

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

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 percent (175%) 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.

A. Retention Sales and Use Tax Credit (InvestArk) – Act 182 of 2003, as amended, § 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 DFA.

To obtain benefits 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 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 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 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 DFA.

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 DFA to report the eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of credit earned during that calendar year, 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 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 million). Should benefits be received for project expenditures and the threshold expenditure of five million dollars ($5 million) not be met, the recapture provisions of Section V of these rules may be invoked by DFA.

Note: the job creation tax credit authorized in § 15-4-2705 cannot be combined with the payroll rebate authorized in 15-4-2707 for the same project.

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;
- 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).

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). 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 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 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) months from the date of the signing 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 DFA when the investment threshold is met. This certification provides the amount of eligible project cost 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 DFA is the mechanism to initiate the verification audit.

The income tax credit earned cannot be used to offset more than fifty percent (50%) of the business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for 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 ($1,560,000) annual payroll exceeds the eight hundred thousand ($800,000) payroll threshold for a Tier 4 county and the capital investment of three and one-half million dollar ($3.5 million) exceeds the two million dollar ($2 million) 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 ($3.5 million), it would earn an income tax credit of three hundred and fifty thousand dollars (**$350,000)** that could be carried forward for 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;
- 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).

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).

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. The targeted 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 percent (175%) of

the state or county average hourly wage, whichever is less.

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

- The credit amount shall be two percent (2%) of investments from two hundred fifty thousand dollars ($250,000) up to five hundred thousand dollars ($500,000);
- The credit amount 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);
- The credit amount 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 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 of the 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 percent (175%) of the state or county average hourly wage, whichever is less, may offset fifty percent (50%) of its tax liability.
- A targeted business that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its tax liability.
- A targeted business that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its tax liability.

The approved targeted business must certify eligible project expenditures annually with DFA. Upon verification of eligibility, 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 nine (9) tax years after the tax year in which it was first earned.

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 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, the eligible 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.

The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be signed within twenty-four (24) months of signing 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) months.

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 (48) months.

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 (48) months.

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 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 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.

Eligible Businesses 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 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 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 DFA prior to the signing of the financial incentive agreement.

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 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 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 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 DFA at the end of each calendar year.

Upon determining the amount of eligible refund, 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 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 hundred and twenty-five thousand dollars ($125,000) in renovation costs. This investment is above the one hundred thousand dollar ($100,000) 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 or 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 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 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).

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.

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 twenty-four (24) months of signing a financial incentive agreement for a sales and use tax refund.
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 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 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.

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 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, 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) 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, 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 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 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), 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 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 year in which the financial incentive agreement is signed and may not extend beyond sixty (60) months 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 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 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. 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%) requirement. 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. It is the responsibility of the company to apply for research and development income tax credits offered by Act 182 of 2003 (Consolidated Incentive Act of 2003). 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-year periods, and (c) emerging firms engaged in strategic research and development over limited five-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 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 million) 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 **($330,000)** 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 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. In-House Research – Act 182 of 2003, as amended, § 15-4-2708

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

A new eligible business that conducts “in-house” research within a research facility that is operated by the eligible business that qualifies for federal research and development tax credits may qualify 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 twenty percent (20%) of the 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.

Example: For a new in-house 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 credit.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth 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 an existing in-house research facility, the base year amount shall be the amount of eligible research expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Commission.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth year.

Term of the In-House Research and Development 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 upon the submittal of a new application and project plan.

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 one hundred percent (100%) of the eligible business's state income tax liability.
Any unused credit may be carried forward for a period not to exceed nine (9) years.

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, usual fringe benefits, and supplies used in the conduct of qualified research. 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:

- 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) or § 15-4-2708(d)(1)(A); or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003), as amended, for the same expenditures.

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

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 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, usual fringe benefits, and supplies used in the conduct of qualified research. 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:

- 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 Department of Finance and Administration.

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 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 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 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) may **not** be used with:

- Other in-house research and development incentives as authorized by § 15-4-2708(b) or § 15-4-2708(d)(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)

An income tax credit equal to thirty-three percent (33%) of qualified research expenditures may be allowed for 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 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. 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 cannot offset more than one hundred percent (100%) of a business's income tax liability in any one tax year and the benefits can be carried forward for 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), usual fringe benefits and supplies used in the conduct of qualified research. 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:

- 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 million) in qualified research expenditures in Arkansas in conjunction with the approved program of in-house research. Assuming the entire one million dollars ($1 million) 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 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 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)(1)(B).

The business must apply to the Commission 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 cannot offset more than one hundred percent (100%) of a business's income tax liability in any one (1) tax year and the benefits can be carried forward for 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 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 of Directors of the Division of Science and Technology of the Arkansas Economic Development

Commission.

- 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.

Combination with other incentives: The income tax credit for research and development under programs of the Division of Science and Technology of the Arkansas 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.

EQUITY INVESTMENT INCENTIVE ACT
Program Summary

Offered at the discretion of the AEDC Executive Director.

Act 566 of 2007, also known as the “Equity Investment Incentive Act of 2007,” as amended and codified at §15-4-3301 et seq., provides a tax credit, offered at the discretion of the Executive Director, for equity investments in targeted, early-state, and start-up businesses. The purpose of equity investments is to encourage capital investments in certain types of early-stage businesses that are creating new, higher-paying jobs in Arkansas.

An approved business may offer income tax credits, equal to thirty-three and one-third percent (33 1/3%) of eligible equity investments to investors. Unused credits may be carried forward for nine (9) years.

Equity Investment Incentive Act of 2007
(Act 566 of 2007, as amended)
Rules

I. Introduction

Act 566 of 2007, also known as the "Equity Investment Incentive Act of 2007," as amended and codified at § 15-4-3301 et seq., provides a tax credit for equity investments in targeted, early-stage, and start-up businesses. The purpose of equity investment incentives is to encourage capital investment in certain types of early-stage businesses that are creating new, higher-paying jobs for the State of Arkansas.

II. Definitions

1. "Commission" means the Arkansas Economic Development Commission;
2. "Convertible financing structure" means an investment mechanism that converts into equity at a subsequent event, including without limitation convertible debt, convertible equity, and a convertible note;
3. "Director" means the Executive Director of the Arkansas Economic Development Commission;
4. "Eligible business" means a business that has been approved and has a signed equity investment incentive agreement with the Commission to participate and solicit equity investments in the business;
5. "Investor" means a person or entity purchasing an equity investment in an eligible business or otherwise advancing funds to the business under the terms of a qualifying convertible financing structure if the convertible financing structure is required to be converted to equity by the business receiving the investment no later than five (5) years from the date the convertible financing structure was consummated.

III. Eligibility

Eligibility for the equity investment incentive tax credit under this subchapter is limited to investments in:

1. Targeted businesses as defined in § 15-4-2703(43); or
2. A business that receives assistance in the form of equity investments from capital investment funds that target early-stage businesses and start-up businesses, if the business:
   A. Pays at least one hundred fifty percent (150%) of the lesser of the

county average wage or the state average wage; and

B. Meets at least two (2) of the following conditions:
   - (i) The business is in one (1) of the business sectors set forth in § 15-4-2703(43)(A)(i)-(vi);
   - (ii) The business is identified in a local or regional economic development plan as the type of business targeted for recruitment or growth within the community or region;
   - (iii) The business is supported by a resolution of the city council or quorum court in the municipality or county in which the business is located or plans to locate;
   - (iv) The business is supported by business incubators certified under § 26-51-815(d);
   - (v) The business is supported by federal small business innovation research grants; or
   - (vi) The business is supported by technology development or seed capital investments made by instrumentalities of the state.

IV. Approval

A business that seeks eligibility for an equity investment incentive tax credit under this subchapter shall file an application with the Arkansas Economic Development Commission. The application shall include:

1. A business plan describing the proposed business for which an equity investment incentive tax credit is sought;
2. A projection of the amount of capital being sought for the proposed business;
3. If the application proposes to use a convertible financing structure, a clear statement concerning the timing and conditions under which the convertible financing structure converts into equity; and
4. Other information requested jointly by the Executive Director of the Arkansas Economic Development Commission and the President of the Arkansas Development Finance Authority.

The Commission shall gather information necessary to determine the eligibility of a business that seeks an equity investment incentive tax credit and process the application.

The Commission shall share the application and all information concerning the business with the Arkansas Development Finance Authority and the Division of Science and Technology of the Arkansas Economic Development Commission for review and concurrence on whether or not an equity investment incentive is offered to the business.

The award of the equity investment incentive tax credit to a qualified business under this subchapter shall be determined jointly at the discretion of 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 and the President of the Arkansas Development Finance Authority.

Upon approval of the application, the approved business shall sign an equity investment incentive agreement with the Commission.

V. Equity Investment Tax Credits

After the equity investment incentive agreement has been signed by the business and the Commission, the business may solicit investors and offer the equity investment incentive tax credit to the investors. Only cash investments shall qualify for the equity investment incentive tax credit under this subchapter, including without limitation the initial principle amount of a qualifying convertible financing structure if the convertible financing structure is required to be converted to equity by the business receiving the investment no later than five (5) years from the date the convertible financing structure was consummated.

For the equity investment tax credit to be awarded to an investor, the eligible business shall verify that all conditions to the award of an equity investment incentive tax credit stated in the equity investment incentive agreement have been met within the time set forth in the agreement.

A purchaser of an equity interest in an eligible business is entitled to a credit against any state income tax liability that may be imposed on the purchaser for any tax year beginning in the tax year in which the equity interest was purchased and for a period not to exceed nine (9) years beyond the tax year in which the equity interest was purchased.

The equity investment must be made in the calendar years 2007 through 2028.

The equity investment tax credit incentive shall be equal to thirty-three and one-third percent (33 1/3%) of the approved amount invested by an investor in an eligible business.

In any one (1) tax year, the credit allowed shall not exceed fifty percent (50%) of the net Arkansas state income tax liability or premium tax liability of the taxpayer: (a) after all other credits and reductions in tax have been calculated; and (b) before the credit allowed by this section is applied.

Any unused credit may be carried forward and applied against Arkansas state income tax for the next-succeeding tax year and annually thereafter for a total period of nine (9) years succeeding the year in which the equity interest in a business was purchased or until the credit is exhausted, whichever occurs first.

VI. Issuance of Tax Credit

Upon receipt of the qualified investment, whether through the sale of an equity interest, or the issuance of a convertible debt instrument by the company in exchange for an infusion of cash from the investor, the qualified business shall provide the following documentation to the Arkansas Economic Development Commission:

1. The name and address of the original purchaser(s);
2. The tax identification number(s) of the person(s) entitled to the credit;
3. The original date of the qualified transaction;
4. The number and type of equity investment purchased;
5. The amount paid by the original purchaser for the equity interest or convertible debt instrument;
6. The amount of dividends and distributions previously paid by the business to the purchaser;
7. Articles of Incorporation;
8. Certificate of Good Standing;
9. Subscription Agreement for equity purchase or a Purchase Agreement detailing a convertible debt structure, terms, and conversion event; and
10. Proof of transfer of funds documenting the investor as the source of funds and the company as the recipient.

The Arkansas Economic Development Commission will issue a certificate of tax credit that must be attached to the income tax return on which the credit is first claimed.

Issuance of credit to a pass-through entity shall be according to each member's proportional ownership interest of the pass through entity.

VII. Sale or Transfer of Credit

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 Department of Finance and Administration.

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 year of its being issued by the Commission. The original investor earning 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 original investor within the time frame allowed under this subchapter.

The purchaser of the tax credit shall be subject to the same carry forward provisions of the credits as the original owner of the credits.

VIII. Sale or Disposition of Equity Interest

For the purpose of ascertaining the gain or loss from the sale or other disposition of an equity interest in a business, the owner of the equity interest shall reduce his or her basis in the equity interest by the amount of cash received from selling the tax credits and the tax credits previously deducted under this section. However, sale or other disposition does not include a transfer from the holder of an equity interest to the business in liquidation of the equity interest. This reduced basis shall be used by the original purchaser or transferee when calculating tax due under the Income Tax Act of 1929, § 26-51-101 et seq.

IX. Limitations

The total cumulative amount of tax credits available to all purchasers of equity interest in qualified businesses under these rules and regulations and under § 15-4-1026 in any calendar year shall not exceed six million two hundred and fifty thousand dollars ($6,250,000).

If the total amount of credits applied for under this subchapter for the year exceeds the cap, the AEDC, when allocating credits under this subchapter for the particular applications that would exceed that cap and in order not to exceed the cap, shall first award credits to investors taking an equity interest through an equity purchase before credits may be allocated to investors that use a convertible financing structure for the investment.

X. Coordination with the Arkansas Capital Development Company Act

All agreements and commitments of the capital development company related to the purchase of equity interests in existence before July 1, 2007, and certified to the Commission shall remain valid and enforceable, shall be entitled to the tax credits set forth in Act 566 of 2007, and shall be completed in accordance with their respective terms.

A person who purchases an equity interest in a capital development company in any of the calendar years 2003 - 2015 under the Arkansas Capital Development Act is entitled to a credit against any state income tax liability or premium tax liability that may be imposed on the purchaser for any tax year commencing on or after the date of the purchase.

No capital development company shall enter into an agreement or a commitment for the purchase by any person of equity interests in the capital development company on or after July 1, 2007.

XI. Rulemaking Authority

The AEDC and ADFA have authority, at § 15-4-3306, to promulgate rules necessary to implement Act 566 of 2007, as amended.

NONPROFIT INCENTIVE
Program Summary

The Nonprofit Incentive Program is a discretionary incentive targeted toward nonprofit organizations that have a new payroll of at least five hundred thousand dollars ($500,000). If offered, this program provides an incentive payment (payroll rebate) equal to four percent (4%) of the payroll of the new full-time permanent employees for a period of up to five years. In addition to the payroll rebate, this program also provides a sales and use tax refund for eligible projects that invest a minimum of two hundred fifty thousand dollars ($250,000). The refund is eligible for taxes paid on construction material and machinery and equipment associated with the approved project.

Non-Profit Incentive Act of 2005
(Act 1277 of 2005 as amended)

Rules and Regulations

I. Introduction

The primary purpose of the Non-Profit Incentive Program is to encourage the location or expansion of national or regional non-profit headquarters in Arkansas. This incentive program may only be offered at the discretion of the Director of the Arkansas Economic Development Commission. Eligible non-profit organizations must create a payroll for new full-time permanent employees of at least five hundred thousand dollars ($500,000) and pay an average wage in excess of one hundred and ten percent (110%) of the state or county average wage (whichever is less) in the county in which the organization locates or expands. In addition, the non-profit must receive seventy-five percent (75%) of its income from out-of-state sources.

For additional information contact:
Incentives Manager
Arkansas Economic Development Commission
900 West Capitol
Little Rock, AR 72201
(501) 682-1682

II. Definitions

(a) “Average hourly wage” means the weekly earnings, excluding overtime, bonuses, and company paid benefits, of all new full-time permanent employees hired after the date of the signed financial incentive agreement, divided by the number of new full-time permanent employees, divided by forty (40);

(b) “Commission” means the Arkansas Economic Development Commission;

(c) “County or state average hourly wage” means 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);

(d) “Director” means the Director of the Arkansas Economic Development Commission;

(e) “Financial incentive agreement” means an agreement entered into by an eligible non-profit organization and the Arkansas Economic Development Commission to provide the organization an incentive to locate in Arkansas;

(f) “Governing authority” means the quorum court of a county or the governing body of a municipality;

(g) “Income” means the monies received by a non-profit organization for operations of the organization and shall include donations, revenue from sales or memberships, grants or legislative appropriations;

(h) (1)(A) “New full-time permanent employee” means a position or job which was created pursuant to the signed financial incentive agreement and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned.

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

(2) Provided, however, in order to qualify for the provisions of this act, a contractual employee must be offered a benefits package comparable to a direct employee of the non-profit organization seeking incentives under this subchapter;

(i) “Non-profit organization” means an entity which has filed papers with and been approved by the Arkansas Secretary of State as having met the qualifications for a non-profit organization in Arkansas and which has also received a § 501 (c) (3), § 501 (c) (6), or § 501 (c) (9) designation from the United States Internal Revenue Service prior to applying for the benefits afforded under this subchapter;

(j) “Payroll” means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible non-profit organization to new full-time permanent employees hired after the date of the signed financial incentive agreement;

(k) (1) “Project” means:

(A) Preconstruction costs, including project planning costs, architectural/engineering fees, right-of-way purchases, utility extensions, site preparations, purchase of mineral rights, building demolition, builders risk insurance, capitalized start-up costs, deposits and process payments on eligible machinery and equipment and other costs necessary to prepare for the start of construction;

(B) Costs associated with the construction of a new plant or facility; including, but not limited to, land, building, production equipment or support infrastructure; or

(C) Costs associated with the expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(D) Cost associated with modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(2) "Project" does not include:

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

(B) Routine operating expenditures; or

(C) Expenditures incurred at multiple facilities.

(3) In order to receive credit for, or refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Commission.

(l) "Project plan" means the plan submitted to the Commission containing such information as may be required by the Director to determine eligibility for benefits. If approved, the project plan becomes a supplement to the financial incentive agreement; and

(m) "Start of construction" means any activity which causes a physical change to the building and/or property identified as the site of the approved project, excluding engineering surveys, soil tests, land clearing and extension of roads and utilities to the project site.

III. <u>To Qualify for the Program a Non-Profit Organization Must</u>

(a) Have a payroll of new full-time permanent employees in excess of five hundred thousand dollars ($500,000) annually.

(b)(1) Pay wages that average in excess of one hundred and ten percent (110%) of the lesser of the county or state average wage; and

(2) Receive a minimum of seventy-five percent (75%) of its income from out-of-state sources.

(c) Hospitals, medical clinics, accredited academic educational institutions and churches are specifically excluded from receiving the benefits authorized by this subchapter.

(d) Non-profit organizations must meet the payroll threshold and the average hourly wage threshold and invest a minimum of two hundred fifty thousand dollars ($250,000) in order to receive the sales and use tax refund authorized by this program. A sales tax refund will be made only after the audit of expenditures and payroll by the Revenue Division of the Arkansas Department of Finance and Administration has determined the non-profit organization is in compliance with all qualifications to receive benefits under this act.

IV. Terms of Financial Assistance

Payroll rebate:

(a) The award of this incentive is at the discretion of the Director of the Arkansas Economic Development Commission.

(b) Benefits are conditioned upon the hiring of new full-time permanent employees and certifying to the Department of Finance and Administration that the requisite payroll thresholds have been met.

(c) The requisite annual payroll for new full-time permanent employees of five hundred thousand dollars ($500,000) shall be reached within twenty-four (24) months of the signing of the financial incentive agreement in order for the benefits of this section to be approved.

(d) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the non-profit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months to reach the requisite annual payroll.

(e) In addition to having an annual payroll of five hundred thousand dollars ($500,000) or more, the non-profit organization applying for benefits under this act shall pay average hourly wages in excess of one hundred and ten percent (110%) of the lesser of the state or county average wage for the county in which the organization locates or expands.

(f) Payments to non-profit organizations with an annual payroll in excess of five hundred thousand dollars ($500,000) shall be considered and may be authorized by the Director, after having signed a financial incentive agreement with the non-profit organization. The payment will be four percent (4%) of the annual payroll of the new full-time permanent employees.

(g) The Director may authorize this benefit for up to five (5) years.

Sales and Use Tax Refund:

(a)(1) In order to qualify for the sales and use tax refund authorized by this section, a qualified non-profit organization must qualify for the payroll rebate program and spend in excess of two hundred fifty thousand dollars ($250,000) on buildings, machinery and equipment in the new or improved facility.

(2) An eligible non-profit organization must file an application with the Commission before the start of construction. The application shall include a project plan which clearly identifies the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. In order to receive refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Commission and;

(A) The application must include an endorsement resolution from the governing authority of a municipality or county in whose jurisdiction the non-profit organization will be located.

(B) The resolution shall:

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

(ii) Authorize the refund of any sales and use tax levied by the municipality or county.

(b)(1) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use tax dedicated to the Educational Adequacy Fund, as authorized by Act 107 of the 2nd Special Session of 2004 and the Conservation Tax Fund, as authorized by Arkansas Code Annotated 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 non-profit organization, 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.

(2) A refund shall not be authorized for:

(A) Routine operating expenditures; or

(B) The purchase of 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.

(c) Subject to the approval of the Arkansas Economic Development Commission, a program participant may make changes in a project by written amendment to the project plan filed with the Commission, provided that the amendment complies with Arkansas Code Annotated 15-4-3207(h)(2).

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

V. Program Administration

(a)(1) In order to qualify for a sales and use tax refund, a non-profit organization must reach the two hundred fifty thousand dollars ($250,000) investment threshold within four (4) years from the date of the signed financial incentive agreement.

(2) All claims for sales and use tax refunds 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.

(3) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed except when:

(A) A non-profit organization 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 Revenue Division of the Department of Finance and Administration.

(b) All claims for sales and use tax refunds relating to an audited purchase shall be 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.

(c)(1) All claims for payroll rebates shall be certified to the Department of Finance and Administration and shall be recertified annually thereafter during the term of the financial incentive agreement.

(2) Failure to certify payroll figures and recertify those figures annually may result in a denial of payments.

(3)(A) If the annual payroll of the non-profit organization applying for benefits under this subchapter is not met within twenty-four (24) months after the signing of the financial incentive agreement, the non-profit organization may request, in writing, an extension of time to reach the required payroll threshold.

(B) If the Director of the Arkansas Economic Development Commission and the Director of the Department of Finance and Administration find that the non-profit organization has presented compelling reasons for an extension of time, the Director of the Arkansas Economic Development Commission may grant an extension of time not to exceed twenty-four (24) months.

(d)(1) If the annual payroll of a non-profit organization receiving benefits under this subchapter falls below the threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the non-profit organization files a written application for an extension of benefits with the Arkansas Economic Development Commission explaining why the payroll has fallen below the level required for qualification.

(2) The 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, for the non-profit

organization to bring the payroll back up to the requisite payroll threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3) If a non-profit organization fails to reach the payroll threshold before the expiration of the twenty-four (24) months or the time period established by a subsequent extension of time, the non-profit organization will be liable for repayment of all payroll benefits previously received by the non-profit organization.

(e)(1) If a non-profit organization fails to maintain the average hourly wage requirements for benefits under this subchapter, the non-profit organization will be liable for the repayment of all payroll benefits previously received by the non-profit organization after the average hourly wage for new full-time permanent employees fell below the required threshold.

(2) After a non-profit organization has failed to maintain the average hourly wage requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.

(f)(1) If a non-profit organization fails to notify the Department of Finance and Administration that the annual payroll of the non-profit organization has fallen below the threshold for qualification for and retention of any incentive authorized by this subchapter, that non-profit organization will be liable for the repayment of all payroll benefits which were paid to the non-profit organization after it no longer qualified for the benefits.

(2) After a non-profit organization has failed to notify the Department of Finance and Administration that the non-profit organization has fallen below the payroll threshold, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.

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

(g)(1) For a qualified non-profit organization taking advantage of the sales and use tax refund, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the non-profit organization shall submit an amended project plan, as soon as the cost overrun is recognized, to include the updated cost figures.

(2)(A) Amendments that exceed twenty-five percent (25%) of the original financial incentive agreement estimate will not be considered and shall be submitted as a new project.

(B) An amendment shall not change the start date as specified in the original project.

(h) The Department of Finance and Administration may obtain whatever information is necessary from a participating non-profit organization and from the Arkansas Department of Workforce Services to verify that a non-profit organization 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 and payrolls to the Department of Finance and Administration.

(i) The Department of Finance and Administration may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a qualifying non-profit organization is located, to enforce the repayment provisions of this subchapter.

(j) The Commission may promulgate rules and regulations, as needed, to administer the provisions of this subchapter.

DIGITAL PRODUCT AND MOTION PICTURE INDUSTRY DEVELOPMENT ACT
Program Summary

To encourage growth in Arkansas's digital product and motion picture industry, Act 816 of 2009 was enacted by the 87th General Assembly and amended in 2013. The legislation's purpose is to cultivate the industry by offering financial incentives to foster the development of the digital and traditional film industry in Arkansas.

I. Production Rebate

To qualify for this rebate, a production company shall spend at least two hundred thousand dollars ($200,000) within a six-month period in connection with the production of one (1) project. Upon approval of the application by the Commission, the production company shall be eligible for a rebate on all qualified production costs in connection with the production of a state-certified film project.

The amount of the rebate shall be twenty percent (20%) of all qualified production costs associated with the production of a state-certified production. An approved production company shall also receive an additional rebate of ten percent (10%) for the payroll of below-the-line employees involved in the production who are fulltime residents of Arkansas.

II. Postproduction Rebate

To qualify for this rebate, a production company shall spend at least fifty thousand dollars ($50,000) within a six-month period in connection with the production of one (1) project.

The amount of the rebate shall be twenty percent (20%) of all qualified production costs associated with the postproduction of a state-certified production. An additional rebate of ten percent (10%) shall be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

Digital Product and Motion Picture Industry Development Act (Act 816 of 2009, as amended) Rules and Regulations

I. Introduction

To encourage growth in Arkansas's digital product and motion picture industry, Act 816 of 2009 was enacted by the 87th General Assembly and amended in 2013. The legislation's purpose is to cultivate the industry by offering financial incentives to foster the development of the digital and traditional film industry in Arkansas. See Arkansas Code Annotated § 15-4-2001 et seq.

For more information, please contact:
Arkansas Economic Development Commission
Arkansas Film Office
900 West Capitol
Little Rock, AR 72201
(501) 682-7326

II. Definitions

(1) "Application for rebate" means the document required by the Film Office to begin the process for obtaining a rebate under the Digital Product and Motion Picture Industry Development Act;

(2) "Below-the-line employees" means:

(A) employees involved with a motion picture production including but not limited to:

(i) Casting assistants,

(ii) Costume design,

(iii) Gaffers,

(iv) Grips,

(v) Location managers,

(vi) Production assistants,

(vii) Set construction staff, and

(viii) Set design staff.

(B) "Below-the-line employees" does not include directors and producers;

(3) “Commission” means the Arkansas Economic Development Commission;

(4) “Film” means a single media or multi-media production that is fixed on film, digital medium, videotape, computer disc, laser disc, or similar delivery medium;

(5) “Film and digital product” means video images or other visual media entertainment content in digital format, film, or videotape, provided the program meets all the underlying criteria of a qualified production including but not limited to the following:

(A) Motion pictures,

(B) Documentaries,

(C) Long-form programs,

(D) Specials,

(E) Mini-series,

(F) Series,

(G) Music videos,

(H) Television programming,

(I) Interactive television,

(J) Interactive games,

(K) Videogames,

(L) Commercials,

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

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

(6) "Film Office" means the division of the Arkansas Economic Development Commission charged with the responsibility of promoting and assisting the digital content industry in Arkansas in order to enhance Arkansas as a land of opportunity for digital and motion picture filmmaking;

(7) “Film production company” means a corporation, individual, limited liability company or partnership that produces one (1) or more films or any part of a film;

(8) “Financial institution" means any bank or savings and loan in the state which carries Federal Deposit Insurance Corporation Insurance;

(9) "Highly compensated individual" means:

  (A) An individual who directly or indirectly receives compensation in excess of five hundred thousand dollars ($500,000) for personal services with respect to a single production.

  (B) An individual receives compensation indirectly when a production company pays a personal service company or an employee-leasing company that pays the individual;

(10) “Interactive television” means a television production in which the viewer’s action(s) may:

  (A) Affect the program being watched, or

  (B) Affect the outcome of the production;

(11) “Post-production” means a final stage in the production of film or digital content occurring after the action has been filmed or videotaped, including but not limited to:

  (A) Dialogue replacement,

  (B) Sound editing,

  (C) Addition or deletion of special effects,

  (D) Editing music,

  (E) Beginning and end credits,

  (F) Negative cutting,

  (G) Soundtrack production,

  (H) Dubbing,

  (I) Subtitling,

  (J) Addition or deletion of sound or visual effects,

  (K) Soundtrack production,

"Post-production" does not include expenditures for advertising, marketing, or distribution;

(12) "Postproduction costs" means all expenditures associated with the post-production phase of a state-certified production within the state;

(13) "Production" means:

(A) The process of producing a type of entertainment content and includes film and digital content product.

(B) "Production" shall not include:

(i) An ongoing program created primarily as news, weather, or financial market reports;

(ii) A production containing any material or performance that is obscene;

(iii) A production deemed an infomercial; or

(iv) Sexually explicit productions as defined in 18 U.S.C. § 2257, as it existed on January 1, 2009;

(14) "Production company" means a corporation, partnership, limited liability company, or other business entity engaged in the business of producing qualified productions and is registered with the Arkansas Secretary of State to engage in business in Arkansas;

(15) "Qualified production costs" means costs associated with the development, preproduction, production, or postproduction of a qualified production within the state, including but not limited to:

(A) Per diem expenditures by the cast or crew for meals and lodging when accompanied by receipts,

(B) Costs associated with original music compositions produced by an Arkansas resident to be used as incidental music, the score, or the soundtrack in film or video games,

(C) Arkansas residents for labor, wages, fees, talent or management,

(D) Arkansas businesses for personal services,

(E) The story and scenario used in the production,

(F) Set construction,

(G) Set operations,

(H) Wardrobe and accessory services,

(I) Photography,

(J) Sound,

(K) Lighting,

(L) Editing related services,

(M) Rentals of equipment and facilities,

(N) Leasing of motor vehicles,

(O) Chartering of aircraft through an Arkansas-based businesses for in-state transportation attributed to the production,

(P) Commercial airfare purchased through Arkansas-based travel agencies for travel to and from Arkansas attributed to the production,

(Q) Insurance and bonding costs,

(R) Costs to option or purchase intellectual property, including without limitation books, scripts, music, or trademarks relating to the development or purchase of a script, screenplay, or format if:

(i) The intellectual property was produced primarily in Arkansas or the creator of the intellectual property is a resident of Arkansas;

(ii) At least seventy-five percent (75%) of the subsequent film or digital content is produced in Arkansas; and

(iii) The production expenses or costs for the optioning or purchase are less than twenty-five percent (25%) of the production expenses or costs incurred in Arkansas. The expenses or costs include all expenditures associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but do not include deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans which the eligible production company may negotiate in order to obtain the rights to the intellectual property;

(S) Other costs of the production in accordance with generally accepted entertainment industry practices,

(T) Fringe contributions being paid for work performed in Arkansas, including:
   (i) Health benefits,
   (ii) Pension contributions,
   (iii) Welfare contributions,
   (iv) Stipends, and
   (v) Living allowances.

(U) Food catering services. When a production company hires a food catering service company that is located outside the state, payments otherwise allowable that are made by the out-of-state food catering service to food businesses located in Arkansas shall be allowed as eligible expenditures,

(V) "Qualified production costs" does not include:
   (i) The optioning or purchase of intellectual property that is not used in the production project;
   (ii) Media buys, promotional events, or gifts or public relations associated with the promotion or marketing of any qualified production;
   (iii) Deferred, leveraged, or profit participation costs relating to any and all personnel associated with any and all aspects of the production, including, without limitation, producer fees, director fees, talent fees, and writer fees;
   (iv) Amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the qualified production; and
   (v) Payments for penalties or fines, payments to nonprofit organizations, and payments to federal and state entities that do not pay state taxes;

(16) "Resident" means natural persons and includes for the purpose of determining eligibility for the rebate incentive provided by this subchapter, a person domiciled in Arkansas and who maintains a permanent residence within the state and spends at least six (6) months of the taxable year within the state;

(17) “Season” means production of at least ten (10) episodes of a television series;

(18) "State-certified production" means a qualified production produced by an eligible production company that is:

(A) In compliance with established rules and regulations of the Digital Content and Motion Picture Industry Development Act;

(B) Authorized by the Film Office to conduct business in this state; and

(C) Approved by the Film Office as qualifying for a production rebate under this section;

(19) "Television mini-series" means a limited run program of more than two (2) and less than the thirteen (13) part-season or half-season block associated with serial or series programming;

(20) "Television programming" means a long- or short-form narrative production of a television series, television mini-series or television special that is intended for commercial broadcast.

Television programming **does not include** programs created primarily as:

(i) News reports,

(ii) Weather reports,

(iii) Financial market reports,

(iv) Current events,

(v) Sporting events,

(vi) Award shows,

(vii) Gala events,

(viii) Fundraising events,

(ix) Marketing a product or service,

(x) Corporate training, or

(xi) Corporate advertising;

(21) "Television series" means at least six (6) hours of television programming exhibited by a television station or network;

(22) "Television specials" means major dramatized presentations broadcast during times normally occupied by episodes of one or more weekly television series.

III. Registration Requirements

A production company, which plans to operate within Arkansas shall register with the Film Office of the Arkansas Economic Development Commission on the prescribed forms before beginning operations in Arkansas.

IV. Application Requirement

A. A production company seeking benefits of this program shall submit an application to the Commission. The application must include an estimate of the production expenditures and shall be filed with the Commission prior to incurring any production costs or post-production costs in Arkansas.

B. The application shall also include the name, phone number and address of a representative to work with the Commission and the Film Office on the reporting of expenditures and other information necessary to qualify for the rebate.

C. Upon approval of the application by the Commission, the production company and the Commission shall sign a financial incentive agreement.

The financial incentive agreement shall define the provisions of the program, which shall include the:

(i) Effective date of the agreement;

(ii) Term of the agreement;

(iii) Incentive for which the production company may qualify;

(iv) Investment threshold requirements necessary to qualify for eligibility;

(v) Production company's responsibilities for certifying eligibility requirements; and

(vi) Production company's responsibilities for failure to meet or maintain eligibility requirements.

V. Production Rebate

To qualify for this rebate, a production company shall spend at least two hundred thousand dollars ($200,000) within a six-month period in connection with the production of one (1) project.

Upon approval of the application by the Commission, the production company shall be eligible for a rebate on all qualified production costs in connection with the production of a state-certified film project.

The amount of the rebate shall be twenty percent (20%) of all qualified production costs associated with the production of a state-certified production.

An approved production company shall also receive an additional rebate of ten percent (10%) for the payroll of below-the-line employees involved in the production who are fulltime residents of Arkansas.

A production rebate shall not be processed until the production company has met in full all obligations to each Arkansas institution and vendor owed for products and services in the state.

VI. Postproduction Rebate

To qualify for this rebate, a production company shall spend at least fifty thousand dollars ($50,000) within a six-month period in connection with the production of one (1) project.

Upon approval of the application by the Commission, the production company shall be eligible for a rebate on all qualified production costs in connection with the production of a state-certified film project.

The amount of the rebate shall be twenty percent (20%) of all qualified production costs associated with the postproduction of a state-certified production.

An additional rebate of ten percent (10%) shall be granted for the payroll of below-the-line employees who are full-time residents of Arkansas.

A postproduction rebate shall not be processed until the production company has met in full all obligations to each Arkansas institution and vendor owed for products and services in the state.

VII. Employment Rebate

In addition to the production rebate and post-production rebates, the employment rebate also entitles a state-certified production company for benefits of employing full-time residents of Arkansas for which the company has submitted a Certified Declaration of Arkansas Residency form with the Film Office.

A. The employment rebate authorizes a rebate of ten percent (10%) for the aggregate payroll of salaries and wages to Arkansas residents who are below-the line employees of the state-certified production.

B. If a production company hires a payroll service company to handle the payroll of a production, the payroll payments otherwise allowable shall be allowed as eligible expenditures if all eligible income payments to employees and independent contractors done through the payroll service are subject to Arkansas state income taxes.

C. The employment rebate shall include the first five hundred thousand dollars ($500,000) of a highly compensated individual's salary.

VIII. Weekly Expenditure Reports

A. (i) Within two (2) weeks after principal photography begins, the production company shall begin filing weekly expenditure reports.

(ii) Failure to file weekly expenditure reports may result in a delay in the disbursement of the rebate provided in §§ 15-4-2005 and 15-4-2006.

B. The weekly expenditure report shall be filed in accordance with but shall not be limited to the following:

(i) Direct cash payments by the production company to Arkansas vendors, businesses, or citizens hired as cast or crew that are accompanied by receipts shall be allowed if the sum of that cash payments does not exceed forty percent (40%) of the total verifiable expenditures;

(ii) Per diem expenditures by cast or crew, or both, for lodging, when accompanied by receipts, shall be eligible expenditures; and

(iii) Expenditure reports shall include without limitation:

(a) Check identification number;

(b) Date of payment;

(c) Name of payee;

(d) Address of payee;

(e) Amount paid; and

(f) Other information the division deems necessary to ensure compliance with this subsection.

IX. Production Costs Certification

Within one hundred eighty (180) days after the last production costs are incurred, the production company shall apply to the Commission for a production rebate certificate and provide a final expenditure report that includes the amount of the company's production expenses or costs. Expenditure reports also shall include information as required by the Revenue Division of the Department of Finance and Administration to ensure compliance with §15-4-2001 et seq.

The Commission will forward the Final Expenditure Report with supporting documents with its recommendation for rebate to the Revenue Division of the Department of Finance and Administration (DF&A).

Upon receipt of the Final Expenditure report and supporting documents from the Commission, the Revenue Division of DF&A will review the Commission's recommendation and verify the amount of rebate recommended.

X. Application for Rebate

Upon completion of filming or production, or both, in Arkansas, the production company shall file an application for the rebate allowed under §15-4-2001 et seq. The application for rebate shall include a proof of performance expenditure list that provides the total amount of expenditures that were made in the state in connection with the filming or production, or both, of a film and digital product that complies with this subchapter. The production company shall provide documentation for expenditures in accordance with rules promulgated by the Film Office.

A. The Revenue Division of the Department of Finance and Administration shall upon receipt of an application for rebate, including a proof of performance expenditure report from the Film Office:

(i) Calculate the total expenditures of the relevant production company for which there are documented receipts for funds expended in the state;

(ii) Calculate the incentive benefit to which the applicant is entitled; and

(iii) Within one hundred twenty (120) days of the date the Final Expenditure Report was submitted to the Commission, the Revenue Division of DF&A will certify to the Director of the DF&A the amount of rebate due to the production company.

B. Within ten (10) working days after the receipt of the certification from the Revenue Division, the Director of DF&A shall issue the rebate to:

(i) The production company, or

(ii) At the option of the production company, the full amount or a specified amount noted by the production company to the:

a. National Film Preservation Foundation;

b. Motion Picture Retirement Fund; or

c. Digital Product and Motion Picture Office Fund.

C. (i) There is no per production cap on the rebate and the amount of the rebate shall be limited only by the amount of moneys in the Digital Product and Motion Picture Office Fund.

(ii) The rebate shall be awarded on a first-come, first-served basis.

(iii) Rebates to be awarded from the Digital Product and Motion Picture Office Fund may be payable from any source of funds allocated for their rebates.

XI. Production Costs Limitations

Production companies are encouraged to make payments for production and postproduction expenses from a checking account from an Arkansas financial institution.

Direct cash payments by a production company to Arkansas vendors, businesses, or citizens hired as cast or crew, which are accompanied by receipts, shall not exceed forty percent (40%) of the total verifiable expenditures.

XII. Penalties

A production company that intends to apply for the rebate and does not register as required by § 15-4-2004 may be enjoined from engaging in production activities in the state by any court of competent jurisdiction until the production company has registered.

A production company that intends to apply for the rebate incentives and fails to comply with the provision of the Digital Product and Motion Picture Industry Development Act may be denied future participation in this incentive program and shall be subject to penalty in accordance with applicable state or federal law.

TOURISM DEVELOPMENT

Program Summary

The Arkansas Tourism Development Act provides state sales tax credits and income tax credits to businesses operating or intending to operate an approved tourism attraction project.

Sales tax credits shall be determined in accordance with the following criteria:

- Eligible minimum project costs must be five hundred thousand dollars ($500,000) in high unemployment counties and one million dollars ($1 million) in all other counties;
- The percentage of sales tax credits shall be determined by total approved project costs:
  - Projects with expenditures of at least five hundred thousand dollars ($500,000) in high unemployment counties are eligible for a credit of twenty-five percent (25%) of the eligible project expenditures;
  - Projects with expenditures of more than one million dollars ($1,000,000) are eligible for a credit of fifteen percent (15%) of the eligible project expenditures;
- The sales tax credit may only be applied against the increased sales tax liability of the approved project; and
- Other review criteria requested by the Arkansas Economic Development Commission may be needed to determine whether the tourism attraction project meets the intent of the Act.

Additionally, eligible businesses may receive an income tax credit equal to four percent (4%) of new payroll for new employees who work at least thirty (30) hours per week.

Income tax credits are earned in the tax year in which the new full-time permanent employees are hired. The income tax credits must be used in the tax year the credits are earned. Any unused portion of the credit may be applied against the income tax liability for the succeeding nine (9) years.

Arkansas Tourism Development Act
(Act 291 of 1997, as amended)
Rules and Regulations

I. Introduction

To encourage growth in Arkansas's tourism industry, Act 291 was passed by the 81st General Assembly in 1997 and amended in 1999, 2001, 2005, 2007 and 2009. The legislation's purpose is to stimulate expansion of Arkansas's tourism industry by offering economic incentives to qualified private development projects in the form of sales and income tax credits. Since the intent is to generate additional tourist traffic to Arkansas, each proposed project must develop a marketing plan that targets 25% of its visitors from out-of-state, meet other requirements and submit a completed application prior to incurring any project costs. See Arkansas Code Annotated § 15-11-501 et seq.

For more information, please contact:
Arkansas Economic Development Commission
Incentives Manager
900 West Capitol
Little Rock, AR 72201
(501) 682-1682

II. Definitions

A. "Agreement" means a financial incentive agreement entered into pursuant to § 15-11-506, by and between the director and an approved company, with respect to a tourism attraction project;

B. "Approved company" means any eligible company that is seeking to undertake a tourism attraction project that has been approved by the Director after obtaining the review and advice of the Director of the Department of Parks and Tourism;

C. "Approved costs" mean:

1. Obligations incurred on or after the effective date of the financial incentive agreement associated with the construction or expansion of a tourism attraction for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery men, and material men in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
2. The costs of acquiring real property or rights in real property in connection with a tourism attraction project, and any costs incidental thereto;

3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, delivery man, contractor, or otherwise provided;
4. All costs of architectural and engineering services, including, but not limited to, estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
5. All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
6. All costs required for the installation of utilities in connection with a tourism attraction project, including, but not limited to, water, sewer, sewage treatment, gas, electricity, and communications, and including off-site construction of utility extensions paid for by the approved company; and
7. All other costs comparable with those described in this subsection.
8. “Approved costs” does not include:
   (a) Costs incurred prior to the effective date of the financial incentive agreement, except for pre-construction costs.
   (b) Expenditures for routine repair and maintenance that do not result in new construction, or expansion;
   (c) Routine operating expenditures;
   (d) Expenditures incurred at multiple facilities.

D. “Director” means the director of the Arkansas Economic Development Commission or the director’s designated representative;

E. “Eligible company” means any corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, or business trust, or any other entity that invests a minimum of five hundred thousand dollars ($500,000) in a high unemployment county or one million dollars ($1,000,000) in any other county for the purpose of constructing, operating or intending to operate a tourism attraction project, whether owned or leased, within the state that meets the standards promulgated by the director pursuant to § 15-11-504;

F. “Final approval” means the action taken by the director authorizing the eligible company to receive inducements under § 15-11-507 and Section 5 of Act 1135 of 1999;

G. “High unemployment” means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Department of Workforce Services, when the state’s annual average unemployment rate is six percent (6%) or below. When the state’s annual average unemployment rate is above six percent (6%), "high unemployment" means equal to or in excess of three percent (3%) above the state's average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Department of Workforce Services.

H. "Increased state sales tax liability" means that portion of an approved company's reported state sales (gross receipts) tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction for any monthly sales tax reporting period after the approved company provides the certification required by § 15-11-507(b) of Act 1135 of 1999, which exceeds the reported state sales tax liability for sales to its customers for the same month in the calendar year immediately preceding such certification. If an approved company purchases an existing tourism attraction which was selling goods and services at the time of purchase and which may or may not have been entitled to the benefits of this subchapter prior to such purchase, the "increased state sales tax liability" resulting from any investments in the tourism attraction by the new owners means that portion of the approved company's reported state sales (gross receipts) tax liability resulting from taxable sales of goods and services to its customers at the tourism attraction for any monthly sales tax reporting period after the approved company provides the certification required by § 15-11-507(b) of Act 1135 of 1999, which exceeds the reported state sales tax liability for sales made by the seller of the tourism attraction for the same month in the calendar year immediately preceding such certification. The prohibitions against disclosure of confidential tax information provided in § 26-18-301 shall not apply for purposes of computing the credit available.

I. "Inducements" means the Arkansas sales tax credit as prescribed in § 15-11-507 and/or the Arkansas income tax credit as prescribed in Section 5 of Act 1135 of 1999;

J. "Investment Threshold" means the minimum amount of eligible project costs that must be incurred in order to qualify for eligibility;

K. "New full-time permanent employee" means a position or job which was created as a result of a tourism attraction project, and which is filled by one (1) or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned or claimed. The employee or employees must work an average of at least thirty (30) hours per week. Provided, however, in order to qualify for the provisions of this subchapter, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives;

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

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

1. Project planning costs;

2. Architectural and engineering fees;

3. Land;

4. Feasibility Studies;

5. Right-of-way purchases;

6. Utility extensions;

7. Site preparations;

8. Purchase of mineral rights;

9. Building demolition;

10. Builders risk insurance;

11. Capitalized start-up costs;

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

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

N. "Tourism attraction" includes:

1. A cultural or historical site;
2. A recreational or entertainment facility;
3. An area of natural phenomenon or scenic beauty;
4. A theme park;
5. An amusement or entertainment park;
6. An indoor or outdoor play or music show;
7. Botanical gardens; and
8. Cultural or educational centers;

O. “Tourism attraction” does not include:

1. Lodging facilities, unless the facilities constitute a portion of a tourism attraction project and represent less than sixty percent (60%) of the total approved costs of the tourism attraction project, or unless the approved costs for the lodging facility exceeds five million dollars ($5,000,000) and is attached to a convention center containing seventy-five thousand (75,000) square feet or contains a minimum of twelve thousand (12,000) square feet of meeting or exhibit space;
2. Facilities that are primarily devoted to the retail sales of goods, unless the goods are created at the site of the tourism attraction project or if the sale of goods is incidental to the tourism attraction project;
3. Facilities that are not open to the general public;
4. Facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the tourism attraction project such as:
    a. Movie Theaters
    b. Bowling Alleys
    c. Fitness Centers
    d. Miniature Golf Courses
    e. Go-Kart Tracks
    f. Skating Rinks
    g. Night Clubs
    h. Retail Stores
    i. Restaurants
    j. Any other establishments deemed by the Director to primarily serve the local community and in-state residents.
5. Facilities owned by the State of Arkansas or a political subdivision of the state; or
6. Facilities established for the purpose of conducting legalized gambling. However, a facility regulated under § 23-110-101 et seq. or § 23-111-101 et seq. shall be a tourism attraction for purposes of this subchapter for any approval project as outlined in subsection (j)(1) of Act 1135 of 1999 or for an approved project relating to pari-mutuel racing at the facility and not for establishing a casino or for offering casino-style gambling.

P. “Tourism attraction project” or “project” means the acquisition, including the acquisition of real estate by leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including, but not limited to, surveys; installation of utilities, which may include, water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

III. Qualifications

A. Qualifying tourism attraction projects are defined as one or more of the following:

1. Cultural or historical site;
2. Recreational or entertainment facilities;
3. Areas of natural phenomenon or scenic beauty;
4. Theme parks;
5. Amusement or entertainment parks;
6. Indoor or outdoor plays or music shows;
7. Botanical gardens;
8. Cultural or educational center;
9. A lodging facility may qualify, but only if it meets one of the following tests:
   (a) It must constitute a portion of a tourism attraction project and represent less than 60% of the total approved costs of the tourism attraction project; or
   (b) If the approved cost for the lodging facility exceeds $5,000,000 and one of the following is met:
      (1) The lodging facility is attached to a convention center containing a minimum of 75,000 square feet, or
      (2) The lodging facility contains a minimum of twelve thousand square feet of meeting or exhibit space. Proposed projects under this category must be approved by the Director prior to April 1, 2011.

B. Eligible tourism attraction projects do not have to be new construction projects. The expansion and/or purchase of existing properties may be eligible. However, the amount of sales tax credit can only be taken against the increased sales tax liability over and above the amount paid by the business being sold or expanded for the corresponding tax month of the previous year.

C. Privately owned facilities constructed on state or federal lands (via a minimum 10-year lease) may be eligible.

D. Ineligible businesses include:

1. Lodging facilities (unless it meets the tests described above);
2. Retail sales facilities (unless the goods are created on-site or if sales are incidental to the overall project);
3. Facilities not open to the general public;
4. Facilities not likely to attract overnight guests from outside the state who would stay in commercial lodging near the attraction;

5. Facilities owned by the State of Arkansas or its political subdivisions;
6. Gambling facilities (unless for approved pari-mutuel racing currently regulated under Arkansas Code)

IV. Powers and Duties of the Economic Development Commission

A. The Director or designee of the Arkansas Economic Development Commission will review each application, making certain the project proposal meets the following minimum criteria:

   1. the application shall be submitted prior to incurring any project cost, other than those costs defined as pre-construction cost;
   2. the project shall have a marketing plan designed to attract at least 25% of its visitors from out-of-state;
   3. shall cost at least $500,000 in high-unemployment counties or $1,000,000 in any other county;
   4. shall have a significant and positive impact on the State, including an analysis of whether the project will compete directly with existing tourism attractions in the state;
   5. shall produce sufficient revenues and public demand to be operating and open to the public on a regular and persistent basis;
   6. shall be likely to attract overnight guests from outside the state who would stay in commercial lodging near the attraction;
   7. shall not adversely affect existing employment in the state;
   8. and other criteria that the Director may deem to apply.

B. Once the application has been reviewed, the applicant will be notified in writing of the results of the review.

C. Upon granting approval, the Director shall enter into a financial incentive agreement with an approved company with respect to its tourism attraction project. The terms and provisions of each financial incentive agreement shall include, but shall not be limited to:

   1. The amount of approved costs, determined through negotiations with the Director and applicant;

   2. The eligibility date for incurring project costs;

   3. A date by which the approved company shall have completed the tourism attraction project (the Completion Date), provided that the Completion Date occurs within (2) years of the date of the financial incentive agreement unless an extension is granted. Within 3 months after the Completion Date, the approved company shall document the actual cost of the project through a certification of

such costs by an independent certified public accountant acceptable to the Director;

4. Provisions that the term of the financial incentive agreement may be extended for a period of two (2) years by the Director if: (i) such extension is also approved by the Director of the Arkansas Department of Finance and Administration or (ii) the approved company has failed to complete the project as a result of unanticipated and unavoidable construction delays or a change in business ownership;
5. In any sales tax reporting period during which a financial incentive agreement is in effect, if the increased state sales tax liability of the approved company exceeds the state sales tax credit available to the approved company, then the approved company shall pay the excess to the state as sales tax;
6. Within 45 days after the end of each calendar year, the approved company shall supply the Director with such reports and certifications as the Director may request demonstrating to the satisfaction of the Director that the approved company is in compliance with the provisions of the Act;
7. The approved company shall not receive a credit against the Arkansas sales tax imposed by Ark. Code Ann. § 26-52-301 et seq. with respect to any calendar year if in any calendar year following the first year of the financial incentive agreement or the agreed upon completion date, the project is not operating and open to the public on a regular and persistent basis;
8. The financial incentive agreement shall not be transferable or assignable by the approved company without the written consent of the Director; and
9. If the approved company utilizes sales tax credits which are subsequently disallowed, then the approved company will be liable for the payment to the Director of the Department of Finance and Administration of all taxes resulting from the disallowance of the credits plus applicable penalties and interest.

D. The Arkansas Economic Development 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 upon an audit by the Revenue Division of the Department of Finance and Administration (DF&A).

V. <u>Terms of the Financial Incentive Agreement</u>

A. The following types of expenses directly related to the tourism attraction project may be included in the total approved costs that are eligible for sales tax credits:

1. Land (outright purchase or leasehold interest with 10-year minimum term);
2. Buildings at the tourism attraction site;

3. Land surveys and architectural/engineering fees;
4. Cost of contract bonds and insurance;
5. Installation of utilities paid by the approved company (including off-site extensions that are project specific);
6. Equipping of the tourist attraction; and
7. Other costs comparable to those described above can be approved on a case-by-case basis.

B. Certain approved costs defined as "pre-construction costs" will be eligible for sales tax credits regardless of the date the costs were incurred.

VI. Administration of Benefits

A. State Income Tax Credits (not eligible for lodging facilities)

1. Upon notification from the director that an approved company has entered into a tourism attraction project financial incentive agreement, the Director of the Department of Finance and Administration shall provide the approved company with such forms and instruction as are necessary to claim those credits.
2. The approved company shall certify the number and the payroll of the new full-time permanent employees to the Revenue Division of the Department of Finance and Administration.
3. Upon certification by the company, the Revenue Division of the Arkansas Department of Finance and Administration shall authorize an income tax credit equal to four percent (4%) of the payroll of the new full-time permanent employees of the approved tourism attraction project qualifying for benefits.
4. As used herein, the term "new full time permanent employee(s)" shall mean a person who (i) is an Arkansas taxpayer in the year the credits are claimed; (ii) is employed in a position or job created by virtue of the project, and (iii) has worked an average of not less than thirty (30) hours per week.
5. The income tax credits may be earned for a period of five (5) years from the effective date of the financial incentive agreement.
6. The income tax credits earned may be applied against the company's Arkansas state income tax liability for the succeeding nine (9) years or until the credit is entirely used, whichever occurs first.

7. The Director shall provide a copy of each financial incentive agreement entered into with an approved company to the Director of the Department of Finance and Administration.

B. Sales and Use Tax Credits

1. Upon receiving notification from the Director that an approved company has entered into a tourism attraction project financial incentive agreement and is entitled to the sales tax credits provided by this Act, the Director of the Department of Finance and Administration shall provide the approved company with such forms and instructions as are necessary to claim the credits.
2. An approved company shall be entitled to a sales and use tax credit upon certifying to the Director of the Department of Finance and Administration that it has met the investment threshold for the county in which it is located. The Director of the Department of Finance and Administration shall then issue a sales tax credit memorandum for the appropriate amount (25% for projects located in high-unemployment counties and 15% for all other projects) to the approved company. Subsequent requests for credit for additional certified approved costs in excess of the investment threshold shall be submitted annually for the term of the financial incentive agreement or until the project is completed, whichever occurs first.
3. The Director of the Department of Finance and Administration may require proof of expenditures. Additional credit memorandums may be issued as the approved company certifies additional expenditures of approved costs.
4. No sales tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the financial incentive agreement was signed by the Director and the approved company. However, the Director, with the advice and consent of the Director of the Department of Finance and Administration, may authorize sales tax credits for approved costs expended up to four (4) years from the date the financial incentive agreement was signed if the Director determines that the failure to complete the project within two (2) years resulted from:
   (a) Unanticipated and unavoidable delay in the construction of the project;
   (b) The project, as originally planned, will require more than two (2) years to complete; or
   (c) A change in business ownership or business structure resulting from a merger or acquisition.
      (1) The reasons listed above shall be brought to the attention of the Director prior to the expiration of the initial two (2) year period, and a request shall be made to the Director during the two (2) years for an extension of time.

5. The credit memorandum issued may be used to offset a portion of the reported state sales (gross receipts) tax liability of the approved company for all sales tax reporting periods following the issuance of the credit memorandum. One hundred per cent (100%) of the credit may be used to offset increased sales tax liability during the first year, with any unused credits carried forward for nine (9) additional years. The credits are also subject to the following limitations:

   (a) Only increased state sales tax liability resulting from sales by the approved company may be offset by the issued credit;

   (b) All issued credit memorandums shall expire at the end of the month following expiration of the financial incentive agreement;

   (c) The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

   (d) By April 1 of each year, the Director of the Department of Finance and Administration shall certify to the Director the state sales and income tax liability of the approved companies receiving inducements under this section, and the amount of state sales and income tax credits taken during the preceding calendar year.

   (e) The Director of the Department of Finance and Administration may promulgate administrative regulations as are necessary for the proper administration of this Act. The Director of the Department of Finance and Administration may also develop such forms and instructions as are necessary for an approved company to claim the sales and income tax credits provided by this act.

   (f) The Director of the Department of Finance and Administration shall have the authority to obtain any information necessary from the approved company and the Director of Economic Development to verify that approved companies have received the proper amounts of sales tax credits as authorized by this act; the Director of the Department of Finance and Administration shall demand the repayment of any credits taken in excess of the credit allowed by this act.

   (g) Qualified amusement parks entering into a financial incentive agreement on or after January 1, 2006 for an approved project that will exceed one million dollars ($1,000,000) are eligible for a sales tax credit equal to twenty-five percent (25%) of the approved costs.

   Qualified amusement parks entering into a financial incentive agreement on or after January 1, 2006 may use the credit to offset one hundred percent (100%) of its tax liability following the issuance of the credit.

The credit may be used to offset the qualified amusement park's sales tax liability for the Gross Receipts tax levied under the Arkansas Gross Receipts Act, § 26-52-101 seq.; and the Tourism gross receipts tax levied under § 26-52-1001 et seq. Any unused credit may be carried forward for a period of nine (9) years.

(h) The special provisions for qualified amusement parks provided in paragraph (g) above shall apply retroactively to July 1, 2006.

C. Calculation of Arkansas Income Tax Credits

1. This program provides an Arkansas income tax credit equal to four percent (4%) of the payroll of each new full-time permanent employee for a period of five (5) years from the effective date of the financial incentive agreement.

2. The calculation of the income tax credit is as follows:

Payroll of New Full-Time Permanent Employees	x	4%	=	Total Credits

D. Calculation of Sales Tax Credit

1. This program offers a sales tax credit in the amount of twenty-five percent (25%) of total project costs if the approved tourism attraction is located in a high-unemployment area.

2. If the approved tourism attraction is located in any other county the program offers a sales tax credit in the amount of fifteen percent (15%) of the total project cost.

3. The calculation of the sales tax credit is as follows:

Approved Costs	x	Appropriate Percentage	=	Total Credits

VII. Restrictions

No person or entity may take advantage of this program and any other tax incentive program.

INDUSTRIAL REVENUE BOND GUARANTY ACT
Program Summary

The Industrial Revenue Bond Guaranty Act was enacted for businesses that have a financial history, but are unable to sell industrial revenue bonds to the public. The Arkansas Economic Development Commission can assure bondholders of repayment by guaranteeing up to five million dollars ($5,000,000) of the bond issue. The State's guaranty allows the bonds to be sold at a higher credit rating, therefore lowering the effective interest rate for the business. The Commission charges a five percent (5%) fee for guaranteeing issues of this type.

Industrial Revenue Bond Guaranty Law
(Act 173 of 1967, as amended)
Arkansas Bond Guaranty Program
Rules and Regulations

I. Introduction

The Bond Guaranty Program was created to provide long-term, tax-exempt and taxable financing for businesses expanding or locating in Arkansas. Although the city or county may issue the revenue bond, the company is still responsible for paying the principal and interest. Under this program, the Department "guarantees" timely payment of principal and interest, up to five million dollars ($5,000,000) principal per bond issue, to the bondholders. This guaranty gives the bonds a better rating, thereby making the bonds more attractive to investors and reducing the company's cost to borrow money.

For additional information contact:
Business Finance Division
Arkansas Economic Development Commission
900 West Capitol
Little Rock, Arkansas 72201
(501) 682-1246

II. Definitions

A. "Act 9 bonds" means revenue bonds issued in accordance with the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law (ACA 14-164-201 et seq.) to benefit private companies. A vote of the local governing body is required to issue these bonds.

B. "ADFA" means the Arkansas Development Finance Authority.

C. "ADFA bonds" means revenue bonds issued by the Arkansas Development Finance Authority in accordance with the Arkansas Development Finance Authority Act, ACA 15-5-101 et seq., ACA 15-5-201 et seq., and ACA 15-5-301 et seq.

D. "Department" means the Arkansas Department of Economic Development.

E. "Direct loans" means loans as defined by ACA 15-103 (13) and including bond anticipation loans.

F. <u>“Director”</u> means the Director of the Arkansas Department of Economic Development.

G. <u>“Lessee”</u> means a person, business or firm who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

H. <u>“Local governing body”</u> means the quorum court of a county or the council, board of directors, or other elected governing body of a municipality.

III. To Qualify for the Program a Business Must

A. To qualify for a tax-exempt industrial revenue bond (IRB), a company must meet the following eligibility criteria:

1. The firm must be engaged in manufacturing, processing or other activities directly supporting or related to manufacturing or processing;
2. The total capital expenditures in a project must not exceed ten million dollars ($10,000,000) for a six (6) year period; and
3. The capital expansion should create new jobs.

B. In order for the Department to guarantee the debt service (principal and interest) of bonds issued under Act 9, certain circumstances, including, but not limited to, the following shall be addressed:

1. There shall be documentary evidence produced from investment bankers that the bonds are not saleable without this guaranty;
2. The lessee must have a proven financial history and must have been in a similar or related business at least three years prior to the bond guaranty application;
3. There is documentary evidence that by the addition or expansion of plant facilities, substantial employment is involved;
4. There is a legal opinion to the effect that the industrial project involves manufacturing, processing, or other activities directly related to or supporting a manufacturing or processing industry;
5. The lessee will not purchase or own at any time any of such bonds;
6. The lessee is found to be financially responsible for, and sufficient rental income may be reasonably expected to amortize in an orderly manner, the interest on a principal amount of the bonds as evidenced by:
   (a) An analysis of the business history of the lessee and/or principals thereof;
   (b) An evaluation of the most recent three (3) years audited annual financial statements as prepared by an independent certified public

accounting firm. If the most recent annual statement is more than ninety (90) days old, then an unaudited interim statement must be provided; and

(c) A pro-forma projection for the ensuing three (3) years in substantially the same form as attached;

7. There is a commitment to pay a one-time premium in the amount of five percent (5%) of the principal amount to be guaranteed or three percent (3%) of the debt service, whichever is greater; and
8. Collateral for the issue will be substantiated by a perfected first mortgage on capital expenditures that are obtained in whole or in part by proceeds of the bond issue along with corporate and/or personal guarantees.

C. The company shall develop a project overview which addresses the following eligibility considerations:

1. Total project costs;
2. Specific uses of the funds;
3. Company's financial strength;
4. Type of operation (manufacturing, etc.);
5. Expected new employment at location of project; and
6. Relevant information about profitability of project.

D. If the Department's staff determines that the project is feasible, it is recommended that the company simultaneously contact the following:

1. Bond counsel to assist in completing the process and to insure its legality;
2. City/County officials which must submit the issue on behalf of the local government involved; and
3. Bond underwriters to submit bids on underwriting the bond issue.

E. A business plan and legal documentation must be submitted to the Department in order for the Department's staff to prepare an application for the Arkansas Economic Development Commission's (AEDC) Bond Guaranty Committee, which will approve or reject the bond guaranty application. If the project is approved, it will go before the full AEDC for final approval. Regardless of whether the application is approved or rejected, the company will be notified of the final decision by the Department's staff.

IV. Administration of Benefits

A. Eligible Activities – As a general rule, bond proceeds can be used to purchase or construct fixed assets including land, building and equipment. Certain limitations, as governed by the IRS tax code, may apply. Experienced municipal bond counsel should be consulted as to eligible activities, but the following minimum restrictions must be adhered to:

1. When an existing building is purchased, fifteen percent (15%) of the purchase price must be expended on renovation; and
2. When proceeds are used to purchase used equipment, one hundred percent (100%) of the purchase prices must also be expended to renovate that equipment.

B. Sequence of Events – There are a number of activities that must occur before a bond guaranty can be executed by the Department. Following is a list of those activities:

1. Memorandum of Intent by the Governing Body (City or County) – This step is not required by state law, but is often utilized to fulfill requirements by the Internal Revenue Service to show "intent" to use tax exempt revenue bond financing. The memorandum should be issued prior to the commencement of a project (the purchase of any land, building or equipment to be financed). This process allows the company to recover any "out-of-pocket" expenditure from the tax-exempt funds. The company should contact an Arkansas licensed bond attorney to draft the memorandum.

2. Notice of Hearing – Ten (10) days prior to the hearing, notice must be given setting forth the date of the hearing. The notice must be published one (1) time in a newspaper of general circulation.

3. Public Hearing – A public hearing must be held before the governing body, whether it is the city or county, prior to the adoption of an ordinance.

4. Referendum Period of Thirty (30) Days – The Constitution of the State of Arkansas requires that the governing body exercise a referendum period. This period is to allow time for a petition, if desired, by the general public requiring the issue to be subjected to a general election. This period is normally thirty (30) days in the case of a municipal issue.

5. Execution of Documents – After a minimum period of forty-five (45) days, the industrial revenue bond issue may close. At this time, the money is delivered. It should be remembered, however, interim financing may be used to start the project without affecting the tax exempt status of the issue once the memorandum of intent has been issued by the governing body.

V. Application Process

A. The application for the Bond Guaranty Program must be filed with the Department a minimum of thirty (30) days prior to the next meeting of the Arkansas Economic

Development Commission (AEDC), which is regularly held on the third Thursday of each month. The applicant should check with the Business Finance Unit for meeting dates.

B. Each application should contain or be accompanied by information and exhibits as follows:

1. A description of the total amount of the financing involved, the purpose thereof, and the portion for which the guaranty is requested;
2. A description of the site, including the total acreage, and a verification of its fair market value (appraisal or other satisfactory evidence);
3. A general description of the improvements to be made;
4. A written estimate of cost of construction;
5. A general description of the machinery and equipment to be included in the project;
6. A verification of cost of machinery and equipment (e.g. quotes from suppliers or written estimate by a recognized authority not in regular employ of company);
7. If existing facilities are involved, written evidence of the current fair market value thereof (appraisal or other satisfactory evidence);
8. A written statement by an officer of the company as to the average number of employees expected within three (3) years after operations are commenced;
9. Projected financial statements for the first three (3) years' operation of the project, containing estimates of earnings and expenses and year-end balances;
10. A description of the capital stock of the company (classes, amounts authorized, amounts outstanding, capital paid in);
11. A history of the company, description of business, and length of time in business;
12. Officer's names, ages, and business experience;
13. Director's names, ages, and business affiliation or profession; amount of the company's stock owned by each officer and director, by class, and the percentage of outstanding stock of each class owned by all officers and directors as a group;
14. Copies of audited annual financial statements for the most recent three (3) year period including such statements of the parent if a subsidiary is to operate the proposed industrial facilities and the parent is to guarantee performance by its subsidiary. Statements that are more than ninety (90) days old must be accompanied by interim statements;
15. Written evidence that the Act No. 9 Bond are not saleable without the guaranty;
16. A commitment to pay a one-time premium payment in the amount of five percent (5%) of the principal amount of the Act No. 9 Bonds to be

guaranteed, or three percent (3%) of the total debt service, whichever is greater, with payment to be made before or simultaneously with the issuance of the guaranty;

17. A written statement to the effect that none of the bonds will be purchased or owned by the company; and
18. The Department and/or the AEDC may, if it so elects, require as conditions to the issuance of guaranty, all or any part of the following:
    (a) That all or certain officers or stockholders execute and deliver to the Trustee, or the Department, their individual personal written guarantees;
    (b) That all or certain officers deliver to the Trustee certificates representing the shares of the capital stock (of all classes) of the company owned by them, and execute and deliver to the Trustee "Stock Pledge Agreements" on forms commonly used by the Trustee for that purpose;
    (c) That each or certain specified officers of the company will obtain life insurance upon his life, of a type and issued by a company satisfactory to the Trustee and to the Department;
    (d) Restrictions as to declaring and paying dividends;
    (e) Restrictions as to preferential treatment of or making advances, loans, or payments to any other company or organization directly or indirectly controlled by or affiliated with the company;
    (f) Salary and bonus restrictions;
    (g) Restrictions as to loans to officers, directors, stockholders, or employees;
    (h) Restrictions as to incurring indebtedness or encumbering properties;
    (i) Restrictions as to issuance of additional capital stock;
    (j) Restrictions as to capital improvements and acquisitions; and
    (k) Restrictions as to minimum limits on size of corporate new worth.

PUBLIC ROADS IMPROVEMENT CREDIT

Program Summary

The Arkansas Public Roads Improvement Credit Act of 1999 provides an income tax credit to any individual, fiduciary or corporation subject to Arkansas state income tax that contributes to the Public Roads Incentive Fund of the Arkansas Economic Development Commission. The contribution may be made to a general improvement fund or designated for a specific project that is approved by the Executive Director.

The credit cannot exceed thirty-three percent (33%) of the taxpayer's contribution. In any one tax year, the credit cannot exceed fifty percent (50%) of the taxpayer's net Arkansas state income tax liability after all other credits and reductions have been calculated. Any amount over fifty percent (50%) can be carried forward up to three (3) years.

Arkansas Public Roads Improvements Credit Act
(Act 1347 of 1999)
Public Roads Project

Rules & Regulations

I. Introduction

In order to facilitate the construction of specific capital improvement projects, Act 1347 of 1999, the Arkansas Public Roads Improvements Credit Act was passed by the 82nd General Assembly of the State of Arkansas.

The goal of this program is to provide an incentive to any individual, fiduciary, or corporation subject to Arkansas state income tax to make contributions in aid of the construction of public roads by providing an income tax credit based on the amount of the taxpayer's contribution.

For additional information contact:
Incentives Manager
Arkansas Economic Development Commission
900 West Capitol
Little Rock, AR 72201
(501) 682-1682

II. Definitions

A. "Capital improvements" means capital improvements for public roads.

B. "Contribution" means a contribution in aid of construction of a public road project made by a taxpayer to the Public Roads Incentive Fund.

C. "Contribution in aid of construction" is a direct contribution of cash made by a taxpayer for public road improvements.

D. "County" means any county in the State of Arkansas.

E. "Department" means the Department of Economic Development.

F. "Director" is the Director of the Department of Economic Development.

G. "Fund" means the Public Roads Incentive Fund.

H. "Governing Authority" means the quorum court of a county, the governing body of a municipality, and the State Highway Commission.

I. "Municipality" means any city or incorporated town in the State of Arkansas.

J. "Project" means all, any combination or any part of the capital improvements for public roads, which are authorized by a governing authority and approved by the director.

K. "Public roads" means roads maintained by a governing authority.

L. "Taxpayer" includes any individual, fiduciary, or corporation subject to Arkansas State Income Tax.

III. To Qualify for the Program

A. Contributions

1. Eligible contributors include any individual, fiduciary, or corporation subject to Arkansas state income tax that contributes to the Public Roads Incentive Fund of the Arkansas Department of Economic Development.

2. The Public Roads Incentive Fund shall consist of contributions made by taxpayers for public roads projects approved by the Director, and any other funds as are designated or deposited to the fund by law.

3. Each taxpayer that contributes to the Public Roads Incentive Fund may make a general contribution or may designate a project for which the contribution is earmarked. When donations are made for dedicated projects, a separate account will be established. Any contributions which remain in the separate account when a project is completed or terminated shall be held and applied to other public roads projects in such manner as the Director shall direct.

4. To contribute to the Public Roads Incentive Fund, the taxpayer must send an application and contribution to the Department of Economic Development. An application can be obtained by contacting the Incentives Coordinator at the Department of Economic Development.

5. The contribution will be transmitted to the Treasurer of the State for deposit into the Public Roads Incentive Fund.

B. Applicants

1. Governing authorities may apply to the Director for funding assistance for capital improvement projects for public roads as provided by Act 1347 of 1999. The Director is authorized to approve capital improvements for funding assistance upon a finding that a project is in the public interest and that there are sufficient dedicated project funds, when combined with the requested funds from the Public Roads Incentive Fund, to complete the project.

2. Applicants must provide documentation that there are sufficient dedicated project funds available, when combined with the amount requested from the Public Roads Incentive Fund, to complete the improvement project.

3. The application, endorsement resolution, and project plan (see Attachment) must be sent to:

   Arkansas Economic Development Commission
   Incentives Manager
   900 West Capitol
   Little Rock, AR 72201

4. The application must include:

   (a) A city or county resolution (also known as an endorsement resolution) or a copy of a minute order from the Arkansas Highway and Transportation Department Commission.
   (b) A completed application filled out completely with project plan.
   (c) Send above to AEDC for processing.

IV. Powers and Duties of the Department of Economic Development

A. The Director of the Department of Economic Development will determine whether or not the project is in the public interest and whether or not there are sufficient dedicated project funds, when combined with the requested funds from the Public Roads Incentive Fund, to complete the project. If the director determines that the project is in the public interest and that sufficient funding is available, the governing authority will be informed and a sub-account will be established for the project.

B. Any project that is submitted to the Department for approval will have to be fully funded before the Department will release funds for the project. Applicants must provide documentation that there are sufficient dedicated project funds available, when combined with the amount requested from the Public Roads Incentive Fund, to complete the improvement project.

C. However, if the project is terminated before completion, any additional funds remaining in the project account will be held and distributed to other projects approved by the Director.

D. A separate account will be established for each project approved by the Director of the Department. The Director is authorized to assist the governing authority in obtaining assistance from any other department of state government. When sufficient funds are accumulated for a particular project, the Director will authorize the release of funds for the project.

V. Administration of Benefits

Eligible taxpayers will be entitled to a state income tax credit that may be applied in any tax year after January 1, 1999. Contributions are to be sent to the Department of Economic Development.

The credit shall be determined in the following manner:

A. The credit is limited to an amount not to exceed 33% of the taxpayer's contribution;

B. In any one (1) tax year, the credit allowed shall not exceed 50% of the taxpayer's net Arkansas state income tax liability after all other credits and reductions in tax have been calculated; and

C. Any credit over 50% of the taxpayer's net Arkansas state income tax liability for any one (1) tax year may be carried forward and applied against Arkansas state income tax for the next-succeeding tax year (subject to the same terms as in "B." above) and annually thereafter for a total period of three (3) years next-succeeding the year in which the credit arose or until the credit is exhausted, whichever occurs first.

D. The Department of Economic Development will issue a letter certifying the amount contributed to the Public Roads Incentive Fund. This certification must be attached to the taxpayers' income tax return in order to claim the credit.

Replacement and Repair of Manufacturing Machinery and Equipment Sales and Use Tax Refund
(Act 1404 of 2013, as amended)
Rules

I. Introduction

Overview

Act 1404 of 2013, as amended and codified in §§ 26-52-447, 26-53-149 and 15-4-3501, establishes two options by which certain state sales and use taxes relating to the partial replacement and repair of machinery and equipment used directly in manufacturing may be refunded to eligible taxpayers beginning July 1, 2014.

The first option, which provides for a refund of one percentage point (1%) of the 5.875% sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, may be claimed by a taxpayer for the purchase and installation of certain machinery and equipment used directly in manufacturing and processing. To qualify for this refund, a taxpayer shall hold a direct pay or a limited direct pay sales and use tax permit from the Arkansas Department of Finance and Administration (DFA).

The second option, which provides for an increased refund of all sales and use taxes (5.875%) levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, is a discretionary incentive that may be offered by the Executive Director of the Arkansas Economic Development Commission (AEDC) to a taxpayer who undertakes a major maintenance and improvement project to purchase and install certain machinery and equipment used directly in manufacturing and processing. To qualify for this discretionary refund, a taxpayer shall:

1. Be eligible for a refund of taxes under §§ 26-52-447 or 26-53-149 (partial replacement and repair of certain machinery and equipment);
2. Hold a direct pay or a limited direct pay sales and use tax permit from the DFA; and when claiming the refund, shall file their monthly direct pay sales and use tax report using the Department's electronic tax report filing system;
3. Enter into a financial incentive agreement with the AEDC for the major maintenance and improvement project prior to incurring project expenditures;

4. Expend at least $3 million on an approved major maintenance and improvement project that includes the purchase of tangible personal property and services that are either exempt or subject to partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149;
5. File a completed Manufacturing Replacement and Repair Sales and Use Tax Refund Application with the AEDC; and
6. Receive approval from the Executive Director of the AEDC to receive the increased refund of sales and use taxes for the major maintenance and improvement project.

All existing excise tax exemptions, including without limitation exemptions under §§ 26-52-402 and 26-53-114, remain in full force and effect and are not limited by this refund.

II. Rulemaking Authority

The AEDC and DFA have authority, at § 15-4-3501(h), to promulgate rules necessary to implement Act 1404 of 2013, as amended.

III. Effective Date

The effective date of Act 1404 of 2013 was July 1, 2014. The AEDC began accepting applications requesting an increased refund of all sales and use taxes levied pursuant to the replacement and repair of manufacturing machinery and equipment under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107, beginning July 1, 2014.

IV. Definitions

1. "Certain machinery and equipment" means items taxable under §§ 26-52-301 and 26-52-302 on the sale of, and §§ 26-53-106 and 26-53-107 on the privilege of storing, using, distributing, or consuming within this state, the following :
   A. Machinery and equipment purchased to modify, replace, or repair, either in whole or in part, existing machinery or equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging articles of commerce at a manufacturing or processing plant or facility in this state; and
   B. Service relating to the initial installation, alteration, addition, cleaning, refinishing, replacement, or repair of machinery or equipment as defined in IV. 1(A) above;
2. "Commission" means the Arkansas Economic Development Commission;

3. “Major maintenance and improvement project” means a project with a defined scope and beginning and ending dates, the range of which shall not exceed twenty-four consecutive months, in which the taxpayer expends at least $3 million on the purchase of tangible personal property and services subject to §§ 26-52-447 and 26-53-149 that are either exempt from or subject to a partial refund of tax under §§ 26-52-402, 26-52-447, 26-53-114, or 26-53-149. The ending date of the project may be extended so that the range of dates is increased to forty-eight consecutive months only with the written approval of the Executive Director of the AEDC and the Director of the Arkansas Department of Finance and Administration;
4. “Manufacturing” or “processing” means the same as defined under § 26-53-114(b) for items taxable under §§ 26-53-106 and 26-53-107 and the same as defined under § 26-52-402(b) for items taxable under §§ 26-52-301 and 26-52-302;
5. “Positive return on taxpayer’s investment” means information provided by the taxpayer requesting an increased refund of all sales and use taxes levied under §§ 26-52-301, 26-52-302, 26-53-106 and 26-53-107 that reasonably proves that any or all of the following dollar amounts, when calculated cumulatively, will offset the amount of taxes refunded as a result of the major maintenance and improvement project:
   a. Enhanced or retained productivity (expressed in dollars);
   b. Enhanced or retained revenue, sales or output (expressed in dollars);
   c. Enhanced or retained employee compensation (expressed in dollars);
   d. Enhanced or retained taxes paid (expressed in dollars); or
   e. Any other quantifiable information requested by the AEDC that the taxpayer may provide as reasonable proof of positive return of the taxpayer’s investment in the major maintenance and improvement project;
6. “Used directly” means the same as defined under § 26-52-402(c), § 26-53-114(c) and Arkansas Gross Receipts Tax Rule GR-55.

V. Application and Approval Process for Discretionary 5.875% State Sales and Use Tax Refund)

Prerequisite: Taxpayers shall hold a direct pay or a limited direct pay sales and use tax permit from the DFA prior to filing an application with the AEDC requesting approval of an increased tax refund for major maintenance and improvement projects.

1. A taxpayer submits to the AEDC Incentives Manager, a completed, signed Manufacturing Replacement and Repair Sales and Use Tax Refund Application, consisting of the following sections:
   A. Applicant information including:
      (i) The name, address, physical location and contact of the company for which the application is being submitted and
      (ii) A Statement of Project Need.
   B. A Project Plan consisting of:
      (i) Estimated start and completion dates of project;
      (ii) A description of the project scope;
      (iii) Project cost estimates; and
      (iv) Data providing reasonable proof that there will be a positive return on the taxpayer's investment in the major maintenance and improvement project that is sufficient to offset the refunded taxes.
   C. Certifications
      (i) Signature of company official and
      (ii) Contract disclosure.
2. The AEDC Incentives Manager reviews the application to determine that:
   A. The taxpayer holds a direct pay or a limited direct pay sales and use tax permit from the DFA;
   B. The taxpayer is eligible for the increased refund for major maintenance and improvement projects provided for by Act 1404 of 2013, as amended;
   C. The taxpayer has provided reasonable proof that there will be a positive return on the taxpayer's investment in the major maintenance and improvement project that is sufficient to offset the costs of the refund;
   D. The taxpayer has provided a defined scope, beginning date, and ending date for the major maintenance and improvement project;
   E. The refund is reasonably necessary for the taxpayer to remain competitive and preserve Arkansas jobs; and
   F. Major maintenance and improvement eligible project expenditures will be at least $3 million.
3. A. If the AEDC determines that the application is complete and meets all requirements, the AEDC Incentives Manager prepares a financial incentive agreement and forwards one copy to the approved applicant for signature and return.
   B. Unapproved applicants will be notified of the reasons for disapproval in writing by the AEDC.
4. Upon receipt of the signed financial incentive agreement from the approved applicant, the AEDC Incentives Manager prepares an approval letter and forwards the financial incentive agreement and the approval letter to the Executive Director of the AEDC for signature.

5. The Executive Director of the AEDC signs the financial incentive agreement and the approval letter and forwards each to the AEDC Incentives Manager for distribution.
6. The AEDC Incentives Manager, on behalf of the Executive Director of the AEDC:
   A. Forwards the taxpayer's approved application, financial incentive agreement, signed approval letter, and any other pertinent documentation to the DFA Director;
   B. Forwards a copy of the executed financial incentive agreement and approval letter to the approved applicant; and
   C. Retains copies of all original documents in AEDC files.
7. The taxpayer shall contact DFA with questions regarding refund claims.
8. A taxpayer that has been approved for the increased refund for major maintenance and improvement projects may request changes to the project plan only by written amendment submitted to and approved by the Executive Director of the AEDC.

VI. Combinability of Expenditures

An expenditure shall not qualify for both the increased refund for major maintenance and improvement projects and the retention tax credit provided for in § 15-4-2706(c).

Regional Economic Development Partnership
(Act 895 of 2011, as amended)
Rules and Regulations

I. Program Summary

Act 895 of 2011 (§ 15-4-3401 et seq.), as amended, authorized the creation of regional economic development partnerships and addressed the governance of these partnerships as well as funding opportunities and responsibilities. The 2011 act, and 2013 amendment, outlined the provisions needed to implement the legislation and provide the Arkansas Economic Development Commission with the ability to promulgate rules and regulations addressing all aspects of the approval and funding of a regional economic development partnership.

It is the purpose of this rulemaking to make as clear as possible the procedures and approvals required by this act.

II. Definitions

A. "Commission" means the state agency known as the Arkansas Economic Development Commission;
B. "Economic development region" means a group of municipalities or counties that includes at least two (2) counties and has formed a regional economic development partnership;
C. "In-kind contributions" means items given to a regional economic development partnership, including, without limitation, donated office space, equipment, staff, and other items specifically approved by the commission; and
D. "Regional economic development partnership" means an organization whose mission is to promote specific regions within the state in accordance with the intent described under §15-4-3402.

III. Membership in a Regional Economic Development Partnership

A. A regional economic development partnership shall satisfy the following requirements:

   1. The economic development region proposed includes the active participation of at least two (2) contiguous counties;
   2. The economic development region is of adequate size in population to:
      a. Effectively undertake economic development activities while remaining a distinct and viable region for attracting new investment; and
      b. Generate adequate regional resources to provide matching funds;

3. The economic development region is economically integrated as determined by commuting patterns, economic base, major employers, membership in a defined metropolitan or micropolitan statistical area, or other indicators determined by the Arkansas Economic Development Commission;
4. Any county seeking to join a regional economic development partnership must adopt an ordinance seeking membership in the regional economic development partnership; and
5. The regional economic development partnership, by a majority vote of its board of directors, that are residents of Arkansas, may approve the membership of a requesting county after having received a copy of the approved ordinance seeking membership.

B. The Arkansas Economic Development Commission may allow an existing entity that applies to be a regional economic development partnership to maintain the entity's existing rules regarding membership, terms, and duties of the board of directors.

IV. Board of Directors

A regional economic development partnership formed on or after January 1, 2013, shall be governed by a board of directors that shall operate, manage and control the regional economic development partnership in all respects. The following shall apply to boards of directors of regional partnerships formed on or after January 1, 2013:

1. The Board of Directors shall contain at least one (1) representative from each county that is a member of the regional economic development partnership.
2. The governing body of each county that is a member of the regional economic development partnership shall appoint members of the board of directors.
3. Each member of the board shall serve for a term as provided under the bylaws of the regional economic development partnership.
4. A person appointed to the board of directors may be a representative of either a public or a private entity.

V. Application for Approval

A. An entity seeking approval from the Arkansas Economic Development Commission as a regional economic development partnership under §15-4-3401 et seq. shall submit an application provided by AEDC.
B. The application shall contain at least a three-year strategic plan that is consistent with the Governor's Strategic Plan for Economic Development and includes the following:
    1. The proposed activities of the partnership; and
    2. A budget for the next calendar year clearly identifying the proposed expenditure for which the grant funds are requested.

C. Also, the application shall provide the following information:
   1. Proof of organization (include copies of corporation filings with the Secretary of State);
   2. A copy of the entity's:
      a. Governing documents approved by the entity's governing board;
      b. Bylaws; or
      c. If incorporated, the Articles of Incorporation;
   3. A map of the economic development region and the population served by the partnership, based on the latest decennial census;
   4. The identity of each public organization and private organization, active in economic development, within the economic development region and the role each organization will undertake in the regional economic development partnership;
   5. A list of the current members of the board of directors and the entity each member represents;
   6. Evidence of:
      a. The staff dedicated to the regional economic development partnership; or
      b. The staff dedicated to program management of the regional economic development partnership.
         i. Dedicated staff may be employed by an entity other than the regional economic development partnership; and
   7. Be prepared to provide local match, in a ratio of 1:1 to access state funding for regional economic development. These agreements between the regional partnerships and the state will be for a term of one-year and may be renewed beyond the year in which funding was first provided under this act.

VI. Staff

A. Staff members and positions may be comprised in whole or in part by direct employees hired by the regional economic development partnership, persons employed by entities contracting with and performing services on behalf of the regional economic development partnership, volunteers or interns contributing in-kind staffing services to the regional economic development partnership, and persons employed and compensated by third-party entities to perform services on behalf, and at the request of, the regional economic development partnership.

B. The primary responsibility of the staff is to market, promote and develop the economic development region to attract site selectors and business prospects and to accomplish the goals and objectives of the strategic plan required by §15-4-3405 (b)(1).

VII. Termination of Partnership

A. A board of directors of a regional economic development partnership may terminate the regional economic development partnership upon a majority vote of the board of directors.
B. At least a thirty (30) day notice of intent to terminate a regional economic development partnership must be sent to the Arkansas Economic Development Commission prior to the vote on termination.
C. Upon termination of a partnership, the board of directors shall remit any unspent state funds to the commission within sixty (60) days of the notice to terminate the regional economic development partnership.

VIII. Funding

A. State Funds

1. Each regional economic development partnership approved by the commission shall enter into an agreement with the Arkansas Economic Development Commission to receive state funds, if available.
2. The agreement shall be:
   a. For a term not to exceed one (1) year; and
   b. Identify the eligible expenses for which the regional economic development partnership intends to use state funds.
3. a. Subsequent one (1) year agreements may be entered into by the regional economic development partnership and AEDC, following the commission's review of the annual report of the regional economic development partnership.
   c. If a regional economic development partnership was initially approved as a multi-year project, a one-year renewal may by granted by the commission without the regional economic development partnership submitting an annual application.
4. Each year the commission shall allocate funds specifically appropriated by the General Assembly or the commission for regional economic development.
   a. The funds shall be distributed equally to the qualifying regional economic development partnerships that meet the matching fund requirements under §15-4-3408.
   b. Funds that are not disbursed under this section during a fiscal year may be distributed in a subsequent fiscal year.
5. If a regional economic development partnership includes a territory located in another state, regional funding provided under this subchapter shall only be provided to a county in Arkansas.

B. Matching Funds

1. A regional economic development partnership shall match the state funds allocated to the regional economic development partnership on the basis of at

least one dollar ($1.00) local matching funds for every one dollar ($1.00) of state funds.

2. If a regional economic development partnership does not provide proof of sufficient matching funds before the release of state funds, the Arkansas Economic Development Commission shall reduce the award of state funds in the amount necessary to adhere to the required one-to-one ratio of local matching dollars to state dollars.
3. Local matching funds may be:
    a. Provided by public sources, private sources, or a combination of public and private sources;
    b. Received in the form of cash, in-kind contributions, or a combination of cash and in-kind contributions; and
    c. In-kind contributions shall not be more than forty percent (40%) of the regional economic development partnership's total matching funds.

C. Eligible Uses of State Funds

State funds under §15-4-3401 et seq., shall be used only for marketing, advertising, promoting, and other activities related to implementing the required strategic plan.

D. Ineligible Uses of State Funds

1. State funds under §15-4-3401 et seq., shall not be used for administrative costs.
2. Ineligible uses of state funds include, without limitation, payment for the following expenses:
    a. Administrative salaries, benefits, general administrative costs, and salaries and benefits related to economic development;
    b. Overhead expenses, including, without limitation, postage, shipping, rent, subscriptions, equipment, furniture, fixtures, telephone and utilities;
    c. Travel and conference expenses within the state;
    d. Local promotions or sponsorships;
    e. Stationery, paper, pens, and general office supplies;
    f. Construction and infrastructure costs;
    g. Membership dues;
    h. Alcoholic beverages; and
    i. Gratuity on meals, including meals related to activities classified as eligible expenses.

IX. AEDC Responsibilities

A. The commission shall review each application submitted under the provisions of §15-4-3405 and shall certify that:
    1. The applicant satisfies the general qualification requirements in § 15-4-3404; and

2. The application submitted under § 15-4-3401 et seq. includes the information required.

B. The commission shall notify unsuccessful applicants in writing of the deficiencies of the application.

X. Annual Reports

A. A regional economic development partnership that receives state funding under §15-4-3401 et seq., shall submit an annual report to the Arkansas Economic Development Commission.

B. The annual report shall include the following:
   1. A description of the economic development activities and organizational activities of the regional economic development partnership in the preceding twelve (12) months;
   2. A detailed financial report;
   3. A detailed budget for the next twelve (12) months; and
   4. A description of the proposed activities of the regional economic development partnership for the next twelve (12) months for which state funding under §15-4-3401 et seq., is being requested.

XI. Rules

§ 15-4-3401 et seq. authorizes the Arkansas Economic Development Commission to promulgate these rules.

Minority Business Enterprise Certification Program
(Act 1456 of 2003 as amended)
Rules and Regulations

I. Introduction

Act 1456 of 2003 states "The Division of Minority Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises."

II. Definitions

A. "Minority Business Enterprise (MBE)" is an independent business entity, which is at least 51% owned by one (1) or more minority persons.

B. "Minority" means a lawful permanent resident of the State of Arkansas who is an African American, Hispanic American, American Indian, Asian American, or Pacific Islander American, or a Service-disabled veteran as designated by the United States Department of Veteran Affairs.

C. "Minority Business Advisory Council" means the Advisory Council to the Division of Minority Enterprise created under Arkansas Code 15-4-303.

D. "Director" is the Administrator of the Division of Minority Business Enterprise of the Arkansas Economic Development Commission.

E. "Commission" means the Arkansas Economic Development Commission.

III. Eligible Applicants

Eligible applicants are registered Arkansas Businesses which can submit documentation (see Appendix) to the Arkansas Economic Development Commission's Division of Minority Business Enterprise to prove they are at least 51% owned by a minority or group of minorities, legally entitled to conduct business in the United States, and can demonstrate the capacity to conduct business with the State of Arkansas. The firm must be owned by a lawful permanent resident or residents of the state of Arkansas and its annual revenue must not exceed $10,000,000.

Eligible minority firms, as defined herein, that are actively certified with the Arkansas-Mississippi Minority Supplier Development Council (AMMSDC), the Small Business Administration (SBA) 8(a) program, or the Arkansas Highway and Transportation

Department (AHTD) Disadvantaged Business Enterprise (DBE) program are also eligible to apply for MBE certification from the State of Arkansas.

IV. Certification Benefits

Certified MBEs will enjoy several benefits.

- Receive notification of opportunities to do business with state agencies
- Receive notification of training events, workshops, networking events, and educational opportunities
- Designation as a certified MBE (CMBE) in the Small and Minority Business Division's online directory
- Receive an official CMBE certificate, and
- Simplified re-certification process

The State Procurement Director, state agency procurement agents, college and university procurement officials, Constitutional offices and minority business officers will be notified of firms which have attained minority certification.

V. Application Process

Interested applicants shall complete the required forms and send them to the Commission's Division of Minority Business Enterprise with copies of the required documents as listed in the Appendix.

The Commission shall review the documents, check the applicant's customer references, and may schedule a pre-certification interview/site visit with the applicant.

Vendor agreements, invoices, partnership agreements, and articles of incorporation that relate to business with the State of Arkansas are subject to examination.

Eligible minority firms, as defined herein, that are actively certified with the one of the following organizations may qualify for a streamlined application process by submitting the completed MBE application and proof of certification from the qualifying organization:

- Arkansas-Mississippi Minority Supplier Development Council (AMMSDC)
- Small Business Administration (SBA) 8(a) program
- Arkansas Highway and Transportation Department (AHTD) Disadvantaged Business Enterprise (DBE) program

VI. MBE Operations

Certified Minority Business Enterprises are subject to periodic reviews by the Commission. It is mandatory to report any change in the status of the business affecting the ability to meet product demand, and/or any change in ownership, with a notarized Notice of Change Affidavit.

All business transactions, including billing and the remittance of such, must be conducted under the name appearing on the MBE certificate.

VII. Annual Re-Certification

Certified MBEs shall send a Re-Certification Affidavit to the Division of Minority Business Enterprise thirty (30) days prior to their current expiration date stating their desire to maintain certification.

The Affidavit shall state that the firm continues to be 51% minority owned, and must be signed by the firm's owner, executive officer and the chairman of its board of directors, if applicable.

The commission maintains the right to re-evaluate the applicant prior to renewal.

VIII. Revocation

The Director of the Division of Minority Business Enterprise has the authority to suspend, and/or, under just cause, revoke the certification of any business which fails to comply with the intent of this program.

Any business with a revoked certification will be ineligible to re-apply to the program for a period of one year.

Prior to revocation of an MBE certification under this regulation, the MBE shall be afforded an opportunity to discuss with the Director the issues which have given rise to the revocation.

IX. Moratorium

Given evidence of non-compliance with these regulations, the Director of the Division of Minority Business Enterprise has the authority to place a moratorium for one year on the new certification of any business sector for which two or more firms have received sanctions within any six month period.

X. Appeals

A. Any applicant who is denied their request for certification because they were unable to prove their minority status may appeal the decision to the Minority Business Advisory Council. A written notice of appeal must be received by the Commission no more than thirty (30) days after the date of the notice of denial. The Minority Business Advisory Council shall meet to hear the appeal within forty-five (45) days of receipt of the written notice.

B. Certified businesses may appeal a revocation action to the Minority Business Advisory Council. A written notice of appeal must be received by the Commission within thirty (30) days after the date on the notice of the revocation. The Minority Business Advisory Council shall meet to hear the appeal within forty-five (45) day of receipt of the written notice.

Appendix

List of Documents

1) Completed MBE application form
2) Copy of certification from qualifying organization*
3) Copy of the Articles of Incorporation, or Fictitious Name Certificate
4) Copy of bank signature authorization form or letter signed by a bank official identifying the person(s) authorized to sign checks on the business account
5) Federal Tax Identification Number
6) Copy of Birth Certificate/Passport/Green Card/Tribal Card
7) Copy of resume of owner(s)
8) Proof of state and federal income tax filing for previous 3 years, business or personal (Minimum of one (1) year tax filing required for businesses operations)
9) Copy of insurance**
10) Bonding information**
11) Copy of professional license**
12) Partnership or Operating Agreement for businesses with 2 or more owners, evidencing division of shares and profit distribution
13) Veterans Administration adjudication letter, if applicant is a service-disabled veteran

* Eligible minority businesses certified by a qualifying organization identified in Section V of these rules need only submit MBE application form along with proof of certification from the qualifying organization

**If required as a normal function of the business