ARKANSAS SENATE

90th General Assembly - Regular Session, 2015

Amendment Form

Subtitle of Senate Bill No. 844

TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; TO AMEND RETENTION TAX CREDITS; AND TO AMEND THE SALES AND USE TAX EXEMPTION FOR REPAIR AND REPLACEMENT OF CERTAIN MACHINERY AND EQUIPMENT.

Amendment No. 1 to Senate Bill No. 844

Amend Senate Bill No. 844 as originally introduced:

Add Senator Burnett as a cosponsor of the bill

AND

Add Representative M. Hodges as a cosponsor of the bill

AND

Delete Senator Hickey as a cosponsor of the bill

AND

Page 1, delete lines 10 through 14, and substitute the following:
"EQUIPMENT; TO CLARIFY THE DISTRIBUTION"

AND

Page 1, line 17, delete "AND" and substitute "TO DECLARE AN EMERGENCY; AND"

AND

Delete the subtitle in its entirety and substitute:
"TO AMEND THE INCOME TAX CREDIT FOR WASTE
REDUCTION, REUSE, OR RECYCLING
EQUIPMENT; AND TO DECLARE AN EMERGENCY."

AND

Delete SECTION 2 in its entirety, and substitute the following:

"SECTION 2. Arkansas Code § 26-51-506(c), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to read as follows:

(c)(1) There shall be allowed a tax credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., in an amount as determined in subsection (e) of this section for any taxpayer engaged in the business of reducing, reusing, or recycling solid waste for commercial purposes who purchases waste reduction, reuse, or recycling equipment used exclusively for the purpose of reducing, reusing, or recycling solid waste.

(2)(A)(i) If the tax credits are allowed with respect to a taxpayer pursuant to a qualified Amendment 82 project under the Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq., that, as of the end of the taxable year in which such tax credits are first allowed, does not have a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder, no more than twenty million dollars ($20,000,000) of credit against tax or an amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., whichever is less, issued to the taxpayer making the purchases of waste reduction, reuse, or recycling equipment under subdivision (c)(1) of this section may be claimed each tax year.

(ii) Any unused tax credit that cannot be claimed in a tax year by operation of subdivision (c)(2)(A)(i) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(2)(A)(i) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the taxpayer to apply the unused tax credit to future tax liability.

(B)(i) If tax credits are allowed under this section with respect to a qualified Amendment 82 project under the Arkansas Amendment 82 Implementation Act, § 15-4-3201 et seq., and any portion of the tax credits under this section would be apportioned to a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder of the taxpayer, the public retirement system shall have the possession and control of all tax credits, including any such tax credits otherwise apportioned to the other proprietors, partners, members, shareholders, or beneficiaries allowed under this section.

(ii) The possession and control of the tax credits by the public retirement system under this subdivision (c)(2)(B) shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration under the Department of Finance and Administration's promulgated rules.

(iii) The public retirement system shall sell or transfer for value the tax credits allowed under this section to the State of Arkansas for eighty percent (80%) of the face value, in lieu of the right of a proprietor, partner, member, shareholder, or beneficiary of the qualified Amendment 82 project to claim the tax credits as allowed pursuant to applicable state law. No more than twenty million dollars ($20,000,000) of the tax credits in possession and control of the public retirement system with respect to a qualified Amendment 82 project pursuant to subdivision (c)(2)(B)(i) of this section may be sold or transferred each year.

(iv) Any unused tax credit that cannot be sold or transferred in a tax year by the operation of subdivision (c)(2)(B)(iii) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(2)(B)(iii) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the public retirement system to sell or transfer all unused tax credits in future years.

(v) Repayment provisions in the applicable Amendment 82 agreement shall continue to apply to tax credits carried forward under subdivision (c)(2)(B)(iv) of this section and in the possession and control of a public retirement system of the State of Arkansas.

(vi) Beginning July 1, 2016, by July 15 of each year, the public retirement system with possession and control of the tax credits under this subdivision (c)(2)(B) shall provide notice to the Department of Finance and Administration of the amount of tax credits, including tax credits pending certification by the Arkansas Department of Environmental Quality, subject to the limitations in subdivision (c)(2)(B)(iii) of this section, to be sold or transferred for value.

(vii) The State of Arkansas shall pay the purchase price equal to eighty percent (80%) of the face value of all of the tax credits included in the notice required in subdivision (c)(2)(B)(vi) of this section on or before June 30 of the year following the year in which the notice was provided for all tax credits certified by the Arkansas Department of Environmental Quality by June 30 of the year following the year in which the notice was provided by warrant from the Economic Development Incentive Fund funded by a transfer from general revenue.

(viii)(a) Tax credits under this section sold or transferred for value to the State of Arkansas are extinguished upon payment of the purchase price as if claimed against the tax imposed by the Income Tax Act of 1929, 26-51-101 et seq.

(b)(1) In the event the State of Arkansas fails to timely pay the purchase price, as required in subdivision (c)(2)(B)(vii) of this section, for the tax credits included in the notice required in subdivision (c)(2)(B)(vi) of this section, the public retirement system may, before the end of the taxable year following the taxable year in which a failure to pay occurs, sell or transfer for value such tax credits to one (1) or more persons. Such person or persons may claim such tax credits in accordance with applicable law, provided however, any tax credits sold or transferred for value to such person or persons under this subdivision (c)(2)(B)(viii)(b) shall not expire before the later of the end of:

(A) The carry-forward period for such tax credits under applicable law; or

(B) The third taxable year following the year in which such tax credits were sold or transferred for value pursuant to this section.

(2) The sale or transfer of tax credits under this subdivision (c)(2)(B)(viii)(b) shall be confirmed in writing by a legal opinion issued by the Department of Finance and Administration under the Department of Finance and Administration's promulgated rules.

SECTION 3. Arkansas Code § 19-6-301(181), concerning the enumeration of special revenues, is amended to read as follows:

(181) Arkansas Economic Development Incentive Act of 1993 transfers from general revenues for financial incentive plans, § 15-4-1607 and § 26-51-506(c)(2)(B)(vii);

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that certain provisions of the tax credit allocations for waste reduction, reuse, or recycling equipment should be modified to ensure that the expansion of major projects utilizing the tax credit does not endanger the ability of the state to provide essential services or to provide the full value of the tax credits earned by the applicable businesses; that further investment for the tax credit allocations for waste reduction, reuse, or recycling equipment will increase the number of applicable tax credits in existence; and that the state must maintain a balanced budget necessary to deliver essential services to its citizens. Without this change, the ability of the State of Arkansas to ensure the delivery of essential services to citizens will be imperiled and could endanger the economic health of the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _______________________
By: Senator Burnett
JLL/JLL - 03-17-2015 16:16:20 _________________________
JLL433 **Secretary**