

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: S2/23/17
A Bill

SENATE BILL 362

By: Senators L. Eads, Bledsoe, J. Dismang, J. English, J. Hendren, Hester, Irvin, B. Johnson, Standridge
By: Representatives Davis, Ballinger, Bentley, Bragg, Coleman, Collins, Dotson, D. Douglas, Gonzales, Holcomb, Maddox, Richmond, Tucker, J. Williams, *Eaves*

For An Act To Be Entitled

AN ACT CONCERNING ECONOMIC INCENTIVES FOR CERTAIN BUSINESSES AND INDUSTRIES; TO SUNSET THE RETENTION TAX CREDIT; TO SUNSET THE TAX REFUND FOR MAJOR MAINTENANCE AND IMPROVEMENT PROJECTS; TO CLARIFY THE EXISTING PROCEDURE FOR CLAIMING A REFUND OF TAX PAID ON PURCHASES RELATED TO THE REPAIR AND PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR MAKING SUCH CLAIMS; TO INCREASE THE REFUND AVAILABLE FOR TAXES PAID ON PURCHASES RELATED TO THE REPAIR AND PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT; TO PHASE IN AN EXEMPTION FROM TAX FOR PURCHASES RELATED TO THE REPAIR AND PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO SUNSET CERTAIN TAX INCENTIVES; TO AMEND THE LAW CONCERNING THE SALES AND USE TAX REFUND FOR THE REPAIR AND PARTIAL REPLACEMENT OF MANUFACTURING MACHINERY AND EQUIPMENT; AND TO DECLARE AN EMERGENCY.

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



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SECTION 1. Arkansas Code § 15-4-2706(c), concerning investment tax credits under the Consolidated Incentive Act of 2003, is amended to add an additional subdivision to read as follows:

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

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

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

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

SECTION 2. Arkansas Code § 15-4-3501, concerning the increased tax refund for major maintenance and improvement projects, is amended to add an additional subsection to read as follows:

(i)(1) A taxpayer may apply for an increased refund for major maintenance and improvement projects under this section through June 30, 2022.

(2) An application for an increased refund for major maintenance and improvement projects under this section shall not be accepted on or after July 1, 2022.

SECTION 3. Arkansas Code § 26-52-447(b), concerning the sales tax refund for partial replacement and repair of certain machinery and equipment, is amended to read as follows:

(b)(1) Beginning July 1, 2014, the taxes levied under §§ 26-52-301 and 26-52-302 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).

(2) The taxes levied under §§ 26-52-301 and 26-52-302 that are subject to a refund under this section are the taxes in excess of the following rates:

(A) Beginning July 1, 2018, three and seven-eighths

percent (3.875%);

(B) Beginning July 1, 2019, two and seven-eighths percent (2.875%);

(C) Beginning July 1, 2020, one and seven-eighths percent (1.875%); and

(D) Beginning July 1, 2021, seven-eighths percent (0.875%).

(3) Beginning July 1, 2022, sales qualifying for the tax refund under this section are exempt from the taxes levied under this chapter.

SECTION 4. Arkansas Code § 26-52-447(f) and (g), concerning the sales tax refund for partial replacement and repair of certain machinery and equipment, are amended to read as follows:

(f) ~~To~~ A taxpayer may claim the benefit of the tax refund under this section, a taxpayer shall hold only by using one (1) of the following methods:

(1)(A) Both:

(i) Obtaining a direct pay or a limited direct pay sales and use tax permit from the Department of Finance and Administration; and shall claim the tax refund under the direct pay or limited direct pay permit.

(ii) Self-refunding:

(a) At the time the taxpayer files his or her original sales and use tax report; or

(b) By later filing an amended sales or use tax report with the department.

(B) The statutes of limitation stated in § 26-18-306 apply to claims made under this subdivision (f)(1).

(C) Interest shall not accrue or be paid on a refund claimed under this subdivision (f)(1); or

(2)(A) Beginning July 1, 2018, for a taxpayer that does not hold a direct pay or limited direct pay permit, holds an active Arkansas sales and use tax permit, and files sales and use tax reports with the department, filing a claim for a credit or rebate with the department.

(B)(i) The credit or rebate authorized under this subdivision (f)(2) shall be obtained only by offsetting the amount of the

claimed credit or rebate against the state tax to be remitted with the taxpayer's sales and use tax reports.

(ii) If the total amount of the credit or rebate authorized under this subdivision (f)(2) is greater than the amount of the state tax to be remitted with the taxpayer's sales and use tax reports, the taxpayer is entitled to a refund of the difference between the amount of the tax owed and the amount of the credit or rebate authorized under this subdivision (f)(2).

(C) A taxpayer claiming a credit or rebate under this subdivision (f)(2) shall electronically file all sales and use tax reports.

(D) A claim for credit or rebate under this subdivision (f)(2) shall not be paid for a claim filed more than one (1) year following the date of the qualifying sale or more than one (1) year following the date of payment, whichever is later.

(E) Interest shall not accrue or be paid on an amount subject to a claim for a credit or rebate under this subdivision (f)(2).

(g) A claim for a credit or rebate shall not be paid under subsection (f)(2) of this section for a sale made before July 1, 2018.

(h) A taxpayer shall not claim the benefit of the refund under this section by filing a verified claim for refund with the department.

~~(g)~~(i) The following provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., apply to claims for a refund under this section:

(1) The time limitations that apply to claims for a refund of an overpayment of state tax; and

(2) The procedures that apply to the disallowance or proposed disallowance of claims for a refund.

SECTION 5. Arkansas Code Title 26, Chapter 52, Subchapter 7, is repealed.

~~Subchapter — Economic Investment Tax Credit Act~~

~~26-52-701. Title.~~

~~This subchapter may be referred to and cited as the "Economic Investment Tax Credit Act".~~

~~26-52-702. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Corporate headquarters" means the home or center of operations, including research and development, of a national or multinational corporation;~~

~~(2) "Defense industry project" means an investment of at least five million dollars (\$5,000,000) and an increase in employment of at least two hundred fifty (250) full-time permanent employees by a company which manufactures components for the defense industry and whose unit cost exceeds five hundred thousand dollars (\$500,000);~~

~~(3) "Distribution center" means a facility for the reception, storage, or shipping of:~~

~~(A) A business' own products which the business wholesales to retail businesses or ships to its own retail outlets;~~

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

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

~~(4) "Eligible business" means a business eligible for sales and use tax credits under the provisions of this subchapter that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the Director of the Arkansas Economic Development Commission, has obtained a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration under the provisions of § 26-52-509, and is classified as one (1) or more of the following types of businesses:~~

~~(A) Manufacturers classified in federal Standard Industrial Classification codes 20-39, including semiconductor and microelectronic manufacturers;~~

~~(B)(i) Computer businesses primarily engaged in providing computer programming services, the design and development of prepackaged software, businesses engaged in digital content production and preservation, computer processing and data preparation services, information retrieval services, and computer and data processing consultants and developers.~~

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

~~have no retail sales to the public;~~

~~(C)(i) Businesses primarily engaged in motion picture production.~~

~~(ii) All businesses in this group must derive at least seventy five percent (75%) of their revenue from out-of-state sales and have no retail sales to the public;~~

~~(D) Businesses primarily engaged in commercial physical and biological research as classified by Standard Industrial Classification code 8731;~~

~~(E) A distribution center with no retail sales to the general public, unless seventy five percent (75%) of the sales revenue is from out-of-state customers;~~

~~(F) An office sector business with no retail sales to the general public;~~

~~(G) A corporate or regional headquarters with no retail sales to the general public; and~~

~~(H) A coal mining operation that employs twenty five (25) or more net full-time permanent positions;~~

~~(5) "Modernization" means to increase efficiency or to increase productivity of the business through investment in machinery or equipment, or both, and shall not include costs for routine maintenance;~~

~~(6) "Office sector" means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers;~~

~~(7) "Person" means a person as defined by § 26-18-104;~~

~~(8)(A) "Project" means any construction, expansion, or modernization in Arkansas by an eligible business.~~

~~(B) The investment must exceed five million dollars (\$5,000,000) or six million dollars (\$6,000,000) for projects involving multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the Arkansas Economic Development Commission as a construction, expansion, or modernization project which qualifies for the credit under the provisions of this subchapter;~~

~~(9) "Regional headquarters" means the center of operations for a specific geographic area; and~~

~~(10) "Routine maintenance" means the replacement of existing machinery parts with like parts.~~

~~26-52-703. Precluded provisions supplemental.~~

~~(a) A recipient of benefits under this subchapter is precluded from receiving benefits under the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., for the same project.~~

~~(b) A recipient of benefits under this subchapter is precluded from receiving benefits under the Manufacturer's Investment Tax Credit Act, § 26-51-2001 et seq., for the same project.~~

~~26-52-704. Credit granted.~~

~~There is granted a credit against the state sales and use tax liability of an eligible business of seven percent (7%) of the amount of the total project cost of any project, subject to the limit set out in § 26-52-705.~~

~~26-52-705. Qualification and determination of credit.~~

~~(a)(1) In order to qualify for and receive the credits afforded by this subchapter, any eligible business undertaking a project shall submit a project plan to the Director of the Arkansas Economic Development Commission thirty (30) days prior to the start of construction.~~

~~(2) The plan submitted to the Arkansas Economic Development Commission shall contain such information as may be required by the Director of the Arkansas Economic Development Commission to determine eligibility.~~

~~(b)(1) Upon determination by the Director of the Arkansas Economic Development Commission that the project qualifies for credit under this subchapter, the Director of the Arkansas Economic Development Commission shall certify to the Director of the Department of Finance and Administration that the project is qualified and transmit with his or her certification the documents upon which the certification was based or copies of the documents.~~

~~(2) Upon receipt by the Director of the Department of Finance and Administration of a certification from the Director of the Arkansas Economic Development Commission that an eligible business as defined by § 26-52-702 is entitled to credit under this subchapter, the Director of the~~

~~Department of Finance and Administration shall provide forms to the eligible business on which to claim the credit.~~

~~(c)(1) At the end of the calendar year in which the application was made to the Director of the Arkansas Economic Development Commission and at the end of each calendar year thereafter until the project is completed, the eligible business shall certify, on the form provided by the Director of the Department of Finance and Administration, the amount of expenditures on the project during the preceding calendar year.~~

~~(2)(A) Upon receipt of the form certifying expenditures, the Director of the Department of Finance and Administration shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the eligible business in the amount of seven percent (7%) of the expenditure.~~

~~(B)(i)(a)(1) The credit shall then be applied against the eligible business' state sales or use tax liability in the year following the year of the expenditure.~~

~~(2) However, if the credit is not used in the calendar year following the expenditure, it may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.~~

~~(b) For eligible defense projects, if the credit is not used in the calendar year following the expenditure, the credit may be carried over to the next succeeding calendar year for a total of nine (9) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.~~

~~(ii)(a) The credit shall be used by the eligible business as a credit against the regular direct pay sales or use tax return of the business.~~

~~(b) In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state sales or use tax liability for the reporting period, except that a company with an eligible defense industry project may claim a credit for one hundred percent (100%) of the sales and use tax liability for the reporting period.~~

~~(iii) The Director of the Department of Finance and~~

~~Administration may require proof of these expenditures.~~

~~(iv)(a) The Director of the Department of Finance and Administration may examine those records necessary and specific to the project to determine credit eligibility.~~

~~(b) Any credits disallowed will be subject to payment in full.~~

~~(d) For all projects approved after July 1, 1997, in order to receive credit for project costs, the project costs must be incurred within five (5) years from the date of certification of the project plan by the Director of the Arkansas Economic Development Commission.~~

~~(e)(1) If project costs exceed the initial project cost estimate included in the financial incentive plan, the business shall amend the financial incentive plan to include updated cost figures.~~

~~(2) Amendments that exceed fifty percent (50%) of the original financial incentive plan estimate shall be submitted as a new project.~~

~~(3) An amendment shall not change the start date of the original project.~~

~~26-52-706. Administration.~~

~~(a) A person claiming credit under a provision of this subchapter is a "taxpayer" within the meaning of § 26-18-104 and shall be subject to all applicable provisions of § 26-18-104.~~

~~(b) Administration of the provisions of this subchapter shall be under the provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq.~~

~~(c) The Director of the Arkansas Economic Development Commission may promulgate such rules and regulations as are necessary to carry out the intent and purposes of this subchapter.~~

SECTION 6. Arkansas Code § 26-53-149(b), concerning the use tax refund for partial replacement and repair of certain machinery and equipment, is amended to read as follows:

(b)(1) Beginning July 1, 2014, the taxes levied under §§ 26-53-106 and 26-53-107 that are subject to a refund under this section are the taxes in excess of four and seven-eighths percent (4.875%).

(2) The taxes levied under §§ 26-53-106 and 26-53-107 that are subject to a refund under this section are the taxes in excess of the

following rates:

(A) Beginning July 1, 2018, three and seven-eighths percent (3.875%);

(B) Beginning July 1, 2019, two and seven-eighths percent (2.875%);

(C) Beginning July 1, 2020, one and seven-eighths percent (1.875%); and

(D) Beginning July 1, 2021, seven-eighths percent (0.875%).

(3) Beginning July 1, 2022, purchases qualifying for the tax refund under this section are exempt from the taxes levied under this chapter.

SECTION 7. Arkansas Code § 26-53-149(f) and (g), concerning the use tax refund for partial replacement and repair of certain machinery and equipment, are amended to read as follows:

(f) ~~To~~ A taxpayer may claim the benefit of the tax refund under this section, a taxpayer shall hold only by using one (1) of the following methods:

(1)(A) Both:

(i) Obtaining a direct pay or a limited direct pay sales and use tax permit from the Department of Finance and Administration; and shall claim the tax refund under the direct pay or limited direct pay permit.

(ii) Self-refunding:

(a) At the time the taxpayer files his or her original sales and use tax report; or

(b) By later filing an amended sales or use tax report with the department.

(B) The statutes of limitation stated in § 26-18-306 apply to claims made under this subdivision (f)(1).

(C) Interest shall not accrue or be paid on a refund claimed under this subdivision (f)(1); or

(2)(A) Beginning July 1, 2018, for a taxpayer that does not hold a direct pay or limited direct pay permit, holds an active Arkansas sales and use tax permit, and files sales and use tax reports with the department,

filing a claim for the credit or rebate with the department.

(B)(i) The credit or rebate authorized under this subdivision (f)(2) shall be obtained only by offsetting the amount of the claimed credit or rebate against the state tax to be remitted with the taxpayer's sales and use tax reports.

(ii) If the total amount of the credit or rebate authorized under this subdivision (f)(2) is greater than the amount of the state tax to be remitted with the taxpayer's sales and use tax reports, the taxpayer is entitled to a refund of the difference between the amount of the tax owed and the amount of the credit or rebate authorized under this subdivision (f)(2).

(C) A taxpayer claiming a credit or rebate under this subdivision (f)(2) shall electronically file all sales and use tax reports.

(D) A claim for credit or rebate under this subdivision (f)(2) shall not be paid for a claim filed more than one (1) year following the date of the qualifying purchase or more than one (1) year following the date of payment, whichever is later.

(E) Interest shall not accrue or be paid on an amount subject to a claim for a credit or rebate under this subdivision (f)(2).

(g) A claim for a credit or rebate shall not be paid under subsection (f)(2) of this section for a purchase made before July 1, 2018.

(h) A taxpayer shall not claim the benefit of the refund under this section by filing a verified claim for refund with the department.

~~(g)~~(i) The following provisions of the Arkansas Tax Procedure Act, § 26-18-101 et seq., apply to claims for a refund under this section:

(1) The time limitations that apply to claims for a refund of an overpayment of state tax; and

(2) The procedures that apply to the disallowance or proposed disallowance of claims for a refund.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that most states exempt from sales and use tax the sale of property and labor associated with the modification, partial replacement, and repair of manufacturing machinery and equipment; that other states apply a reduced tax rate to the sale of property and labor associated with the modification, partial replacement, and repair of

manufacturing machinery and equipment; that Arkansas taxes the sale of property and labor associated with the modification, partial replacement, and repair of manufacturing machinery and equipment at a tax rate of four and seven-eighths percent (4.875%) after application of the refund of tax paid for property and labor associated with the modification, partial replacement, and repair of manufacturing machinery and equipment; that the Arkansas Business and Economic Development Incentives Study conducted by Fluor Global Location Strategies and presented to the Bureau of Legislative Research in 2006 classified Arkansas as the worst of the twelve states in the southeast region on the taxation of sales of industrial materials used in manufacturing; that Alabama, Mississippi, North Carolina, and other states have phased in exemptions for sales of property and labor associated with the modification, partial replacement, and repair of manufacturing machinery and equipment over time; that under the Streamlined Sales and Use Tax Agreement to which Arkansas is a party, reductions in sales and use tax must be implemented through a refund or rebate mechanism until a complete exemption is achieved; and that this act is immediately necessary because Arkansas, in imposing an effective tax rate of four and seven-eighths percent (4.875%) after application of the refund of tax paid for property and labor associated with the modification, partial replacement, and repair of manufacturing machinery and equipment, is not competitive with surrounding states and states in the southeast region, which costs the state present and future jobs. Therefore, an emergency is declared to exist, and this act being immediately 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.

/s/L. Eads