

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

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: S3/27/23
A Bill

SENATE BILL 352

By: Senator Irvin
By: Representatives J. Mayberry, Lundstrum

For An Act To Be Entitled

AN ACT TO CREATE INCOME TAX INCENTIVES FOR EMPLOYER-BASED DEPENDENT CARE ASSISTANCE; TO CREATE AN INCOME TAX CREDIT FOR EMPLOYER PAYMENTS RELATED TO DEPENDENT CARE ASSISTANCE; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE INCOME TAX INCENTIVES FOR EMPLOYER-BASED DEPENDENT CARE ASSISTANCE; AND TO CREATE AN INCOME TAX CREDIT FOR EMPLOYER PAYMENTS RELATED TO DEPENDENT CARE ASSISTANCE.

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

SECTION 1. Arkansas Code Title 26, Chapter 51, Subchapter 5, is amended to add an additional section to read as follows:

26-51-517. Credit for employer payments related to dependent care assistance.

(a) As used in this section, "eligible taxpayer" means an employer that has at least fifty percent (50%) of its employees receive an annual wage that is less than fifty-five thousand dollars (\$55,000).

(b) Subject to the limitations stated in subsection (c) of this section, there is allowed an income tax credit against the income tax imposed by this chapter in the amount equal to fifty percent (50%) of the amount that is excluded from the eligible taxpayer's income under 26 U.S.C. § 129, as it existed on January 1, 2023, as amounts paid or incurred by the eligible



taxpayer for dependent care assistance provided to an employee of the eligible taxpayer.

(c)(1) An eligible taxpayer that wants to claim the income tax credit allowed under this section shall obtain an exemption certificate from the Arkansas Economic Development Commission that states the amount of the income tax credit to which the eligible taxpayer is entitled.

(2) The commission shall:

(A) Not issue exemption certificates for an aggregate amount that exceeds three million dollars (\$3,000,000) for a tax year; and

(B) Issue exemption certificates on a first-come, first-served basis to eligible taxpayers.

(d)(1)(A) Except as provided in subdivision (d)(2) of this section, the amount of the income tax credit under this section that may be claimed by the eligible taxpayer in a tax year shall not exceed the amount of income tax due by the eligible taxpayer.

(B) Any unused income tax credit under this section may be carried forward for five (5) consecutive tax years following the tax year in which the income tax credit was earned.

(2) If the amount of the income tax credit allowed under this section exceeds the eligible taxpayer's income tax liability and the eligible taxpayer is a charitable organization that qualifies as an exempt organization under 26 U.S.C. § 501(c)(3), as it existed on January 1, 2023, the excess shall be refunded to the eligible taxpayer.

(e)(1) The commission shall prescribe annually an amount that shall apply in lieu of the annual wage amount stated in subsection (a) of this section for the succeeding tax year based on the cost-of-living adjustment described in subdivision (e)(2) of this section, rounded to the nearest one hundred dollars (\$100).

(2) The cost-of-living adjustment is the percentage, if any, by which the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the twelve-month period ending on August 31 of the current calendar year exceeds the average of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor as of the close of the twelve-month period ending on August 31 of the preceding calendar year, not to exceed three percent (3%).

(f)(1)(A) An eligible taxpayer may sell some or all of the amount of the income tax credit for which an exemption certificate has been issued under subsection (c) of this section by applying to the commission for authorization to sell the income tax credit under this section.

(B) An eligible taxpayer applying to the commission for authorization under this subsection to sell an income tax credit under this section shall submit to the commission the information required by the commission to facilitate the sale.

(2) If a purchaser of an income tax credit under this section seeks to use the income tax credit, the purchaser shall provide the information required by the Department of Finance and Administration.

(3)(A) A person who purchases an income tax credit under this section from an eligible taxpayer under this subsection may use the income tax credit under this section only to the extent the income tax credit under this section is still available to and has not previously been used by the eligible taxpayer.

(B) The amount of the income tax credit under this section received by a purchaser under this subsection may be carried forward in part or in whole as provided in subdivision (d)(1)(B) of this section, beginning from the taxable year in which the income tax credit under this section originated, to apply against the purchaser's income taxes due.

(4) If a subsequent audit or adjustment is made to an income tax credit issued under this section that reduces the amount of the income tax credit under this section, then the eligible taxpayer that originally received the income tax credit under this section shall refund the difference between the original amount and the reduced amount to the Department of Finance and Administration.

(g) The commission and the Department of Finance and Administration may adopt rules to implement this section.

SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective for tax years beginning on or after January 1, 2023.

/s/Irvin