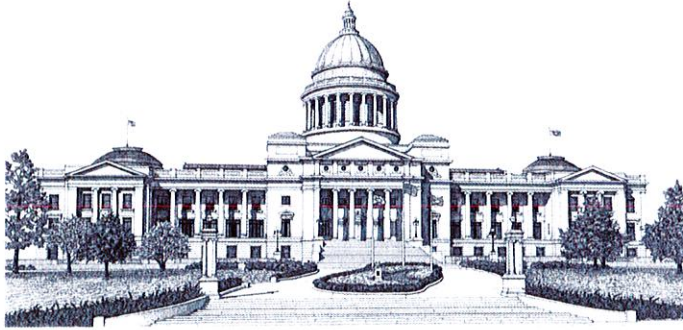


# ARKANSAS REGISTER

## Transmittal Sheet

Use only for FINAL and EMERGENCY RULES



Secretary of State  
**John Thurston**  
500 Woodlane, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



**For Office**

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Commerce

Department Arkansas Economic Development Commission

Contact Renee Doty E-mail rdoty@arkansasedc.com Phone 501-682-2460

Statutory Authority for Promulgating Rules A.C.A. §26-51-1105

**Rule Title:** Donations or Sales of Equipment to Educational Institutions Tax Credit Program

**Intended Effective Date**  
(Check One)

Emergency (ACA 25-15-204)

10 Days After Filing (ACA 25-15-204)

Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Legal Notice Published .....

Final Date for Public Comment .....

Reviewed by Legislative Council .....

Adopted by State Agency .....

Date

3/20/2020

4/18/2020

6/17/2020

6/29/2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Renee Doty

rdoty@arkansasedc.com

6/19/2020

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Renee Doty  
Signature

501-682-2460

rdoty@arkansasedc.com

Phone Number

E-mail Address

Director, Policy and Legislative Affairs

Title

6/19/2020

Date

# **Donations or Sales of Equipment to Educational Institutions Tax Credit Program**

**(Act 469 of 1985, as amended)**

## **Rules**

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### **I. Introduction**

Act 469 of 1985, as amended and codified at §26-51-1101 et seq., was created to encourage the donation of machinery and equipment to accredited educational institutions for use in qualified educational programs or qualified research programs by providing an income tax credit incentive to entities making the donation. Act 203 of 2019 amended the program to allow a taxpayer that makes a cash donation to a qualified educational institution for the purchase of new machinery and equipment to receive a tax credit.

For more information, please contact:

Arkansas Economic Development Commission  
Business Finance Division  
1 Commerce Way, Suite 601  
Little Rock, AR 72202  
(501) 682-1121

### **II. Definitions**

1. "Accredited institution of higher education" means a four-year public college or university that offers bachelor's degrees and is recognized by the Division of Higher Education for credit;
2. "Cost" means:
  - i. In the case of a donation or sale below cost by a wholesale or retail business, the amount actually paid by the wholesaler or retailer to the supplier for the machinery and equipment;
  - ii. In the case of a donation or sale below cost by a manufacturer of machinery and equipment, the enhanced value of the materials used to produce the machinery and equipment, which shall be deemed to be the lowest price at which the manufacturer sells the machinery and equipment; or
  - iii. In the case of a cash donation by a taxpayer to a qualified educational institution for the purchase of new machinery and equipment, the amount actually paid by the qualified educational institution to the wholesale, retail, or manufacturing business, as documented by itemized receipts;
3. "Financial incentive agreement" means an agreement between the Arkansas Economic Development Commission and a taxpayer outlining the terms and conditions of a tax credit awarded under these regulations;

**Donations or Sales of Equipment to Educational Institutions Tax Credit Program Rules**

**(F-2020) Page | 1**

4. "Machinery and equipment" means tangible personal property used in connection with a qualified education program or a qualified research program that has been approved for a tax credit under rules prescribed by the Department of Finance and Administration;
5. "New" means the machinery and equipment are state-of-the-art machinery and equipment that have:
  - i. Never been used except for normal testing by the manufacturer to ensure that the machinery or equipment is of a proper quality and in good working order; or
  - ii. Been used by the retailer or wholesaler solely for the purpose of demonstrating the product to customers for sale;
6. "Qualified education program" means a program conducted by a qualified educational institution under rules prescribed by the Division of Higher Education for programs in colleges, universities, or junior colleges, by the Division of Career and Technical Education for programs in vocational technical training schools and by the Division of Elementary and Secondary Education for programs in secondary schools, all of which programs are for the purpose of promoting the use of new machinery and equipment for classroom, laboratory, and other educational instruction;
7. "Qualified educational institution" means:
  - i. A public university, college, junior college, or vocational technical training school located in and supported by the State of Arkansas;
  - ii. A private university, college, junior college, or vocational technical training school located in Arkansas and qualified for tax-exempt status under the Income Tax Act of 1929, § 26-51-101 et seq.; and
  - iii. A public secondary school;
8. "Qualified research expenditures" means the sum of any amounts that are paid or incurred by a taxpayer during the taxable year in funding a qualified research program that has been approved for tax credit treatment under rules promulgated by the Department of Finance and Administration;
9. "Qualified research program" means a program of applied or basic research undertaken by a qualified educational institution that applies the findings of the research or other existing knowledge toward discovering new scientific knowledge that has specific commercial objectives with respect to new products, services, processes, or methods;
10. "Research park authority" means a public entity created under the Research Park Authority Act, §14-144-101 et seq., to provide facilities and support for businesses engaged in research and development in pursuit of economic development opportunities; and
11. "State-of-the-art-machinery and equipment" means machinery and equipment that are of the same type, design, and capability as like machinery and equipment that are currently sold or manufactured by the donee for sale to customers.

### **III. Application For Credit Approval**

- A. A taxpayer seeking a credit under this program shall submit an original application and one (1) copy to the Executive Director of the Arkansas Economic Development Commission on the forms provided by the agency.
- B. The Executive Director of the Arkansas Economic Development Commission shall review each application submitted and shall either:
  - i. Approve the application; or
  - ii. Reject the application and notify the applicant of the deficiencies in the application.
- C. An applicant that receives approval shall sign a financial incentive agreement with, and in a form specified by, the Arkansas Economic Development Commission. The financial incentive agreement must be signed before the taxpayer makes the donation or sale to a qualified educational institution or qualified research program. An expenditure made before the approval date of the signed financial incentive agreement shall be denied a credit under this program.
- D. An applicant may resubmit a rejected application after addressing any deficiencies identified by the Executive Director of the Arkansas Economic Development Commission.
- E. The Executive Director of the Arkansas Economic Development Commission and the Director of the Division of Higher Education must approve a qualified research expenditure as part of a qualified research program.

### **IV. Credit Granted**

- A. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit for donations and sales of new machinery and equipment, or both, to a qualified educational institution in connection with a qualified education program or a qualified research program. The amount of the credit to a taxpayer shall be thirty-three percent (33%) of the:
  - i. Cost of the machinery and equipment donated for new machinery and equipment;
  - ii. Amount by which the cost is reduced for below cost machinery and equipment; and
  - iii. Cash donation used by the educational institution to purchase new machinery and equipment from a wholesale, retail, or manufacturing business.
- B. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit equal to thirty-three percent (33%) of the qualified research expenditures of a taxpayer in a qualified research program.
- C. A taxpayer may be granted an Arkansas corporate income tax credit or Arkansas individual income tax credit equal to thirty-three percent (33%) of the donation (whether of machinery or equipment, sale below costs, or cash) made to an accredited higher education institution to support a research park authority. This donation must also directly or indirectly support research funded by one or more of the following federal agencies:
  - i. The National Science Foundation;

- ii. The National Institutes of Health;
  - iii. The U.S. Department of Energy;
  - iv. The U.S. Department of Defense;
  - v. The U.S. Environmental Protection Agency;
  - vi. The National Aeronautics and Space Administration;
  - vii. The U.S. Department of Agriculture;
  - viii. The U.S. Department of Transportation;
  - ix. The U.S. Department of Commerce;
  - x. The U.S. Department of Education; and
  - xi. The U.S. Department of Homeland Security
- D. Tax credits are allowed for up to one hundred percent (100%) of the net tax liability of the taxpayer after all other credits and reductions in tax have been calculated.
- E. The credit must be claimed in the tax year that the qualified research expenditure, donation, or sale was made. All or part of any unused credit may be carried forward to the next succeeding tax year and annually thereafter for a total period of nine (9) years succeeding the year in which the credit was earned or until the credits are exhausted, whichever occurs first.
- F. A taxpayer awarded any tax credit under this program for any expense or contribution may not take a deduction under the Arkansas income tax law for the same expense or contribution.
- G. Tax credits issued under this program may not be sold or transferred.

## **V. Documentation Required**

To claim the credit granted for this program, the taxpayer shall provide the following documents to the Executive Director of the Arkansas Economic Development Commission for each piece of machinery and equipment donated, sold below cost, or purchased by a qualified educational institution with a cash donation:

- A. An affidavit from the receiving qualified educational institution that includes:
- i. A statement that the educational institution received the machinery and equipment;
  - ii. A statement that the machinery and equipment are new within the meaning of this program;
  - iii. If applicable, a statement of the amount that the educational institution paid for machinery and;
  - iv. A statement indicating whether the educational institution received the machinery and equipment as a donation; purchased the machinery and equipment below cost; or purchased the machinery and equipment with a cash donation provided by the taxpayer;
  - v. A statement that the educational institution will use the equipment or machinery, however acquired, in connection with a qualified education program or a qualified research program.
- B. In the case of a donation or sale by a retail or wholesale business, a copy of the invoice from the business' supplier showing the actual cost of the machinery and equipment.

### **Donations or Sales of Equipment to Educational Institutions Tax Credit Program Rules (2020)**

- C. In the case of a donation or sale below cost by a manufacturer, a copy of the manufacturer's wholesale price list showing the lowest price of the machinery and equipment for which the credit is claimed.
- D. In the case of a purchase by a qualified educational institution with a cash donation, itemized receipts documenting the amount of the cash donation and the purchase costs of the new machinery and equipment.
- E. In the case of a donation to a qualified research program, documentation of the approval of the Executive Director of the Arkansas Economic Development Commission and the Director of the Division of Higher Education of a qualified research expenditure as part of a qualified research program.

## **VI. Issuance of Tax Credit**

Upon receipt of the all documentation required, the Executive Director of the Arkansas Economic Development Commission will review the documentation for completeness and if the terms and obligations under the signed financial incentive agreement have been met. If the requirements and obligations have been met, the Arkansas Economic Development Commission will issue a certificate of tax credit that the taxpayer must attach to the income tax return on which the credit is first claimed.

## **VII. Rulemaking Authority**

The Arkansas Economic Development Commission, the Secretary of the Department of Finance and Administration, the Director of the Division of Higher Education, the Director of the Division of Career and Technical Education, and the Commissioner of the Department of Education, are authorized by § 26-51-1105 to promulgate rules necessary to implement Act 469 of 1985, as amended.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Commerce  
**DIVISION** Arkansas Economic Development Commission  
**PERSON COMPLETING THIS STATEMENT** Renee Doty  
**TELEPHONE NO.** 501-682-1121 **FAX NO.** NA **EMAIL:** rdoty@arkansasedc.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Donations or Sales of Equipment to Educational Institutions Tax Credit Program

- 1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
\_\_\_\_\_
- (b) The reason for adoption of the more costly rule;  
\_\_\_\_\_
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
\_\_\_\_\_
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
\_\_\_\_\_

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

Total \$0.00 \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0.00 \_\_\_\_\_

**Next Fiscal Year**

\$ 0.00 \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 310 \_\_\_\_\_

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

An estimate of \$310 to AEDC for legal advertising and printing in the promulgation process of this rule

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and



- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
  - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
  - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
  - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
    - (a) the rule is achieving the statutory objectives;
    - (b) the benefits of the rule continue to justify its costs; and
    - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.