ARKANSAS REGISTER

Proposed Rule Cover Sheet

Secretary of State
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Name of Department: Arkansas Department of Commerce

Agency or Division Name: Arkansas Economic Development Commission

Other Subdivision or Department, If Applicable:

Previous Agency Name, If Applicable:

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Name of Rule: Consolidated Incentive Act Rules

Newspaper Name: Arkansas Democrat-Gazette

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Final Date for Public Comment: November 11th, 2025

Location and Time of Public Meeting: November 5th, 2025. 10 am - 1 Commerce Way, Little Rock, AR 72202

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Arkansas Department of Commerce
BOARD/COMMISSION Arkansas Economic Development Commission
BOARD/COMMISSION DIRECTOR Clint O'Neal
CONTACT PERSON Brian Black
ADDRESS 1 Commerce Way, Suite 601, Little Rock, AR 72202
PHONE NO. (501) 682-1121 **EMAIL** brian.black@arkansasedc.com
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Brian Black & Jennifer Emerson
PRESENTER EMAIL(S) brian.black@arkansasedc.com; JEmerson@arkansasedc.com

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

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1. What is the official title of this rule?
   Consolidated Incentive Act Rules

2. What is the subject of the proposed rule? The incentive programs codified at Ark. Code Ann. § 15-4-2701 et s

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

   If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

   If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, what was the effective date of the emergency rule? ________________________________

On what date does the emergency rule expire?____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☐ No ☑

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☑

If yes, please list the rules being repealed.
If no, please explain.

This rule is being repealed, hence Executive Order 23-02 is not implicated.

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☑ No ☐
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☐ No ☑
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code Ann. § 15-4-2710

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☐ No ☑

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

The proposed repeal eliminates a rule that is not required by statute, that largely restates the statute, and only serves to create complexity and ambiguity.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

www.arkansasedc.com/rules

13. Will a public hearing be held on this proposed rule? Yes ☑ No ☐

If yes, please complete the following:

Date: 11/05/2025

Time: 10:00 am

Place: Diamond Mine Room - 1 Commerce Way, Little Rock, AR 72202

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 11/11/2025

15. What is the proposed effective date for this rule? 10 days after filing of the adopted final rule.

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

Businesses that have benefited or could potentially benefit from the incentives contained in the Consolidated Incentive Act.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Commerce
BOARD/COMMISSION Arkansas Economic Development Commission
PERSON COMPLETING THIS STATEMENT Brian Black
TELEPHONE NO. (501) 682-1121 **EMAIL** brian.black@arkansasedc.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Consolidated Incentive Act Rules

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 no, please explain:

   (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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		**Next Fiscal Year**	
General Revenue	$0.00	General Revenue	$0.00
Federal Funds	$0.00	Federal Funds	$0.00
Cash Funds	$0.00	Cash Funds	$0.00
Special Revenue	$0.00	Special Revenue	$0.00
Other (Identify)	$0.00	Other (Identify)	$0.00
Total	$0.00	Total	$0.00

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

Current Fiscal Year		**Next Fiscal Year**	
General Revenue	$0.00	General Revenue	$0.00
Federal Funds	$0.00	Federal Funds	$0.00
Cash Funds	$0.00	Cash Funds	$0.00
Special Revenue	$0.00	Special Revenue	$0.00
Other (Identify)	$0.00	Other (Identify)	$0.00
Total	$0.00	Total	$0.00

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

Current Fiscal Year	**Next Fiscal Year**
$ 0.00	$ 0.00

6. What is the total estimated cost by fiscal year to a state, county, or 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	**Next Fiscal Year**
$ 0.00	$ 0.00

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.

Stricken language would be deleted from and underlined language would be added to the Code of Arkansas Rules.

Proposed Rulemaking

Title

Promulgated by:
Department of Commerce
Arkansas Economic Development Commission

~~**Title 15. Natural Resources and Economic Development**~~

~~**Chapter VIII. Arkansas Economic Development Commission, Department of Commerce**~~

~~**Subchapter B. Economic Development Incentives**~~

~~**Part 143. Rules for the Consolidated Incentive Act of 2003**~~

~~**Subpart 1. Generally**~~

~~**15 CAR § 143-101. Introduction.**~~

~~(a)(1) Acts 2003, No. 182, the Consolidated Incentive Act of 2003, as amended and codified at Arkansas Code § 15-4-2701 et seq., consolidated six (6) previously existing incentives into one (1) incentive package.~~

~~(2) The consolidated incentives include:~~

~~(A) Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-107 et seq. (Advantage Arkansas);~~

~~(B) Economic Investment Tax Credit Act, Arkansas Code § 26-52-701 et seq. [repealed] (InvestArk);~~

~~(C) Arkansas Economic Development Incentive Act of 1993, Arkansas Code § 15-4-1061 et seq. (Create Rebate);~~

~~(D) Arkansas Economic Development Act of 1995, Arkansas Code § 15-4-109 et seq. (AEDA);~~

~~(E) Arkansas Emerging Technology Development Act of 1999, Arkansas Code § 15-4-2101 et seq.; and~~

~~(F) Biotechnology Training and Development Act.~~

~~(b)(1) The Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., 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.~~

~~(2) In addition, it expands the opportunities for qualified businesses to earn income tax credits based on research and development expenditures.~~

~~(c) Other benefits of consolidating incentives include uniformity of definitions and administration of the various incentives.~~

~~(d)(1) A financial incentive agreement will be signed with each eligible business that:~~

~~(A) Qualifies for an incentive under this the Consolidated Incentive Act of 2003; and~~

~~(B) Is approved by the Arkansas Economic Development Commission.~~

~~(2)(A) The financial incentive agreement will be the primary document outlining the:~~

~~(i) Benefits to be received; and~~

~~(ii) Start and end dates of the project.~~

~~(B) It will also serve as the primary source document when the Department of Finance and Administration audits the business to verify compliance.~~

~~(e) The financial incentive agreement shall specify the:~~

~~(1) Effective date of the agreement;~~

~~(2) Term of the agreement, which shall be calculated from the date the agreement is signed by the business and the commission;~~

~~(3) Incentive the business is to receive;~~

~~(4) Investment, wage, and payroll threshold requirements necessary to qualify for eligibility;~~

~~(5) Eligible business's responsibilities for certifying eligibility requirements; and~~

~~(6) Approved business's responsibilities for failure to meet or maintain eligibility requirements.~~

~~**15 CAR § 143-102. Definitions.**~~

~~As used in this part:~~

~~(1) "Applied research" means any activity that applies the findings of basic research or other existing knowledge toward discovering new scientific knowledge that has specific commercial objectives with respect to new:~~

~~(A) Products;~~

~~(B) Services;~~

~~(C) Processes; or~~

~~(D) Methods;~~

~~(2)(A) "Average hourly wage" means "payroll" as defined in Arkansas Code § 15-4-2703(26), divided by the number of hours worked to earn the "payroll".~~

~~(B) For purposes of counting the number of hours worked for salaried employees, forty (40) hours per week shall be used.~~

~~(C) 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 the pursuit of new scientific knowledge or understanding that does not have specific, immediate commercial objectives, although the pursuit may be in fields of present or potential commercial interest;~~

~~(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) "Contractual employee" means an employee who:~~

~~(A) May be included in the payroll calculations of a qualified business under this part and is under the direct supervision of the qualified business receiving~~

~~incentives under this part, but is an employee of a business other than the one (1) receiving incentives under this part;~~

~~(B) Otherwise meets the requirements of a new full-time permanent employee of the qualified business receiving incentives under this part; and~~

~~(C) Receives a benefits package comparable to direct employees of the qualified business receiving incentives under this part;~~

~~(7)(A) "Corporate headquarters" means a facility or portion of a facility where the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions are effectuated on either a regional basis or a national basis under the direction of principal executive officers, including without limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility.~~

~~(B) A corporate headquarters shall be either a:~~

~~(i) Regional corporate headquarters; or~~

~~(ii) National corporate headquarters.~~

~~(C) The Director of the Arkansas Economic Development Commission, with advice from the Secretary of the Department of Finance and Administration, may determine eligibility for a corporate headquarters facility if a difference exists between:~~

~~(i) A business's disclosed corporate headquarters functions; and~~

~~(ii) Its North American Industry Classification System primary business activity code;~~

~~(8) "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 Division of Workforce Services in its most recent annual Covered Employment and Earnings publication, divided by forty (40); and~~

~~(B) The average hourly wage threshold determined at the approval date of the financial incentive agreement is the threshold for the term of the agreement;~~

~~(9) "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 revenue is 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 revenue of the product owner 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;~~

~~(10) "Eligible businesses" means nonretail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this part and fall into one (1) or more of the following categories in effect on the effective date of the incentive agreement:~~

~~(A) Manufacturers classified in sectors 31-33 of the 2017 North American Industry Classification System;~~

~~(B) Manufacturers classified in sectors 20-39 according to the Standard Industrial Classification standards but that are classified under NAICS in another sector;~~

~~(C)(i) Businesses primarily engaged in:~~

~~*(a)* The design and development of software;~~

~~*(b)* Digital content production and preservation;~~

~~*(c)* Computer processing and data preparation services; or~~

~~*(d)* Information retrieval services.~~

~~(ii) All businesses in this group shall derive at least fifty-one percent (51%) of their sales revenue from out of state.~~

~~(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this subchapter shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;~~

~~(D)(i) Businesses primarily engaged in film and digital product productions and postproductions.~~

~~(ii) All businesses in this group shall derive at least fifty-one percent (51%) of their sales revenue from out of state.~~

~~(iii) The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this part shall exceed one hundred twenty-five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;~~

~~(E) A distribution center or intermodal facility;~~

~~(F) An office sector business;~~

~~(G) A national or regional corporate headquarters, as classified in sector 551114 of the 2017 North American Industry Classification System, or as determined by the Director of the Arkansas Economic Development Commission under subdivision (7)(C) of this section;~~

~~(H) Businesses primarily engaged in research and development in the physical, engineering, and life sciences, as classified in the North American Industry Classification System codes 541713, 541714, and 541715, as in effect January 1, 2017;~~

~~(I)(i) Scientific and technical services business.~~

~~(ii)*(a)* All businesses in this group shall derive at least fifty-one percent (51%) of their sales revenue from out of state.~~

~~*(b)* The average hourly wage paid by businesses in this group to employees whose payroll is subject to incentives under this part shall exceed one hundred fifty percent (150%) of the lesser of the county or state average hourly wage for the county in which the business locates or expands;~~

~~(J) The Director of the Arkansas Economic Development Commission may classify a nonretail business as an eligible business if the following conditions exist:~~

~~(i) The business must derive at least fifty-one percent (51%) of its sales revenue from out of state; and~~

~~(ii) The average hourly wage paid by the business to employees whose payroll is subject to incentives under this part shall exceed one hundred twenty-~~

~~five percent (125%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;~~

~~(K)(i) Businesses primarily engaged in other support activities for air transportation, as classified in the North American Industry Classification System Code 488190, as in effect on January 1, 2017.~~

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

~~(L)(i) Businesses primarily engaged in support activities for rail transportation, as classified in the North American Industry Classification System Code 488210, as in effect on January 1, 2017.~~

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

~~(11) "Endorsement resolution" means a resolution approved by the governing body of the municipality or county within whose jurisdiction the project facility is located that:~~

~~(A) Approves the business's participation in the program; and~~

~~(B)(i) Specifies that the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the approved business.~~

~~(ii) 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;~~

~~(12)(A) "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.~~

~~(B) For the purposes of this part, subordinated debt may also be considered an equity investment;~~

~~(13)(A) "Existing employees" means those employees hired by a business before the date the financial incentive agreement was approved.~~

~~(B) Existing employees may be considered new full-time permanent employees only if:~~

~~(i) The position or job filled by the existing employee was created in accordance with the approved financial incentive agreement; and~~

~~(ii) 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 Director of the Arkansas Economic Development Commission and the Secretary 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;~~

~~(14) "Facility" means a single physical location, which may consist of multiple structures of an eligible business that are conducting similar or complementary activities located on noncontiguous property within the same county, at which the eligible business is conducting its operations;~~

~~(15) "Film and digital product" means video images and other visual media entertainment content in digital format, film, or videotape, if the video images and other visual media entertainment content meet all the underlying criteria of a qualified production under the Digital Product and Motion Picture Industry Development Act of 2009, Arkansas Code § 15-4-2001 et seq., including without limitation:~~

~~(A) A motion picture;~~

~~(B) A documentary;~~

~~(C) A long-form program;~~

~~(D) A special;~~

~~(E) A mini-series;~~

~~(F) A series;~~

~~(G) A music video;~~

~~(H) Television programming;~~

~~(I) Interactive television;~~

~~(J) An interactive game;~~

~~(K) A video game;~~

~~(L) A commercial;~~

~~(M) Digital media for distribution or exhibition to the general public; and~~

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

~~(16) "Financial incentive agreement" means an agreement entered into by an eligible business and the Arkansas Economic Development Commission to provide the business an incentive to locate a new business or expand or retain an existing business in Arkansas;~~

~~(17) "Governing authority" means the quorum court of a county or the governing body of a municipality;~~

~~(18)(A)(i) "In-house research" means applied research supported by the business through the payment of wages and usual fringe benefits specific to research activities of employees of the business or for wages and usual fringe benefits paid through contractual agreements, approved in writing by the Director of the Arkansas Economic Development Commission, with an Arkansas state college, an Arkansas state university, or other Arkansas-based research organization to perform research for a targeted business.~~

~~(ii) "In-house research" includes experimental, clinical, 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.~~

~~(B) "In-house research" does not include:~~

~~(i) Tests or inspection of materials or products for quality control;~~

~~(ii) Efficiency surveys;~~

~~(iii) Management studies;~~

~~(iv) Other market research;~~

~~(v) Supplies;~~

~~(vi) The purchase of land;~~

~~(vii) The purchase or rehabilitation of production machinery and equipment;~~

~~(viii) The construction or renovation of buildings; or~~

~~(ix) Any other ordinary and necessary expenses of conducting business;~~

~~(19) "Intellectual property" means an invention, discovery, or new idea that the legal entity responsible for commercialization has legally protected for possible commercial gain, based on the disclosure of the creator;~~

~~(20) "Intermodal facility" means a facility with more than one (1) mode of interconnected movement of freight or commerce;~~

~~(21) "Invest" or "investment" means money expended by or on behalf of a qualified business that:~~

~~(A) Seeks to begin or expand operations in Arkansas; and~~

~~(B) Without the infusion of capital, the location or expansion may not occur;~~

~~(22) "Investment threshold" means the minimum amount of investment in project cost that must be incurred to qualify for eligibility;~~

~~(23) "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;~~

~~(24)(A) "Modernization" means an increase in efficiency or productivity of a business through investment in:~~

~~(i) Machinery;~~

~~(ii) Equipment; or~~

~~(iii) 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;~~

~~(25) "NAICS" means North American Industry Classification System of 2017;~~

~~(26) "National corporate headquarters" means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;~~

~~(27)(A)(i) "New full-time permanent employee" means a position or job that was created pursuant to an approved 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, Arkansas Code § 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) For an employee of a qualified business with a regular, standardized work schedule, 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.~~

~~(iii) For an employee of a qualified business with an irregular, nonstandardized work schedule, the:~~

~~*(a)* Position or job held by the employee or employees had been filled for at least one hundred thirty (130) days during any twenty-six-week period of a tax year; and~~

~~*(b)* Employee or employees filling the position worked at least seven hundred eighty (780) hours within the tax year.~~

~~(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;~~

~~(28) "Nonretail business" means a business that is not classified in North American Industry Classification System sectors 44-45, as in effect on January 1, 2017;~~

~~(29)(A) "Office sector business" means business operations that support primary business needs, including without limitation:~~

~~(i) Customer service;~~

~~(ii) Credit accounting;~~

~~(iii) Telemarketing;~~

~~(iv) Claims processing; and~~

~~(v) Other administrative functions.~~

~~(B) All businesses in this group shall:~~

~~(i) Be nonretail businesses; and~~

~~(ii) Derive at least seventy-five percent (75%) of their sales revenue from out of state;~~

~~(30) "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 approved financial incentive agreement;~~

~~(31)(A) "Person" means:~~

~~(i) An individual;~~

~~(ii) A trust;~~

~~(iii) An estate;~~

~~(iv) A fiduciary;~~

~~(v) A firm;~~

~~(vi) A joint venture;~~

~~(vii) A proprietorship;~~

~~(viii) A partnership;~~

~~(ix) A limited liability company; or~~

~~(x) A 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;~~

~~(32) "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;~~

~~(33)(A) "Project costs" means costs associated with the:~~

~~(i) Construction of a new plant or facility;~~

~~(ii) Expansion of an established plant or facility by adding to the building, machinery and equipment, or support infrastructure; or~~

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

~~(B) "Project costs" 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 or will close; and~~

~~*(b)* The purchase of the existing business will result in the retention of 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 approved by the Arkansas Economic Development Commission;~~

~~(34) "Project plan" means a plan submitted to the Arkansas Economic Development Commission containing the information required by the Director of the Arkansas Economic Development Commission to determine eligibility for incentives;~~

~~(35) "Qualified business" means an eligible business that has:~~

~~(A) Met the qualifications for one (1) or more economic development incentives authorized by this part; and~~

~~(B) Signed a financial incentive agreement that has been approved by the Arkansas Economic Development Commission;~~

~~(36) "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 that has been approved for tax credit treatment under rules promulgated by the Arkansas Economic Development Commission;~~

~~(37) "Region" or "regional" means a geographic area comprising this state and at least one (1) state contiguous to Arkansas;~~

~~(38)(A) "Regional corporate headquarters" means a facility or portion of the facility in which the majority of an eligible business's financial, human resources, engineering, legal, strategic planning, information technology, corporate communications, marketing, or other headquarters-related functions are effectuated on a regional basis under the direction of principal executive officers, including without~~

~~limitation chief executive officers, chief operating officers, chief financial officers, or other senior-level officers based at the facility.~~

~~(B) A function on a regional basis does not include a function involving:~~

~~(i) Manufacturing;~~

~~(ii) Processing;~~

~~(iii) Warehousing;~~

~~(iv) Distributing;~~

~~(v) Wholesaling activities; or~~

~~(vi) The operations of a call center;~~

~~(39) "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;~~

~~(ii) Computer programming and computer systems design; or~~

~~(iii) Scientific research and development in the physical, biological, and engineering sciences;~~

~~(B) Deriving at least fifty-one percent (51%) of its sales revenue from out of state; and~~

~~(C) Paying employees whose payroll is subject to incentives under this part average hourly wages exceeding one hundred fifty percent (150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands;~~

~~(40) "SIC" means the Standard Industrial Classification system;~~

~~(41) "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 preconstruction costs;~~

~~(42) "Strategic research" means research that:~~

~~(A) Has strategic economic or long-term commercial value to the state; and~~

~~(B) Is identified in the research and development plan approved by the 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;~~

~~(43) "Support infrastructure" means physical assets necessary for the business to operate, including without limitation:~~

~~(A) Water systems;~~

~~(B) Wastewater systems;~~

~~(C) Gas and electric utilities;~~

~~(D) Roads;~~

~~(E) Bridges;~~

~~(F) Parking lots; and~~

~~(G) Communications infrastructure;~~

~~(44) "Targeted businesses" means a grouping of growing business sectors, not to exceed six (6), which include the following:~~

~~(A) Advanced materials and manufacturing systems;~~

~~(B) Agriculture, food, and environmental sciences;~~

~~(C) Biotechnology, bioengineering, and life sciences;~~

~~(D) Information technology;~~

~~(E) Transportation logistics; and~~

~~(F) Bio-based products;~~

~~(45) "Technological information" means information derived from basic or applied research that provides an improved practical understanding of the business component; and~~

~~(46) "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 incentives under this part.~~

~~15 CAR § 143-103. Tiers.~~

~~(a)(1) Except for the retention investment credits (InvestArk) in Arkansas Code § 15-4-2706(c), the research and development credits in Arkansas Code § 15-4-2708, and the payroll income tax credit for targeted businesses in Arkansas Code § 15-4-2709, all benefits provided in the Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., are determined in relation to the tier of the county in which the project is located.~~

~~(b)(1) The state's seventy-five (75) counties are divided into four (4) tiers, with:~~

~~(A) Tier 1 counties being the most prosperous counties; and~~

~~(B) Tier 4 counties being the least prosperous counties.~~

~~(2) Tiers are determined annually by the Arkansas Economic Development Commission by ranking four (4) variables:~~

~~(A) Poverty rate;~~

~~(B) Population change;~~

~~(C) Per capita personal income; and~~

~~(D) Unemployment rate.~~

~~(3) 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.~~

~~(4)(A) 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.~~

~~(B) 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.~~

~~(c) A county's tier ranking, determined on the effective date of any incentive agreement under the Consolidated Incentive Act of 2003, shall establish the thresholds and benefits for the term of the agreement, regardless of any subsequent change to the tier.~~

~~(d)(1) 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 caused by a closure of one (1) or more businesses or a mass layoff at one (1) or more businesses, or both, as documented by notice provided under the Worker Adjustment and Retraining~~

~~Notification Act, 29 U.S.C. § 2101 et seq., as it existed on January 1, 2019, that results in a loss of a minimum of five percent (5%) of the county's total employed labor force.~~

~~(2)(A) The movement to a lower tier is authorized upon written request by the county judge of the affected county and approval by the Director of the Arkansas Economic Development Commission.~~

~~(B) A business that had signed a financial incentive agreement with the commission prior to the action of the commission to move a county to a lower 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.~~

~~(C) A tier modification approved under this subsection remains in effect until the annual tier rankings are updated in accordance with this section.~~

~~(e) The five percent (5%) threshold stated in the immediately preceding subsection (d) of this section shall be evidenced by calculating the highest percentage difference in employment between the county's:~~

~~(1) Current monthly, not seasonally, adjusted total employed labor force; and~~

~~(2) Each of the following:~~

~~(i) The previous monthly, not seasonally, adjusted total employed labor force;~~

~~(ii) The most recent annually, not seasonally, adjusted total employed labor force; or~~

~~(iii) The monthly, not seasonally, adjusted total employed labor force for the same month of the previous year.~~

~~**15 CAR § 143-104. Powers and duties of the Arkansas Economic Development Commission.**~~

~~The Arkansas Economic Development Commission shall:~~

~~(1) Administer the provisions of the Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq.; and~~

~~(2) Have the following powers and duties in addition to those mentioned in other laws of the state:~~

~~(A) To promulgate rules in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., necessary to carry out the provisions of the Consolidated Incentive Act of 2003;~~

~~(B) 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;~~

~~(C) To assist governing authorities in obtaining assistance from any other department of state government to promote new businesses and industries;~~

~~(D) 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;~~

~~(E) To act as a liaison between other state agencies and businesses and industries to assure that both the spirit and intent of this part are met;~~

~~(F) To make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in Arkansas Code § 15-4-2707 of the Consolidated Incentive Act of 2003; and~~

~~(G) The Director of the Arkansas Economic Development Commission is authorized to negotiate proposals on behalf of the state with prospective businesses that are considering locating a new facility or expanding an existing facility that would seek the discretionary programs under the Consolidated Incentive Act of 2003.~~

~~**15 CAR § 143-105. Administration.**~~

~~(a) If the annual payroll threshold of the business applying for incentives under the Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., is not met within two (2) years after the signing of the approved financial incentive agreement, the business may request, in writing, an extension of time to reach the required payroll threshold.~~

~~(b)(1) If the Director of the Arkansas Economic Development Commission and the Secretary of the Department of Finance and Administration find that the qualified business has presented compelling reasons for an extension of time, the director may grant an extension of time not to exceed four (4) years from the effective date of the financial incentive agreement.~~

~~(2) However, the extension on projects applying for benefits under Arkansas Code § 15-4-2705 is limited to a two-year extension.~~

~~(c)(1) If a qualified business fails to reach the annual payroll threshold required under the approved financial incentive agreement, that qualified business is liable for the repayment of all incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the payroll threshold had not been met.~~

~~(2)(A) If a qualified business fails to reach the annual payroll threshold required under an approved financial incentive agreement, the Department of Finance and Administration has two (2) years to:~~

~~(i) Collect incentives previously received by the qualified business; or~~

~~(ii) File a lawsuit to enforce the repayment provisions.~~

~~(B)(i) If the annual payroll of a qualified business receiving benefits under the Consolidated Incentive Act of 2003 falls below the payroll threshold for qualification in a year subsequent to the year in which it initially qualified for the incentive, the incentives outlined in the financial incentive agreement shall be terminated unless a written application for an extension of incentives explaining why the payroll has fallen below the level required for qualification has been filed with and approved by the commission.~~

~~(ii) The director and the secretary may approve the:~~

~~*(a)* Request for extension of time, not to exceed two (2) years, for the qualified business to bring the payroll back up to the requisite threshold amount; and~~

~~*(b)* Continuation of incentives during the period the extension is granted.~~

~~(iii) If the business fails to reach the payroll threshold before the expiration of the time period established by a subsequent extension of time, the qualified business is liable for the repayment of all incentives paid to the business after it no longer qualified for the incentives.~~

~~(C)(i) If a qualified business fails to reach the investment threshold before the expiration of the four-year time limit, that qualified business is liable for the repayment of all incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold was not met.~~

~~(ii) If a qualified business fails to reach the investment threshold of this part under an approved financial incentive agreement, the department has two (2) years to:~~

~~*(a)* Collect incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the investment threshold has not been met; or~~

~~*(b)* File a lawsuit to enforce the repayment provisions.~~

~~(D)(i) If a qualified business fails to reach the average hourly wage threshold for incentives under this part as specified in an approved financial incentive agreement, the qualified business is liable for the repayment of all incentives previously received by the qualified business for which the average hourly wage threshold has not been met.~~

~~(ii) If a qualified business fails to meet the hourly wage threshold, the department has two (2) years to:~~

~~*(a)* Collect incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the average hourly wage threshold has not been met; or~~

~~*(b)* File a lawsuit to enforce the repayment provisions.~~

~~(E)(i) Eligible businesses whose qualification depends on deriving either fifty-one percent (51%) or seventy-five percent (75%) of their sales from out-of-state~~

~~customers shall meet this requirement within three (3) years from the approval date of their financial incentive agreement.~~

~~(ii)*(a)* If the requirement is not met within three (3) years of the approved financial incentive agreement, the qualified business may request, in writing, an extension of time to reach the required sales threshold.~~

~~*(b)* If the director finds that the qualified business has presented compelling reasons for an extension of time, the director may grant an extension of time not to exceed an additional two (2) years.~~

~~(F)(i) If a qualified business fails to meet the out-of-state sales requirements of this part under the specified deadlines in the approved financial incentives agreement, the qualified business is liable for the repayment of all incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met.~~

~~(ii) If a qualified business fails to meet the out-of-state sales requirements, the department has two (2) years to:~~

~~*(a)* Collect incentives previously received by the qualified business that were conditioned on the approved financial incentive agreement for which the sales threshold has not been met; or~~

~~*(b)* File a lawsuit to enforce the repayment provisions.~~

~~(G)(i) If a qualified business fails to notify the department that the annual payroll of the qualified business has fallen below the threshold for qualification for and retention of any incentive authorized by this part, that qualified business will be liable for the repayment of all incentives that were paid to the qualified business and that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met after it no longer qualified for the incentives.~~

~~(ii) If a qualified business fails to notify the department that the qualified business has fallen below the payroll threshold, the department has two (2) years to:~~

~~*(a)* Collect incentives previously received by the qualified business and that were conditioned on the approved financial incentive agreement for which the payroll threshold has not been met; or~~

~~*(b)* File a lawsuit to enforce the repayment provisions.~~

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

~~(H)(i) The department may obtain whatever information is necessary from a participating qualified business and from the Division of Workforce Services to verify that a qualified business is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, wages, and out-of-state revenues to the department.~~

~~(ii) The department shall provide the information obtained to the director upon request.~~

~~(I) The department may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a qualified business is located, to enforce the repayment provisions of this part.~~

~~(J)(i) If a qualified business fails to satisfy or maintain any other requirement or threshold of this part, that qualified business is liable for the repayment of all incentives received after it no longer qualified.~~

~~(ii) If a qualified business fails to comply with the requirements or thresholds of this part, the department has two (2) years to:~~

~~*(a)* Collect incentives previously received by the qualified business for noncompliant financial incentive agreements; or~~

~~*(b)* File a lawsuit to enforce the repayment provisions.~~

~~(K) If a repayment is required as a result of not complying with the requirements or thresholds of this part, interest shall be due at the rate of ten percent (10%) per annum.~~

~~15 CAR § 143-106. Transfer and assignment of financial incentive agreements.~~

~~No Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., financial incentive agreement shall be transferrable or assignable without the written consent of the Director of the Arkansas Economic Development Commission and the Secretary of the Department of Finance and Administration.~~

~~Subpart 2. Incentive Programs Contained Within the Consolidated Incentive Act of 2003, as Amended~~

~~15 CAR § 143-201. Introduction.~~

~~(a)(1) The incentive programs below require that a potentially eligible business submit an application and a project plan to the Arkansas Economic Development Commission prior to incurring project costs or hiring new employees associated with the project.~~

~~(2) In some cases, once an application is processed and signed by the commission, the application, with supporting information, becomes a financial incentive agreement.~~

~~(b) The date an application is received by the commission is the earliest date benefits may be accrued.~~

~~15 CAR § 143-202. Job-creation tax credit, Arkansas Code § 15-4-2705.~~

~~(a)~~ **~~Job-creation income tax credit (Advantage Arkansas) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2705.~~**

~~(1)(A) 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.~~

~~(B) The tier in which the project is located determines the qualifying payroll threshold as well as the income tax benefit calculation.~~

~~(2) Pursuant to Acts 2009, No. 716, for agreements with an effective date on or after July 31, 2009, in all tiers, in order to qualify for the incentives under this~~

~~program the proposed average hourly wage of the eligible business applying for these incentives shall be at least equal to the greater of:~~

~~(A) The lowest county average hourly wage calculated by the Arkansas Economic Development Commission based on the most recent calendar year data published by the Division of Workforce Services; or~~

~~(B) Twelve dollars and fifty cents ($12.50).~~

~~(3)(A) The date of the approved financial incentive agreement is the beginning date in determining when the payroll threshold must be met.~~

~~(B) Only those employees hired after the date of the approved financial incentive agreement are eligible for the income tax credits, except as provided in 15 CAR § 143-102(13).~~

~~(4)(A) The income tax credit earned cannot be used to offset up to fifty percent (50%) of a business's income tax liability annually.~~

~~(B) Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.~~

~~(5)(A) Income tax credits are earned in the tax year in which the new full-time permanent employees qualify after the financial incentive agreement was approved by the commission.~~

~~(B)(i) 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 the Department of Finance and Administration.~~

~~(ii) 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.~~

~~(iii) Upon verification of the reported payroll amounts, the department shall authorize the appropriate income tax credit.~~

~~(iv) Therefore, the business must certify annually at the end of each tax year to the department.~~

~~(6)(A) The qualified business shall be entitled to receive income tax credits for which it has remained eligible under the rule and for which has provided timely certification in support thereof, for each subsequent tax year during the term of the agreement.~~

~~(B) The term of the financial incentive agreement shall be for a period of five (5) years, beginning on the date of the approved financial incentive agreement.~~

~~(7)(A) 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.~~

~~(B) The payroll threshold of the new full-time permanent employees must be met by the business within two (2) years following the date the financial incentive agreement was approved, except as provided in 15 CAR § 143-105.~~

~~(8) 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 date the financial incentive agreement was approved:~~

~~(A) **Tier 1 counties.**~~

~~(i) An eligible business must have a payroll of new full-time permanent employees of at least one hundred twenty-five thousand dollars ($125,000) in order to qualify.~~

~~(ii) 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;~~

~~(B) **Tier 2 counties.**~~

~~(i) An eligible business must have a payroll of new full-time permanent employees of at least one hundred thousand dollars ($100,000) in order to qualify.~~

~~(ii) 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;~~

~~(C) **Tier 3 counties.**~~

~~(i) An eligible business must have a payroll of new full-time permanent employees of at least seventy-five thousand dollars ($75,000) in order to qualify.~~

~~(ii) 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~~

(D) ~~**Tier 4 counties.**~~

~~(i) An eligible business must have a payroll of new full-time permanent employees of at least fifty thousand dollars ($50,000) in order to qualify.~~

~~(ii) 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.~~

~~(iii) A qualified business shall receive an additional tax credit of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives under this act exceeds one hundred twenty-five percent (125%) of the lesser of the county or state average hourly wage for the county in which the qualified business locates or expands.~~

~~**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 ($15.00) 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. ($15.00 per hour x 2,080 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 two (2) years 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.~~

~~(b) **Combination with other incentives.**~~

~~(1) The job creation income tax credit (Advantage Arkansas) authorized in Arkansas Code § 15-4-2705 may be combined with:~~

~~(A) The research and development income tax credit for in-house research authorized by Arkansas Code § 15-4-2708(a); and~~

~~(B) Either the:~~

~~(i) Retention investment incentive (InvestArk) authorized in Arkansas Code § 15-4-2706(c); or~~

~~(ii) Sales and use tax refund investment incentive (Tax Back) authorized by Arkansas Code § 15-4-2706(d).~~

~~(2) Advantage Arkansas shall not be combined with the payroll rebate incentive (Create Rebate) authorized by Arkansas Code § 15-4-2707.~~

~~**15 CAR § 143-203. Economic Development Incentive Fund — Payroll rebate, Arkansas Code § 15-4-2707.**~~

~~(a) **Payroll rebate (Create Rebate) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2707.**~~

~~(1)(A) The payroll rebate incentive, also known as "Create Rebate", is offered only at the discretion of the Director of the Arkansas Economic Development Commission.~~

~~(B) Like the Advantage Arkansas job creation income tax credit, the payroll rebate is based on the payroll of new full-time permanent employees.~~

~~(2)(A) The date of the approved financial incentive agreement is the beginning date in determining when the payroll threshold must be met.~~

~~(B) Only the payroll of those employees hired after the date of the financial incentive agreement is eligible for the rebate (except as provided in 15 CAR § 143-102(13)).~~

~~(C) To qualify for this incentive, a business shall meet minimum annual payroll thresholds for new full-time permanent employees for the county tier in which the project is located.~~

~~(3)(A) 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.~~

~~(B) 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.~~

~~(C) 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 15 CAR § 143-105(a)).~~

~~(4) 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.~~

~~(5)(A) It is the responsibility of the qualified business to file the Create Rebate Program New Full-Time Permanent Employee Payroll Certification with the Department of Finance and Administration when the requisite payroll threshold has been attained.~~

~~(B) This certification provides the number of new full-time permanent employees hired, together with the dollar amount of their payroll.~~

~~(C) Thereafter, the qualified business shall recertify the number of new full-time permanent employees and payroll amounts annually at the end of each tax year.~~

~~(D) The certification to the department is the mechanism to initiate the verification audit.~~

~~(E) Therefore, the business must certify annually at the end of each tax year to the department.~~

~~(6)(A) Pursuant to Acts 2009, No. 625, 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 the department will result in:~~

~~(i) The department reducing the amount of rebate earned by ten percent (10%) if not claimed within one (1) year from the end of the tax year in which the rebate was earned; or~~

~~(ii) A one hundred percent (100%) forfeiture of the earned rebate if not claimed within two (2) years from the end of the tax year in which the rebate was earned.~~

~~(B) If a qualified business has failed to submit an initial certification with the department within four (4) years after the date of the approved financial incentive agreement the agreement will be terminated, unless the date has been extended by the director.~~

~~(C) The offering of this incentive is intended to provide benefits to businesses locating or expanding in Arkansas.~~

~~(D) In the event the approved business ceases the operations of the facility for which the incentives are offered:~~

~~(i) The incentive agreement will be terminated; and~~

~~(ii) Any benefits accrued and not claimed as of the date of closure will be forfeited.~~

~~(7)(A) The payroll rebate (Create Rebate) benefit:~~

~~(i) Can only be authorized at the discretion of the director in the form of a written proposal; and~~

~~(ii) May be offered for up to ten (10) years.~~

~~(B) The term of the agreement depends on the benefit to the state as determined by a cost-benefit analysis performed by the Arkansas Economic Development Commission.~~

~~(C) If the proposal is accepted by the qualified business, a financial incentive agreement is signed by the commission and the business.~~

~~(D) 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 director.~~

~~(E) With the exception of targeted businesses, the incentive allowed is dependent upon the tier in which the business locates.~~

~~(F) The qualifying annual payroll thresholds and incentive payment allowed are as follows:~~

~~(i) **Tier 1 counties.**~~

~~*(a)* The annual payroll threshold is at least two million dollars ($2,000,000).~~

~~*(b)* 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;~~

~~(ii) **Tier 2 counties.**~~

~~*(a)* The annual payroll threshold is at least one million seven hundred fifty thousand dollars ($1,750,000).~~

~~*(b)* 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;~~

~~(iii) **Tier 3 counties.**~~

~~*(a)* The annual payroll threshold is at least one million five hundred thousand dollars ($1,500,000).~~

~~*(b)* 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;~~

~~(iv) **Tier 4 counties.**~~

~~*(a)* The annual payroll threshold is at least one million two hundred fifty thousand dollars ($1,250,000).~~

~~*(b)* An incentive payment equal to five percent (5%) of the payroll of the new full-time permanent employees for the term of the agreement; and~~

~~(v) At the discretion of the director, an eligible business located in a Tier 1, 2, 3, or 4 county may be authorized to receive an enhanced incentive of up to five percent (5%) of the payroll of the new full-time permanent employees if the following conditions are met:~~

~~*(a)* The business is considering a location in another state;~~

~~*(b)* The business derives at least fifty-one percent (51%) of its sales from out of state; and~~

~~*(c)* The business proposes to pay wages in excess of one hundred percent (100%) of the average wage of the county in which it locates.~~

~~(8) To qualify for this incentive, except for the enhanced incentive, the average hourly wage paid to employees whose payroll is subject to incentives shall be at least equal to the greater of:~~

~~(A) The lowest county average hourly wage as calculated by the commission based on the most recent calendar year data published by the Division of Workforce Services; or~~

~~(B) Twelve dollars and fifty cents ($12.50).~~

~~(9) A qualified business shall receive an additional incentive of one percent (1%) of the payroll of new full-time permanent employees if the average hourly wage paid to employees subject to incentives exceeds the lesser of one hundred twenty-five percent (125%) of the county or state hourly wage for the county in which the business locates or expands.~~

~~(10)(A) The benefits provided by this section shall be calculated based upon the provisions of the financial incentive agreement.~~

~~(B) 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 ($19.00) 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 one million seven hundred fifty thousand dollars ($1,750,000) is required to qualify for this incentive. In this example, the director agrees to award the payroll rebate for a period of three (3) years. ($19.00 per hour X 2,080 = $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 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 one million seven hundred fifty thousand dollar ($1,750,000) threshold for qualification, the business may request an extension of up to two (2) years 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.~~

~~(11) **Combination with other incentives.** The payroll rebate (Create Rebate) incentive authorized in Arkansas Code § 15-4-2707, if offered by the director, may be combined with:~~

~~(A)(i) Either the:~~

~~*(a)* Retention investment incentive (InvestArk) authorized by Arkansas Code § 15-4-2706(c); or~~

~~*(b)* Sales and use tax refund incentive (Tax Back) authorized by Arkansas Code § 15-4-2706(d).~~

~~(ii) The approved business would choose between these two (2), but cannot take both;~~

~~(B) The ArkPlus investment incentive authorized by Arkansas Code § 15-4-2706(b), if approved by the director; and~~

~~(C) The research and development income tax incentive for in-house research authorized by Arkansas Code § 15-4-2708(a).~~

~~(b) **Payroll rebate for targeted businesses — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2707(e).**~~

~~(1) 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:~~

~~(A) The average hourly wage of the new full-time permanent employees must be at least one hundred fifty percent (150%) of the lesser of the state or county average hourly wage; and~~

~~(B) The payroll of the new full-time permanent employees exceeds two hundred fifty thousand dollars ($250,000).~~

~~(2) The payroll rebate for targeted businesses may not be used in conjunction with the income tax credit based on payroll authorized by Arkansas Code § 15-4-2709.~~

~~**15 CAR § 143-204. Investment tax incentives, Arkansas Code § 15-4-2706.**~~

~~(a) **Retention Sales and Use Tax Credit (InvestArk) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2706(c).**~~

~~(1)(A) A qualified business may apply for the Retention Sales and Use Tax Credit (InvestArk) through June 30, 2017.~~

~~(B) InvestArk applications shall not be accepted on or after July 1, 2017.~~

~~(C) However, any projects that qualify for InvestArk based on applications filed through June 30, 2017, shall continue to earn credits.~~

~~(D) InvestArk tax credits issued on a project that qualified for InvestArk tax credits based on an application filed through June 30, 2017, shall:~~

~~(i) Remain in effect; and~~

~~(ii) Be taken and carried forward as otherwise provided under Arkansas Code § 15-4-2706(c).~~

~~(2)(A) The qualifications and benefits for this incentive are the same in all four (4) tiers.~~

~~(B) To qualify, a business must:~~

~~(i) Have been in continuous operation in the state for at least two (2) years;~~

~~(ii) Invest a minimum of five million dollars ($5,000,000) in a project, including land, buildings, and equipment; and~~

~~(iii) Hold a direct-pay sales and use tax permit from the Department of Finance and Administration.~~

~~(3)(A) To obtain incentives under the InvestArk program, a business must:~~

~~(i) Apply to the Arkansas Economic Development Commission, using forms provided by the commission; and~~

~~(ii) Be approved based on the qualifications submitted in the application and the accompanying project plan.~~

~~(B) With the exception of preconstruction costs, only those costs incurred after the commission's approval are eligible in calculating the benefit of this program.~~

~~(4)(A) The project plan shall clearly identify:~~

~~(i) The scope of the project;~~

~~(ii) The time frame in which the project is to be started and completed; and~~

~~(iii) A complete listing of estimated project expenditures.~~

~~(B) All project costs must be incurred within four (4) years from the date the project is approved by the commission.~~

~~(C)(i) However, a qualified business that enters into a lease for building or equipment for a period of at least five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures.~~

~~(ii) The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.~~

~~(5)(A) A company that filed an InvestArk application with the commission between June 22–28, 2017, may be approved by the Director of the Arkansas Economic Development Commission to have six (6) years to incur project costs if a positive return on taxpayer investment is met.~~

~~(B) A company must have:~~

~~(i) Had an InvestArk application approved on or after June 22, 2017; and~~

~~(ii) The director determine that the portion of the qualified project to be completed in the forty-nine–month to seventy-two–month extension period will have a positive return on taxpayer's investment equal to or greater than the amount of retention tax credits issued.~~

~~(C) If the director approves an extension, the tax credits earned may be taken beginning on and after July 1, 2023.~~

~~(D) The maximum amount of tax credits that may be used by a qualified applicant in any fiscal year for this extension period is seven hundred fifty thousand dollars ($750,000).~~

~~(E) To determine a positive return on taxpayer's investment a company must submit documentation to the commission stating:~~

~~(i) Enhanced or retained productivity (expressed in dollars);~~

~~(ii) Enhanced or retained revenue, sales, or output (expressed in dollars);~~

~~(iii) Enhanced or retained employee compensation (expressed in dollars);~~

~~(iv) Enhanced or retained taxes paid (expressed in dollars); or~~

~~(v) Any other quantifiable information requested by the commission that the taxpayer may provide as reasonable proof of a positive return of the taxpayer's investment.~~

~~(6)(A) The project plan may be revised by written amendment filed with the commission.~~

~~(B) The commission's approval of an amendment will not extend the time period in which project costs may be incurred.~~

~~(C) 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.~~

~~(7)(A) The benefit of the InvestArk program is a sales and use tax credit based on a percentage of qualified expenditures.~~

~~(B) The percentage used to determine the amount of sales and use tax credits earned is five-tenths 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.~~

~~(8)(A) 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.~~

~~(B) Any unused credits may be carried forward for a period of up to five (5) years.~~

~~(C) 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.~~

~~(9) Once a business has qualified for the InvestArk incentive, the director will notify the department that the project has been approved and will transmit the documents upon which the qualification was based.~~

~~(10)(A) The commission's approval of any application is for content only.~~

~~(B) It does not constitute approval of all items listed on the application or the project plan.~~

~~(C) These items will be reviewed and either approved or ruled ineligible by an audit by the Revenue Division of the department.~~

~~(11)(A) The department is authorized to conduct an audit to determine eligibility of reported project expenditures.~~

~~(B) The audit may be conducted after credits have been issued and used.~~

~~(C) 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.~~

~~(12)(A) 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 the department to report the eligible project expenditures incurred during the preceding calendar year.~~

~~(B) Upon determining the amount of credit earned during that calendar year, the department shall issue a memorandum of credit to the qualified business.~~

~~(C) 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 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 (0.5%) over the rate of six and one-half percent (6.5%) as of July 1, 2013). At the end of each calendar year, until project completion, the business shall certify to the department 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 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 six and one-half percent (6.5%) ($7,754,000 X 7%) would be five hundred forty-two thousand seven hundred eighty dollars ($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; or~~
- ~~The project fails to reach the minimum investment threshold of five million dollars ($5,000,000). Should benefits be received for project expenditures and the threshold expenditure of five million dollars~~

~~($5,000,000) not be met, the recapture provisions of 15 CAR § 143-105 may be invoked by the department.~~

~~(13) **Combination with other incentives.**~~

~~(A) The retention tax credit (InvestArk) authorized in Arkansas Code § 15-4-2706(c) may be combined with:~~

~~(i) The job creation tax credit (Advantage Arkansas) as authorized in Arkansas Code § 15-4-2705;~~

~~(ii) The payroll rebate (Create Rebate), if offered by the director, as authorized in Arkansas Code § 15-4-2707; and~~

~~(iii) The research and development income tax incentive for in-house research authorized by Arkansas Code § 15-4-2708(a).~~

~~(B) This incentive shall not be combined with the sales and use tax refund authorized in Arkansas Code § 15-4-2706(d) for the same project.~~

~~(b) **Investment income tax credit (ArkPlus) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2706(b).**~~

~~(1)(A) This incentive is awarded only at the discretion of the director.~~

~~(B) To qualify, the business must meet both the investment and payroll thresholds for the tier in which it locates.~~

~~(2)(A) The benefit is an income tax credit equal to ten percent (10%) of total audited eligible project costs.~~

~~(B) The benefit is the same regardless of the tier in which the business locates.~~

~~(3)(A) The business must reach the investment threshold for the tier in which it is located within four (4) years from the date of the approved financial incentive agreement.~~

~~(B)(i) All project costs must be incurred within four (4) years from the date the project is approved by the commission.~~

~~(ii) However, a qualified business that enters into a lease for building or equipment for a period of at least five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures.~~

~~(iii) The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.~~

~~(4) The business must reach the payroll threshold for the tier in which it is located within two (2) years from the date of the approval of the financial incentive agreement.~~

~~(5)(A) 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 the department when the investment threshold is met.~~

~~(B) This certification provides the:~~

~~(i) Amount of eligible project costs incurred in the previous tax year; and~~

~~(ii) Number of new full-time permanent employees hired, together with the dollar amount of their payroll.~~

~~(C) 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.~~

~~(D) The certification to the department is the mechanism to initiate the verification audit.~~

~~(6)(A) The income tax credit earned can be used to offset up to fifty percent (50%) of the business's income tax liability annually.~~

~~(B) Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.~~

~~(7) To qualify for this incentive, the business must meet the investment and payroll thresholds for the tier in which the business locates or expands:~~

~~(A) **Tier 1.** The business must:~~

~~(i) Invest at least five million dollars ($5,000,000); and~~

~~(ii) Have an annual payroll of new full-time permanent employees of at least two million dollars ($2,000,000);~~

~~(B) **Tier 2.** The business must:~~

~~(i) Invest at least three million seven hundred fifty thousand dollars ($3,750,000); and~~

~~(ii) Have an annual payroll of new full-time permanent employees of at least one million five hundred thousand dollars ($1,500,000);~~

~~(C) **Tier 3.** The business must:~~

~~(i) Invest at least three million dollars ($3,000,000); and~~

~~(ii) Have an annual payroll of new full-time permanent employees of at least one million two hundred thousand dollars ($1,200,000); and~~

~~(D) **Tier 4.** The business must:~~

~~(i) Invest at least two million dollars ($2,000,000); and~~

~~(ii) 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 ($15.00) per hour. ($15.00/hour X 2,080 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 sixty thousand dollar ($1,560,000) annual payroll exceeds the eight hundred thousand dollar ($800,000) payroll threshold for a Tier 4 county, and the capital investment of three million five hundred thousand dollars ($3,500,000) exceeds the two million dollar ($2,000,000) investment threshold, allowing the business to meet minimum qualifications for the incentive. Should the director approve the business's application for this incentive program, and should the~~

~~business spend precisely three million five hundred thousand dollars ($3,500,000), it would earn an income tax credit of three hundred fifty thousand dollars ($350,000) that could be carried forward for up to 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 15 CAR § 143-105.~~

~~(8) **Combination with other incentives.** The investment income tax credit authorized by Arkansas Code § 15-4-2706(b), if approved by the director, may be combined with the:~~

~~(A) Payroll rebate (Create Rebate) authorized by Arkansas Code § 15-4-2707, if approved by the director; and~~

~~(B) Research and development income tax incentive for in-house research authorized by Arkansas Code § 15-4-2708(a).~~

~~(c) **Technology-based enterprises investment income tax and sales and use tax credit (Targeted ArkPlus) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2706(b)(7).**~~

~~(1)(A) At the discretion of the director, a targeted business may earn an income tax credit or a sales and use tax credit based upon new investment.~~

~~(B) The targeted business must:~~

~~(i) Invest a minimum of two hundred fifty thousand dollars ($250,000) within four (4) years of the effective date of the financial incentive agreement;~~

~~(ii) Create a new payroll of at least two hundred fifty thousand dollars ($250,000); and~~

~~(iii) Pay wages that are at least one hundred fifty percent (150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands.~~

~~(2) The credit earned by the targeted business is based upon a percentage of the investment as follows:~~

~~(A) The credit amount is two percent (2%) of investments from two hundred fifty thousand dollars ($250,000) up to five hundred thousand dollars ($500,000);~~

~~(B) The credit amount is 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);~~

~~(C) The credit amount is 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~~

~~(D) The credit amount is 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).~~

~~(3) Prior to commission approval of a financial incentive agreement, the targeted business must elect to receive the tax credits as sales and use tax credits or income tax credits.~~

~~(4) 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) A targeted business that pays at least one hundred fifty percent (150%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands may offset up to fifty percent (50%) of its tax liability annually;~~

~~(B) A targeted business that pays at least one hundred seventy-five percent (175%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands may offset up to seventy-five percent (75%) of its tax liability annually; and~~

~~(C) A targeted business that pays at least two hundred percent (200%) of the lesser of the state or county average hourly wage for the county in which the business locates or expands may offset up to one hundred percent (100%) of its tax liability annually.~~

~~(5)(A) The approved targeted business must certify eligible project expenditures and average hourly wages annually with the department.~~

~~(B) Upon verification of eligibility, the department shall issue the credit according to the tax type specified in the financial incentive agreement.~~

~~(6)(A) The income tax credit may be applied against the approved business's Arkansas income tax liability.~~

~~(B) Any unused credit may be carried forward for up to nine (9) tax years after the tax year in which it was first earned or until the tax credits are exhausted, whichever occurs first.~~

~~(7) 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.~~

~~(8) The tax liability reported on the business's monthly sales and use tax that may be offset by the credit may be derived from:~~

~~(A) Sales made by the approved business and collected from the customer;~~

~~(B) Use taxes accrued by the business for out-of-state purchases; and~~

~~(C) Sales and use taxes accrued and reported on the business's monthly direct-pay report.~~

~~(9)(A) The credit may not be applied against any taxes collected from the business by the seller.~~

~~(B) Any unused credit may be carried forward for a period up to 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) — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2706(d).~~**

~~(1)(A) 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.~~

~~(B) The commission's approval is contingent upon receipt of a completed application and a local endorsement resolution from the city or county, or both, that authorizes the refund of its local taxes to the eligible business.~~

~~(2) To qualify for a refund under this program, the qualified business must meet the:~~

~~(A) Eligibility criteria of the Advantage Arkansas, Arkansas Code § 15-4-2705, or Create Rebate, Arkansas Code § 15-4-2707, job creation incentive programs; and~~

~~(B) Minimum investment thresholds for the tier in which the qualified business expands or locates, as follows:~~

~~(i) For Tier 1 counties, the minimum investment threshold is at least five hundred thousand dollars ($500,000);~~

~~(ii) For Tier 2 counties, the minimum investment threshold is at least four hundred thousand dollars ($400,000);~~

~~(iii) For Tier 3 counties, the minimum investment threshold is at least three hundred thousand dollars ($300,000); and~~

~~(iv) For Tier 4 counties, the minimum investment threshold is at least two hundred thousand dollars ($200,000).~~

~~(3) The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be approved within two (2) years of signing the approval of 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 Arkansas Code § 15-4-2705 or § 15-4-2707 within the previous four (4) years.~~

~~(4) In the event an eligible business has an existing Tax Back agreement, the business may apply for additional Tax Back benefits if it has signed a job creation financial incentive agreement under Arkansas Code § 15-4-2705 or § 15-4-2707 within the previous four (4) years.~~

~~(5) 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 Arkansas Code § 15-4-2705 or § 15-4-2707 within the previous four (4) years.~~

~~(6)(A) An application, accompanied by the local endorsement resolution or resolutions, must be filed with the commission.~~

~~(B) The application should clearly identify:~~

~~(i) The intent of the project;~~

~~(ii) The expenditures planned;~~

~~(iii) The start and end date of the project; and~~

~~(iv) An estimate of total project costs.~~

~~(C) The local endorsement resolution or resolutions 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.~~

~~(7)(A) The purpose of the resolution is to:~~

~~(i) Approve the business's participation in the program; and~~

~~(ii) Specify that the municipality or county authorizes the department to refund all or part of any sales and use tax levied at the local level.~~

~~(B) 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.~~

~~(8)(A) 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.~~

~~(B) A sales and use tax refund is also allowed for the purchases of taxable machinery or equipment associated with the building or project.~~

~~(9) A refund shall not be authorized for:~~

~~(A) Routine operating expenditures;~~

~~(B) 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;~~

~~(C) Licensed motor vehicles; or~~

~~(D) Expenditures for routine repair and maintenance that do not result in new construction or expansion.~~

~~(10) 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:~~

~~(A) Educational Adequacy Fund, eight hundred seventy-five thousandths of a percent (.875%); or~~

~~(B) Conservation Tax Fund, one hundred twenty-five thousandths of a percent (.125%).~~

~~(11)(A) All project costs must be incurred within four (4) years from the date the project is approved by the commission.~~

~~(B) The project plan may be revised by written amendment filed with and approved by the commission.~~

~~(C) The commission's approval of an amendment will not extend the time period in which project costs may be incurred.~~

~~(D) Amendments that exceed twenty-five percent (25%) of the original project plan's estimated cost:~~

~~(i) Will not be approved by the commission; and~~

~~(ii) Shall be submitted as a new project.~~

~~(12) **Eligible business Tax Back refunds.**~~

~~(A) 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.~~

~~(B) 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 the department's 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.~~

~~(C) An approved business is prohibited from claiming a refund for the same amount of local tax that:~~

~~(i) The approved business has received, or will be receiving, for a local tax cap rebate on qualifying Tax Back purchases, either:~~

~~*(a)* On the approved business's Sales and Use Tax Report; or~~

~~*(b)* As a refund from the Sales and Use Tax Section; or~~

~~(ii) The contractor or developer has received, or will be receiving, a local tax cap rebate on qualifying Tax Back purchases, either:~~

~~*(a)* On the contractor's or developer's Sales and Use Tax Report; or~~

~~*(b)* 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 ($75.00), 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 ($25.00) 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.~~

(13) ~~**Refunds to developers and contractors.**~~

~~(A)(i) 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 from the department's Tax Credits/Special Refunds Section, in writing, that:~~

~~*(a)* This be permitted; and~~

~~*(b)* States the basis for this request.~~

~~(ii) This request must be approved by the department prior to the signing of the financial incentive agreement.~~

~~(B) The Revenue Division of the Department of Finance and Administration will authorize this procedure only when it is satisfied that:~~

~~(i) 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;~~

~~(ii) All requirements of the Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., and commission rules will be adhered to;~~

~~(iii) A notarized affidavit, Form Tax Back 1400, is presented to the 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;~~

~~(iv)*(a)* A notarized affidavit, Form Tax Back 1300, is presented to the 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.~~

~~*(b)* The affidavit must state that the eligible business acknowledges that if the eligible business fails to comply with the conditions contained in the Consolidated Incentive Act of 2003, or this part, that the business will be liable for the payment of all sales and use taxes that were refunded to the contractors and developers under the Consolidated Incentive Act of 2003, plus interest; and~~

~~(v) 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.~~

~~(C) If a developer or contractor has been authorized by the department 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.~~

~~(D) 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 ($75.00), 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 ($25.00) 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.~~

~~(14) **Filing requirements.**~~

~~(A) 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 the department at the end of each calendar year.~~

~~(B) Upon determining the amount of eligible refund, the department shall issue a refund to the eligible business.~~

~~(C) 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 the commission. The business plans to hire seven (7) new full-time permanent employees at twelve dollars ($12.00) per hour. ($12.00/hour X 2,080 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 three hundred twenty-five thousand dollars ($325,000) in renovation costs. This investment is above the three hundred thousand dollar ($300,000) 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 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.~~

~~(D) **Notes.** The refund of sales and use tax for eligible businesses is dependent upon the following conditions:~~

~~(i) The refund is made contingent upon the signing of a financial incentive agreement for a jobs creation incentive (Advantage Arkansas or Create Rebate) within two (2) years of signing a financial incentive agreement for a sales and use tax refund for new and expanding eligible businesses;~~

~~(ii) The items purchased being subject to the sales or use tax;~~

~~(iii) The payroll threshold under the Advantage Arkansas or Create Rebate job creation financial incentive agreements being met within two (2) years of the signing of the financial incentive agreement; and~~

~~(iv) The documentation of the minimum investment needed to qualify for the sales and use tax refund.~~

~~(E) **Combination with other incentives.** The sales and use tax refund for new and expanding eligible businesses, authorized by Arkansas Code § 15-4-2706(d), may be combined with:~~

~~(i) Advantage Arkansas, as authorized by Arkansas Code § 15-4-2705, or Create Rebate, as authorized by Arkansas Code § 15-4-2707, if approved by the director; and~~

~~(ii) The research and development income tax incentive for in-house research authorized by Arkansas Code § 15-4-2708(a).~~

~~(e) **Sales and use tax refund for targeted businesses — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2706(e).**~~

~~(1)(A) 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".~~

~~(B) This incentive is offered only at the discretion of the director.~~

~~(C) 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)* Health care;~~

~~(v) Transportation logistics, with emphases on the following:~~

~~*(a)* Intelligent material handling;~~

~~*(b)* Automated systems; and~~

~~*(c)* Transportation management systems; and~~

~~(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 nontraditional biomass sources.~~

~~(2)(A) To qualify as a targeted business, the commission must:~~

~~(i) Determine that the targeted business must have an annual payroll of at least one hundred thousand dollars ($100,000); and~~

~~(ii) Demonstrate evidence of an equity investment in the targeted business of at least two hundred fifty thousand dollars ($250,000).~~

~~(B) 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, Acts 2003, No. 182, as amended.~~

~~(C) The preceding payroll requirements:~~

~~(i) Apply only to the initial eligibility determination; and~~

~~(ii) Do not preclude a targeted business from receiving incentives if, at any time after the financial incentive agreement is approved, the actual payroll of the targeted business does not satisfy the payroll requirements.~~

~~(3)(A) 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, Arkansas Code § 15-4-2709.~~

~~(B) A signed financial incentive agreement for targeted payroll income tax credits must be signed within two (2) years of signing a financial incentive agreement for a sales and use tax refund.~~

~~(4) To be eligible for the incentives under this program, the targeted business shall meet all payroll creation requirements of an approved financial incentive~~

~~agreement under Arkansas Code § 15-4-2707 or § 15-4-2709 within two (2) years of the date of the approved financial incentive agreement under this subsection or other subsequent date if approved by the director.~~

~~(5)(A) An application accompanied by a local endorsement resolution must be filed with the commission.~~

~~(B) The application should clearly identify:~~

~~(i) The intent of the project;~~

~~(ii) The expenditures planned;~~

~~(iii) The start and end date of the project; and~~

~~(iv) An estimate of the total project costs.~~

~~(C) 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.~~

~~(6)(A) The purpose of the resolution is to:~~

~~(i) Approve the specific entity's participation in the program; and~~

~~(ii) Specify that the municipality or county authorizes the department to refund all or part of any sales and use tax levied at the local level.~~

~~(B) 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.~~

~~(7)(A) 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.~~

~~(B) A sales and use tax refund is also allowed for the purchases of taxable machinery or equipment associated with the building or project.~~

~~(8) A refund shall not be authorized for:~~

~~(A) Routine operating expenditures;~~

~~(B) 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;~~

~~(C) Licensed motor vehicles; or~~

~~(D) Expenditures for routine repair and maintenance that do not result in new construction or expansion.~~

~~(9) 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:~~

~~(A) Educational Adequacy Fund, eight hundred seventy-five thousandths of a percent (.875%); or~~

~~(B) Conservation Tax Fund, one hundred twenty-five thousandths of a percent (.125%).~~

~~(10)(A) All project costs must be incurred within four (4) years from the date the project is approved by the commission.~~

~~(B) The project plan may be revised by written amendment filed with and approved by the commission.~~

~~(C) The commission's approval of an amendment will not extend the time period in which project costs may be incurred.~~

~~(D) Amendments that exceed twenty-five percent (25%) of the original project plan's estimated cost:~~

~~(i) Will not be approved by the commission; and~~

~~(ii) Shall be submitted as a new project.~~

~~(11)(A) 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 the department to request a refund of sales and use taxes paid on eligible project expenditures incurred during the preceding calendar year.~~

~~(B) Upon determining the amount of the eligible refund, the department shall issue a refund to the qualified business.~~

~~(C) 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), which exceeds the two hundred fifty thousand dollar ($250,000) threshold, 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 ($28.00) per hour. ($28.00/hour X 2,080 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 and investment requirements necessary to qualify for the sales and use tax refund. Eligibility is also dependent upon being approved by the 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.~~

~~(D) **Notes.** The refund of sales and use tax for eligible targeted businesses is dependent upon the following conditions:~~

~~(i) 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 two (2) years of signing a financial incentive agreement for a sales and use tax refund for a targeted business;~~

~~(ii) The items purchased being subject to the sales or use tax;~~

~~(iii) The business meeting the average wage requirement;~~

~~(iv) The payroll threshold being met within two (2) years of the signing of the financial incentive agreement; and~~

~~(v) The documentation that the targeted business has received an equity investment in excess of two hundred fifty thousand dollars ($250,000).~~

~~(12) **Combination with other incentives.** The sales and use tax refund for targeted businesses authorized by Arkansas Code § 15-4-2706(e) may be combined with, if approved by the director, the:~~

~~(A) Targeted job creation income tax credit as authorized by Arkansas Code § 15-4-2709; and~~

~~(B) Targeted research and development tax credit authorized by Arkansas Code § 15-4-2708(c).~~

~~**15 CAR § 143-205. Targeted business special incentive, Arkansas Code § 15-4-2709.**~~

~~(a) **Payroll income tax credit for targeted businesses — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2709.**~~

~~(1)(A) 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.~~

~~(B) This incentive is offered only at the discretion of the Director of the Arkansas Economic Development Commission.~~

~~(C) 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)* Health care;~~

~~(v) Transportation logistics, with emphases on the following:~~

~~*(a)* Intelligent material handling;~~

~~*(b)* Automated systems; and~~

~~*(c)* Transportation management systems; and~~

~~(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 nontraditional biomass sources.~~

~~(2)(A) 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).~~

~~(B) This requirement only applies to the initial eligibility determination and does not preclude qualified businesses from receiving incentive if, at any time after the financial incentive agreement has been approved, actual payroll does not satisfy the requirements.~~

~~(C) A business must 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.~~

~~(3)(A) 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.~~

~~(B) Any unused credits can be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.~~

~~(4)(A) The incentive may be offered for a period not to exceed five (5) years.~~

~~(B) The five-year period begins on January 1 of the following year in which the financial incentive agreement is approved and may not extend beyond five (5) years from that date.~~

~~(C) 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.~~

~~(D) To claim these benefits, the targeted business must sign a financial incentive agreement with the Arkansas Economic Development Commission.~~

~~(5)(A) 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.~~

~~(B)(i) 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 the Department of Finance and Administration.~~

~~(ii) 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.~~

~~(iii) Therefore, the business must certify annually at the end of each tax year to the department.~~

~~(6)(A) A unique feature of this incentive is the ability of the business that earns the targeted business income tax credit to sell the credits upon approval of the director.~~

~~(B) The business must make application to the commission for the sale of credits.~~

~~(C) 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.~~

~~(D) The commission may assist the business in finding a buyer for the tax credits.~~

~~(E) Any sale of tax credits through this incentive will be fully documented by the commission and that information will be transmitted to the Revenue Division of the Department of Finance and Administration.~~

~~(7)(A) 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.~~

~~(B) Since one (1) 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 Arkansas Code § 15-4-2708 or § 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 University of Arkansas for Medical Sciences 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 ($45.00) per hour. ($45.00/hour X 2,080 = $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 ($45.00) per hour wage is more than the one hundred fifty percent (150%) wage requirement for the tier of the county in which the targeted business locates. 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 (five (5) years), the credit in subsequent years would be equal to ten percent (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.~~

~~(C) **Notes.** The calculation of the benefit for an income tax credit for new targeted businesses is dependent upon the following conditions:~~

~~(i) A minimum payroll of one hundred thousand dollars ($100,000) being maintained during the term of the agreement;~~

~~(ii) The business operations continuing in one (1) of the six (6) targeted areas;~~

~~(iii) The average hourly wage threshold being maintained; and~~

~~(iv) The business continuing to operate in accordance with the qualification requirements throughout the term of the financial incentive agreement.~~

~~(b) **Combination with other incentives.** The payroll income tax credit for targeted businesses authorized by Arkansas Code § 15-4-2709 may be combined with, if approved by the director:~~

~~(1) The sales and use tax refund for targeted businesses as authorized by Arkansas Code § 15-4-2706(e); and~~

~~(2) The research and development income tax credit for targeted businesses as authorized by Arkansas Code § 15-4-2708(c).~~

~~**15 CAR § 143-206. Research and development income tax credits, Arkansas Code § 15-4-2708.**~~

~~(a)(1) This section deals with incentives for research and development.~~

~~(2) The different tax credits are intended to provide incentives for in-house research of several kinds and research and development in start-up, technology-based enterprises.~~

~~(3) It is important for the applicant to understand the different incentives and to select the most appropriate for the eligible research and development activity.~~

~~(4) In summary:~~

~~(A)(i) The incentives for in-house research are intended for:~~

~~*(a)* The ongoing 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.~~

~~(ii) 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; and~~

~~(B)(i) The incentive for research and development under programs of the Division of Science and Technology of the Arkansas Economic Development Commission is intended for:~~

~~*(a)* Companies in the earliest stages of development; and~~

~~*(b)* Knowledge-based companies that require a continuing research and development program to remain competitive.~~

~~(ii) Generally, this incentive may not be combined with other research and development incentives.~~

~~(b)(1) Unless otherwise specified, the research and development application and project plan shall be the basis for the Arkansas Economic Development Commission's decision to approve tax credit treatment for research and development expenditures.~~

~~(2) 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 Acts 2003, No. 182, as amended.~~

~~(3) At the discretion of the commission, an approved application and project plan may serve as the financial incentive agreement.~~

~~(4) 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.~~

~~(c)(1) The term of the research and development financial incentive agreements under Arkansas Code § 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 five (5) years from that date.~~

~~(2) The specific requirements to qualify for research and development incentives follow.~~

~~(d) **In-house research — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2708.**~~

~~(1) **In-house research and development facilities, Arkansas Code § 15-4-2708(a)(1).**~~

~~(A)(i) In-house research includes experimental, clinical, or laboratory activities to develop new uses of products, but only to the extent that activity is conducted in Arkansas.~~

~~(ii) An eligible business that has not been previously approved for incentives under this subsection and that conducts in-house research that has been approved for federal research and development tax credits may qualify, at the discretion of the Director of the Arkansas Economic Development Commission, for in-house research income tax credits.~~

~~(iii) 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.~~

~~(iv) The credit allowed for approved in-house research is up to twenty percent (20%) of the incremental amount spent on qualified in-house research~~

~~expenditures that exceeds the baseline established in the preceding year, for a period of five (5) years, subject to extension at the discretion of the director.~~

~~(B) The initial baseline for a qualified business new to the incentives offered under this subsection is the amount of research conducted in the state as claimed for federal research and development tax credits during the most recent year.~~

~~(C) Tax credits for the first year shall be calculated based on the incremental eligible expenditures for research and development at the end of the first year minus the research and development expenditures as reported by the qualified business for research and development tax credits initial baseline.~~

~~(D) Tax credits for succeeding years shall be calculated as the difference between the current year's research conducted in the state and the previous year's research conducted in the state.~~

~~**Example 1:** For an in-house research facility that did not claim any research conducted in the state for federal research and development tax credits during the most recent year, the base year is zero (0). Therefore, in the first year following the date of the financial incentive agreement, all eligible expenditures will qualify for credit. The tax credits for the second year will be calculated by the amount of qualified research expenditures incurred in the second year minus the amount incurred in the first year. The tax credits for the third year will be calculated by the amount of qualified research expenditures incurred in the third year minus the amount incurred in the second year. The tax credits for the fourth year will be calculated by the amount of qualified research expenditures incurred in the fourth year minus the amount incurred in the third year. The tax credits for the fifth year will be calculated by the amount of qualified research expenditures incurred in the fifth year minus the amount incurred in the fourth year.~~

~~**Example 2:** For an in-house research facility that claimed research conducted in the state for federal research and development tax credits during the most recent year, the baseline amount shall be the amount the business claimed for that year. The tax credits for the first year will be calculated by the amount of qualified research expenditures in the first year minus the amount of the baseline. The tax credits for the second year will be calculated by the amount of qualified research expenditures in the second year minus the amount incurred in the first year. The tax credits for the third year will be calculated by the amount of qualified research expenditures in the third year minus the amount incurred in the second year. The tax credits for the fourth year will be calculated by the amount of qualified research expenditures in the fourth year minus the amount incurred in the third year. The tax credits for the fifth year will be calculated by the amount of qualified research expenditures in the fifth year minus the amount incurred in the fourth year.~~

~~(2) **Term of the in-house research and development agreement.**~~

~~(A)(i) 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.~~

~~(ii) The financial incentive agreement may be renewed for additional five-year periods upon the submittal and approval of a new application and project plan by the director.~~

~~(B) The approved business shall certify annually at the end of each tax year, to the commission, the amount expended on in-house research.~~

~~(C)(i) The income tax credit earned for in-house research and development may be used to offset up to one hundred percent (100%) of the qualified business's state income tax liability.~~

~~(ii) Any unused tax credits may be carried forward for a period up to nine (9) years after the year in which the credit was first earned or until the tax credits are exhausted, whichever occurs first.~~

~~(D)(i) To claim the credit earned through this incentive, the business shall file with its return the Certificate of Tax Credit issued by the commission.~~

~~(ii) 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.~~

~~(E) Qualified research expenditures include in-house expenses for taxable wages paid and usual fringe benefits specific to research activities of employees of the business or for wages and usual fringe benefits paid through contractual agreements, approved in writing by the director, with a state college, an Arkansas state university, or other Arkansas-based research organization to perform research for a targeted business.~~

~~(F) Qualified research must satisfy all of the following tests to qualify:~~

~~(i) The activity must be undertaken for the purpose of discovering information that is technological in nature;~~

~~(ii) The application of technological information must be intended to be useful in a new or improved business component; and~~

~~(iii) Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved:~~

~~*(a)* Function;~~

~~*(b)* Performance;~~

~~*(c)* Reliability; or~~

~~*(d)* Quality.~~

~~(G) The following activities are specifically excluded from the definition of qualified research:~~

~~(i) Purchase of supplies;~~

~~(ii) Purchase of land;~~

~~(iii) Purchase or rehabilitation of production machinery and equipment;~~

~~(iv) Construction or renovation of buildings;~~

~~(v) Any ordinary and necessary expenses of conducting business;~~

~~(vi) Any research conducted after the beginning of commercial production;~~

~~(vii) Research adapting an existing product or process to a particular customer's need;~~

~~(viii) Duplication of an existing product or process;~~

~~(ix) Surveys or studies;~~

~~(x) Research related to certain internal-use computer software;~~

~~(xi) Research in the:~~

~~*(a)* Social sciences;~~

~~*(b)* Arts; or~~

~~*(c)* Humanities; and~~

~~(xii)*(a)* Research conducted outside of Arkansas.~~

~~*(b)* However, the 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:~~

~~*(1)* The business qualifies as a targeted business;~~

~~*(2)* The commission and the business have entered into a targeted in-house research and development incentive agreement;~~

~~*(3)* 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~~

~~*(4)* 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.~~

~~(H)(i) Qualified wages are taxable wages paid to an employee for performing qualified services.~~

~~(ii) Qualified services are services of employees who are:~~

~~*(a)* Engaging in qualified research, which means the actual conduct of qualified research;~~

~~*(b)* Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and~~

~~*(c)* Engaging in the direct support of research activities that constitute qualified research.~~

~~(I) Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.~~

~~(J) **Combination with other incentives.** The in-house research income tax credit may not be combined with:~~

~~(i) Other in-house research and development incentives as authorized by Arkansas Code § 15-4-2708(b) or § 15-4-2708(c)(1)(A);~~

~~(ii) Any other incentive in Acts 2003, No. 182, Consolidated Incentive Act of 2003, as amended, for the same expenditures; or~~

~~(iii) A qualified business claiming tax credits earned under this subsection shall not receive the credit granted by Arkansas Code § 26-51-1102(2) for the same expenditure.~~

~~(e) **In-house research by a targeted business — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2708(b).**~~

~~(1) 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 in-house research and development expenditures.~~

~~(2)(A) 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 five (5) years of the financial incentive agreement.~~

~~(B) This incentive is offered only at the discretion of the director.~~

~~(C) The application for this income tax credit shall include a project plan that clearly identifies:~~

~~(i) The intent of the project;~~

~~(ii) The expenditures planned;~~

~~(iii) The start and end dates of the project; and~~

~~(iv) An estimate of total project costs.~~

~~(3) 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.~~

~~(4) Qualified research expenditures include in-house expenses for taxable wages paid and usual fringe benefits specific to research activities of employees of the business.~~

~~(5) Qualified research must satisfy all of the following tests to qualify:~~

~~(A) The activity must be undertaken for the purpose of discovering information that is technological in nature;~~

~~(B) The application of technological information must be intended to be useful in a new or improved business component; and~~

~~(C) Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved:~~

~~(i) Function;~~

~~(ii) Performance;~~

~~(iii) Reliability; or~~

~~(iv) Quality.~~

~~(6)(A) The following activities are specifically excluded from the definition of qualified research:~~

~~(i) Purchase of supplies;~~

~~(ii) Purchase of land;~~

~~(iii) Purchase or rehabilitation of production machinery and equipment;~~

~~(iv) Construction or renovation of buildings;~~

~~(v) Any ordinary and necessary expenses of conducting business;~~

~~(vi) Any research conducted after the beginning of commercial production;~~

~~(vii) Research adapting an existing product or process to a particular customer's need;~~

~~(viii) Duplication of an existing product or process;~~

~~(ix) Surveys or studies;~~

~~(x) Research related to certain internal-use computer software;~~

~~(xi) Research in the:~~

~~*(a)* Social sciences;~~

~~*(b)* Arts; or~~

~~*(c)* Humanities; and~~

~~(xii)*(a)* Research conducted outside of Arkansas.~~

~~*(b)* However, the 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:~~

~~*(1)* The business qualifies as a targeted business;~~

~~*(2)* The commission and the business have entered into a targeted in-house research and development incentive agreement;~~

~~*(3)* 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~~

~~*(4)* 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.~~

~~(7)(A) Qualified wages are taxable wages paid to a full-time permanent employee or "contractual employee", as defined in the Consolidated Incentive Act of 2003, Arkansas Code § 15-4-2701 et seq., for performing qualified services.~~

~~(B) Qualified services are services of employees who are:~~

~~(i) Engaging in qualified research, which means the actual conduct of qualified research;~~

~~(ii) Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and~~

~~(iii)(a) Engaging in the direct support of research activities that constitute qualified research.~~

~~(b) Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.~~

~~(8) 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.~~

~~(9)(A) The income tax credits earned under this program may be sold upon approval by the commission.~~

~~(B) 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.~~

~~(10) The purchaser of the tax credits provided by this program shall:~~

~~(A) Obtain certification from the commission; and~~

~~(B) Attach the appropriate documentation provided by the commission to the tax return on which the credit is first claimed.~~

~~(11)(A) The tax credit must be sold within one (1) year of its being issued by the commission.~~

~~(B) 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.~~

~~(12) 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.~~

~~(13)(A) 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.~~

~~(B) A targeted business earning research and development tax credits is prohibited from earning job creation tax credits, as authorized by Arkansas Code § 15-4-2709, 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 qualified expenditures for 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 up to 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.~~

~~(C) **Notes.**~~

~~(i) The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.~~

~~(ii)*(a)* A buyer of the credit is limited to the same carry forward period.~~

~~*(b)* A sale of the tax credit does not alter the time frame for using the credits.~~

~~(iii) It is the intent of the commission to adhere to some of the federal guidelines for research conducted by an eligible targeted business.~~

~~(14) **Combination with other incentives.** The income tax credit for research by a targeted business authorized by Arkansas Code § 15-4-2708(b) may not be used with:~~

~~(A) Other in-house research and development incentives as authorized by Arkansas Code § 15-4-2708(a) or § 15-4-2708(c)(1)(A); or~~

~~(B) Any other incentive in Acts 2003, No. 182, Consolidated Incentive Act of 2003, as amended, for the same expenditures.~~

~~(f) **Research area of strategic value and research under programs of the Division of Science and Technology of the Arkansas Economic Development Commission — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2708(c)(1).**~~

~~(1) An income tax credit equal to thirty-three percent (33%) of qualified research expenditures may be offered, at the discretion of the director, to an Arkansas taxpayer that invests in:~~

~~(A) In-house research in an area of strategic value; or~~

~~(B) A project under the research and development programs offered by the commission.~~

~~(2) **In-house research in an area of strategic value — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2708(c)(1)(A).**~~

~~(A)(i) The business must apply to the commission to qualify for the income tax credit for research in an area of strategic value.~~

~~(ii) Research in an area of strategic value means research in fields:~~

~~*(a)* Having long-term economic or commercial value to the state; and~~

~~*(b)* That have been identified in the research and development plan approved from time to time by the director with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission.~~

~~(iii) 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.~~

~~(iv) The income tax credit earned can:~~

~~*(a)* Offset up to one hundred percent (100%) of a business's income tax liability annually; and~~

~~*(b)* Be carried forward for up to nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.~~

~~(B) The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars ($50,000) per tax year.~~

~~(C) The application for this income tax credit shall include a project plan that clearly identifies:~~

~~(i) The intent of the project;~~

~~(ii) The expenditures planned;~~

~~(iii) The start and end dates of the project; and~~

~~(iv) An estimate of total project costs.~~

~~(D) 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.~~

~~(E)(i) Qualified research expenditures for research in an area of strategic value include:~~

~~*(a)* In-house expenses for taxable wages paid (wages subject to withholding); and~~

~~*(b)* Usual fringe benefits specific to research activities of employees of the business.~~

~~(ii) Qualified research must satisfy all of the following tests to qualify:~~

~~*(a)* The activity must be undertaken for the purpose of discovering information that is technological in nature;~~

~~*(b)* The application of technological information must be intended to be useful in a new or improved business component; and~~

~~*(c)* Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved:~~

~~*(1)* Function;~~

~~*(2)* Performance;~~

~~*(3)* Reliability; or~~

~~*(4)* Quality.~~

~~(F) The following activities are specifically excluded from the definition of qualified research:~~

~~(i) Purchase of supplies;~~

~~(ii) Purchase of land;~~

~~(iii) Purchase or rehabilitation of production machinery and equipment;~~

~~(iv) Construction or renovation of buildings;~~

~~(v) Any ordinary and necessary expenses of conducting business;~~

~~(vi) Any research conducted after the beginning of commercial production;~~

~~(vii) Research adapting an existing product or process to a particular customer's need;~~

~~(viii) Duplication of an existing product or process;~~

~~(ix) Surveys or studies;~~

~~(x) Research related to certain internal-use computer software;~~

~~(xi) Research in the social sciences, arts, or humanities; and~~

~~(xii)(a) Research conducted outside of Arkansas.~~

~~(b) However, the 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:~~

~~(1) The business qualifies as a targeted business;~~

~~(2) The commission and the business have entered into a targeted in-house research and development incentive agreement;~~

~~(3) 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~~

~~(4) 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.~~

~~(G)(i) Qualified wages are taxable wages paid to a new full-time permanent employee for performing qualified services.~~

~~(ii) Qualified services are services of employees who are:~~

~~(a) Engaging in qualified research, which means the actual conduct of qualified research;~~

~~(b) Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and~~

~~(c)(1) Engaging in the direct support of research activities that constitute qualified research.~~

~~(2) Direct support of research activities does not include general administrative services or other services only indirectly of benefit to the research activity.~~

~~(H) A business claiming a credit through this incentive shall be prohibited from receiving the research tax credit authorized by Arkansas Code § 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 ($1,000,000) in qualified research expenditures in Arkansas in conjunction with the approved program of in-house research. Assuming the entire one million dollars ($1,000,000) 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.~~

~~(I) **Notes:**~~

~~(i) The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.~~

~~(ii) The director must approve any research for which a business is seeking a credit under this incentive.~~

~~(iii) It is suggested that any business wishing to take advantage of this income tax credit first visit with the commission to help ensure the success of the research and development effort.~~

~~(J) **Combination with other incentives.** The income tax credit for research in an area of strategic value may not be used in combination with:~~

~~(i) Any other research and development incentive as authorized by Arkansas Code § 15-4-2708; or~~

~~(ii) Any other incentive in Acts 2003, No. 182, Consolidated Incentive Act of 2003, as amended, for the same expenditures.~~

~~(3) **Research under programs of the Division of Science and Technology of the Arkansas Economic Development Commission — Acts 2003, No. 182, as amended, Arkansas Code § 15-4-2708(c)(1)(B).**~~

~~(A)(i) The business must receive approval from the director to qualify for the income tax credit for research under programs of the division.~~

~~(ii) The application for this income tax credit shall include a project plan that clearly identifies:~~

~~*(a)* The intent of the project;~~

~~*(b)* The expenditures planned;~~

~~*(c)* The start and end dates of the project; and~~

~~*(d)* An estimate of total project costs.~~

~~(iii) The division specifies the application format for its programs.~~

~~(iv) The tax credit may be earned for the first five (5) years following the signing of a financial incentive agreement with the commission.~~

~~(v) The income tax credit earned can:~~

~~*(a)* Offset up to one hundred percent (100%) of a business's income tax liability annually; and~~

~~*(b)* The benefits can be carried forward for up to nine (9) years beyond the tax year in which they were earned or until exhausted, whichever occurs first.~~

~~(vi) The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars ($50,000) per tax year.~~

~~(B) 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.~~

~~(C) **Notes.**~~

~~(i) The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.~~

~~(ii) Applications for tax credit approval under this incentive must be approved by the director.~~

~~(iii) It is suggested that any business wishing to take advantage of this income tax credit first visit with the commission to help ensure the success of the research and development effort.~~

~~(D) **Combination with other incentives.** The income tax credit for research and development under programs of the division may not be used in combination with:~~

~~(i) Any other research and development incentive as authorized by Arkansas Code § 15-4-2708; or~~

~~(ii) Any other incentive in Acts 2003, No. 182, Consolidated Incentive Act of 2003, as amended, for the same expenditures.~~

Hugh McDonald
SECRETARY OF COMMERCE
Clint O'Neal
EXECUTIVE DIRECTOR,
ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

DATE: October 9, 2025

TO: All Interested Persons

FROM: Arkansas Economic Development Commission

SUBJECT: Proposed Repeal of the Consolidated Incentive Act Rules

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication the Arkansas Economic Development Commission's (the "AEDC") proposed repeal of its Consolidated Incentive Act Rules.

Pursuant to the Arkansas Administrative Procedures Act, NOTICE is hereby given that a PUBLIC HEARING will be held on November 5th, 2025, at 10 a.m. in the Diamond Mine Room on the second floor of the offices of the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The purpose of the Public Hearing will be to determine whether the AEDC should repeal the existing rules for incentives under Ark. Code Ann. § 15-4-2701, et seq. AEDC is proposing the repeal in order to eliminate unnecessary rules and provide space for more effective public guidance on its incentive programs.

All interested persons are encouraged to send their comments, statements, or opinions to the address below or to attend the Public Hearing and present, orally or in writing, statements, arguments, or opinions on the proposed repeal. The record will remain open for public comment until the close of the 30-day period outlined in the Arkansas Administrative Procedures Act; in this instance, November 11th, 2025.

Persons who wish to testify or make comments are requested to submit intended statements in writing in advance of the Public Hearing. Inquiries should be directed to: Brian Black, General Counsel – Arkansas Economic Development Commission, email: brian.black@arkansasedc.com. A copy of the proposed amendments may be obtained or viewed at https://www.arkansasedc.com/data-reports/rules.

Sincerely,

Jake G. Windley
Director of Legislative Affairs & Policies
Arkansas Department of Commerce

Hugh McDonald
SECRETARY OF COMMERCE
Clint O'Neal
EXECUTIVE DIRECTOR,
ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

Executive Summary

The Arkansas Economic Development Commission (the "AEDC") is proposing to repeal its existing Consolidated Incentive Act Rules. AEDC maintains that the current rules are unnecessary, as they largely restate the statute and introduce potential ambiguities that could be better addressed through individualized incentive agreements and public guidance. Rule promulgation is not required under the Consolidated Incentive Act itself, and the repeal will also ensure that there is no disconnect between any changes to the statute and AEDC's administrative guidance moving forward.