

Consolidated Incentive Act of 2003 (Act 182 of 2003, as amended) Rules

I. Introduction

Act 182 of 2003, “Consolidated Incentive Act of 2003,” as amended and codified at § 15-4-2701, et seq., consolidated six (6) previously-existing incentives into one (1) incentive package. The consolidated incentives include:

- Enterprise Zone (Advantage Arkansas);
- Economic Investment Tax Credit (InvestArk);
- Economic Development Incentive Act (Create Rebate);
- Arkansas Economic Development Act (AEDA);
- Emerging Technology Development Act; and
- Biotechnology Training and Development Act.

The Consolidated Incentive Act of 2003, 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. In addition, it expands the opportunities for qualified businesses to earn income tax credits based on research and development expenditures.

Other benefits of consolidating incentives include uniformity of definitions and administration of the various incentives.

A financial incentive agreement will be signed with each eligible business that qualifies for an incentive under this Act and is approved by the Arkansas Economic Development Commission (Commission). The financial incentive agreement will be the primary document outlining the benefits to be received and the start and end dates of the project. It will also serve as the primary source document when the Department of Finance and Administration (DFA) audits the business to verify compliance.

The financial incentive agreement shall specify the:

- Effective date of the agreement;
- Term of the agreement, which shall be calculated from the date the agreement is signed by the business and the Commission;

- Incentive the business is to receive;
- Investment, wage and/or payroll threshold requirements necessary to qualify for eligibility;
- Eligible business's responsibilities for certifying eligibility requirements; and
- Approved business's responsibilities for failure to meet or maintain eligibility requirements.

II. Definitions

1. "Applied research" means any activity that seeks to utilize, synthesize, or apply existing knowledge, information, or resources to the resolution of a specific problem, question, or issue;
2. "Average hourly wage" means "Payroll" as defined in § 15-4-2703(28), divided by the number of hours worked to earn the "payroll". For purposes of counting the number of hours worked for salaried employees, forty (40) hours per week shall be used. 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 any original investigation for the advancement of scientific or technological knowledge;
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. "Commission" means the Arkansas Economic Development Commission;
7. "Contractual employee" means an employee who:
 - A. May be included in the payroll calculations of a business qualifying for benefits under this Act and is under the direct supervision of the business receiving benefits under this Act, but is an employee of a business other than the one receiving benefits under this Act;
 - B. Otherwise meets the requirements of a new full-time permanent employee of the business receiving benefits under this Act; and
 - C. Receives a benefits package comparable to direct employees of the business receiving benefits under this Act;
8. "Corporate headquarters" means:
 - A. The facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the business's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled either on a regional basis or

national basis. These facilities include establishments primarily engaged in administering, overseeing, and managing other establishments of the business or enterprise as classified in sector 551114 of the 2012 North American Industrial Classification System (NAICS).

- B. A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;
9. "Council" means the Arkansas Economic Development Council as defined at § 15-4-201 et seq.;
10. "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 Arkansas Department of Workforce Services in their most recent Annual Covered Employment and Earnings publication, divided by forty (40).
 - B. The average hourly wage threshold determined at the signing of the financial incentive agreement shall be the threshold for the term of the agreement;
11. "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 revenues are 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 revenues of the product owner are from out-of-state customers; or
 - C. Products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;
12. "Division" means the Division of Science and Technology of the Arkansas Economic Development Commission;
13. "Eligible businesses" means non-retail businesses engaged in commerce for profit that meet the eligibility requirements for the applicable incentive offered by this subchapter, and fall into one (1) or more of the following categories in effect on the effective date of the incentive agreement:
- A. (i) Manufacturers classified in sectors 31-33 of the 2012 North American Industrial Classification System (NAICS);
(ii) Manufacturers classified in sectors 20-39 according to the Standard Industrial Classification (SIC) standards but which are classified under NAICS in another sector;
 - B. (i) Businesses primarily engaged in the design and development of prepackaged software, digital content production and preservation, computer processing and data preparation services, or information retrieval services.
(ii) All businesses in this group shall derive at least seventy-five percent

- (75%) of their sales revenue from out of state;
 - C. (i) Businesses primarily engaged in motion picture productions.
(ii) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state;
 - D. A distribution center or intermodal facility;
 - E. An office sector business;
 - F. A national or regional corporate headquarters, as classified in sector 551114 of the 2012 North American Industrial Classification System (NAICS);
 - G. Firms primarily engaged in commercial, physical and biological research as classified in the 2012 North American Industrial Classification System (NAICS) codes 541711 or 541712;
 - H. (i) Scientific and technical services business.
(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their sales revenue from out of state; and
(b) (1) The average hourly wages paid by businesses in this group shall exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less.
(2) The average hourly wage threshold determined at the signing of the financial incentive agreement shall be the threshold for the term of the agreement; and
 - I. The Executive Director may classify a non-retail business as an eligible business if the following conditions exist:
 - (i) The business must derive at least seventy-five percent (75%) of its sales revenue from out of state; and
 - (ii) The business proposes to pay wages in excess of one hundred ten percent (110%) of the county or state average wage, whichever is less;
14. "Endorsement resolution" means a resolution approved by the governing body of the municipality or county within whose jurisdiction the project facility is located which:
- A. Approves the business's participation in the program; and
 - B. Specifies that the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the approved business. 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;
15. "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. For the purposes of this Act, subordinated debt may also be considered an equity investment;
16. "Executive Director" means the Executive Director of the Arkansas Economic Development Commission;
 17. "Existing employees" means:
 - A. Those employees hired by the business before the date the financial incentive agreement was signed.
 - B. (i) Existing employees may be considered new full-time permanent employees only if:
 - (ii)(a) The position or job filled by the existing employee was created in accordance with the signed financial incentive agreement; and
 - (b) 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 Executive Director and the Director 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;
 18. "Facility" means a single physical location at which the eligible business is conducting its operations. A physical location may consist of more than one (1) facility of the eligible business, that is conducting similar or complimentary activity, located on non-contiguous property within the same incorporated county;
 19. "Financial incentive agreement" means an agreement entered into by an eligible business and the Commission to provide the business an incentive to locate a new business or expand an existing business in Arkansas;
 20. "Fund" means the Arkansas Economic Development Incentive Fund;
 21. "Governing authority" means the quorum court of a county or the governing body of a municipality;
 22. "In-house research" means:
 - A. (i) Applied research supported by the business through the purchase of supplies for research activities and payment of wages and usual fringe benefits for employees of the business who conduct research activities in research facilities:
 - (a) Dedicated to the conduct of research activities;
 - (b) Operated by the business; and
 - (c) Performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice, or to advance a concept or idea, or improvement thereon, to the point of practical application.

- (ii) “In-house research” includes experimental 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.
 - (iii) “In-house research” may also include contractual agreements with one or more Arkansas colleges or universities, or other research organizations to perform research for a “targeted business” as defined in § 15-4-2703, provided that the Executive 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, determines in writing, in advance of the research being performed, that the research by the college or university or other research organization is essential to the core function of the targeted business.
- B. “In-house research” does not include tests or inspection of materials or products for quality control, efficiency surveys, management studies, other market research, or any other ordinary and necessary expenses of conducting business;
23. “Intellectual property” means an invention, discovery, or new idea that the legal entity responsible for commercialization has decided to legally protect for possible commercial gain, based on the disclosure of the creator;
24. “Intermodal facility” means a facility with more than one (1) mode of interconnected movement of freight, commerce, or passengers;
25. “Invest” or “Investment” means money expended by or on behalf of an approved eligible business that seeks to begin or expand operations in Arkansas, and without the infusion of capital, the location or expansion may not occur;
26. “Investment threshold” means the minimum amount of investment in project cost that must be incurred in order to qualify for eligibility;
27. “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;
28. “Modernization” means:
- A. An increase in efficiency or productivity of a business through investment in machinery, equipment, or 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;
29. “National corporate headquarters” means the sole corporate headquarters in the nation that handles headquarters-related functions on a national basis;
30. “New full-time permanent employee” means:

- A. (i) A position or job that was created pursuant to the signed 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, Ark. Code Ann. § 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) 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.
- 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;
- 31. “Non-retail business” means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;
- 32. “Office sector business” means:
 - A. Business operations that support primary business needs, including, but not limited to, customer service, credit accounting, telemarketing, claims processing, and other administrative functions.
 - B. All businesses in this group must be non-retail businesses and derive at least seventy-five percent (75%) of their sales revenue from out of state;
- 33. “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 signed financial incentive agreement;
- 34. “Person” means:
 - A. An individual, trust, estate, fiduciary, firm, partnership, limited liability company, or 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;
35. "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;
36. "Project" means costs associated with the:
- A.
 - (i) Construction of a new plant or facility;
 - (ii) Expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or
 - (iii) Modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.
 - B. "Project" 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; and
 - (b) The purchase of the existing business will result in the retention of the 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 signed by the Commission;
37. "Project plan" means a plan:
- A. Submitted to the Commission containing such information as may be required by the Executive Director to determine eligibility for benefits; and
 - B. That, if approved, is a supplement to the financial incentive agreement;

38. "Qualified business" means an eligible business that:
 - A. Has met the qualifications for one (1) or more economic development incentives authorized by this Act; and
 - B. (i) Has signed a financial incentive agreement with the Commission; or
(ii) Is involved in a research and development program administered by the Commission;
39. "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 which has been approved for tax credit treatment under rules promulgated by the Commission;
40. "Region" or "regional" means a geographic area comprised of this state and a contiguous state;
41. "Regional corporate headquarters" means:
 - A. The location where a headquarters staff performs functions on a regional basis that involve the services of administration, planning, research and development, marketing, personnel, legal, computer, or telecommunications;
 - B. A function on a regional basis does not include a function involving manufacturing, processing, warehousing, distributing, wholesaling activities or the operations of a call center;
42. "Research and development programs of the Division of Science and Technology of the Arkansas Economic Development Commission" means statutory programs operated by the Commission under §§ 15-3-101 to 15-3-135;
43. "Research area of strategic value" means research in fields having long-term economic or commercial value to the state, and that have been identified in the research and development plan approved from time to time by the Executive 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;
44. "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; or
 - (ii) Computer programming and computer systems design; or
 - (iii) Scientific research and development in the physical, biological, and engineering sciences;
 - B. Selling expertise;
 - C. Having production processes that are almost wholly dependent on worker skills;
 - D. Deriving at least seventy-five percent (75%) of their sales revenue from

- out of state; and
 - E. Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;
45. "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 engineering surveys, soil tests, land clearing, and extension of roads and utilities to the project site;
46. "Strategic research" means research that has strategic economic or long-term commercial value to the state and that is identified in the research and development plan approved from time to time by the Executive 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;
47. "Support infrastructure" means physical assets necessary for the business to operate, including, but not limited to, water systems, wastewater systems, gas and electric utilities, roads, bridges, parking lots, and communication infrastructure;
48. "Targeted businesses" means:
- A. A grouping of growing business sectors, the businesses of which:
 - (i) Have been operating in the state for less than five (5) years. For purposes of determining this criterion, the targeted business is considered operating in Arkansas when the minimum annual payroll threshold is met and the minimum equity investment has been constructively received. Once these thresholds are met, the business has five (5) years in which it is eligible to apply as a targeted business;
 - (ii) Pay at least one hundred and fifty percent (150%) of the lesser of the county or state average wage; and
 - (iii) That have been selected to receive special benefits;
 - B. Those groupings, not to exceed six (6), include the following:
 - (i) Advanced materials and manufacturing systems;
 - (ii) Agriculture, food and environmental sciences;
 - (iii) Biotechnology, bioengineering, and life sciences;
 - (iv) Information technology;
 - (v) Transportation logistics; and
 - (vi) Bio-based products;
49. "Technological information" means information derived from basic or applied research that provides an improved practical understanding of the business component; and
50. "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 benefits.

III. Tiers

Except for the retention investment credits (InvestArk) in § 15-4-2706(c), the research and development credits in § 15-4-2708, and the payroll income tax credit for targeted businesses in § 15-4-2709; all benefits provided in this Act are determined in relation to the tier of the county in which the project is located. The state's seventy-five (75) counties are divided into four (4) tiers, with Tier 1 counties being the most prosperous counties and Tier 4 counties being the least prosperous counties. Tiers are determined annually by the Commission by ranking four variables: poverty rate, population growth, per capita personal income, and unemployment rate. 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. 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. 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.

A county's tier ranking, determined on the effective date of any incentive agreement under the Consolidated Incentive Act of 2003, as amended, shall establish the thresholds and benefits for the term of the agreement.

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, as indicated by a loss of more than five percent (5%) of the employed labor force. The most recent Labor Market Information publication, published by the Arkansas Department of Workforce Services, is used as the reference to determine a loss of five percent (5%) of the employed labor force. The movement to a higher tier is authorized by action of the Arkansas Economic Development Council (Council) after having received a request from the county judge of the county in question. A business that had signed a financial incentive agreement with the Commission prior to the action of the Council to move a county to a higher 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.

IV. Powers and Duties of the Arkansas Economic Development Commission

The Commission shall administer the provisions of the Consolidated Incentive Act of 2003, as amended, and shall have the following powers and duties in addition to those mentioned in other laws of the state:

1. To promulgate rules in accordance with the Administrative Procedures Act, § 25-15-201 et seq., necessary to carry out the provisions of the Consolidated Incentive Act of 2003, as amended;
2. To provide the DFA with a copy of each financial incentive agreement entered into by the Commission with each qualifying business;
3. To assist governing authorities in obtaining assistance from any other department of state government to promote new businesses and industries;
4. 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;
5. To act as a liaison between other state agencies and businesses and industries to assure that both the spirit and intent of this Act are met;
6. To make disbursements from the Economic Development Incentive Fund to qualified businesses as authorized in § 15-4-2707 of the Consolidated Incentive Act of 2003, as amended; and
7. The Executive Director is authorized to negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility or expanding an existing facility that would seek the benefits of §§ 15-4-2706(b), 15-4-2706(e), 15-4-2707, 15-4-2708(c), or 15-4-2709.

V. Administration

1. A. If the annual payroll threshold of the business applying for benefits under this Act is not met within twenty-four (24) months after the signing of the financial incentive agreement, the business may request, in writing, an extension of time to reach the required payroll threshold.
- B. (i) If the Executive Director and the Director of the Department of Finance and Administration (Director) find that the approved business has presented compelling reasons for an extension of time, the Executive Director may grant an extension of time not to exceed forty-eight (48) months.
(ii) However, the extension on projects applying for benefits under § 15-4-2705 is limited to a twenty-four (24) month extension.
- C. (i) If a business fails to reach the annual payroll threshold before the expiration of the twenty-four (24) months, or the time period established by a subsequent extension of time, that business will be liable for the repayment of all benefits previously received by the business.
(ii) (a) After a business has failed to reach the annual payroll threshold in a timely manner, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.

- (b) (1) If the annual payroll of a business receiving benefits under this Act falls below the payroll threshold for qualification in a year subsequent to the one in which it initially qualified for the incentive, the benefits outlined in the financial incentive agreement will be terminated unless the business files a written application for an extension of benefits with the Commission explaining why the payroll has fallen below the level required for qualification.
- (2) The Executive Director and the Director may approve the request for extension of time, not to exceed twenty-four (24) months, for the business to bring the payroll back up to the requisite threshold amount and may approve the continuation of benefits during the period the extension is granted.
- (3) If the business fails to reach the payroll threshold before the expiration of the time period established by a subsequent extension of time, the business shall be liable for the repayment of all benefits paid to the business after it no longer qualified for the benefits.
- (c) (1) If a business fails to reach the investment threshold before the expiration of the four (4) year time limit, that business will be liable for the repayment of all benefits previously received by the business.
- (2) After a business has failed to reach the investment threshold of this Act in a timely manner, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.
- (d) (1) If a business fails to reach the average hourly wage requirement for benefits under this Act within twenty-four (24) months of the effective date of the financial incentive agreement, the business will be liable for the repayment of all benefits previously received by the business.
- (2) After a business has failed to meet the hourly wage requirements, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.
- (e) (1) If a business fails to meet the non-retail business requirements of this Act, the business will be liable for the repayment of all benefits previously received by the business.
- (2) After a business has failed to meet the non-retail business requirements, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to

- enforce the repayment provisions.
- (f) (1) Eligible businesses whose qualification depends on deriving seventy-five percent (75%) of their sales from out-of-state customers shall meet this requirement within three (3) years from the date of their financial incentive agreement.
 - (2)(A) If the requirement is not met within three (3) years of the signed financial incentive agreement, the business may request, in writing, an extension of time to reach the required sales threshold.
 - (B) If the Executive Director finds that the business has presented compelling reasons for an extension of time, the Executive Director may grant an extension of time not to exceed twenty-four (24) months.
 - (g) (1) If a business fails to timely meet the out-of-state sales requirements of this Act, the business will be liable for the repayment of all benefits previously received by the business.
 - (2) After a business has failed to meet the out-of-state sales requirements, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.
 - (h) (1) If a business fails to notify the DFA that the annual payroll of the business has fallen below the threshold for qualification for and retention of any incentive authorized by this Act, that business will be liable for the repayment of all benefits which were paid to the business after it no longer qualified for the benefits.
 - (2) After a business has failed to notify the DFA that the business has fallen below the payroll threshold, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.
 - (3) Interest shall also be due at the rate of ten percent (10%) per annum.
 - (i) The DFA may obtain whatever information is necessary from a participating business and from the Arkansas Department of Workforce Services (ADWS) to verify that a business that has entered into financial incentive agreements with the Commission is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, and out-of-state revenues to the DFA.
 - (j) The DFA may file a lawsuit in the Circuit Court of Pulaski County, or the circuit court in any county where a program participant is located, to enforce the repayment provisions of this Act.

- (k) (1) If a business fails to satisfy or maintain any other requirement or threshold of this Act, that business will be liable for the repayment of all benefits received after it no longer qualified.
- (2) After a business has failed to comply with the requirements or thresholds of this Act, the DFA shall have two (2) years to collect benefits previously received by the business or file a lawsuit to enforce the repayment provisions.
- (l) If a repayment is required as a result of not complying with the requirements or thresholds of this Act, interest shall be due at the rate of ten percent (10%) per annum.

VI. Transfer and Assignment of Financial Incentive Agreements

No Consolidated Incentive Act financial incentive agreement shall be transferrable or assignable without the written consent of the Executive Director.

VII. Incentive Programs Contained Within the Consolidated Incentive Act of 2003, as Amended

The incentive programs below require that a potentially-eligible business submit an application and a project plan to the Commission prior to incurring project costs or hiring new employees associated with the project. In some cases, once an application is processed and signed by the Commission, the application, with supporting information, becomes a financial incentive agreement.

The date an application is received by the Commission is the earliest date benefits may be accrued.

1. Job-Creation Tax Credit § 15-4-2705.

A. Job Creation Income Tax Credit (Advantage Arkansas) – Act 182 of 2003, as amended, § 15-4-2705.

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

Pursuant to Act 716 of 2009, for agreements with an effective date on or after July 31, 2009, in all tiers, in order to qualify for the benefits of this program, the proposed average hourly wage of the eligible business applying for these benefits must be equal to, or greater than, the lowest county average hourly wage calculated by the Commission based on the most recent calendar year data published by the ADWS.

The date of the financial incentive agreement is the beginning date in determining when the payroll threshold must be met. Only those employees hired after the date of the financial incentive agreement are eligible for the income tax credits (except as provided in Section II (17)).

The income tax credit earned cannot be used to offset more than fifty percent (50%) of a business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

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. 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 DFA. 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. Therefore, the business must certify annually at the end of each tax year to the DFA.

The business shall be entitled to receive income tax credits for which it has remained eligible under the Act and for which has provided timely certification in support thereof, for each subsequent tax year during the term of the agreement. The term of the financial incentive agreement shall be for a period of sixty (60) months, beginning on the date of the approved financial incentive agreement.

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. 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. 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 Section V (1)).

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 effective date of the financial incentive agreement:

- **Tier 1 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of one hundred twenty-five thousand dollars (\$125,000) in order to qualify. 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;
- **Tier 2 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of one hundred thousand dollars (\$100,000) in order to qualify. 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;
- **Tier 3 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of seventy-five thousand dollars (\$75,000) in order to qualify. 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
- **Tier 4 Counties** – An eligible business must have a payroll of new full-time permanent employees in excess of fifty thousand dollars (\$50,000) in order to qualify. 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.

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) 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. ($\$15 \text{ per hour} \times 2080 \text{ hours} = \$31,200 \text{ per employee} \times 25 \text{ jobs} = \$780,000 \text{ annual payroll} \times 3\% = \$23,400 \text{ income tax credit earned for each of the next five (5) years.}$) 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 twenty-four (24) months 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.

Combination with other incentives: The job creation income tax credit (Advantage Arkansas) authorized in § 15-4-2705 may be combined with:

- The research and development income tax credit for university-based research authorized by § 15-4-2708(a);
- The research and development income tax credit for in-house research authorized by § 15-4-2708(b); and
- Either the retention investment incentive (InvestArk) authorized in § 15-4-2706(c); or
- The sales and use tax refund investment incentive (Tax Back) authorized by § 15-4-2706(d).

2. Economic Development Incentive Fund – Payroll Rebate § 15-4-2707.

A. Payroll Rebate (Create Rebate) – Act 182 of 2003, as amended, § 15-4-2707.

The payroll rebate incentive, also known as “Create Rebate”, is offered only at the discretion of the Executive Director. Like the Advantage Arkansas job creation income tax credit, the payroll rebate is based on the payroll of new full-time permanent employees.

The date of the financial incentive agreement is the beginning date in determining when the payroll threshold must be met. Only the payroll of those employees hired after the date of the financial incentive agreement is eligible for the rebate (except as provided in Section II (17)). A minimum payroll of two million dollars (\$2 million) (payroll threshold) for new full-time permanent employees is required to qualify for this incentive.

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. 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. 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 Section V (1)).

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.

It is the responsibility of the qualified business to file the *Create Rebate Program New Full-Time Permanent Employee Payroll Certification* with the DFA when the requisite two million dollar (\$2 million) payroll threshold has been attained. This certification provides the number of new full-time permanent employees hired, together with the dollar amount of their payroll. Thereafter, the business shall recertify the number of new full-time permanent employees and payroll amounts annually at the end of each tax year. The certification to the DFA is the mechanism to initiate the verification audit. Therefore, the business must certify annually at the end of each tax year to the DFA.

Pursuant to Act 625 of 2009, 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 DFA will result in the DFA reducing the amount of rebate earned by ten percent (10%) if not claimed within twelve (12) months from the end of the tax year in which the rebate was earned, or a one hundred percent (100%) forfeiture of the earned rebate if not claimed within twenty-four (24) months from the end of the tax year in which the rebate was earned. The offering of this incentive is intended to provide benefits to businesses locating or expanding in Arkansas. In the event the approved business ceases the operations of the facility for which the incentives are offered, the incentive agreement will be terminated and any benefits accrued and not claimed as of the date of closure will be forfeited.

The payroll rebate (Create Rebate) benefit can only be authorized at the discretion of the Executive Director in the form of a written proposal and may be offered for up to ten (10) years. The term of the agreement depends on the benefit to the state as determined by a cost-benefit analysis performed by the Commission. If the proposal is accepted by the business, a financial incentive agreement is signed by the Commission and the business. 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 Executive Director. With the exception of targeted businesses, the benefit allowed is dependent upon the tier in which the business locates as follows:

- **Tier 1 Counties** – 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;
- **Tier 2 Counties** – 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;

- **Tier 3 Counties** – 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; and
- **Tier 4 Counties** – An incentive payment equal to five percent (5.0%) of the payroll of the new full-time permanent employees for the term of the agreement.
- At the discretion of the Executive Director, an eligible business located in a Tier 1, 2, or 3 county may be authorized to receive an increased benefit, up to five percent (5.0%), of the payroll of the new full-time permanent employees if the following conditions are met:
 - The business is considering a location in another state;
 - The business derives at least seventy-five percent (75%) of its sales from out of state; and
 - The business proposes to pay wages in excess of one hundred percent (100%) of the average wage of the county in which it locates.

The benefits provided by this section shall be calculated based upon the provisions of the financial incentive agreement. 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) 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 two million dollars (\$2,000,000) is required to qualify for this incentive. In this example, the Executive Director agrees to award the payroll rebate for a period of three (3) years. ($\$19 \text{ per hour} \times 2080 = \$39,520 \text{ per employee} \times 65 \text{ jobs} = \$2,568,800 \text{ annual payroll} \times 4.25\% = \$109,174 \text{ payroll rebate for each of the next three (3) years.}$) 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 Executive 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 two million dollar [\$2,000,000] threshold for qualification, the business may request an

extension of up to twenty-four (24) months 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.

Combination with other incentives: The payroll rebate (Create Rebate) incentive authorized in § 15-4-2707, if offered by the Executive Director, may be combined with:

- Either the retention investment incentive (InvestArk) authorized by § 15-4-2706(c) *or* the sales and use tax refund incentive (Tax Back) authorized by § 15-4-2706(d), the approved business would choose between these two, but cannot take both;
- The ArkPlus investment incentive authorized by § 15-4-2706(b), if approved by the Executive Director;
- The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(b).

B. Payroll Rebate for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2707.

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:

- The average hourly wage of the new full-time permanent employees must be at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less; and
- The payroll of the new full-time permanent employees exceeds two hundred fifty thousand dollars (\$250,000).

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

3. Investment Tax Incentives § 15-4-2706.

A. Retention Sales and Use Tax Credit (InvestArk) – Act 182 of 2003, as amended, § 15-4-2706(c).

A qualified business may apply for the Retention Sales and Use Tax Credit (InvestArk) through June 30, 2017. InvestArk applications shall not be accepted on or after July 1, 2017. However, any projects that qualify for InvestArk based on applications filed through June 30, 2017, shall continue to earn credits. InvestArk tax credits issued on a project that qualified for InvestArk tax credits based on an application filed through June 30, 2017, shall remain in effect and shall be taken and carried forward as otherwise provided under § 15-4-2706(c).

The qualifications and benefits for this incentive are the same in all four (4) tiers. To qualify, a business must: 1) Have been in continuous operation in the state for at least two (2) years; 2) Invest a minimum of five million dollars (\$5,000,000) in a project (including land, buildings and equipment); and 3) Hold a direct-pay sales and use tax permit from the DFA.

To obtain benefits under the InvestArk program, a business must apply to the Commission, using forms provided by the Commission, and be approved based on the qualifications submitted in the application and the accompanying project plan. With the exception of preconstruction costs, only those costs incurred after the Commission's approval are eligible in calculating the benefit of this program.

The project plan shall clearly identify the scope of the project, the time frame in which the project is to be started and completed and a complete listing of estimated project expenditures. All project costs must be incurred within four (4) years from the date the project is approved by the Commission. However, a qualified business that enters into a lease for building or equipment for a period in excess of five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures. The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.

The project plan may be revised by written amendment filed with the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. 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.

The benefit of the InvestArk program is a sales and use tax credit based on a percentage of qualified expenditures. The percentage used to determine the amount of sales and use tax credits earned is one-half 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.

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

Once a business has qualified for the benefits of the InvestArk incentive, the Executive Director will notify the DFA that the project has been approved and will transmit the documents upon which the qualification was based.

The Commission's approval of any application is for content only. It does not constitute approval of all items listed on the application or the project plan. These items will be reviewed and either approved or ruled ineligible by an audit by the Revenue Division of the DFA.

The DFA is authorized to conduct an audit to determine eligibility of reported project expenditures. The audit may be conducted after credits have been issued and used. 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.

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 DFA to report the eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of credit earned during that calendar year, the DFA shall issue a memorandum of credit to the qualified business. 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 and 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 over the rate of 6.5% as of July 1, 2013). At the end of each calendar year, until project completion, the business shall certify to the DFA 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 and 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 6.5% ($\$7,754,000 \times 7\%$) would be \$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.
- 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 Section V of these rules may be invoked by the DFA.

Combination with other incentives: The retention tax credit (InvestArk) authorized in § 15-4-2706(c) may be combined with:

- The job creation tax credit (Advantage Arkansas) as authorized in § 15-4-2705;
- The payroll rebate (Create Rebate), if offered by the Executive Director, as authorized in § 15-4-2707;
- The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(b).

B. Investment Income Tax Credit (ArkPlus) – Act 182 of 2003, as amended, § 15-4-2706(b).

This incentive is awarded only at the discretion of the Executive Director. To qualify, the business must meet both the investment and payroll thresholds for the tier in which it locates.

The benefit is an income tax credit equal to ten percent (10%) of the investment in land, buildings, equipment, and costs relating to licensing and protecting intellectual property (which would include license fees, patent fees and attorney

fees to maintain or enhance the patent's or trademark's application). The benefit is the same regardless of the tier in which the business locates.

The business must reach the investment threshold for the tier in which it is located within four (4) years from the date of the signing of the financial incentive agreement. All project costs must be incurred within four (4) years from the date the project is approved by the Commission; however, a qualified business that enters into a lease for building or equipment for a period in excess of five (5) years may count the lease payments for the first five (5) years of the lease agreement as qualifying expenditures. The first five (5) years of qualified lease payments should be claimed in the expenditure year in which the lease is signed.

The business must reach the payroll threshold for the tier in which it is located within twenty-four (24) months from the date of the signing of the financial incentive agreement.

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 DFA when the investment threshold is met. This certification provides the amount of eligible project costs incurred in the previous tax year and the number of new full-time permanent employees hired, together with the dollar amount of their payroll. 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. The certification to the DFA is the mechanism to initiate the verification audit.

The income tax credit earned cannot be used to offset more than fifty percent (50%) of the business's income tax liability in any one (1) tax year. Any unused credits can be carried forward for nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

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

- **Tier 1** – The business must invest at least five million dollars (\$5,000,000) and have an annual payroll of new full-time permanent employees of at least two million dollars (\$2,000,000);
- **Tier 2** – The business must invest at least three million seven hundred fifty thousand dollars (\$3,750,000) and have an annual payroll of new full-time permanent employees of at least one million five hundred thousand dollars (\$1,500,000);

- **Tier 3** – The business must invest at least three million dollars (\$3,000,000) and have an annual payroll of new full-time permanent employees of at least one million two hundred thousand dollars (\$1,200,000); and
- **Tier 4** – The business must invest at least two million dollars (\$2,000,000) and 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) per hour. ($\$15/\text{hour} \times 2080 \text{ hours} = \$31,200$ average annual salary $\times 50$ 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 and 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 and one-half million 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 Executive Director approve the business’s application for this incentive program, and should the business spend precisely three and one-half million dollars (\$3,500,000), it would earn an income tax credit of three hundred and fifty thousand dollars (\$350,000) that could be carried forward for 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 Section V of these rules.

Combination with other incentives: The investment income tax credit authorized by § 15-4-2706(b), if approved by the Executive Director, may be combined with:

- The payroll rebate (Create Rebate) authorized by § 15-4-2707, if approved by the Executive Director;
- The research and development income tax incentive for university-based research authorized by § 15-4-2708(a); and
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(b).

C. Technology-Based Enterprises Investment Income Tax and Sales and Use Tax Credit (Targeted ArkPlus) – Act 182 of 2003, as amended, § 15-4-2706(b).

At the discretion of the Executive Director, a targeted business may earn an income tax credit or a sales and use tax credit based upon new investment. The targeted business must:

- Invest a minimum of two hundred fifty thousand dollars (\$250,000) within four (4) years of the effective date of the financial incentive agreement;
- Create a new payroll of at least two hundred fifty thousand dollars (\$250,000); and
- Pay wages that are at least one hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less.

The credit earned by the targeted business shall be based upon a percentage of the investment as follows:

- The credit amount shall be two percent (2%) of investments from two hundred fifty thousand dollars (\$250,000) up to five hundred thousand dollars (\$500,000);
- The credit amount shall be 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);
- The credit amount shall be 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
- The credit amount shall be 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).

Prior to the execution of the financial incentive agreement, the targeted business must elect to receive the tax credits as sales and use tax credits or income tax credits.

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 targeted business that pays at least one-hundred seventy-five percent (175%) of the state or county average hourly wage, whichever is less, may offset fifty percent (50%) of its tax liability.
- A targeted business that pays at least two hundred percent (200%) of the state or county average hourly wage, whichever is less, may offset seventy-five percent (75%) of its tax liability.
- A targeted business that pays at least two hundred twenty-five percent (225%) of the state or county average hourly wage, whichever is less, may offset one hundred percent (100%) of its tax liability.

The approved targeted business must certify eligible project expenditures annually with the DFA. Upon verification of eligibility, the DFA shall issue the credit according to the tax type specified in the financial incentive agreement.

The income tax credit may be applied against the approved business's Arkansas income tax liability. Any unused credit may be carried forward for a period not to exceed nine (9) tax years after the tax year in which it was first earned.

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.

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

- Sales made by the approved business and collected from the customer;
- Use taxes accrued by the business for out-of state purchases; and
- Sales and use taxes accrued and reported on the business's monthly direct-pay report.

The credit may not be applied against any taxes collected from the business by the seller. Any unused credit may be carried forward for a period not to exceed 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) – Act 182 of 2003, as amended, § 15-4-2706(d).

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. The Commission's approval is contingent upon receipt of a completed application and a local endorsement resolution from the city, county, or both which authorizes the refund of its local taxes to the eligible business.

To qualify, the eligible business must invest in excess of one hundred thousand dollars (\$100,000) and meet the eligibility criteria of the Advantage Arkansas (§ 15-4-2705) or Create Rebate (§ 15-4-2707) job creation incentive programs.

The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be signed within twenty-four (24) months of signing 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 § 15-4-2705 or § 15-4-2707 within the previous forty-eight (48) months.

In the event an eligible business has an existing Tax Back agreement, the business may apply for additional Tax Back if it has signed a job creation financial incentive agreement under § 15-4-2705 or § 15-4-2707 within the previous forty-eight (48) months.

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 § 15-4-2705 or § 15-4-2707 within the previous forty-eight (48) months.

An application, accompanied by local endorsement resolution(s), must be filed with the Commission. The application should clearly identify the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. The local endorsement resolution(s) 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.

The purpose of the resolution is to: A) approve the business's participation in the program; and B) specify that the municipality or county authorizes the DFA to refund all or part of any sales and use tax levied at the local level. 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.

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

A refund shall not be authorized for:

- routine operating expenditures;
- 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;
- licensed motor vehicles; or
- expenditures for routine repair and maintenance that do not result in new construction or expansion.

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 Educational Adequacy Fund (.875%) provided in § 19-5-1227 or the taxes dedicated to the Conservation Tax Fund (.125%) provided in § 19-6-484.

All project costs must be incurred within four (4) years from the date the project is approved by the Commission. The project plan may be revised by written amendment filed with the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. 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.

Eligible Business Tax Back Refunds

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.

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 DFA 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.

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

- The approved business has received, or will be receiving, for a local tax cap rebate on qualifying Tax Back purchases, either on the approved business's Sales and Use Tax Report or as a refund from the Sales and Use Tax Section; or
- The contractor or developer has received, or will be receiving, a local tax cap rebate on qualifying Tax Back purchases, either on the contractor's or developer's Sales and Use Tax Report or 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) (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) 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.

Refunds to Developers/Contractors

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 the DFA Tax Credits/Special Refunds Section, in writing, that this be permitted and states the basis for this request. This request must be approved by the DFA prior to the signing of the financial incentive agreement.

The DFA Revenue Division will authorize this procedure only when it is satisfied that:

- 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;
- All requirements of the Consolidated Incentive Act of 2003, as amended, and AEDC rules will be adhered to;
- A *notarized affidavit (Form Tax Back 1400)* is presented to the DFA

Revenue 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;

- A *notarized affidavit (Form Tax Back 1300)* is presented to the DFA Revenue 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. The affidavit must state that the eligible business acknowledges that if the eligible business fails to comply with the conditions contained in the Act or this rule, that the business will be liable for the payment of all sales and use taxes which were refunded to the contractors and developers under this Act, plus interest; and
- 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.

If a developer or contractor has been authorized by the DFA 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.

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) (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) 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.

Filing Requirements

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 DFA at the end of each calendar year.

Upon determining the amount of eligible refund, the DFA shall issue a refund to the eligible business.

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 AEDC. The business plans to hire seven (7) new full-time permanent employees at twelve dollars (\$12) per hour ($\$12/\text{hour} \times 2080 \text{ hours} = \$24,960$ average annual wage \times 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 one hundred and twenty-five thousand dollars (\$125,000) in renovation costs. This investment is above the one hundred thousand dollar (\$100,000) 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.

Notes: The refund of sales and use tax for eligible businesses is dependent upon the following conditions:

- The refund is made contingent upon the signing of a financial incentive agreement for a jobs creation incentive (Advantage Arkansas or Create Rebate) within twenty-four (24) months of signing a financial incentive agreement for a sales and use tax refund for new and expanding eligible businesses;
- The items purchased being subject to the sales or use tax;
- The payroll threshold under the Advantage Arkansas or Create Rebate job creation financial incentive agreements being met within twenty-four (24) months of the signing of the financial incentive agreement; and

- The documentation of the minimum investment of one hundred thousand dollars (\$100,000) needed to qualify for the sales and use tax refund.

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

- Advantage Arkansas as authorized by § 15-4-2705 or Create Rebate as authorized by § 15-4-2707, if approved by the Executive Director; and
- The research and development income tax credit for university-based research authorized by § 15-4-2708(a); and
- The research and development income tax incentive for in-house research authorized by § 15-4-2708(b).

E. Sales and Use Tax Refund for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2706(e).

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”. This incentive is offered only at the discretion of the Executive Director. 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) Healthcare.
- (v) Transportation logistics, with emphases on the following:
- (a) Intelligent material handling;
 - (b) Automated systems; and
 - (c) Transportation management systems.
- (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 non-traditional biomass sources.

To qualify as a targeted business, the Commission must determine that the business falls within one (1) of the six (6) categories noted above, the business must have been in operation for five (5) years or less and must pay average hourly wages in excess of one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less. In addition, the targeted business must have an annual payroll of at least one hundred thousand dollars (\$100,000) and demonstrate evidence of an equity investment in the targeted business of at least two hundred fifty thousand dollars (\$250,000). 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 (Act 182 of 2003), as amended.

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 (§ 15-4-2709). A signed financial incentive agreement for targeted payroll income tax credits must be signed within twenty-four (24) months of signing a financial incentive agreement for a sales and use tax refund.

An application accompanied by a local endorsement resolution must be filed with the Commission. The application should clearly identify the intent of the project, the expenditures planned, the start and end date of the project and an estimate of the total project costs. 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.

The purpose of the resolution is to: A) approve the specific entity's participation in the program; and B) specify that the municipality or county authorizes the DFA to refund all or part of any sales and use tax levied at the local level. 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.

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

A refund shall not be authorized for:

- routine operating expenditures;
- 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;

- licensed motor vehicles; or
- expenditures for routine repair and maintenance that do not result in new construction or expansion.

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 Educational Adequacy Fund (.875%) provided in § 19-5-1227 or the taxes dedicated to the Conservation Tax Fund (.125%) provided in § 19-6-484.

All project costs must be incurred within four (4) years from the date the project is approved by the Commission. The project plan may be revised by written amendment filed with the Commission. The Commission's approval of an amendment will not extend the time period in which project costs may be incurred. 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.

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 DFA to request a refund of sales and use taxes paid on eligible project expenditures incurred during the preceding calendar year. Upon determining the amount of the eligible refund, the DFA shall issue a refund to the qualified business.

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 and 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) per hour. The average hourly wage for the Tier 1 county in which the business plans to locate is fifteen dollars (\$15) per hour. ($\$15/\text{hour} \times 150\% = \22.50 per hour.) The business's average hourly wage of twenty-eight dollars (\$28) per hour is above the threshold wage to qualify in this Tier 1 county. ($\$28/\text{hour} \times 2080$ 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, investment and average wage requirements necessary to qualify for the sales and use tax refund. Eligibility is also dependent upon being approved by the Executive 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.

Notes: The refund of sales and use tax for eligible targeted businesses is dependent upon the following conditions:

- 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 twenty-four (24) months of signing a financial incentive agreement for a sales and use tax refund for a targeted business;
- The items purchased being subject to the sales or use tax;
- The business meeting the average wage requirement;
- The payroll threshold being met within twenty-four (24) months of the signing of the financial incentive agreement; and
- The documentation that the targeted business has received an equity investment in excess of two hundred fifty thousand dollars (\$250,000).

Combination with other incentives: The sales and use tax refund for targeted businesses authorized by § 15-4-2706(e) may be combined with, if approved by the Executive Director:

- The targeted job creation income tax credit as authorized by § 15-4-2709; and
- The targeted research and development tax credit authorized by § 15-4-2708(c).

4. Targeted Business Special Incentive § 15-4-2709.

A. Payroll Income Tax Credit for Targeted Businesses – Act 182 of 2003, as amended, § 15-4-2709.

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. This incentive is offered only at the discretion of the Executive Director. 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) Healthcare.

- (v) Transportation logistics, with emphases on the following:
 - (a) Intelligent material handling;
 - (b) Automated systems; and
 - (c) Transportation management systems.

- (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 non-traditional biomass sources.

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), 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.

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

The incentive may be offered for a period not to exceed five (5) years. The five-year period begins on January 1st of the year in which the financial incentive agreement is signed and may not extend beyond sixty (60) months from that date. 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. To claim these benefits, the targeted business must sign a financial incentive agreement with the Commission.

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. 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 DFA. 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. Therefore, the business must certify annually at the end of each tax year to the DFA.

A unique feature of this incentive is the ability of the business that earns the targeted business income tax credit to sell the credits. The business must make application to the Commission for the sale of credits. 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. The Commission may assist the business in finding a buyer for the tax credits. Any sale of tax credits through this incentive will be fully documented by the Commission and that information will be transmitted to the DFA Revenue Division.

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. Since one 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 § 15-4-2708 or by § 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 UAMS 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) per hour. ($\$45/\text{hour} \times 2080 = \$93,600$ average annual salary $\times 5$ 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) per hour wage is more than the one hundred fifty percent (150%) wage requirement. 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 (5 years), the credit in subsequent years would be equal to 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.

Notes: The calculation of the benefit for an income tax credit for new targeted businesses is dependent upon the following conditions:

- A minimum payroll of one hundred thousand dollars (\$100,000) being maintained during the term of the agreement;
- The business operations' continuing in one (1) of the six (6) targeted areas;
- The average hourly wage threshold being maintained; and
- The business's continuing to operate in accordance with the qualification requirements throughout the term of the financial incentive agreement.

Combination with other incentives: The payroll income tax credit for targeted businesses authorized by § 15-4-2709 may be combined with, if approved by the Executive Director:

- The sales and use tax refund for targeted businesses as authorized by § 15-4-2706(e); and
- The research and development income tax credit for targeted businesses as authorized by § 15-4-2708(c).

5. Research and Development Income Tax Credits § 15-4-2708.

Section 5 deals with incentives for research and development. The different tax credits are intended to provide incentives for university-based research, in-house research of several kinds, and research and development in start-up, technology-based enterprises. It is important for the applicant to understand the different incentives and to select the most appropriate for the eligible research and development activity. In summary:

- The incentive for research and development with universities is intended for firms of virtually every size and stage of development, may complement in-house research, and may be combined with in-house research incentives;
- The incentives for in-house research are intended for (a) the on-going 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; 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;

- The incentive for research and development under programs of the Division of Science and Technology of the Arkansas Economic Development Commission is intended for companies in the earliest stages of development and for knowledge-based companies that require a continuing research and development program to remain competitive; generally, this incentive may not be combined with other research and development incentives.

Unless otherwise specified, the research and development application and project plan shall be the basis for the Commission's decision to approve tax credit treatment for research and development expenditures. 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 Act 182 of 2003, as amended. At the discretion of the Commission, an approved application and project plan may serve as the financial incentive agreement. 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.

The term of the research and development financial incentive agreements under § 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 sixty (60) months from that date. The specific requirements to qualify for research and development incentives follow.

A. Research and Development with Universities – Act 182 of 2003, as amended, § 15-4-2708(a)

An eligible business that contracts with one or more Arkansas colleges or universities in performing research may qualify for a thirty-three percent (33%) income tax credit as authorized in § 26-51-1102(b) for qualified research expenditures. The income tax credit may be carried forward for nine (9) years beyond the year in which the credit was earned.

To qualify for the income tax credit for research and development with universities, an eligible business must submit an application and project plan to the Commission. The Division of Science and Technology of the Arkansas Economic

Development Commission will review the application and project plan and, if eligible, recommend approval and execution of a financial incentive agreement.

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.

If approved, the thirty-three percent (33%) income tax credit for research and development expenditures with an Arkansas college or university will be granted regardless of the business location or other qualifications.

Example: An Arkansas seed business contracts with the Division of Agriculture at the University of Arkansas to engineer a new drought-resistant soybean seed. The seed business spends one million dollars (\$1,000,000) with the University of Arkansas to research and develop a soybean seed with the characteristics desired by the seed business. This expenditure for this project could result in an earned income tax credit of three hundred thirty-three thousand dollars (\$333,000) that could be taken over a ten-year period (the year in which it was earned, plus nine (9) years of carry forward).

Notes: It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help insure the success of the research and development effort. It should also be noted that this incentive is subject to the limitations established in § 26-51-1103:

- The amount of credit which may be claimed in any year is limited to one hundred percent (100%) of tax liability;
- The credits may be used in the year earned, plus a nine-year carry forward period; and
- This incentive cannot be used with other income tax benefits for the same expenditure.

This incentive must also adhere to the documentation requirements of § 26-51-1104:

- Must demonstrate proof of approval by the Commission as a qualified research project;
- Must document expenditures with the university or college; and
- Must file copies of the two (2) above-mentioned documents with the DFA when claiming the credit.

Combination with other incentives: The income tax credit for research and development with universities authorized by § 15-4-2708(a):

- May be used with the in-house research and development incentive as

authorized by § 15-4-2708(b), (c), and (d)(1)(A); but

- May not be used with any other incentive authorized in Act 182 of 2003, as amended (Consolidated Incentive Act of 2003) for the same expenditures.

B. In-House Research – Act 182 of 2003, as amended, § 15-4-2708

(i) New In-House Research and Development Facilities § 15-4-2708(b)(1):

A new eligible business that conducts “in-house” research within a research facility that is operated by the eligible business that qualifies for federal research and development tax credits may qualify for in-house research income tax credits. 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. The credit allowed for approved in-house research is twenty percent (20%) of the amount spent on qualified in-house research expenditures that exceeds the base year, for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years.

Example: For a new in-house research facility, the base year is zero (0). Therefore, in the first three (3) years following the date of the financial incentive agreement, all eligible expenditures will qualify for credit.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth year.

(ii) Existing In-House Research and Development Facilities § 15-4-2708(b)(2):

Existing eligible businesses that conduct in-house research in a research facility operated by the business and that qualify for federal research and development tax credits may qualify for an income tax credit equal to twenty percent (20%) of the amount spent on research that exceeds the base year for a period of three (3) years and the incremental increase in qualified research expenditures for the succeeding two (2) years, subject to the limitations under § 26-51-1103.

Example: For an existing in-house research facility, the base year amount shall be the amount of eligible research expenditures incurred in the year prior to the year in which the financial incentive agreement was signed by the Commission.

The amount of qualified research expenditures incurred in the third year shall be used to calculate the tax credit in the fourth year.

The amount of qualified research expenditures incurred in the fourth year shall be used to calculate the tax credit in the fifth year.

Term of the In-House Research and Development Agreement

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. The financial incentive agreement may be renewed for a period not to exceed five (5) years upon the submittal of a new application and project plan.

The approved business shall certify annually at the end of each tax year, to the Commission, the amount expended on in-house research.

The income tax credit earned for in-house research and development may be used to offset one hundred percent (100%) of the eligible business's state income tax liability. Any unused credit may be carried forward for a period not to exceed nine (9) years.

To claim the credit earned through this incentive, the business shall file with its return, the Certificate of Tax Credit issued by the Commission. 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.

Qualified research expenditures include in-house expenses for taxable wages paid, usual fringe benefits, and supplies used in the conduct of qualified research.

Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Any research conducted after the beginning of commercial production;

- Research adapting an existing product or process to a particular customer’s need;
- Duplication of an existing product or process;
- Surveys or studies;
- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive 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:
 - The business qualifies as a Targeted Business;
 - The Commission and the business have entered into a Targeted In-House Research and Development incentive agreement;
 - 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
 - The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
 - Has incorporated as a business in the State of Arkansas;
 - Has physically relocated to Arkansas; and
 - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to an employee for performing qualified services. Qualified services are services of employees who are:

- Engaging in qualified research, which means the actual conduct of qualified research;
- Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and
- Engaging in the direct support of research activities which constitute qualified research.

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

Notes:

- The carry forward for this income tax credit is limited to nine (9) years beyond the year in which the credit was earned.
- It is the intent of the Commission to adhere to some of the federal guidelines for research conducted within an eligible business.

Combination with other incentives: The in-house research income tax credit may **not** be combined with:

- Other in-house research and development incentives as authorized by § 15-4-2708(c) or § 15-4-2708(d)(1)(A); or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003), as amended, for the same expenditures.

C. In-House Research by a Targeted Business – Act 182 of 2003, as amended, § 15-4-2708(c)

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 research and development expenditures.

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 (5) years of the financial incentive agreement. This incentive is offered only at the discretion of the Executive Director. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs. The targeted business applying for in-house research and development income tax credits shall comply with all of the qualifications required of targeted businesses to qualify for a job creation income tax credit:

- In operation for less than five (5) years;
- Annual payroll of not less than one hundred thousand dollars (\$100,000) or more than one million dollars (\$1,000,000);
- An equity investment of at least two hundred fifty thousand dollars (\$250,000); and
- Pay at least one hundred fifty percent (150%) of the lesser of the county or state average wage.

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.

Qualified research expenditures include in-house expenses for taxable wages paid, usual fringe benefits, and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Any research conducted after the beginning of commercial production;
- Research adapting an existing product or process to a particular customer's need;
- Duplication of an existing product or process;
- Surveys or studies;
- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive 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:
 - The business qualifies as a Targeted Business;
 - The Commission and the business have entered into a Targeted In-House Research and Development incentive agreement;
 - 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
 - The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
 - Has incorporated as a business in the State of Arkansas;
 - Has physically relocated to Arkansas; and
 - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to a full-time permanent employee or "contractual employee", as defined in the Act, for performing qualified services.

Qualified services are services of employees who are:

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

- Engaging in the direct support of research activities which constitute qualified research.

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

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.

The income tax credits earned under this program may be sold upon approval by the Commission. Any sale of tax credits through this program must be fully documented by the Commission and that information will be transmitted to the DFA.

The purchaser of the tax credits provided by this program shall obtain certification from the Commission and attach the appropriate documentation provided by the Commission to the tax return on which the credit is first claimed.

The tax credit must be sold within one (1) year of its being issued by the Commission. 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.

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.

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. A targeted business earning research and development tax credits is prohibited from earning job creation tax credits, as authorized by § 15-4-2709, or research tax credits as authorized by § 15-4-2708(a), 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 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 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.

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- A buyer of the credit is limited to the same carry forward period. A sale of the tax credit does not alter the time frame for using the credits.
- It is the intent of the Commission to adhere to some of the federal guidelines for research conducted by an eligible targeted business.

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

- Other in-house research and development incentives as authorized by § 15-4-2708(b) or § 15-4-2708(d)(1)(A); or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.

D. Research Area of Strategic Value – Act 182 of 2003, as amended, § 15-4-2708(d)(1)(A) and Research Under Programs of the Division of Science and Technology of the Arkansas Economic Development Commission – Act 182 of 2003, as amended, § 15-4-2708(d)(1)(B).

An income tax credit equal to thirty-three percent (33%) of qualified research expenditures may be allowed for an Arkansas taxpayer that invests in:

- In-house research in an area of strategic value; or
- A project under the research and development programs offered by the Commission.

(i) In-house Research in an Area of Strategic Value – Act 182 of 2003, as amended, § 15-4-2708(d)(1)(A).

The business must apply to the Commission to qualify for the income tax credit for research in an area of strategic value. Research area of strategic value means research in fields having long-term economic or commercial value to the state, and that have been identified in the research and development plan approved from time to time by the Executive Director with the advice of the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development

Commission (Board). 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. The income tax credit earned cannot offset more than one hundred percent (100%) of a business's income tax liability in any one tax year and the benefits can be carried forward for nine (9) years beyond the year in which they were earned or until exhausted, whichever occurs first.

The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars (\$50,000) per tax year. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs.

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.

Qualified research expenditures for research in an area of strategic value include in-house expenses for taxable wages paid (wages subject to withholding), usual fringe benefits and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests to qualify:

- The activity must be undertaken for the purpose of discovering information which is technological in nature;
- The application of technological information must be intended to be useful in a new or improved business component; and
- Substantially all of the activities related to the research effort must constitute elements of a process of experimentation relating to a new or improved function, performance, reliability or quality.

The following activities are specifically excluded from the definition of qualified research:

- Any research conducted after the beginning of commercial production;
- Research adapting an existing product or process to a particular customer's need;
- Duplication of an existing product or process;
- Surveys or studies;
- Research related to certain internal-use computer software;
- Research in the social sciences, arts or humanities; and
- Research conducted outside of Arkansas. However, the Executive 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:

- The business qualifies as a Targeted Business;
- The Commission and the business have entered into a Targeted In-House Research and Development incentive agreement;
- 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
- The certificate of tax credit will not be issued to an out-of-state business relocating to Arkansas until the business:
 - Has incorporated as a business in the State of Arkansas;
 - Has physically relocated to Arkansas; and
 - Is conducting research in Arkansas.

Qualified wages are taxable wages paid to a new full-time permanent employee for performing qualified services. Qualified services are services of employees who are:

- Engaging in qualified research, which means the actual conduct of qualified research;
- Engaging in the direct supervision of qualified research, which means the immediate supervision (first-line management) of qualified research; and
- Engaging in the direct support of research activities which constitute qualified research.

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

A business claiming a credit through this incentive shall be prohibited from receiving the research tax credit authorized by § 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 ($\$200,000 \times 33\% = \$66,000$) 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.

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- The Commission must approve any research for which a business is seeking a credit under this incentive.
- It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help insure the success of the research and development effort.

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

- Any other research and development incentive as authorized by § 15-4-2708; or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.

(ii) Research Under Programs of the Division of Science and Technology of the Arkansas Economic Development Commission – Act 182 of 2003, as amended, § 15-4-2708(d)(1)(B).

The business must apply to the Commission to qualify for the income tax credit for research under programs of the Division of Science and Technology of the Arkansas Economic Development Commission. The application for this income tax credit shall include a project plan, which clearly identifies the intent of the project, the expenditures planned, the start and end dates of the project, and an estimate of total project costs. The Division of Science and Technology of the Arkansas Economic Development Commission specifies the application format for its programs. The tax credit may be earned for the first five (5) years following the signing of a financial incentive agreement with the Commission. The income tax credit earned cannot offset more than one hundred percent (100%) of a business's income tax liability in any one (1) tax year and the benefits can be carried forward for nine (9) years beyond the tax year in which they were earned or until exhausted, whichever occurs first. The maximum tax credit that may be claimed by a business under this program is fifty thousand dollars (\$50,000) per tax year.

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.

Example: A new medical device business had only a few assets and employees and it did not qualify for any of the other research and development incentives. As a start-up business, it had been seeking outside investors in its revolutionary circulatory system implant. The business received a three thousand dollar (\$3,000) technology transfer assistance grant from the Division of Science and Technology of the Arkansas Economic Development Commission to help the business prepare its first Small Business Innovation Research (SBIR) proposal to a federal agency. As part of its assistance to the business the Division's staff encouraged the business to prepare an application and project plan (which was actually the business's commercialization and business plan) for the research and development incentive under programs of the Division. The application and project plan were approved by the Commission and became the five-year financial incentive agreement with the business. The agreement includes a timetable for commercializing the business's technology that would begin with the notice of the SBIR phase I award.

The financial incentive agreement includes a twenty thousand dollar (\$20,000) university research project under the Division's Applied Research Grant Program in support of the phase I SBIR effort, a fifty thousand dollar (\$50,000) product development project under the Technology Development Program, one hundred eighty thousand dollars (\$180,000) under the Applied Research Grant and Technology Development Programs in support of a future SBIR phase II award, and a three hundred thousand dollar (\$300,000) investment under the Seed Capital Investment Program in support of SBIR phase III. Qualification for tax credit consideration for these R&D activities is contingent on the business's performance under the federal SBIR program and decisions to fund phase I and II projects by the federal agency. It is also dependent on raising risk capital investments from individual investors who must decide that the potential benefit from sales of the implant is worth the risk.

The medical device business has been notified that it has been approved for its first SBIR award of sixty thousand dollars (\$60,000). A local individual investor has decided, on the strength of the SBIR award and the financial incentive agreement, to become part of the business. In the first year after the SBIR award notice, the investor put twenty thousand dollars (\$20,000) into university research and fifty thousand dollars (\$50,000) into product development. The Commission has approved both projects. The seventy thousand dollars (\$70,000) qualifies under the financial incentive agreement for a thirty-three percent (33%) tax credit equal to twenty three thousand one hundred dollars (\$23,100), which is under the fifty thousand dollar (\$50,000) per year cap.

The business submitted an application for a phase II SBIR project to extend its commercialization work. Tax credits in the remaining four (4) years will depend on decisions by the federal agency regarding the phase II application and the investor (or investors) regarding additional investments.

Notes:

- The carry forward for this incentive is nine (9) years beyond the year in which the credit was first earned.
- Applications for tax credit approval under this incentive must be approved by the Executive Director with the advice of the Board.
- It is suggested that any business wishing to take advantage of this income tax credit first visit with the Commission to help insure the success of the research and development effort.

Combination with other incentives: The income tax credit for research and development under programs of the Division of Science and Technology of the Arkansas Economic Development Commission may **not** be used in combination with:

- Any other research and development incentive as authorized by § 15-4-2708 or
- Any other incentive in Act 182 of 2003 (Consolidated Incentive Act of 2003, as amended) for the same expenditures.