

Arkansas Economic Development Act (Act 831 of 1995, as amended) Rules and Regulations

I. Introduction

This incentive is to be used at the discretion of the director of the Department in competitive situations. The terms (minimum number of jobs created and retained and duration of the incentive) will be negotiated by the Department, with consideration of a cost/benefit analysis and other appropriate factors. See Arkansas Code Annotated § 15-4-1901 et seq.

Companies are prohibited from benefiting from other state tax and incentive programs (Advantage Arkansas, Create Rebate, InvestArk, Biotechnology, or Emerging Technologies) if they accept the AEDA incentive.

For additional information contact:

Arkansas Department of Economic Development
Business Development Section
One Capitol Mall
Little Rock, Arkansas 72201
(501) 682-7675

II. Definitions

- A. “Average hourly wage” is computed by using the total of the net new full-time permanent employee’s reported taxable earnings, including overtime pay and one quarter (1/4) of the employee’s annual bonus amount, divided by the number of weeks worked during the most recent quarter, divided by the average hours worked per week per net new full-time permanent employee;
- B. “Coal mining” means an operation that hires a minimum of twenty-five (25) net new full-time permanent employees and extracts coal or lignite from within the boundaries of the State of Arkansas (Act 1065 of 2001 added coal mining as a business eligible for benefits under the Arkansas Economic Development Act.)
- C. “Corporate headquarters” means the home or center of operations, including research and development, of a national or multi-national corporation;
- D. “Department” means the Arkansas Department of Economic Development;

- E. “Digital Content Production” means companies engaged in the creation of product that includes acquiring, modeling, and manipulating video imagery, film and animation. These products are created in digital form and are eligible for copyrighting under the copyrighting laws of the United States. Outlets for digital content products may include broadcast television, corporate presentations, cable shows, advertising, video games, movies and themed entertainment outlets. For companies engaged in digital content production to be eligible for benefits under this program, they must derive seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public.
- F. “Digital Preservation” means companies engaged in the transformation, storage, archiving and/or distribution of various forms of media which have been transferred into a digital format. Media transformation into digital content may include film, video or written materials. For companies engaged in digital preservation to be eligible for benefits under this program, they must derive seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public.
- G. “Director” means the executive director of the Department;
- H. “Distribution center” means a facility for the reception, storage, or shipping:
1. Of a business’ own product or products which the business wholesales to retail businesses or ships to its own retail outlets; or
 2. Of products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenues are from out-of-state customers; or
 3. Of products for sale to the general public if seventy-five percent (75%) of the sales revenues are from out-of-state customers;
- I. “Endorsement resolution” means a resolution approved by the governing body of a municipality or county within whose jurisdiction the facility is located and must:
1. Approve the specific entity’s participation in the program; and
 2. Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program. A municipality or county can authorize the refund of all or part of a tax levied by it, but cannot authorize the refund of any tax not levied by it.
- J. “Financial incentive plan” means an agreement entered into by a business and the Department to provide the business an incentive to locate a new facility or expand an existing facility in Arkansas. Within this regulation, the “financial incentive plan” is referred to as a “financial incentive agreement.”

- K. “Governing authority” means the quorum court of a county or the governing body of a municipality;
- L. “High unemployment” means an unemployment rate equal to or in excess of one hundred fifty percent (150%) of the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department, when the state’s annual average unemployment rate is six percent (6%) or below. When the state’s annual average unemployment rate is above six percent (6%), “high unemployment” means equal to or in excess of three percent (3%) above the state’s average unemployment rate for the preceding calendar year as specified by statewide annual labor force statistics compiled by the Arkansas Employment Security Department;
- M. “Net new full-time permanent employee” means a position or job which was created as a result of a project and which is filled by one or more employees or contractual employees who were Arkansas taxpayers during the year in which the tax credits or incentives were earned;
1. The position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.
 2. Provided however, in order to qualify for the provisions of this act, a contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives under this act;
- N. “Office sector” means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed.
- O. “Program” means the Arkansas Economic Development Act of 1995, as amended;
- P. “Project” means the construction or expansion of an eligible business as defined below in Arkansas costing at least five million dollars (\$5,000,000), including the cost of land, buildings, and equipment used in the construction or expansion, which has been approved by the Department as a construction or expansion qualifying for tax benefits under this act. The project cost shall include:
1. All activities and costs associated with the construction of a new plant or facility;
 2. All activities and costs associated with the expansion of an established plant or facility by adding to the building or production equipment or support infrastructure or both;
 3. All activities and costs associated with the replacement of production or processing equipment or support infrastructure or both at the subject plant or facility.

- Q. “Regional headquarters” means the center of operations for a specific geographical area;
- R. “Requisite number” as defined in the Act is a minimum of one hundred (100) net new full-time permanent employees.
- S. “The sales factor of a project plant or facility” is a fraction. The numerator is the total sales of the project plant or facility in this state during the tax period. The denominator is the total sales of the taxpayer’s Arkansas operations during the tax period.
- T. “The payroll factor of a project plant or facility” is a fraction. The numerator is the total amount paid in this State during the tax period by the project plant or facility for compensation to employees working in the plant or facility. The denominator is the total compensation paid in the taxpayer’s Arkansas operations during the tax period.
- U. “The property factor of a project plant or facility” is a fraction. The numerator is the average value of the taxpayer’s real and tangible personal property owned or rented and used at the project plant or facility during the tax period. The denominator is the average value of all the taxpayer’s real and tangible personal property owned or rented and used during the tax period in Arkansas.

III. To Qualify for Consideration a Business Must

- A. Be an eligible business, as defined by one or more of the following:
 - 1. Manufacturers classified in Federal Standard Industrial Classification (SIC) codes 20-39, including semiconductor and microelectronic manufacturers;
 - 2. Computer businesses primarily engaged in providing computer programming services: the design and development of prepackaged software, businesses engaged in digital content production and preservation: computer processing and data preparation services; information retrieval services; computer and data processing consultants and developers. All businesses in these groups must derive at least seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public;
 - 3. Businesses primarily engaged in commercial physical and biological research as classified by SIC code 8731;
 - 4. Businesses primarily engaged in motion picture productions. All businesses in this group must derive at least seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public;
 - 5. A distribution center, with no retail sales to the general public, unless seventy-five percent (75%) or more of the sales revenues are from out-of-state customers;
 - 6. An office sector business, with no retail sales to the general public; and
 - 7. A corporate or regional headquarters with no retail sales to the general public.

8. A coal mining operation employing a minimum of twenty-five (25) net new full-time permanent employees.
- B. Hire at least one hundred (100) net new full-time permanent employees within twenty-four (24) months following the date the financial incentive agreement was signed by the Department and the business. In the event that the requisite number of net new full-time employees cannot be employed with this twenty-four (24) month period, the business can file, before the end of the original twenty-four (24) month period, a written application with the Department explaining why additional time is necessary. The business can be afforded up to twenty-four (24) more months to hire the requisite number of employees if the Director and the Chief Fiscal Officer of the State agree.
 - C. Expend at least five million dollars (\$5,000,000) on the project, limited to land, buildings and equipment, covered by the financial incentive agreement.
 - D. Agree to certify to the Department of Finance and Administration the number of net new full-time permanent employees and the average hourly wage of the net new full-time permanent employees once the number of net new full-time permanent employees reaches the requisite number.
 - E. Agree to certify to the Department of Finance and Administration within thirty (30) days if the number of net new full-time employees falls below the requisite number or the average hourly wage falls below the amount specified in the financial incentive agreement.
 - F. Pay a one-time fee of two thousand five hundred dollars (\$2,500) to the Department of Economic Development for the Department's administrative and legal fees associated with the preparation of the financial incentive agreement. Payment is due at the time the AEDA application is submitted to the Department.
 - G. Employ all of the new permanent employees at the project plant or facility.
 - H. The financial incentive agreement shall:
 1. Specify the tax incentives the business is to receive, including the maximum amount of income tax credit the business may claim for each tax year covered by the financial incentive agreement;
 2. Specify the term of the agreement, which cannot exceed ten (10) years. The ten (10) years shall be calculated from the date the financial incentive agreement is signed by the business and the Department;
 3. Specify the annual amount of payments, including principal and interest, the business will make to the lender in connection with the project financing, and attach copies of the business's loan documents that reflect the amount of the annual payments. (For projects initiated after June 1, 2000, the Department is authorized to negotiate with a business a financial incentive plan granting an

income tax credit based on total investment, limited to land, buildings and equipment, without regard to how the project is financed, if it otherwise meets the qualifications. The annual credit earned shall be based on the total investment divided by the term of the financial incentive plan.);

4. Specify the amount of the average hourly wage the business must maintain to receive benefits under the agreement;
5. Specify the minimum number of net new employees that must be maintained during the duration of the agreement;
6. Specify the percentage of income tax liability against which the income tax credit may be claimed;
7. Specify that the tax credits can never exceed the total amount of the debt service or, for projects initiated after June 1, 2000, the total amount of investment in land, buildings and equipment; and
8. Specify that, after the term of the agreement expires, the business may not claim any unused credit against income tax liability for subsequent tax years.

IV. Powers and Duties of the Department of Economic Development

- A. The Department, at its discretion, can negotiate proposals on behalf of the state with prospective businesses which are considering locating a new facility or expanding an existing facility that would employ the requisite number of net new full-time permanent employees and expend at least five million dollars (\$5,000,000) on the project. The Department shall set the terms of the agreement in accordance with Section V. of these rules and regulations. The Department may, at its discretion, require prospective businesses to create and maintain higher levels of employment than the minimum required by law in order to receive benefits under the financial agreement.
- B. The Department is authorized to negotiate with a business a financial incentive agreement granting an income tax credit which will be a percentage of the business's annual amount of debt service (principal and interest) paid to a lender in connection with the project financing. For projects initiated after June 1, 2000, the Department is authorized to negotiate with a business a financial incentive plan granting an income tax credit based on total investment, without regard to how the project is financed, if it otherwise meets the qualifications. In those cases, the annual credit shall be based on the total investment divided by the term of the financial incentive plan. The amount of the annual income tax credit granted to the company will depend on the average hourly wage of the net new full-time permanent employees.
- C. If the project is located in a high unemployment area, the director of the Department is authorized to consider all the factors of the project including a cost/benefit analysis and negotiate with the business an income tax credit in an amount up to one hundred percent (100%) of the state income tax liability.

V. Terms of the Incentive Agreement

- A. The negotiated financial incentive agreement will contain the amount of the income tax credit that may be claimed each year for the life of the financial agreement. This amount shall be determined in accordance with the following:
1. When the average hourly wage [times forty (40)] of the net new full-time permanent employee is between one hundred and twenty-five percent (125%) and one hundred and forty nine percent (149%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of fifty percent (50%) of the employer's state income tax liability.
 2. When the average hourly wage [times forty (40)] of the net new full-time permanent employee is between one hundred and fifty percent (150%) and one hundred and seventy-four percent (174%) of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of seventy-five percent (75%) of the employer's state income tax liability.
 3. When the average hourly wage [times forty (40)] of the net new full-time permanent employee is one hundred and seventy-five percent (175%) or more of the lesser of the county or state annual average weekly wage per employee, the employer shall receive an annual income tax credit in the amount of one hundred percent (100%) of the employer's state income tax liability.
 4. If the average hourly wage [times forty (40)] of the net new full-time permanent employee is less than one hundred and twenty-five percent (125%) of the lesser of the county or state annual average weekly wage per employee the employer shall receive no tax credit under this section.

Note: The company's average weekly wage will be calculated by multiplying the company's average hourly wage per net new full-time permanent employee by forty (40). Once the financial incentive agreement is signed, the percentage amount of tax benefits the company receives cannot be increased, even if the average weekly wage of the employees increases during the period of the agreement.

- B. For projects initiated before 8/13/2001, the Department's finance section will evaluate the company's loan instruments to determine annual debt service. Loan instruments shall be attached to the financial incentive agreement.
- C. The requisite number of net new full-time permanent employees must be employed by the business within a twenty-four (24) month period following the date the agreement was signed. The business can file a written application with the Department of Economic Development requesting additional time to meet the requisite number and explaining why additional time is necessary. The business can be extended a maximum of an additional twenty-four (24) months if the director of the Department and the Chief Fiscal Officer of the State determine that one of the following conditions apply:

1. Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired; or
 2. The project, as originally planned, will require more than twenty-four (24) months to complete; or
 3. A change in the business ownership or business structure occurs due to a merger or acquisition.
- D. If the number of net new full-time permanent employees drops below the requisite number after twenty-four (24) months from the date the financial incentive agreement is signed, all benefits under the financial incentive agreement will be terminated, unless the Director and the Chief Fiscal Officer approve a written request filed by the business explaining why the number of new permanent employees fell below the requisite number. The Director and the Chief Fiscal Officer may grant the business up to twenty-four (24) months to bring the number of new permanent employees back up to the requisite number and may approve the continuation of the benefits during that period.

Note: Substantial penalties will be assessed if written notification for failure to maintain the requisite number of permanent employees is not received by the Director and Chief Fiscal Officer.

- E. In the event that a business fails to notify the Department of Finance and Administration that the number of employees has fallen below the requisite number or that the average hourly wage has fallen below the amount specified in the financial incentive agreement, the business will be liable for the repayment of all benefits which were received by the business, plus penalty and interest.
- F. Any business receiving benefits under this program shall be liable for the repayment of any benefits received, plus penalty and interest, if it does not comply with the terms of the financial incentive agreement, the requirements of this act, or any rule or regulation promulgated pursuant to this act. The Chief Fiscal Officer may bring any lawful action to recover any amount for which the recipient is liable.

VI. Administration of Benefits

A. Income Tax Credits

1. The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit for the project debt service payments made by the business during the tax year. For projects initiated after June 1, 2000, the Revenue Division of the Department of Finance and Administration shall authorize an income tax credit based on the total investment in land, buildings and equipment divided by the term of the financial incentive plan for each tax year. The request for such credit must be accompanied by an endorsement

resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located and a copy of the financial incentive agreement the business entered into with the Department.

- (a) The amount of income tax credit taken during any tax year shall not exceed the Arkansas income tax liability resulting from the project plant or facility. The income tax liability of the project plant or facility shall be determined by adding the sales factor, payroll factor and property factor of the plant or facility and dividing the sum by three (3) to arrive at the project apportionment percentage. The total Arkansas corporate income tax liability of the corporation shall be multiplied by the project apportionment percentage to arrive at the income tax liability arising from the project. The income tax credit available may then be used to offset the income tax liability arising from the project as agreed for in the financial incentive agreement.
- (b) If the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the next succeeding tax year and annually thereafter for a total of nine (9) years succeeding the year in which the credit originated, until the credit is exhausted, or until the financial incentive agreement expires, whichever occurs first.

B. Sales and Use Tax Refunds

- 1. The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use taxes imposed by the state and a municipality or county, if the municipality or county authorized the refund of its local tax. All requests for the refund of a local tax must be filed with and received by the Department of Finance and Administration within sixty (60) days of the invoice date which indicates that the local tax was paid. Refunds are eligible for the following expenses:
 - (a) On the purchases of the material used in the construction of a building or buildings, or on any addition or improvement thereon, for housing the project plant or facility; and
 - (b) On machinery and equipment to be located in or in connection with the project. (Licensed vehicles are not eligible equipment expenditures.)
- 2. A sales and use tax refund shall be authorized, provided that:
 - (a) The business and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except

where it is not reasonably possible to do so without added expense, substantial inconvenience or sacrifice in operational efficiency.

- (b) The business files an endorsement resolution with the Department and the Department of Finance and Administration.
 - (c) The business also files with the Department of Finance and Administration a copy of the financial incentive agreement the business entered into with the Department.
3. The endorsement resolution must be approved by the governing body of a municipality or of a county within its jurisdiction. It also must:
- (a) Approve the specific entity's participation in the program; and
 - (b) Specifically state whether the municipality or county authorized the Department of Finance and Administration to refund local sales and use taxes to the entity under the program. A municipality or county can authorize the refund of all or part of a tax levied by it, but cannot authorize the refund of any tax not levied by it.
4. The Sales and Use Tax refunds become effective the date the financial incentive agreement is signed by the Department and the business.

VII. Verification

- A. The Department will provide the Department of Finance and Administration with a copy of each financial incentive agreement entered into by the Department with each of the qualifying businesses, so that the Department of Finance and Administration will know the maximum amount of income tax credit the qualified business may claim during the term of the agreement. The financial incentive agreement shall specify the annual amount of payments, including principal and interest, the business will make to the lender in connection with the project financing, and attach copies of the business' loan documents which reflect the amount of the annual payments. For projects initiated after June 1, 2000, the financial incentive plan shall specify the amount of tax credit to be earned annually, based on estimates of total project investments, which are limited to land, buildings and equipment, and divided by the term of the financial incentive plan.
- B. The Department of Finance and Administration shall have the authority to obtain whatever information necessary from the participating businesses and from the Arkansas Employment Security Department to verify that businesses which have entered into financial incentive agreements with the Department are complying with the terms of the financial incentive agreements and reporting accurate information concerning the number of employees and their payroll to the Department of Finance and Administration.

- C. Any business receiving benefits under this program shall be liable for the repayment of any benefits received, plus penalty and interest, if it does not comply with:
1. The terms of the financial incentive plan;
 2. The requirements of the Arkansas Economic Development Act of 1995, as amended; or
 3. Any rule or regulation promulgated pursuant to this act.
- D. The Chief Fiscal Officer of the State may bring any lawful action to recover any amount for which the recipient is liable.

VIII. Restrictions

The business may not receive benefits from the AEDA and claim benefits under the Create Rebate program (ACA 15-4-1601 et seq.) or any other Arkansas tax credit incentive program.