

Consolidated Incentive Act of 2003 (Act 182 of 2003) Rules and Regulations

I. Introduction

Act 182 of 2003 consolidates six previously existing incentives into one 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 also adds new incentives for targeted businesses that allow earned income tax credits to be sold to 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.

The act also promotes a regional approach to economic development by rewarding those counties that work together through a formal compact in which they all reap the benefits of newly located business and industry by sharing the new revenues that result from new locations or expansions.

Other benefits of consolidating incentives include the 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. The financial incentive agreement will be the primary document outlining the benefits to be received and the start and end date of the project. It will also serve as the primary source document when the Department of Finance and Administration audits the business to verify compliance.

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 the weekly earnings, excluding overtime, bonuses, and company paid benefits, of all new full time permanent employees hired after the date of the signed financial incentive agreement, divided by forty (40);
3. “Basic research” means any original investigation for the advancement of scientific or technological knowledge;
4. “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;
5. “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;
6. “Corporate headquarters” means:
 - A. The facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company’s financial, personnel, legal, planning, information technology, or other headquarters related functions are handled either on a regional basis or national basis.
 - B. A corporate headquarters must be a regional corporate headquarters or a national corporate headquarters;
7. “County or state average hourly wage” means the weighted average weekly earnings for Arkansans in all industries, both statewide and county wide, as calculated by the Arkansas Employment Security Department in their most recent Annual Covered Employment and Earnings publication, divided by forty (40);
8. “Department” means the Department of Economic Development;

9. “Director” means the Director of the Department of Economic Development;
10. “Distribution center” means a facility for the reception, storage, or shipping of:
 - A. A business’ own products or products that the business wholesales to retail businesses or ships to its own retail outlets;
 - 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;
11. “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:
 - A. Manufacturers classified in sectors 31-33 in the North American Industrial Classification System, as in effect January 1, 2003;
 - 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 revenue from out-of-state sales;
 - 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 revenue from out-of-state sales;
 - D. A distribution center;
 - E. An office sector business;
 - F. A national or regional corporate headquarters;
 - G. Firms primarily engaged in commercial, physical and biological research as classified in the North American Industrial Classification System code 541710, as in effect January 1, 2003; and
 - H. (i) Scientific and technical services business.
(ii)(a) All businesses in this group shall derive at least seventy-five percent (75%) of their revenue from out-of-state sales;
and
(b) 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;
12. “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 Innovative Research (SBIR) or Small Business Technology Transfer (STTR) grant. For the purposes of this act, subordinated debt may also be considered an equity investment;

13. “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;
14. “Financial incentive agreement” means an agreement entered into by an eligible business and the department to provide the business an incentive to locate a new business or expand an existing business in Arkansas;
15. “Fund” means the Arkansas Economic Development Incentive Fund;
16. “Governing authority” means the quorum court of a county or the governing body of a municipality;
17. “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.
 - 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;

18. “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;
19. “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;
20. “National corporate headquarters” means the sole corporate headquarters in the nation that handles headquarters related functions on a national basis;
21. “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 were Arkansas taxpayers during the year in which the tax credits or incentives were earned.
(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.
 - B. However, to qualify under this act, a contractual employee shall be offered a benefits package comparable to a direct employee of the business seeking incentives under this act;
22. “Non-retail business” means a business that derives less than ten percent (10%) of its total Arkansas revenue from sales to the general public;
23. “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 revenue from out-of-state sales;
24. “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;

25. “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;
26. “Project” means:
- A. If costs are incurred within four (4) years from the date a financial incentive agreement was signed by the department:
 - (i) All activities and costs associated with the construction of a new plant or facility;
 - (ii) The expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or
 - (iii) Modernization 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 or expansion; or
 - (ii) Routine operating expenditures;
27. “Project plan” means a plan:
- A. Submitted to the department containing such information as may be required by the director to determine eligibility for benefits; and
 - B. That, if approved, is a supplement to the financial incentive agreement;
28. “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 department;
or
(ii) Is involved in a research and development program administered by the Arkansas Science and Technology Authority;
29. “Qualified research expenditures” means the sum of any amounts which are 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 and regulations promulgated by the department;

30. “Region” or “regional” means a geographic area comprised of two (2) or more states, including this state;
31. “Regional corporate headquarters” means a site that:
 - A. Is the sole corporate headquarters within the region; and
 - B. Handles headquarters related functions on a regional basis;
32. “Research and development programs of the Arkansas Science and Technology Authority” means statutory programs operated by the Arkansas Science and Technology Authority under §§ 15-3-101 to 15-3-135;
33. “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 Board of Directors of the Arkansas Science and Technology Authority;
34. “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; and
 - (ii) Computer programming and computer systems design;
 - 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 revenue from out-of-state sales; and
 - E. Paying average hourly wages that exceed one hundred fifty percent (150%) of the county or state average hourly wage, whichever is less;
35. “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;
36. “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 Board of Directors of the Arkansas Science and Technology Authority;
37. “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;

38. “Targeted businesses” means:
- A. A grouping of growing business sectors that:
 - (i) Have been operating in the state for less than five (5) years;
 - (ii) Depending upon the tier in which the business is located, pay at least one hundred and fifty percent (150%) to one hundred and eighty percent (180%) 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;
 - (vi) Bio-based products;
39. “Technological information” means information derived from basic or applied research that provides an improved practical understanding of the business component; and
40. “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) and the research and development credits in 15-4-2708, 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 75 counties are divided into four 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 Arkansas Department of Economic Development by ranking four variables: poverty rate, population growth, per capita income and unemployment rate. A county ranking is determined for each of these variables using a consistent source and the four rankings are totaled and divided by four to obtain an overall ranking. It is the intention of the Department of Economic Development to place 15 counties in Tier 1 and 20 counties in Tiers 2, 3 and 4. If there is a tie between two 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.

In the event a project is located in multiple counties, the project shall either receive the benefits of the county with the lowest tier or submit separate

incentive applications for each county (or tier), each of which must meet the qualifications for each county (or tier).

A county's tier might be moved to one 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 of the employed labor force. The most recent Labor Market Information publication, published by the Arkansas Employment Security Department, is used as the reference to determine a loss of five percent of the employed labor force. The movement to a higher tier is authorized by action of the Arkansas Economic Development Commission after having received a request from a county official from within the county in question. A business that had signed a financial incentive agreement with the Department of Economic Development prior to the action of the Commission 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 Department of Economic Development

The Department of Economic Development shall administer the provisions of the Consolidated Incentive Act of 2003 and shall have the following powers and duties in addition to those mentioned in other laws of the state:

1. To promulgate rules and regulations 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;
2. To provide the Department of Finance and Administration with a copy of each financial incentive agreement entered into by the Department of Economic Development with each qualifying business;
3. To assist the governing authority in obtaining assistance from any other department of state government, including assistance to 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; and
7. The Director of the Department of Economic Development 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 of the business applying for benefits under this act does not reach the payroll threshold necessary to qualify for benefits within twenty-four (24) months after the signing of the financial incentive agreement, the applicant may request, in writing, an extension of time to reach the required payroll threshold.
- B.(i) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the applicant business has presented compelling reasons for an extension of time, the Director of the Department of Economic Development 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 are limited to a twenty-four (24) month extension.
- C.(i) If a business fails to reach the 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 payroll threshold in a timely manner, the Department of Finance and Administration 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 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 Department of Economic Development explaining why the payroll has fallen below the level required for qualification.
 - (2) The Director of the Department of Economic Development and the Director of the Department of Finance and Administration may approve the request for extension of

benefits, not to exceed twenty-four (24) months, and may authorize an extension of time for the business to meet the payroll requirements of the incentive received.

- (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 Department of Finance and Administration 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, 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 Department of Finance and Administration 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 nonretail 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 nonretail business requirements, the Department of Finance and Administration 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 receiving seventy-five percent (75%) of their revenue 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 applicant may request, in writing, an extension of time to reach the required sales threshold.
 - (B) If the Director of the Department of Economic Development finds that the applicant business has presented compelling reasons for an extension of time, the 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 revenue 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 revenue requirements, the Department of Finance and Administration 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 Department of Finance and Administration 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 Department of Finance and Administration that the business has fallen below the payroll threshold, the Department of Finance and Administration 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 Department of Finance and Administration may obtain whatever information is necessary from a participating business and from the Arkansas Employment Security Department to verify that a business that has entered into financial incentive agreements with the Department of Economic Development is complying with the terms of the financial incentive agreements and reporting accurate information concerning investments, payrolls, and out-of-state revenues to the Department of Finance and Administration.
- (j) The Department of Finance and Administration 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 previously received by the business.
 - (2) After a business has failed to comply with the requirements or thresholds of this act, the Department of Finance and Administration 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. Industrial Development Compacts

Section 15-4-2713 of the Consolidated Incentive Act of 2003 allows for the formation of industrial development compacts as authorized by Section 9 of Amendment 62 to the Arkansas Constitution. For the purposes of the Consolidated Incentive Act of 2003, the term “industrial development compacts” is to reflect any type of economic activity that results in the creation of jobs or capital investment within a compact region.

It is the intent of the Arkansas Department of Economic Development that the ultimate decisions on the content of a compact, how the compact is structured and how it will operate will rest solely with those counties (and the voters within those counties) participating in the compact. The restraints on a regional compact (outside of the limitations imposed by Section 9 of Amendment 62) are found within the Consolidated Incentive Act of 2003 and include the following:

1. Four or more contiguous counties are required in order to form a compact to receive the enhanced benefits authorized by Section 15-4-2713;
2. Each of the counties within the compact are allowed to apply the benefits of the tier of the most impoverished county within the compact;
3. In order to share the property taxes (and any other revenues that may be contained within a compact as authorized by Amendment 62, Section 9) of new or expanded business locations within the compact area, the new or expanded businesses must qualify for and receive benefits under one or more incentives authorized by the Consolidated Incentive Act of 2003;
4. A business that locates within a compact region may not receive property tax abatement, or a negotiated payment in lieu of taxes (PILOT), under an Act 9 bond issue unless the abatement or PILOT is approved by each of the parties participating in the compact;
5. A county may not be a member of more than one regional compact; and
6. In order for counties participating in the compact to be eligible for enhanced benefits, the following must be provided to the department:
 - A. A copy of the certified election results from each of the counties participating in the compact;
 - B. A statement providing the name, if any, of the compact being formed;
 - C. A letter from a county official asking for the compact to be

- recognized and identifying the other counties participating in the compact; and
- D. A copy of the compact that was approved by the voters.

The benefits to be derived from counties participating in the compact may change annually, depending upon any changes in assignment of counties to tiers, based on the ranking of the four variables. A business that has signed a financial incentive agreement with the Department of Economic Development prior to the formation of a compact, 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.

VII. Coordination with other economic development incentives

To provide an orderly transition between the Consolidated Incentive Act of 2003 and the six incentive programs it incorporates from previous legislative actions, Section 15-4-2714 specifies that any eligible business that signs a financial incentive agreement with the department prior to the effective date of the Consolidated Incentive Act of 2003 (March 3, 2003) shall be provided only the benefits authorized under one of the following six existing incentives:

1. Biotechnology Training and Development Act, §§ 2-8-101 to 2-8-109;
2. Economic Development Incentive Act of 1993 (Create Rebate), §§ 15-4-1601 to 15-4-1609;
3. Arkansas Enterprise Zone Act of 1993, §§ 15-4-1701 to 15-4-1709;
4. Arkansas Economic Development Act of 1995, §§ 15-4-1901 to 15-4-1908;
5. Economic Investment Tax Credit Act, §§ 26-52-701 to 26-52-706; and
6. Arkansas Emerging Technology Development Act of 1999, §§ 15-4-2101 to 15-4-2107.

Eligible businesses signing an agreement after the effective date of the Consolidated Incentive Act of 2003 (March 3, 2003) shall receive only the benefits for which they qualify, or are approved for, under the Consolidated Incentive Act of 2003. Benefits for the same project cannot be obtained under the Consolidated Incentive Act of 2003 and any of the incentives, enumerated above, which it replaced.

In the section that follows, each incentive program will be addressed individually and restrictions on the use of that incentive with other incentives

will be noted.

VIII. Incentive programs contained within the Consolidated Incentive Act of 2003

A. Job Creation Income Tax Credit (Advantage Arkansas)

The payroll of the new full time permanent employees and the tier in which those jobs are located determine the income tax credits for job creation under 15-4-2705. In every case, the job creation benefits cannot offset more than 50% of a business' 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. 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 department. The income tax credit for the tax year in which new employees are hired 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. In order 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 for a minimum of thirty (30) hours per week. The threshold for qualifying for the job creation tax credit and the benefit received is dependent upon the tier in which the business locates:

1. Tier 1 Counties – To qualify for the job creation income tax credit (Advantage Arkansas), a business must have a payroll of new full time permanent employees in excess of \$200,000 and, if approved, will be authorized for a tax credit benefit of one percent (1%) of payroll of new full time permanent employees of the business for each of the first 60 months following the date of the approved financial incentive agreement;
2. Tier 2 Counties – To qualify for the job creation income tax credit (Advantage Arkansas), a business must have a payroll of new full time permanent employees in excess of \$150,000 and, if approved, will be authorized for a tax credit benefit of two percent (2%) of payroll of new full time permanent employees of the business for each of the first 60 months following the date of the approved financial incentive agreement;
3. Tier 3 Counties – To qualify for the job creation income tax credit (Advantage Arkansas), a business must have a payroll of new full time permanent employees in excess of \$125,000 and, if approved, will be authorized for a tax credit benefit of three percent (3%) of payroll of new full time permanent employees of the business for each of the first 60 months following the date of the approved financial incentive agreement; and

4. Tier 4 Counties – To qualify for the job creation income tax credit (Advantage Arkansas), a business must have a payroll of new full time permanent employees in excess of \$100,000 and, if approved, will be authorized for a tax credit benefit of four percent (4%) of payroll of new full time permanent employees of the business for each of the first 60 months following the date of the approved financial incentive agreement.

Example: An eligible business intends to expand its operation in a Tier 3 county and will be adding 25 new full time permanent employees earning \$15 per hour. In a Tier 3 county, a payroll threshold of \$125,000 must be met in order to qualify for the job creation tax credit equal to three percent of payroll. (\$15 per hour X 2080 hours = \$31,200 per employee X 25 jobs = \$780,000 annual payroll X 3% = **\$23,400 income tax credit earned for each of the next five years.**) This example assumes that all 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 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;
- Raises are awarded which would affect the benefit, if awarded within the five year period for benefits; and
- If the payroll falls below the \$125,000 required for qualification in a Tier 3 county, the business may request an extension of up to 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 all benefits previously received.

Combination with other incentives: The job creation income tax credit (Advantage Arkansas) may be combined with:

- The payroll rebate (Create Rebate) authorized in 15-4-2707, if approved by the Director;
- 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).

B. Payroll Rebate

The payroll rebate incentive, also known as “Create Rebate”, is offered only at the discretion of the Director. Like the job creation income tax credit, the

payroll rebate is based on the payroll of new full time permanent employees. In every case, a minimum payroll of two million dollars (\$2 million) for new full time permanent employees is required in order to qualify for this incentive. At the discretion of the Director, the payroll rebate (Create Rebate) benefit can be authorized for up to ten (10) years. The benefit allowed is dependent upon the tier in which the business locates:

- (1) Tier 1 Counties – A payroll rebate (Create Rebate) of 3.9% of new full time permanent employees may be granted for a period not to exceed ten (10) years;
- (2) Tier 2 Counties – A payroll rebate (Create Rebate) of 4.25% of new full time permanent employees may be granted for a period not to exceed ten (10) years;
- (3) Tier 3 Counties – A payroll rebate (Create Rebate) of 4.5% of new full time permanent employees may be granted for a period not to exceed ten (10) years; and
- (4) Tier 4 Counties – A payroll rebate (Create Rebate) of 5% of new full time permanent employees may be granted for a period not to exceed ten (10) years.

Example: An eligible business plans on locating in a Tier 2 county and plans to hire 65 employees at an average wage of \$19 per hour. In Tier 2 a payroll rebate of 4.25% of payroll of new full time permanent employees may be granted. A minimum annual payroll of \$2 million is required to qualify for this incentive. In this example, the Director agrees to award the payroll rebate for a period of three years. ($\$19 \text{ per hour} \times 2080 = \$39,520 \text{ per employee} \times 65 \text{ jobs} = \$2,568,800 \text{ annual payroll} \times 4.25\% = \mathbf{\$109,174 \text{ payroll rebate for each of the next three years.}}$) This example assumes that all 65 new full time permanent employees were hired at the beginning of the first year and worked forty (40) hours per week.

Notes: Benefit calculations could change given any of the following circumstances:

- The business decided to locate in another tier;
- The Director awards a shorter or longer term for the benefit;
- The payroll increases due to either raises being given or new employees added to the payroll;
- The payroll decreases (if the payroll falls below the \$2 million threshold for qualification, the business may request and extension of up to 24 months to regain the threshold payroll); 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, if offered by the Director, may be combined with:

- The job creation income tax credit (Advantage Arkansas) authorized by 15-4-2705;
- 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;
- If the business is also offered the ArkPlus investment incentive authorized by 15-4-2706(b), the business will also be eligible to receive the sales and use tax refund (Tax Back) authorized by 15-4-2706(d) but will not be eligible for the retention sales and use tax credit authorized by 15-4-2706(c) or for the job creation income tax credit (Advantage Arkansas) authorized by 15-4-2705;
- 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. Investment Incentives

1. Retention Sales and Use Tax Credit (InvestArk) – The qualifications and benefits for this incentive are the same in all four tiers. In order to qualify, a business must have been in continuous operation in the state for at least two years, must invest a minimum of five million dollars (\$5,000,000) in a project (including land, buildings and equipment) and hold a direct-pay sales and use tax permit from the Arkansas Department of Finance and Administration.

In order to obtain benefits under the InvestArk program, a business must apply to the Arkansas Department of Economic Development, using forms provided by the department, and be approved based on the qualifications submitted in the application and the accompanying project plan. The application and project plan should be submitted to the department at least 30 days prior to the start of construction. 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.

Assuming the project meets the qualifications for this program, the benefits to be derived are in the form of 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 above the state sales and use tax rate in effect at the time the financial incentive agreement is signed with the department. (As of March 3, 2003, the state sales tax rate is

5.125%, plus .5% = 5.625%.) The credit may be applied against the business' direct-pay 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 50% of the business' sales and use tax liability on taxable purchases.

Once a business has qualified for the benefits of the InvestArk incentive, the department will notify the Arkansas Department of Finance and Administration that the project has been approved and will transmit the documents upon which the qualification was based.

It is the responsibility of the qualified business to certify annually at the end of each calendar year to the Department of Finance and Administration, on forms provided, the amount of expenditures on the project during the preceding calendar year. Upon determining the amount of credit earned during that calendar year, the Department of Finance and Administration 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.

If the qualified business plans to apply for benefits under the InvestArk program and either applies for the job creation tax credit (Advantage Arkansas) or is offered the payroll rebate (Create Rebate), the financial incentive agreement for the job creation incentives (Advantage Arkansas or Create Rebate) must be signed within 24 months of signing a financial incentive agreement under the retention tax credit (InvestArk) incentive.

Example: A manufacturing firm is adding a new product line and will require additional space as well as new processing equipment. The total cost of the project, with land, building and equipment, totals \$7,754,000. The business has been in operation for over 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 department, the manufacturing firm is eligible for a sales and use tax credit of 5.625% (one-half a percent over the rate of 5.125 as of 3/1/03). At the end of each calendar year, until project completion, the business shall certify to the Department of Finance and Administration 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 \$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 5.125% ($\$7,754,000 \times 5.625\%$) would be **\$436,162.50**, which could be used the following year and any unused credit could be carried forward for an additional five years. In any year, the amount of the sales and use tax credit used cannot exceed 50% of the business' sales and use tax liability.

Notes: The benefit calculations above could change given any of the

following circumstances:

- The sales tax rate was increased prior to the signing of a financial incentive agreement with the department. Once a business has signed a financial incentive agreement with the department, 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 \$5 million. Should benefits be received for project expenditures and the threshold expenditure of \$5 million not be met, the recapture provisions of Section V of these regulations may be invoked by the Department of Finance and Administration.

Combination with other incentives: The retention tax credit (InvestArk) 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 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).

2. Investment Income Tax Credit (ArkPlus) – Act 182 of 2003 § 15-4-2706(b)(1)(A).

This incentive is awarded only at the discretion of the Director. In order to qualify, the business must meet both investment and payroll thresholds for the tier in which it locates, must apply to the department and be approved by the Director. The benefit is the same regardless of the tier in which the business locates. The benefit is 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 business must reach the investment threshold for the tier in which it is located within four years from the date of the signing of the financial incentive agreement. The income tax credit taken through this incentive cannot exceed 50% of the business’ income tax liability in any given year. In order to qualify for this incentive, the business must meet the investment and payroll threshold for the tier in which the business locates or expands:

- (1) Tier 1 – The business must invest at least \$5 million and have an annual payroll of new full time permanent employees of at least \$2 million;
- (2) Tier 2 – The business must invest at least \$4 million and have an annual payroll of new full time permanent employees of at least \$1.5 million;

- (3) Tier 3 – The business must invest at least \$3 million and have an annual payroll of new full time permanent employees of at least \$1.25 million;
- (4) Tier 4 – The business must invest at least \$2 million and have an annual payroll of new full time permanent employees of at least \$1 million.

Example: A new eligible business plans to begin operations in a Tier 4 county. It plans on hiring 50 new full time permanent employees at an average wage of \$15 per hour. (\$15/hr. X 2080 hours = \$31,200 avg. annual salary X 50 employees = \$1,560,000 annual payroll) It will invest \$3,500,000 in land, buildings and equipment for the new operation. The \$1,560,000 annual payroll exceeds the \$1 million threshold for a Tier 4 county and the capital investment of \$3.5 million exceeds the \$2 million investment threshold allowing the business to meet minimum qualifications for the incentive. Should the Director approve the business' application for this incentive program, and should the business spend precisely \$3.5 million, it would earn an income tax credit of **\$350,000** that could be carried forward for nine 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 regulations.

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

- The payroll rebate (Create Rebate) authorized by 15-4-2707, if approved by the Director;
- The sales and use tax refund for new and expanding eligible business (Tax Back) as authorized by 15-4-2706(d);
- 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).

3. Sales and Use Tax Refund for New and Expanding Eligible Businesses (Tax Back)

This incentive program is available to all eligible businesses that meet the qualification for payroll and investment in the tier in which it locates and are

approved for benefits by the department. This incentive is not available unless the business has applied for a job creation financial incentive agreement under Advantage Arkansas (15-4-2705) or is offered Create Rebate (15-4-2707). The financial incentive agreement for the job creation tax credit (Advantage Arkansas) or payroll rebate (Create Rebate) must be signed within 24 months of signing a financial incentive agreement for a sales and use tax refund.

The application must be accompanied by an endorsement resolution from the governing authority (city council or quorum court). The purpose of the resolution is to: A) approve the specific entity's participation in the program; and B) specify whether the municipality or county authorizes the Department of Finance and Administration to refund of all or part of any sales tax levied at the local level.

This incentive program grants a sales and use tax refund 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 machinery or equipment associated with the building or project. A refund shall not be authorized for: A) routine operating expenditures; B) the purchase of replacements of items previously purchased as part of a project unless the items previously purchased will not enable the project to function as originally intended; C) licensed motor vehicles; or D) expenditures for routine repair and maintenance that do not result in new construction or expansion.

The application for a sales and use tax refund should be accompanied by a project plan which clearly identifies the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. The project plan may be revised by written amendment filed with the department. Amendments that exceed 25% of the original project plan's estimated cost will not be considered and shall be submitted as a new project.

All claims for sales and use tax refunds under this incentive program must be filed annually, on the forms provided, with the Department of Finance and Administration within three years from the date of the qualified purchase or purchases or those claims will be denied.

To qualify for a sales and use tax refund, the eligible business must meet the following criteria:

- (1) Tier 1 – Have an annual payroll for new full time permanent employees of \$200,000 or more and invest in excess of \$100,000;
- (2) Tier 2 – Have an annual payroll for new full time permanent employees of \$150,000 or more and invest in excess of \$100,000;

- (3) Tier 3 – Have an annual payroll for new full time permanent employees of \$125,000 or more and invest in excess of \$100,000; and
- (4) Tier 4 – Have an annual payroll for new full time permanent employees of \$100,000 or more and invest in excess of \$100,000.

Example: A relatively new eligible business is planning to expand its operations in a Tier 3 county. The business plans to hire seven new full time permanent employees at \$12 per hour. ($\$12/\text{hr.} \times 2080 \text{ hours} = \$24,960$ average annual wage $\times 7$ new employees = \$174,720 annual payroll). The business would meet the payroll threshold for a Tier 3 county. The business will renovate an existing building in the community and will spend approximately \$125,000 in renovation costs. This investment is above the 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. The eligible business must file for the sales or use tax refund within three 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 24 months of signing an 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 being maintained during the term of the financial incentive agreement; and
- The documentation of the minimum investment (\$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 may be combined with:

- Advantage Arkansas as authorized by 15-4-2705 and/or Create Rebate as authorized by 15-4-2707, if approved by the Director; and
- The investment income tax credit (ArkPlus) as authorized by 15-4-2706(b), however, ArkPlus may not be used in combination with Advantage Arkansas (15-4-2705).

4. Sales and Use Tax Refund for Targeted Businesses – Act 182 of 2003 § 15-4-2706(e)(1)

This incentive program extends the benefits of a sales and use tax refund for

new and expanding eligible businesses to a new category of businesses referred to as “targeted businesses”. This incentive is a discretionary incentive and is offered only at the discretion of the Director. Targeted businesses are found within six growing business sectors that include:

- (i) Advanced materials and manufacturing systems, with emphases on the following:
 - (a) Photonics;
 - (b) Nanotechnology;
 - (c) Electronics manufacturing; and
 - (d) Environmental issues related to material and manufacturing.

- (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) (a) Information technology, with emphases on the following:
 - (b) Knowledge and data engineering;
 - (c) Database systems;
 - (d) Distributed systems;
 - (e) Wireless systems;
 - (f) Software development; and
 - (g) 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 crude oil;
 - (e) Adhesives;
 - (f) Polymers;
 - (g) Automotive components; and
 - (h) Engineered products from non-traditional biomass sources.

To qualify as a targeted business, the department must determine that the business falls within one of the six categories noted above, the business must have been in operation for five years or less and must pay, at minimum, 150% to 180% of the lesser of the state or county average wage. In addition, the targeted business must have an annual payroll of at least \$200,000 and demonstrate evidence of an equity investment in the targeted business of at least \$500,000. A targeted business with an annual payroll in excess of \$1 million 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).

This incentive is not available unless the business has applied for and signed a job creation financial incentive agreement under the targeted job creation income tax credits as authorized by 15-4-2709. A signed financial incentive agreement for targeted job creation income tax credits must be signed within 24 months of signing a financial incentive agreement for a sales and use tax refund.

The application for a sales and use tax refund must be accompanied by an endorsement resolution from the governing authority (city council or quorum court). The purpose of the resolution is to: A) approve the specific entity's participation in the program; and B) specify whether the municipality or county authorizes the Department of Finance and Administration to refund of all or part of any sales tax levied at the local level.

This incentive program grants a sales and use tax refund 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 or machinery or equipment associated with the building or project. A refund shall not be authorized for: A) routine operating expenditures; B) the purchase of replacements of items previously purchased as part of a project unless the items previously purchased will not enable the project to function as originally intended; C) licensed motor vehicles; or D) expenditures for routine repair and maintenance that do not result in new construction or expansion.

The application for a sales and use tax refund should be accompanied by a project plan which clearly identifies the intent of the project, the expenditures planned, the start and end date of the project and an estimate of total project costs. The project plan may be revised by written amendment filed with the department. Amendments that exceed 25% of the original project plan's estimated cost will not be considered and shall be submitted as a new project.

All claims for sales and use tax refunds under this incentive program must be filed annually, on the forms provided, with the Department of Finance and Administration within three years from the date of the qualified purchase or purchases or those claims will be denied.

After the Director has determined that the project of the targeted business is eligible for a sales and use tax refund, a notice of this determination, accompanied by a copy of the financial incentive agreement and any other pertinent information, shall be forwarded to the Director of the Department of Finance and Administration. The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use tax for all eligible expenditures if the Department of Economic Development approves the project and if the project meets the following requirements for the tier in which the project is located:

- (1) Tier 1 – For tier 1 counties, average hourly wages in excess of 180% of the county or state average hourly wage, whichever is less;
- (2) Tier 2 – For tier 2 counties, average hourly wages in excess of 170% of the county or state average hourly wage, whichever is less;
- (3) Tier 3 – For tier 3 counties, average hourly wages in excess of 160% of the county or state average hourly wage, whichever is less; and
- (4) Tier 4 – For tier 4 counties, average hourly wages in excess of 150% of the county or state average hourly wage, whichever is less.

Example: A new start-up computer software design firm is beginning business in a Tier 1 county. It has received an equity investment from a venture capital firm in the amount of \$750,000 to help it get started. It plans on hiring six new full time permanent employees at an average hourly wage of

\$28 per hour. The average hourly wage for the tier 1 county in which the business plans to locate is \$15 per hour. ($\$15/\text{hr.} \times 180\% = \27 per hour) The business' average hourly wage of \$28 per hour is above the threshold wage to qualify in this tier 1 county. ($\$28/\text{hr.} \times 2080 \text{ hrs.} = \$58,290$ average annual salary $\times 6$ employees = \$349,440 annual payroll). The business' annual payroll exceeds the threshold of \$200,000 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 Director of the Department of Economic Development. All eligible expenditures subject to the sales or use tax may be refunded under this incentive. The eligible targeted business must file for the sales or use tax refund within three 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 job creation incentive (Advantage Arkansas or Create Rebate) within 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 pays above the average wage requirement for the county tier in which it locates;
- The payroll threshold being maintained during the term of the financial incentive agreement; and
- The documentation that the targeted business has received an equity investment in excess of \$500,000.

Combination with other incentives: The sales and use tax refund for targeted businesses may be combined with, if approved by the 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).

D. Job creation income tax credit for targeted businesses – Act 182 of 2003 § 15-4-2709

The income tax credit for job creation by targeted businesses is offered to assist with 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 Director. In order to qualify for this incentive, the business must be included in one of six targeted business sectors that include:

- (i) Advanced materials and manufacturing systems, with emphases on the following:
 - (a) Photonics;
 - (b) Nanotechnology;
 - (c) Electronics manufacturing; and
 - (d) Environmental issues related to material and manufacturing.

- (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 crude oil;
 - (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 \$200,000 or more than \$1 million, show proof of an equity investment of at least \$500,000 and pay average hourly wages as follows:

- (1) Tier 1 – for tier 1 counties, average hourly wages in excess of 180% of the county or state average hourly wage, whichever is less;
- (2) Tier 2 – for tier 2 counties, average hourly wages in excess of 170% of the county or state average hourly wage, whichever is less;
- (3) Tier 3 – for tier 3 counties, average hourly wages in excess of 160% of the county or state average hourly wage, whichever is less; and
- (4) Tier 4 – for tier 4 counties, average hourly wages in excess of 150% of the county or state average hourly wage, whichever is less.

The benefit for a targeted business for job creation is an income tax credit based on 10% of its annual payroll, with a cap of \$100,000 per year in earned income tax credits for a business that qualifies and is approved for this incentive. The incentive may be offered for a period not to exceed five years.

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 department for the sale of credits earned under this section within one year of issuance. Upon approval by the department, the business may sell earned income tax credits within one year of issuance and the credits may only be sold one time. The department 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 department and that information will be transmitted to the Revenue Division of the Department of Finance and Administration.

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 job creation 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 Innovative Research (SBIR) grant of \$700,000 to continue its efforts with assistance from the National Institutes of Health. Currently, the business has one employee, a former UAMS research scientist who holds the patent on the biomedical device that is to be the company's first product. The business plans on hiring four new full time permanent employees for a total of five new full time permanent employees. The average hourly wage of the five employees will be \$45 per hour. ($\$45/\text{hr.} \times 2080 = \$93,600$ avg. annual salary $\times 5$ employees = \$468,000 annual payroll) The SBIR grant allows the new company to meet the equity investment threshold and the annual payroll is well above the \$200,000 minimum to qualify. The \$45 per hour wage is more than the 180% requirement for a tier 1 county. The new targeted business would earn a tax credit of \$46,800 which may be sold to a willing buyer. If this business were granted the job creation tax credit for the maximum time allowable (5 years) the credit in subsequent years would be based on 10% of the annual payroll in years two through five. 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 \$200,000 being maintained during the term of the agreement;
- The business operations must continue in one of the six targeted areas;
- The average hourly wage being maintained at a level above that required for the tier of the county in which the business is located; and
- The business continues to operate in accordance with the qualification requirements throughout the term of the financial incentive agreement.

Combination with other incentives: The job creation income tax credit for targeted businesses may be combined with, if approved by the 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).

E. Research and development income tax credits

1. Research and development with universities – Act 182 of 2003 § 15-4-2708(a)

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

In order to qualify for the income tax credit for research and development with universities, an eligible business must submit an application to the department or to the Arkansas Science and Technology Authority. The Arkansas Science and Technology Authority will review the applications submitted and advise the department on the approval of the business' qualification for the income tax credit. Either the department or the Arkansas Science and Technology Authority may approve an application for this incentive.

Qualified research expenditures include in-house expenses for taxable wages paid (wages subject to withholding) and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests in order 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 conducted outside of Arkansas; and
- Research in the social sciences, arts or humanities.

Qualified wages are the 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.

The qualified services must be in the direct support of either: 1) Persons engaging in the actual conduct of qualified research; or 2) Persons who are directly supervising persons engaging in the actual conduct of qualified research.

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

If approved, the 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 company contracts with the Division of Agriculture at the University of Arkansas to engineer a new drought resistant soybean seed. The seed company spends \$1 million with the University of Arkansas to research and develop a soybean seed with the characteristics desired by the seed company. This expenditure would result in an earned income tax credit of \$333,333 that could be taken over a four-year period (the year in which it was earned, plus three years of carry forward).

Notes: The Arkansas Science and Technology Authority (ASTA) is viewed as the lead agency in determining the viability of an application for this incentive. It is suggested that any business wishing to take advantage of this income tax credit first visit with the ASTA staff (501-683-4400) 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:

- Amount of credit which may be claimed in any year is limited to 50% of tax liability;
- The credits may be used in the year earned, plus a three-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 Arkansas Science and Technology Authority as a qualified research project;
- Must document expenditures with the university or college; and
- Must file copies of the two above-mentioned documents with the Department of Finance and Administration when claiming the credit.

Combination with other incentives: The income tax credit for research and development with universities may **not** be used 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) for the same expenditures.

2. In-house research – Act 182 of 2003 § 15-4-2708(b)(1)

An eligible business that conducts “in-house” research within a research facility that is operated by the eligible business may qualify for in-house research income tax credits. The eligible business must make an application to the department fully 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 ten percent (10%) of qualified expenditures. However, the maximum credit that can be earned by each qualified business shall not exceed \$10,000 per tax year.

To claim the credit earned through this incentive, the business shall file with its return the Certificate of Tax Credit issued by the Arkansas Science and Technology Authority. The department 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 (wages subject to withholding) and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests in order 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 conducted outside of Arkansas;

- Research in the social sciences, arts or humanities; and
- Research funded by another person or government entity.

Qualified wages are the 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.

The qualified services must be in the direct support of either: 1) Persons engaging in the actual conduct of qualified research; or 2) Persons who are directly supervising persons engaging in the actual conduct of qualified research.

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

Example: An eligible business performs in-house research to develop new products to add to its existing line of products. It spends \$250,000 per year on salaries and equipment dedicated solely to developing new product ideas. Assuming all expenditures met the qualifications, the eligible business would earn an income tax credit of \$10,000 per tax year, due to the limit established.

Notes:

- The carry forward for this income tax credit is limited to three years beyond the year in which the credit was earned and cannot exceed 50% of the taxpayer's income tax liability.
- Documentation must also be provided that shows that the Arkansas Science and Technology Authority has approved the research expenditures as part of a qualified research program.
- It is the intent of the department 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:

- 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) for the same expenditures.

3. In-house research by a targeted business – Act 182 of 2003 § 15-4-2708(c)(1)

Businesses deemed by the department to fit within the six business sectors classified as “targeted businesses” may enter into a financial incentive agreement for income tax credits based on qualified research and development expenditures. An eligible business may be approved for an income tax credit each year equal to 33% of the qualified research and development expenditures incurred each year for the first five (5) years of the financial incentive agreement. This incentive is a discretionary incentive and is offered only at the discretion of the Director. 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:

- A. In operation for less than five years,
- B. Annual payroll of not less than \$200,000 or more than one million (\$1,000,000),
- C. An equity investment of at least \$500,000, and
- D. Average hourly wages above the threshold for the county tier in which the business is located.

The department 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 wages paid (wages subject to withholding) and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests in order to qualify:

- Your 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 your new or improved business component; and
- Substantially all of the activities related to your 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 conducted outside of Arkansas; and
- Research in the social sciences, arts or humanities.

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.

The qualified services must be in the direct support of either: 1) Persons engaging in the actual conduct of qualified research; or 2) Persons who are directly supervising persons engaging in the actual conduct of 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 job creation income tax credits for targeted businesses, the income tax credit for research and development earned by targeted businesses may be sold. The business must make application to the department for the sale of credits earned under this section within one year of issuance. Upon application and approval by the department, the business may sell earned income tax credits within one year of issuance and the credits may only be sold one time. The department may assist the targeted business in finding a buyer for the tax credits. Any sale of tax credits through this incentive will be fully documented by the department and that information will be transmitted to the Revenue Division of the Arkansas Department of Finance and Administration. The same benefits accrue to a project regardless of the tier in which the business is located.

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 Arkansas Science and Technology Authority.

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 company that has recently left the Genesis 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 \$200,000 on

in-house research and development activities that have been approved by the Arkansas Science and Technology Authority as a qualified research program. The \$200,000 expenditure would be eligible for a 33% tax credit, entitling the photonics company to earn \$66,000 in income tax credits. These credits, by applying to the department, may be sold to allow the photonics company to realize the benefit of the credit much earlier than it would otherwise.

Notes:

- The carry forward for this incentive is three 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 department 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 may **not** be used 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) for the same expenditures.

4. Research area of strategic value – Act 182 of 2003 § 15-4-2708(d)(1)

An income tax equal to 33% of qualified research expenditures may be allowed for an Arkansas taxpayer that invests in:

- A. In-house research in an area of strategic value or
- B. Has an active project with research and development programs offered by the Arkansas Science and Technology Authority and approved by its Board of Directors.

The taxpayer must apply to the department in order to qualify for the income tax credit for research in an area of strategic value. The tax credit may be earned for the first five years following the signing of a financial incentive agreement with the department. The maximum tax credit that may be claimed by a taxpayer under this program is \$50,000 per tax year.

To claim a credit earned through this incentive, the taxpayer shall file the Certificate of Tax Credit issued by the Arkansas Science and Technology Authority with the tax return on which the credit is first claimed.

Qualified research expenditures include in-house expenses for taxable wages paid (wages subject to withholding) and supplies used in the conduct of qualified research. Qualified research must satisfy all of the following tests in order to qualify:

- Your 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 your new or improved business component; and
- Substantially all of the activities related to your 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 conducted outside of Arkansas; and
- Research in the social sciences, arts or humanities.

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.

The qualified services must be in the direct support of either: 1) Persons engaging in the actual conduct of qualified research; or 2) Persons who are directly supervising persons engaging in the actual conduct of 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 company has been approved for this research as being "research in an area of strategic value" by the Board of Directors of the Arkansas Science and Technology Authority. The ASTA

Board of Directors envisioned many non-defense applications of the proposed research and felt as though it was very complementary to other work being done in Arkansas in the field of microelectronics. The defense contractor will spend \$1 million in qualified research expenditures in Arkansas in conjunction with the ASTA approved research program. Assuming the entire \$1 million is expended on qualified items over the five-year period, the defense contractor would earn \$330,000 in income tax credits. The credits may be carried forward for three years beyond the year in which they were first earned.

Notes:

- The carry forward for this incentive is three years beyond the year in which the credit was first earned.
- The Arkansas Science and Technology Authority 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 ASTA staff (501-683-4400) 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) for the same expenditures.