

Arkansas Economic Development Incentive Act (Act 788 of 1993, as amended) Create Rebate Program Rules and Regulations

I. Introduction

In highly competitive situations, the director of the Arkansas Department of Economic Development is authorized to negotiate proposals with eligible businesses considering locating a new facility or expanding an existing facility that would employ the requisite number of net new full-time permanent employees. This incentive is offered at the discretion of the Director of the Department of Economic Development and may be up to an amount equal to three and nine-tenths percent (3.9%) of the business' annual payroll for the net new full-time permanent employees. An amount up to five percent (5%) of the business' annual payroll for the new positions may be negotiated if the business locates in an area of defined high unemployment. The company being considered for this incentive must meet the eligibility requirements as well as demonstrate the competitive situation. See Arkansas Code Annotated § 15-4-1601 et. seq.

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II. Definitions

- A. "Annual payroll" means the wages of the net new full-time permanent employees based on the payroll for the previous twelve (12) months reported to the Employment Security Department and is computed by using the total of the net new full-time permanent employees' reported taxable earnings, including overtime pay.
- B. "Corporate or Regional Headquarters" means the home or center of operations, including research and development, of a national or multi-national corporation.
- C. "Defense Industry Project" means an investment of at least five million dollars (\$5,000,000) and an increase in employment of at least two hundred and fifty (250) full-time permanent employees by a company which manufactures components for the defense industry and whose unit cost exceeds five hundred thousand dollars (\$500,000).
- D. "Department" means the Department of Economic Development.

- E. “Director” is the director of the Department.
- F. “Distribution center” means a facility for the reception, storage, or shipping:
1. Of a business’ own products 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;
- G. “Existing employees” means those employees hired by the business prior to the date of the signed financial incentive agreement. Existing employees may be considered “net new full-time permanent employees” only if:
1. The position or job filled by the existing employee was created in accordance with the signed financial agreement; and
 2. 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 such classification. To count existing employees that have no replacements, there must be sufficient evidence that the business is clearly discontinuing its old operations and beginning a new business activity.
- H. “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.”
- I. “Fund” means the Economic Development Incentive Fund.
- J. “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.
- K. “Net new full-time permanent employee” means a position or job which was created pursuant to the signed financial incentive agreement and which 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.

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. A contractual employee must be offered a benefits package comparable to a direct employee of the business seeking incentives.
- L. “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.

III. To Qualify for Consideration A Business Must

A. Be an eligible business, as defined by one or more of the following;

1. A manufacturer classified in the Federal Standard Industrial Classification (SIC) codes 20-39, including semiconductor and microelectronic manufacturers, which will employ one hundred (100) or more net new full-time permanent employees;
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 this group must employ twenty-five (25) or more net new full-time permanent employees, 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, which will employ fifty (50) or more net new full-time permanent employees;
4. Businesses primarily engaged in motion picture production which will employ fifty (50) or more net new full-time permanent employees. 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. An office sector business which will employ fifty (50) or more net new permanent employees and have no retail sales to the general public;
6. A national, corporate or regional headquarters which will employ fifty (50) or more net new full-time permanent employees and have no retail sales to the general public; or
7. A distribution center or facility which will employ one hundred (100) or more net new full-time permanent employees and have no retail sales to the general public, unless seventy-five percent (75%) or more of the sales revenues are from out-of-state customers.

- B. The requisite number of net new full-time permanent employees must be hired within twenty-four (24) months following the date the financial incentive agreement with the Department was signed. In the event that the requisite number of net new full-time permanent employees cannot be employed within the twenty-four (24) month period, the business can file 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. Company must agree to certify to the Department of Finance and Administration (DF&A) the number of net new full-time permanent employees and their payroll once the requisite number of net new full-time permanent employees has been attained. It also must recertify the number and payroll of the net new full-time permanent employees annually thereafter during the term of the incentive agreement.
- D. Company must agree to certify to DF&A within thirty (30) days after the number of net new full-time permanent employees falls below the requisite number required to qualify.

IV. Powers and Duties of the Department of Economic Development

- A. In highly competitive situations, the Director of the Department is authorized to negotiate proposals on behalf of the state with prospective businesses that are considering locating a new facility that would create significant economic benefit.
- B. The Department will enter into a financial incentive agreement with the company. The agreement will specify the number of the net new permanent employees to be hired, the percentage of the company's annual payroll to be rebated, the amount and intended use of the funds rebated to the company, and the number of years the company is to receive the rebate.

V. Terms of the Incentive Agreement

- A. The term of a financial incentive agreement shall not exceed one hundred twenty-six (126) months.
 - 1. For defense industry projects, the term shall be calculated forward from the date certification of the mandatory number of employees is granted by the Department of Finance and Administration.
 - 2. For all other projects, the term will be calculated forward from the date the financial incentive agreement was signed by the business and the Department.
- B. The business will be eligible for its first financial incentive payment twelve (12) months after it has hired the requisite number of net new full-time permanent employees and has certified that fact to DF&A.

- C. The agreement will specify the number of new employees to be hired, the percentage of the company's annual payroll to be rebated, the amount and intended use of the funds rebated to the company, and the number of years the company is to receive the rebate.
- D. Once the requisite number of net new full time permanent employees have worked twenty-six (26) consecutive weeks, with an average of thirty (30) hours a week or more, the company will then certify to the Department of Finance and Administration (DF&A). A certification form will be provided to the company.
- E. Upon receipt of the certification form, DF&A will schedule an audit at the company's facility. An employee work sheet will be provided to the company for tracking the new permanent employees.
- F. The certification form is the mechanism for DF&A to schedule annual audits. Therefore, the company must certify annually to DF&A. (The certification is at the end of the company tax year).
- G. For each tax year, an annual incentive agreement expenditure report must be provided to DF&A. As designated by the Department, any funds received through this program must be used according to the financial incentive agreement. An itemized schedule must be maintained detailing such information as vendor, invoice numbers, payment date, cost center codes, and other information substantiating amounts shown on the form.
- H. DF&A has the authority to obtain whatever information necessary from the Arkansas Employment Security Division or from the company to verify that the company is complying with the terms of the financial incentive agreement concerning the number of employees and their annual payroll.
- I. If the business fails to maintain the requisite number of employees, the business has thirty (30) days to notify DF&A in writing that the number of net new full-time permanent employees has fallen below the requisite number. If the number of net new full-time permanent employees drops below the requisite number, all benefits under the financial incentive agreement entered into with the department shall be terminated unless the director and the Chief Fiscal Officer of the State approve a written request filed by the business explaining why the number of net new full-time permanent employees fell below the requisite number. The director and the Chief Fiscal Office of the State may grant the business up to twenty-four (24) months to bring the number of net new full-time permanent employees back up to the requisite number and may approve the continuation of benefits during that period.
- J. If the company fails to notify DF&A that the number of employees has fallen below the requisite number, the company will be liable for the repayment of all benefits

which were paid to the company after it no longer qualified for the benefits. Interest shall also be due at the rate of ten percent (10%) per annum.

VI. Administration of Benefits

The rebate received by a business shall be used in accordance with the financial incentive agreement with the department. Employee training, infrastructure, or construction costs are eligible expenditures for the rebate. The Director is authorized to allow other expenditures in the agreement provided such expenditures adhere to the intent of the legislation.

VII. Restrictions

Businesses participating in the Create Rebate Program may not participate in the Arkansas Biotechnology Development and Training Act (ACA § 2-8-101 et seq.) or the Arkansas Economic Development Act (ACA § 15-4-1901 et seq.) for the same project.