Manufacturer's Investment Tax Credit Act
(Act 1661 of 2001)
Special Incentive for Manufacturers of Paper and Allied Products
Rules and Regulations

I. Introduction

The Manufacturer's Investment Tax Credit Act of 2001 is a program designed to stimulate the expansion and modernization of facilities and equipment of Arkansas companies with a federal Standard Industrial Classification (SIC) Code 26 and engaged in the production of paper and allied products. The incentive provided by this act offers a credit against the income tax liability of the eligible company for making an investment, before December 31, 2004 of more than one hundred million dollars ($100,000,000).

If approved to participate in the Manufacturer's Investment Tax Credit Act of 2001, a company may not receive benefits under Advantage Arkansas (Arkansas Enterprise Zone Act of 1993, as amended) or InvestArk (Economic Investment Tax Credit Act) for the same project.

For additional information contact:

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

II. Definitions

A. "Corporate or regional headquarters" means the home or center of operations, including research and development, of a national or multinational corporation with no retail sales to the general public.

B. "Department" means the Arkansas Department of Economic Development.

C. "Director" means the director of the Arkansas Department of Economic Development.

D. "Eligible business" means any person engaged in a business classified as manufacturing paper and allied products in federal Standard Industrial Classification Code 26, that has been in continuous operation in Arkansas for at least two (2) years prior to the initial application to the Director of the Department of Economic Development for income tax credits as provided for in Act 1661 of 2001.

E. "In continuous operation in Arkansas for at least two years" means the business applying for the tax credit shall have on file with the Employment Security Division, employment reports dated at least two years (8 reporting quarters) prior to the date of application for the tax incentive.

F. "Ineligible items" shall include any expenditure which cannot be attributed to the project or expenditures that are incurred more than twelve (12) months prior to submission of an application unless otherwise approved by the Director of the Department of Economic Development and the Commissioner of Revenues.

G. "Modernization" means to increase efficiency or to increase productivity of the business through investment in machinery and/or equipment. Modernization does not include costs for routine maintenance, defined as the replacement of existing machinery parts with like parts.

H. "No retail sales to the general public" means no walk-in "point of sale" service.

I. "Person" means a person as defined by Arkansas Code 26-18-104.

J. "Pre-construction costs" shall mean the cost of eligible items incurred prior to the start of construction, including project planning costs, architectural fees, deposits and process payments on eligible machinery and equipment, rights-of-way purchases, land, and purchase of mineral rights.

K. "Project" means any construction, expansion or modernization in Arkansas by an eligible business and the investment by the eligible business shall exceed one hundred million dollars ($100,000,000) between the effective date of Act 1661 of 2001 and December 31, 2004 for projects involving either single or multiple locations within the State of Arkansas, including the cost of the land, buildings, and equipment used in the construction, expansion, or modernization and which construction, expansion, or modernization has been approved by the Arkansas Department of Economic Development as a construction, expansion, or modernization project which qualifies for the credit under the provisions of Act 1661 of 2001.

L. "Routine maintenance" means the replacement of existing machinery parts with like parts.

M. "Start of Construction" shall mean any activity which causes a physical change to the building and/or property identified as the site of the approved project, excluding engineering surveys, soil tests, land clearing, and extension of roads and utilities to the job site.

III. To Qualify for the Program a Business Must:

A. Be engaged in the manufacturing of paper and allied products with a federal Standard Industrial Classification Code 26.

B. Have had continuous operations in the state of Arkansas for at least two years prior to the initial application to the Director.

C. Invest more than one hundred million dollars ($100,000,000) in the construction, expansion or modernization at one or more locations within the State of Arkansas before December 31, 2004.

D. Submit an application and a project plan for approval to the Director of the Department at least 30 days prior to the start of construction and prior to incurring any costs, other than pre-construction costs as defined herein. In the event a project does not involve construction, the application must be received at least 30 days prior to the company taking delivery of the eligible project machinery or equipment at the project site.

E. Following the Department's approval of the Company's application and project plan, the Department of Finance & Administration will be responsible for monitoring and administering the program.

IV. Powers and Duties of the Department of Economic Development

A. Determine that both the project and the applicant meet minimum qualifications.

B. The Director shall use any resources necessary to review the application to determine eligibility for the tax credit. However, any portion of the project plan clearly identified as taxpayer information under the Arkansas Tax Procedure Act is confidential and privileged as is all other taxpayer information. Following review and approval, the Department will forward all documents to DF&A with an approval letter. The date of approval by the Director shall be the date the application is signed by the Director. DF&A will contact the company and provide the forms and instructions needed for the company to receive the credits. The Department will also forward a copy of the approval letter and approved application to the company contact.

C. The Arkansas Department of Economic Development's approval of any application is for content only. It does not constitute approval of all items listed on the application or the project plan. These items will be reviewed and either approved or ruled ineligible by an audit by the Revenue Division of the Department of Finance and Administration (DF&A).

D. DF&A is authorized to conduct an audit to determine the eligibility of expenses. This audit may be conducted after credits have been approved and used. If expenditures upon which credits have been calculated, awarded, and used are found to be ineligible, the taxpayer will be liable for payment of all taxes determined to be due.

E. If a company is determined to be ineligible, the Department will forward a letter to the company stating the reasons why they are ineligible for benefits. In the event the company disagrees with the decision on qualification rendered by the Department Director, the company shall within fifteen (15) days of receipt of notification of ineligibility from the Director, give notice of said disagreement and request a meeting to review the project plan. The Director shall arrange for a meeting to discuss the disagreement within fifteen (15) days of the company's notification of the disagreement.

F. In the event the disagreement cannot be resolved by these parties, the company (applicant) has the right to further appeal through the Arkansas Administrative Procedures Act.

V. Terms of the Incentive Agreement

A. Project Plan

As part of the application, and at least thirty (30) days prior to the start of construction, the company must submit a project plan to the Director of the Department. The project plans shall address the following:

1. Total project cost - the plan should estimate expenditures for each category of expenditures listed on the annual reporting form required by the Commissioner of Revenue.

2. Construction period - the plan should address the time frames involved in the project indicating start dates and expected completion dates. In no event should construction begin on the project prior to approval by the Department.

3. Contractors -it is encouraged that Arkansas based contractors be used whenever possible.

4. Employment **-** the plan should address any changes in the number of employees resulting from the planned project.

5. Benefits, products, or services - the plan should include a description of the benefits, product(s), or service(s) that will result from the construction, modernization, or expansion.

B. The project plan must contain the signature of the Chief Executive Officer, or the officer primarily responsible for the Arkansas plant operations of the company applying for the tax credits.

C. The project plan shall be submitted to the following address:

Director
Arkansas Department of Economic Development
One Capitol Mall
Little Rock, AR 72201

D. Eligible Items for Calculation of Income Tax Credits

1. "Eligible Items" shall include, but is not limited to: project planning costs, construction labor costs (including on-site direct labor and supervision, whether employed by a contractor or the project owner); architectural/engineering fees; right-of-way purchases; utility extensions; site preparation; parking lots; disposal or containment systems; water and sewer treatment systems; rail spurs; streets and roads; purchase of mineral rights; land; building renovation; production, processing, and testing equipment; freight charges; building demolition; material handling equipment, drainage systems; water tanks and reservoirs; storage facilities; equipment rental; contractor's cost plus fees; builders risk insurance; original spare parts; job administrative expenses; office furnishings and equipment; rolling stock (does not include motor vehicles); capitalized start-up costs as recognized by generally accepted accounting principals; construction material, and other costs related to the construction and expansion.

2. "Production and Processing equipment" includes machinery and equipment essential for the receiving, storing, processing and testing of raw materials, and for the production, storage, testing, and shipping of finished products. These include facilities for the production of: steam, electricity, chemicals, and other materials that are essential to the manufacturing process but which are consumed in the manufacturing process and do not become essential components of the finished product.

3. "Excluded Costs" includes costs incurred at any company location other than those specifically identified in the project plan. Any costs incurred more than 30 days prior to the receipt of the application by the Department will be excluded, with the exception of those pre-construction costs as defined herein. All expenses which, upon examination by the Department

of Finance and Administration, are deemed to be regular maintenance costs, or are deemed to be outside the scope of the project or the project plan, are ineligible for computation of credits. The eligibility of questionable items will be determined by the Department of Finance and Administration.

VI. <u>Administration of Benefits</u>

A. Each company seeking a credit shall apply for and, if eligible, will receive a memorandum of credit issued by DF&A.

B. The Director of the Department of Economic Development shall certify to DF&A that the business meets the eligibility requirements and shall advise DF&A of the estimated amount of the project expenditures. Actual project expenditures and resulting tax credits will be verified by DF&A in accordance with established audit procedures. Credits issued prior to the audit, if found to be ineligible, may be rescinded upon audit, and a tax liability to the applicant may result.

C. Following approval of the application, an eligible business shall file an Annual Project Expenditure report (Form MIC 2000) on or before January 31 of each year until the project is completed. The annual project report shall be mailed to:

Department of Finance & Administration
Tax Credits/Special Refunds Section
P.O. Box 1272
Little Rock, AR 72203-1272

D. A memo of credit not exceeding seven percent (7%) of the annual qualifying project expenditures shall be issued by the Commissioner of Revenue to the company annually for each project and shall be used on when the eligible business submits its corporate income tax return. The Commissioner of Revenue shall issue the credit memo by the tenth (10^{th}) day of the month following the month in which the Annual Project Expenditure report is filed. The credit memo shall be attached to and used by the company as a credit against the corporate income tax liability as long as the credit does not exceed fifty percent (50%) of the company's total income tax liability for each year.

E. The credit memo shall be reduced by the amount of the income tax credits taken, if approved.

F. The credit shall be applied to corporate income tax liability after all applicable deductions and other credits available to the company have been utilized. Under no circumstances may the credit be used for the payment of any penalties or interest assessed against a company by the Commissioner of Revenue.

G. In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state income tax liability for the reporting period.

H. Accurate and up-to-date records of all expenditures for all of the approved projects shall be maintained by the company and made available for inspection and audit by the Commissioner of Revenue pursuant to the Arkansas Tax Procedure Act.

I. The Commissioner of Revenue may examine those records necessary and specific to the project to determine credit eligibility. Any credits disallowed will be subject to payment in full.

J. For all projects approved after July 1, 2001, all expenditures toward the project cost must be incurred within five (5) years from the date of the certification of the project plan by the director.

K. The state income tax credit provided by Act 1661 of 2001 may not be claimed on any income tax return filed or required by law to be filed prior to July 1, 2003. State income tax credits resulting from the provisions of Act 1661 of 2001 that would have been available to claim on an income tax return required to be filed before July 1, 2003, shall first be available on income tax returns due after July 1, 2003 and may be carried over to the next succeeding calendar year for a total period of six (6) years following the year in which the credit was first available to be claimed, or until the credit is exhausted, whichever occurs first.

VII. <u>Restrictions</u>

No person or entity may take advantage of the income tax credit benefits of the Manufacturer's Investment Tax Credit Act of 2001 and receive benefits under Advantage Arkansas (Arkansas Enterprise Zone Act of 1993 - ACA § 15-4-1701 et seq.) for the same project. In addition, recipients of benefits from this incentive are precluded from receiving benefits under InvestArk (the Economic Investment Tax Credit Act – ACA 26-52-701 et seq.) for the same project