Economic Investment Tax Credit Act
(Act 529 of 1985, as amended)
InvestArk
Rules and Regulations

I. Introduction

InvestArk is a program designed to stimulate the expansion and modernization of the existing facilities and equipment of eligible Arkansas companies by offering credits against a portion of the sales and use tax liability of the company making the investment. See Arkansas Code Annotated § 26-52-701 et. seq.

If approved to participate in InvestArk, a company may not receive benefits under Advantage Arkansas (Arkansas Enterprise Zone Act of 1993, as amended) for the same project.

For additional information contact:

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

II. Definitions

A. "Coal mining" means an operation that hires a minimum of twenty-five (25) net new full-time permanent employees and extracts coal or lignite from within the boundaries of the State of Arkansas. (Act 1065 of 2001 added coal mining as a business eligible for benefits under the Economic Investment Tax Credit Act.)

B. "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.

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. <u>“Department”</u> means the Arkansas Department of Economic Development.

E. <u>“Digital Content Production”</u> means companies engaged in the creation of product that includes acquiring, modeling, and manipulating video imagery, film, and animation. These products are created in digital form and are eligible for copyright under the copyright laws of the United States. Outlets for digital content products may include broadcast television, corporate presentations, cable shows, advertising, video games, movies and themed entertainment outlets. For companies engaged in digital content production to be eligible for benefits under this program, they must derive at least seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public.

F. <u>“Digital Preservation”</u> means companies engaged in the transformation, storage, archiving and/or distribution of various forms of media which have been transferred into a digital format. Media transformation into digital content may include film, video or written materials. For companies engaged in digital preservation to be eligible for benefits under this program, they must derive at least seventy-five percent (75%) of their revenue from out of state sales and have no retail sales to the general public.

G. <u>“Director”</u> means the director of the Arkansas Department of Economic Development.

H. <u>“Distribution center”</u> means a facility for the reception, storage, or shipping of:

1. A business’ own products which the business wholesales to retail businesses or ships to its own retail outlets;
2. Products owned by other companies with which the business has contracts for storage and shipping if seventy-five percent (75%) of the sales revenue is from out-of-state customers; or
3. Products for sale to the general public if seventy-five percent (75%) of the sales revenue is from out-of-state customers;

I. <u>“Financial incentive plan”</u>, within this regulation, the “financial incentive plan” may also be referred to as a “financial incentive agreement” and consists of the application and a project plan which describes the project costs, establishes time frames for construction, addresses changes in employment and provides other information identified in Section V.

J. <u>“In continuous operation in Arkansas for at least two years”</u> means the business applying for the tax credit shall have on file with the Employment Security Division, employment reports dated at least two (2) years (eight reporting quarters) prior to the date of application for the tax incentive.

K. “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.

L. “Modernization” means to increase efficiency or to increase productivity of the business through investment in machinery and/or equipment, not including costs for routine maintenance.

M. “Motion picture production company” means a company that produces any motion picture or portion thereof for: display at theaters, video release, television shows, music videos and special effects, titles and credits all of which are embodied on film or prepared for digital presentation. Motion picture production companies are generally a subset of those companies classified in SIC code 7812 and must have no retail sales to the general public and derive at least seventy-five percent (75%) of their revenue from out of state sales.

N. “Office sector” means control centers that influence the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions that act as production centers are performed. Office sector businesses can have no retail sales to the general public.

O. “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.

P. “Project” means any eligible firm’s construction, expansion or modernization in Arkansas that costs more than five million dollars ($5,000,000), or six million dollars ($6,000,000) for projects involving multiple locations within the state of Arkansas. This cost includes the cost of eligible items (land, buildings, and equipment) used in the construction, expansion, or modernization that has been approved by the Arkansas Department of Economic Development as a construction, expansion, or modernization which qualifies for the credit.

Q. “Routine maintenance” means the replacement of existing machinery parts with like parts.

R. “Routine operating expenditures” means: (1) costs normally associated with doing business; or (2) recurring expenditures for items which in the normal course of business must be routinely renewed, upgraded, improved, repaired, replaced or changed. Nothing contained herein limits a company's ability to obtain credit for items which are purchased as part of an approved project including material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any legitimate business enterprise and machinery and equipment to be located in or in connection with such building or buildings.

S. "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 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;
2. A computer business primarily engaged in providing computer programming services; the design and development of prepackaged software; a business engaged in digital content production and preservation; computer processing and data preparation services; or information retrieval services; computer and data processing consultants and developers. All businesses in this group must derive at least seventy-five (75%) percent of their revenue from sales outside of Arkansas and have no retail sales to the public;
3. Businesses primarily engaged in motion picture production, derive at least seventy-five percent (75%) of their revenue from sales outside of Arkansas, and have no retail sales to the public;
4. A business primarily engaged in commercial physical and biological research as classified by SIC code 8731;
5. A distribution center, as defined in Section II;
6. An office sector business, with no retail sales to the general public;
7. A corporate or regional headquarters with no retail sales to the general public.
8. A coal mining operation employing a minimum of twenty-five (25) net new full-time permanent employees.

B. Have had continuous operations in the state of Arkansas for at least two (2) years prior to the initial application to the Director

C. Invest at least $5 million ($5,000,000) in fixed asset acquisition or construction, or $6 million ($6,000,000) in fixed asset acquisition or construction at multiple locations.

D. Submit an application and a financial incentive plan for approval to the Director of the Department at least thirty (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 thirty (30) days prior to the company taking delivery of the eligible project machinery or equipment at the project site.

E. Obtain a direct-pay sales and use tax permit from the Revenue Division of the Department of Finance and Administration (DF&A). A direct pay sales and use tax permit can be obtained by calling DF&A Sales and Use Tax Section at (501) 682-7104.

F. Following the Department's approval of the Company's application and financial incentive 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. Financial Incentive Plan

As part of the application, and at least thirty (30) days prior to the start of construction, the company must submit a financial incentive plan to the Director of the Department. The financial incentive plan 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. If project costs exceed the initial project cost estimate included in the financial incentive plan, the business shall amend the financial incentive plan to include updated costs figures. Amendments that exceed fifty percent (50%) of the original financial incentive plan estimate shall be submitted as a new project. An amendment shall not change the start date of the original project.

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 financial incentive 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 financial incentive 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 Sales and Use 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 prior to 30 days following approval 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 as either a qualification for the five million dollars ($5,000,000) minimum or six million dollars ($6,000,000) minimum, or

for computation of credits. The eligibility of questionable items will be determined by the Department of Finance and Administration.

VI. Administration of Benefits

A. Each company seeking a credit shall apply for and, if eligible, will receive a direct-pay sales and use tax permit 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 subsequent Direct Pay Sales and Use Tax reports. 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 regular monthly Direct Pay State Sales and Use Tax report as long as the credit does not exceed fifty percent (50%) of the company's total state sales and use tax liability for each monthly report. The company shall remit to the Commissioner of Revenue with the monthly Direct Pay State Sales and Use Tax report and credit memo, a check for the remaining fifty percent (50%) balance due after applying the credit. The company may begin to claim credit immediately on receipt of the credit memo.

E. If the company files the Annual Project Expenditure reports and also the direct pay sales and use tax reports on time but does not receive a credit memo in sufficient time to claim credit for each month in the calendar year, the company may (upon issuance of the credit memo) claim refunds for those months and in the amounts for which it could have claimed credit in the calendar year if the memo of credit had been issued in a timely manner.

F. The credit memo shall be reduced by the amount of the refunds if approved. Direct Pay Sales and Use Tax reports will be timely filed if mailed by the twentieth (20^{th}) day of the month following the month being reported. Credit memos will be considered mailed timely if mailed by the tenth (10^{th}) day of the month following the timely filing dates set out in these regulations for the Annual Project Expenditure reports and the Direct Pay Sales and Use Tax reports.

G. The oldest memo of credit for each direct pay number should be exhausted prior to the use of subsequent memo of credit issued for subsequent calendar year expenditures for the same project or projects.

H. Except for defense industry projects, unused credits may be carried forward, not to exceed six (6) years, beyond the year in which the credit originated or until the credit is exhausted, whichever occurs first. For eligible defense industry projects, if the credit is not used in the calendar year following the expenditure, the credit may be carried forward to the next succeeding calendar year for a total of nine (9) years following the year in which the credit was first available for use or until the credit is exhausted, whichever occurs first.

I. All local sales and use taxes must be remitted in full to the Commissioner of Revenue. No credit shall be taken for the payment of these sales and use taxes.

J. The credit shall be applied to Direct Pay taxable purchases 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.

K. In no event shall the credit used on any regular return be more than fifty percent (50%) of the eligible business' total state sales and use tax liability for the reporting period, except for a defense industry project. A company with an eligible defense industry project may claim a credit for one hundred percent (100%) of the sales and use tax liability for the reporting period.

L. 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.

M. 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.

N. For all projects approved after July 1, 1997, all expenditures toward the project cost must be incurred within five (5) years from the date of certification of the financial incentive plan by the Director of the Department of Economic Development.

VII. <u>Restrictions</u>

No person or entity may take advantage of the sales and use tax credit benefits of InvestArk, and receive benefits under Advantage Arkansas (Arkansas Enterprise Zone Act of 1993 - ACA § 15-4-1701 et seq.) for the same project.