# Non-Profit Incentive Act of 2005
# (Act 1277 of 2005)

## Rules and Regulations

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## I. Introduction

The primary purpose of the Non-Profit Incentive Program is to encourage the location or expansion of national or regional non-profit headquarters in Arkansas. This incentive program may only be offered at the discretion of the Director of the Department of Economic Development. Eligible non-profit organizations must create a payroll for new full-time permanent employees of at least one million dollars ($1,000,000) and pay an average wage in excess of one hundred and ten percent (110%) of the state or county average wage (whichever is less) in the county in which the organization locates or expands. In addition, the non-profit must receive seventy-five percent (75%) of its income from out-of-state sources.

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## II. Definitions

(a) "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 the number of new full-time permanent employees, divided by forty (40);

(b) "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);

(c) "Department" means the Department of Economic Development;

(d) "Director" means the Director of the Department of Economic Development;

(e) “Financial incentive agreement” means an agreement entered into by an eligible non-profit organization and the Department of Economic Development to provide the organization an incentive to locate in Arkansas;

(f) “Governing authority” means the quorum court of a county or the governing body of a municipality;

(g) “Income” means the monies received by a non-profit organization for operations of the organization and shall include donations, revenue from sales or memberships, grants or legislative appropriations;

(h) (1)(A) “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.

(B) The position or job held by such employee or employees must have been filled for at least twenty-six (26) consecutive weeks with an average of at least thirty (30) hours per week.

(2) Provided, however, in order to qualify for the provisions of this act, a contractual employee must be offered a benefits package comparable to a direct employee of the non-profit organization seeking incentives under this subchapter;

(i) “Non-profit organization” means an entity which has filed papers with and been approved by the Arkansas Secretary of State as having met the qualifications for a non-profit organization in Arkansas and which has also received a 501(c) designation from the United States Internal Revenue Service prior to applying for the benefits afforded under this subchapter;

(j) “Payroll” means the total taxable wages, including overtime and bonuses, paid during the preceding tax year of the eligible non-profit organization to new full-time permanent employees hired after the date of the signed financial incentive agreement;

(k) (1) “Project” means:

(A) Preconstruction costs, including project planning costs, architectural/engineering fees, right-of-way purchases, utility extensions, site preparations, purchase of mineral rights, building demolition, builders risk insurance, capitalized start-up costs, deposits and process payments on eligible machinery and equipment and other costs necessary to prepare for the start of construction;

(B) Costs associated with the construction of a new plant or facility; including, but not limited, to land, building, production equipment or support infrastructure; or

(C) Costs associated with the expansion of an established plant or facility by adding to the building, production equipment, or support infrastructure; or

(D) Cost associated with modernization of an established plant or facility through the replacement of production or processing equipment or support infrastructure that improves efficiency or productivity.

(2) "Project" does not include:

(A) Expenditures for routine repair and maintenance that do not result in new construction or expansion;

(B) Routine operating expenditures; or

(C) Expenditures incurred at multiple facilities.

(3) In order to receive credit for, or refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Department.

(l) "Project plan" means the plan submitted to the Department containing such information as may be required by the Director to determine eligibility for benefits. If approved, the project plan becomes a supplement to the financial incentive agreement; and

(m) "Start of construction" means 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 project site.

## III. To Qualify for the Program a Non-Profit Organization Must

(a) Have a payroll of new full-time permanent employees in excess of one million dollars ($1,000,000) annually.

(b)(1) Pay wages that average in excess of one hundred and ten percent (110%) of the lesser of the county or state average wage; and

(2) Receive a minimum of seventy-five percent (75%) of its income from out-of-state sources.

(c) Hospitals, medical clinics, accredited academic educational institutions and churches are specifically excluded from receiving the benefits authorized by this subchapter.

(d) Non-profit organizations must meet the payroll threshold and the average hourly wage threshold and invest a minimum of five hundred thousand dollars ($500,000) in order to receive the sales and use tax refund authorized by this program. A sales tax refund will be made only after the audit of expenditures and payroll by the Revenue Division of the Arkansas Department of Finance and Administration has determined the non-profit organization is in compliance with all qualifications to receive benefits under this act.

## IV. Terms of Financial Assistance

**Payroll rebate:**

(a) The award of this incentive is at the discretion of the Director of the Department of Economic Development.

(b) Benefits are conditioned upon the hiring of new full-time permanent employees and certifying to the Department of Finance and Administration that the requisite payroll thresholds have been met.

(c) The requisite annual payroll for new full-time permanent employees of one million dollars ($1,000,000) shall be reached within twenty-four (24) months of the signing of the financial incentive agreement in order for the benefits of this section to be approved.

(d) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the non-profit organization 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 twenty-four (24) months to reach the requisite annual payroll.

(e) In addition to having an annual payroll of one million dollars ($1,000,000) or more, the non-profit organization applying for benefits under this act shall pay average hourly wages in excess of one hundred and ten percent (110%) of the lesser of the state or county average wage for the county in which the organization locates or expands.

(f) Payments to non-profit organizations with an annual payroll in excess of one million dollars ($1,000,000) shall be considered and may be authorized by the Director, after having signed a financial incentive agreement with the non-profit organization. The payment will be four percent (4%) of the annual payroll of the new full-time permanent employees.

(g) The Director may authorize this benefit for up to five (5) years.

**Sales and Use Tax Refund:**

(a)(1) In order to qualify for the sales and use tax refund authorized by this section, a qualified non-profit organization must qualify for the payroll rebate program and spend in excess of five hundred thousand dollars ($500,000) on buildings, machinery and equipment in the new or improved facility.

(2) An eligible non-profit organization must file and application with the Department before the start of construction. The application shall include 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. In order to receive refunds related to project costs, the costs must be incurred within four (4) years from the date the financial incentive agreement was signed by the Department and;

(A) The application must include an endorsement resolution from the governing authority of a municipality or county in whose jurisdiction the non-profit organization will be located.

(B) The resolution shall:

(i) Endorse the applicant's participation in this sales and use tax refund program; and

(ii) Authorize the refund of any sales and use tax levied by the municipality or county.

(b)(1) A sales and use tax refund of state and local sales and use taxes, excepting the sales and use tax dedicated to the Educational Adequacy Fund, as authorized by Act 107 of the 2nd Special Session of 2004 and the Conservation Tax Fund, as authorized by Arkansas Code Annotated 19-6-484, on the purchases of the material used in the construction of a building or buildings or any addition, modernization, or improvement thereon for housing any new or expanding non-profit organization, and machinery and equipment to be located in, or in connection with, such a building, shall be authorized by the Director of the Department of Finance and Administration.

(2) A refund shall not be authorized for:

(A) Routine operating expenditures; or

(B) The purchase of items previously purchased as part of a project under this subsection unless the items previously purchased are necessary for the implementation or completion of the project.

(c) Subject to the approval of the Department of Economic Development, a program participant may make changes in a project by written amendment to the project plan filed with the Department, provided that the amendment complies with Arkansas Code Annotated 15-4-3207(h)(2).

(d) All claims for sales and use tax refunds under this section shall be denied unless they are filed with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

## V. <u>Program Administration</u>

(a)(1) In order to qualify for a sales and use tax refund, a non-profit organization must reach the five hundred thousand dollar ($500,000) investment threshold within four (4) years from the date of the signed financial incentive agreement.

(2) All claims for sales and use tax refunds shall be filed annually with the Revenue Division of the Department of Finance and Administration within three (3) years from the date of the qualified purchase or purchases.

(3) Claims filed after three (3) years from the date of the qualified purchase or purchases shall be disallowed except when:

(A) A non-profit organization fails to pay sales tax on an item that was taxable; and

(B) The applicable tax is subsequently assessed as a result of an audit by the Revenue Division of the Department of Finance and Administration.

(b) All claims for sales and use tax refunds relating to an audited purchase shall be entitled to a refund of interest paid on the amount of tax assessed on the audited purchase if a refund is approved for the purchase.

(c)(1) All claims for payroll rebates shall be certified to the Department of Finance and Administration and shall be recertified annually thereafter during the term of the financial incentive agreement.

(2) Failure to certify payroll figures and recertify those figures annually may result in a denial of payments.

(3)(A) If the annual payroll of the non-profit organization applying for benefits under this subchapter is not met within twenty-four (24) months after the signing of the financial incentive agreement, the non-profit organization may request, in writing, an extension of time to reach the required payroll threshold.

(B) If the Director of the Department of Economic Development and the Director of the Department of Finance and Administration find that the non-profit organization 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 twenty-four (24) months.

(d)(1) If the annual payroll of a non-profit organization receiving benefits under this subchapter 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 non-profit organization 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 time, not to exceed twenty-four (24) months, for the non-profit organization to bring the payroll back up to the requisite payroll threshold amount and may approve the continuation of benefits during the period the extension is granted.

(3) If a non-profit organization 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, the non-profit organization will be liable for

repayment of all payroll benefits previously received by the non-profit organization.

(e)(1) If a non-profit organization fails to maintain the average hourly wage requirements for benefits under this subchapter, the non-profit organization will be liable for the repayment of all payroll benefits previously received by the non-profit organization after the average hourly wage for new full-time permanent employees fell below the required threshold.

(2) After a non-profit organization has failed to maintain the average hourly wage requirements, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.

(f)(1) If a non-profit organization fails to notify the Department of Finance and Administration that the annual payroll of the non-profit organization has fallen below the threshold for qualification for and retention of any incentive authorized by this subchapter, that non-profit organization will be liable for the repayment of all payroll benefits which were paid to the non-profit organization after it no longer qualified for the benefits.

(2) After a non-profit organization has failed to notify the Department of Finance and Administration that the non-profit organization has fallen below the payroll threshold, the Department of Finance and Administration shall have two (2) years to collect benefits previously received by the non-profit organization or file a lawsuit to enforce the repayment provisions.

(3) Interest shall also be due at the rate of ten percent (10%) per annum.

(g)(1) For a qualified non-profit organization taking advantage of the sales and use tax refund, if the project costs exceed the initial project cost estimate included in the approved financial incentive agreement, the non-profit organization shall submit an amended project plan, as soon as the cost overrun is recognized, to include the updated cost figures.

(2)(A) Amendments that exceed twenty-five percent (25%) of the original financial incentive agreement estimate will not be considered and shall be submitted as a new project.

(B) An amendment shall not change the start date as specified in the original project.

(h) The Department of Finance and Administration may obtain whatever information is necessary from a participating non-profit organization and from the Arkansas Employment Security Department to verify that a non-profit organization 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 and payrolls to the Department of Finance and Administration.

(i) 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 qualifying non-profit organization is located, to enforce the repayment provisions of this subchapter.

(j) The department may promulgate rules and regulations, as needed, to administer the provisions of this subchapter.