State of Arkansas *As Engrossed: H4/8/25*
95th General Assembly
A Bill
Regular Session, 2025 HOUSE BILL 1935

By: Representative Eaves
By: Senator Gilmore

For An Act To Be Entitled

AN ACT TO AMEND THE CONSOLIDATED INCENTIVE ACT OF 2003; TO CREATE A MODERNIZATION AND AUTOMATION TAX CREDIT TO ENCOURAGE INVESTMENT BY EXISTING BUSINESSES WITHIN THE STATE; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE A MODERNIZATION AND AUTOMATION TAX CREDIT TO ENCOURAGE INVESTMENT BY EXISTING BUSINESSES WITHIN THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-4-2703(29)(C), concerning the definition of "project costs" under the Consolidated Incentive Act of 2003, is amended to read as follows:

(C) Eligible project costs must be incurred within:

(i) Four (4) years from the date a financial incentive agreement was approved by the commission; or

(ii) Six (6) years from the date a financial incentive agreement was approved by the commission in connection with a project qualifying for ~~retention tax credits under § 15-4-2706(c)(1)(A) and approved on or after June 22, 2017~~ a modernization and automation tax credit under § 15-4-2706(c);

SECTION 2. Arkansas Code § 15-4-2706(c), concerning investment tax incentives under the Consolidated Incentive Act of 2003, is amended to read as follows:

(c)(1)(A) An application for a ~~retention~~ modernization and automation tax credit under this subsection shall be submitted to the commission.

(B)(i) The application shall be submitted to the commission before ~~incurring~~ any project costs are incurred.

(ii) With the exception of preconstruction costs, only ~~those~~ project costs incurred after the commission's approval of the application are eligible for the modernization and automation tax credit.

(C) Upon the approval of the application, the commission shall execute a financial incentive agreement with the applicant that shall:

(i) Require that the project forming the basis of the application be completed within six (6) years from the date of the execution of the financial incentive agreement;

(ii) Require that the applicant maintain within the state the current yearly average level of payroll and employment during the course of the project and for twenty-four (24) months after the termination of the project; and

(iii) Contain a forfeiture provision that requires an applicant to return any modernization and automation tax credits claimed for the project if the applicant is found to have breached the financial incentive agreement.

(2) The modernization and automation tax credit ~~against the qualified business's sales and use tax liability~~ under this subsection is available only to Arkansas businesses that:

(A) Have been in continuous operation in the state for at least two (2) years;

(B) ~~Invest~~ Incur a minimum of ~~*five*~~ *twenty-five* million dollars ~~*($5,000,000)*~~ *($25,000,000)* in ~~a~~ project costs~~, including land, buildings, and equipment used in the construction, expansion, or modernization~~; ~~*and*~~

(C) Hold a direct-pay sales and use tax permit from the *department before submitting an application for incentives; and*

(D) Have received a positive cost-benefit analysis from the commission for the project that forms the basis of the businesses' financial incentive agreement.

(3)(A) If allowed, the modernization and automation tax credit shall be ~~a percentage~~ up to five percent (5%) of the eligible project costs.

(B) ~~The amount of the credit shall be five-tenths percent (0.5%) above the state sales and use tax rate in effect at the time a financial incentive agreement is signed with the commission~~ <u>The maximum modernization and automation tax credit that may be used in a fiscal year by an applicant is two million dollars ($2,000,000)</u>.

(C) ~~In any one (1) year following the year of the expenditures, credits taken cannot exceed fifty percent (50%) of the direct pay sales and use tax liability of the qualified business for taxable purchases.~~

~~(D)~~ Unused <u>modernization and automation tax</u> credits may be carried forward for a period of up to five (5) years beyond the year in which the <u>modernization and automation tax</u> credit was first earned.

~~(E) Retention tax credits earned between forty-nine (49) and seventy-two (72) months after the commission approved the financial incentive agreement may be taken only:~~

~~(i) On and after July 1, 2023;~~

~~(ii) After the director has determined, based on evidence provided by the applicant, that the applicant's investment in the part of the qualified project to be completed between forty-nine (49) and seventy-two (72) months after the commission approved the financial incentive agreement will generate a return that will likely be equal to or greater than the amount of retention tax credits under this subdivision (c)(3)(E); and~~

~~(iii) For an application filed with the commission between June 22, 2017, and June 28, 2017.~~

~~(F) The maximum amount of retention tax credits under subdivision (c)(3)(E) of this section that may be used in any fiscal year by a qualified applicant is seven hundred fifty thousand dollars ($750,000).~~

(4)(A) Upon ~~determination by the director~~ <u>determining</u> that ~~the~~ <u>a</u> project ~~qualifies~~ <u>is eligible</u> for <u>a modernization and automation tax</u> credit under this subsection, the director shall certify to the Secretary of the Department of Finance and Administration that the project qualifies and shall transmit ~~with his or her certification~~ the documents ~~or copies of the documents~~ upon which the certification was based.

(B) The ~~secretary~~ <u>department</u> shall provide forms to the qualified business on which to claim the <u>modernization and automation tax</u> credit.

(C) At the end of the calendar year in which the application is made and at the end of each calendar year thereafter until the project is completed, the qualified business shall certify on the ~~form~~ forms provided by the ~~secretary~~ department the ~~amount of expenditures on the~~ project costs incurred during the preceding calendar year.

(D) Upon receipt of the form certifying ~~expenditures~~ the project costs, the ~~secretary~~ department shall determine the amount due as a credit for the preceding calendar year and issue a memorandum of credit to the qualified business.

~~(E) The credit against the qualified business's sales and use tax liability shall be a percentage of the eligible project costs equal to five-tenths percent (0.5%) above the state sales and use tax rate in effect at the time the financial incentive agreement was approved by the commission.~~

(5) If a business ~~plans to apply for incentives~~ applies for a modernization and automation tax credit under this subsection and ~~also plans to apply for incentives~~ a job-creation tax credit under § 15-4-2705, the financial incentive ~~agreement under § 15-4-2705~~ agreements for the incentives shall be approved within ~~two (2) years after signing the financial incentive agreement under this subsection~~ one (1) year of each other.

(6) A qualified business that ~~enters into a lease for~~ leases a building or equipment for a period of at least five (5) years may count the lease payments for the first five (5) years as a qualifying expenditure for the investment threshold required for this investment incentive.

~~(7)(A) A business may apply for the retention tax credit under this subsection through June 30, 2017.~~

~~(B)(i) An application for the retention tax credit under this subsection shall not be accepted on or after July 1, 2017.~~

~~(ii) However, projects that qualify for a retention tax credit based on an application filed through June 30, 2017, shall continue to earn credits as provided in this section.~~

~~(iii) Retention tax credits issued on a project that qualifies for retention tax credits based on an application filed through June 30, 2017, shall remain in effect and shall be taken and carried forward as otherwise provided in this section.~~

SECTION 3. Arkansas Code § 15-4-2712(b)(6), concerning restrictions on the use of incentives under the Consolidated Incentive Act of 2003, is amended to read as follows:

(6) The investment tax credit authorized under § 15-4-2706(b) shall not be combined with the ~~sales and use tax credit~~ modernization and automation tax credit authorized under § 15-4-2706(c) for the same project.

SECTION 4. Arkansas Code § 15-4-3501(g), concerning the increased tax refund for major maintenance and improvement projects, is amended to read as follows:

(g) An expenditure shall not qualify for both the increased refund for major maintenance and improvement projects under this section and the ~~retention~~ modernization and automation tax credit provided for in § 15-4-2706(c).

SECTION 5. EFFECTIVE DATE. Sections 1-4 of this act are effective on and after October 1, 2025.

/s/Eaves

APPROVED: 4/17/25