

Department of Finance and Administration

Legislative Impact Statement

Bill: SB844

(3/19/15 Engrossment)

Bill Subtitle: TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; TO AMEND RETENTION TAX CREDITS; AND TO AMEND THE SALES AND USE TAX EXEMPTION FOR REPAIR AND REPLACEMENT OF CERTAIN MACHINERY AND EQUIPMENT.

Basic Change : Sponsor: Senator Burnett

Engrossment 03/19/15 --- Senate Amendment 1 --- The proposal amends the income tax credit for waste reduction, reuse, or recycling equipment for qualified Amendment 82 projects. The bill adds new provisions to current law that limits the amount or credit that can be used or transferred each tax year to \$20,000,000. If the Amendment 82 project does not have a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder, then the recycling tax credit is applied against the income tax due for each tax year. Any unused credit may be carried forward as allowed by law; however if there are any unused credits left after the carry-over period expires, then use of those credits shall be extended each year, for one (1) additional year at a time.

If the Amendment 82 project has a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder, then the public retirement system shall have possession and control of all tax credits earned. Confirmation of the credits possessed by the public retirement system will be confirmed in writing by DFA's Office of Revenue Legal Counsel. The public retirement system shall sell the tax credits to the State Of Arkansas for eighty percent (80%) of the face value in lieu of the right to claim these credits against any income tax due by a proprietor, partner, member, shareholder or beneficiary. Any unsold credit may be carried forward as allowed by law; however, if there are unsold credits left after the carry-over period expires, the carry forward period for these unsold credits shall be extended each year for one (1) additional year at a time.

Beginning July 1, 2016, the public retirement system with possession of these credits shall notify DFA by July 1 of each year of the amount of credits, including credits pending certification by the Arkansas Department of Environment Quality, that are subject to be sold. The State of Arkansas shall pay the public retirement an amount equal to 80% of the credits on or before June 30 of the year following the year in which the notice was provided. Payment will be made from funds transferred from general revenue to the Economic Development Incentive Fund. The credits sold to the State of Arkansas are extinguished as if they were claimed against income tax due.

If the State of Arkansas doesn't pay the public retirement system by end of the tax year following the tax year in which a failure to pay occurs, the public retirement system may sell or transfer those credits to one (1) or more persons who may then claim these credits against the income tax due from the person or persons. Unused credits will expire the later of the end of the carry-forward period allowed by law or the third tax year following the year in which the credits were sold. The sale of tax credits to a person or persons shall be confirmed in writing by the Office of Legal Counsel. An emergency clause is provided in this bill.

Revenue Impact :

None.

Taxpayer Impact :

The use or sale of credits earned by taxpayers approved for Amendment 82 projects will be limited to \$20,000,000 per year.

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Resources Required :

None

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Education of staff of change in law.

Legal Analysis :

SB844 provides for special procedures for Amendment 82 Projects that have qualified for Recycling Tax Credits. If an Amendment 82 Project qualifies for Recycling Tax Credits, it will generally be limited to the lesser of \$20M per year or the amount of income attributable to the qualifying Amendment 82 Project as apportioned between investors. If any credits would expire as a result of this ceiling, the credits are extended an additional year, each year they would have expired, to ensure the use of 100% of the credits.

If an Amendment 82 Project qualifies for recycling tax credits and has a public retirement system as an investor, specific procedures are put in place.

1. The Public Retirement System holds and controls all of the credits for the Qualified Amendment 82 Project.
2. The Public Retirement System shall sell \$20M of the credits to the state every year, at 80% of face value or \$16M.
3. On purchase by the State, the credits are extinguished. If any credits would expire because of the \$20M ceiling, the credits are extended an additional year, each year they would have expired, to ensure the use of 100% of the credits.
4. If the State fails or declines to purchase the credits in one year, those \$20M of credits may be sold to third parties by the Public Retirement System.

SB844 provides for the administrative mechanisms to confirm ownership or transfer of affected credits, sale of the credits to the State, and establishes the payments to be based on the Economic Development Fund for AEDC.