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Proposed Rulemaking

Title

Promulgated by:
Department of Finance and Administration

~~Title 26. Taxation~~

~~Chapter I. Department of Finance and Administration, Generally~~

~~Subchapter F. Miscellaneous Taxes~~

~~Part 170. Enterprise Zone Act of 1993~~

~~Subpart 1. Generally~~

~~26 CAR § 170-101. Definitions.~~

~~As used in this part:~~

~~(1) "Act" means the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;~~

~~(2) "Approved enterprise zone business" means a business that has been approved by the Arkansas Economic Development Commission to receive benefits under the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;~~

~~(3)(A) "Average hourly wage" means the average wage of the net new permanent employees based on payroll for the most recent quarter reported to the Division of Workforce Services and is computed by using the total of the net new permanent employees' reported taxable earnings, including overtime pay, divided by the number of weeks worked, divided by the average hours worked per week per net new permanent employee.~~

~~(B) Salaried employees are deemed to have worked forty (40) hours per week for the purpose of calculating average hourly wage and most recent quarter reported in the tax year during which the income tax credits were earned;~~

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~~—————(4) "Chief Fiscal Officer of the State" means the Secretary of the Department of Finance and Administration;~~

~~—————(5) "Commission" means the Arkansas Economic Development Commission;~~

~~—————(6) "Corporate headquarters" means the home or center of operations, including research and development, of a national or multi-national corporation;~~

~~—————(7) "Department" means the Arkansas Economic Development Commission;~~

~~—————(8) "Director" is the director of the Arkansas Economic Development Commission;~~

~~—————(9) "Governing authority" means the quorum court of a county or the governing body of a municipality;~~

~~—————(10)(A) "Net new permanent employee" means a new permanent employee who was not employed by the taxpayer during the preceding tax year.~~

~~—————(B) However, if during the tax year in which a new permanent employee was hired the employee did not work the requisite number of weeks to qualify as a new permanent employee for that tax year, then that employee may be counted as a net new permanent employee for the tax year in which he or she meets the requirement.~~

~~—————**Example:** An employee hired August 1, 1993, could not qualify as a new permanent employee for 1993 because he could not have worked twenty-six (26) consecutive weeks in 1993. However, if in 1994 that employee completes his twenty-sixth consecutive week of work with an average of thirty (30) hours of work per week since the date he was hired, that employee will qualify as a net new permanent employee for the 1994 tax year.~~

~~—————(C) The number of net new permanent employees shall be equal to the total number of new permanent employees for the current tax year minus the total number of new permanent employees for the previous tax year;~~

~~—————(11)(A) "New permanent employee" means an employee who:~~

~~—————(i) Is an Arkansas resident when hired;~~

~~—————(ii) Was hired as a result of the project; and~~

~~—————(iii) Has worked an average of at least thirty (30) hours per week for at least twenty-six (26) consecutive weeks.~~

~~—————(B) To be counted as a new permanent employee for the purpose of qualifying for the tax credits and incentives, the employee must have been an Arkansas resident during the tax year in which the tax credits or incentives were earned;~~

~~—————(12)(A) "Office sector business" 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.~~

~~—————(B) Also referred to as "back office industry";~~

~~—————(13) "Program" means the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq.;~~

~~—————(14) "Project" means:~~

~~—————(A) All activities and costs associated with the construction of a new plant or facility;~~

~~—————(B) The expansion of an established plant or facility by adding to the building or production equipment, support infrastructure, or both; or~~

~~—————(C) The replacement of production or processing equipment, support infrastructure, or both;~~

~~—————(15) "Standard Industrial Classification numbers" means the numbers used to classify businesses in the Standard Industrial Classification Manual published by the Office of Management and Budget, Executive Office of the President;~~

~~—————(16)(A) "Tax year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which taxable income is computed.~~

~~—————(B) In the case of a return made for a fractional part of a year, "tax year" means the period for which such return is made; and~~

~~—————(17) "Trucking sector business" means a business that comes within the Standard Industrial Classification (SIC) number 4231.~~

~~— 26 CAR § 170-102. Refund of sales and use tax.~~

~~— (a) The Revenue Division of the Department of Finance and Administration shall authorize a refund of sales and use tax imposed by the state and municipality or county, if the municipality or county authorized the refund of its local tax, on the purchases of the material used in the construction of a building or buildings, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment to be located in or in connection with such building.~~

~~— (b)(1) A sales and use tax refund as provided for in subsection (a) of this section shall be authorized provided that the:~~

~~— (A) Qualified business is an industry that fits into Standard Industrial Classification (SIC) numbers 20 through 39, 7375, or 7376, is a distribution center, corporate headquarters, office sector business, or trucking sector business located within Arkansas;~~

~~— (B) Firm and its contractors give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except where it is not reasonably possible to do so without:~~

~~— (i) Added expense;~~

~~— (ii) Substantial inconvenience; or~~

~~— (iii) Sacrifice in operational efficiency; and~~

~~— (C)(i) Firm files an endorsement resolution with the Arkansas Economic Development Commission and the Department of Finance and Administration.~~

~~— (ii) The endorsement resolution must:~~

~~— (a) Be approved by the governing body of a municipality or county in whose jurisdiction the facility is located;~~

~~— (b) Approve the specific entity's participation in the program; and~~

~~— (c) Specifically state whether the municipality or county authorizes the Department of Finance and Administration to refund local sales and use taxes to the entity under the program.~~

~~— (iii) A municipality or county can authorize the refund of all or part of a tax levied by it but cannot authorize the refund of any tax not levied by it.~~

~~—————(D) In the event it is found that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in this subsection, that business will be liable for the payment of all sales and use taxes which were refunded under subsection (a) of this section plus penalty and interest.~~

~~—————(2)(A) The term "distribution center" shall mean a facility for the reception, storage, or shipping of a business' own products or products which the business wholesales to retail businesses or ships to its own retail outlets.~~

~~—————(B) For a distribution center to qualify for the benefits provided in this section, it must meet the following requirements:~~

~~—————(i) The distribution center must not make retail sales to the general public; and~~

~~—————(ii) The distribution center must employ twenty five (25) or more new permanent employees.~~

~~—————(3) If a distribution center, office sector business, corporate headquarters, or trucking sector business does not meet the requirements of this subsection, then that business will:~~

~~—————(A) Automatically be disqualified from receiving any benefits under this section; and~~

~~—————(B) Be required to repay any tax benefits already received under the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., plus penalty and interest.~~

~~—————(4) For an office sector business to qualify for the benefits of this section it must:~~

~~—————(A) Employ one hundred (100) or more new permanent employees; and~~

~~—————(B) Not make retail sales to the general public.~~

~~—————(5) For a corporate headquarters to qualify for the benefits of this section it must:~~

~~—————(A) Employ fifty (50) or more new permanent employees; and~~

~~—————(B) Not make retail sales to the general public.~~

~~—————(6) For a trucking sector business to qualify for the benefits of this section it must:~~

~~—————(A) Employ one hundred (100) or more new permanent employees; and~~

~~—————(B) Not make retail sales to the general public.~~

~~—————(7)(A) The requisite number of new permanent employees must be employed by the industry, distribution center, corporate headquarters, office sector business, or trucking sector business within twenty four (24) months of the date the endorsement resolution was adopted or passed by the governing body approving the business' participation in the program.~~

~~—————(B)(i) In the event that the requisite number of new permanent employees cannot be employed within the twenty four month period, the business can file a written application with the commission explaining why additional time is necessary.~~

~~—————(ii) The business can be afforded up to twenty four (24) more months to hire the requisite number of employees if the Director of the Arkansas Economic Development Commission and the Chief Fiscal Officer of the State determine that the need for additional time is due to:~~

~~—————(a) Unanticipated and unavoidable delay in the construction of a facility that must be completed before the employees can be hired;~~

~~—————(b) The project as originally planned will require more than twenty four (24) months to complete; or~~

~~—————(c) A change in the business ownership or business structure due to a merger or acquisition.~~

~~———— **26 CAR § 170-103. Income tax credit.**~~

~~————(a)(1) The Revenue Division of the Department of Finance and Administration shall authorize an income tax credit equal to one hundred (100) times the average hourly wage paid with a maximum of two thousand dollars (\$2,000) per net new permanent employee of a business qualifying under 26 CAR § 170-102(b).~~

~~—————(2)(A) This tax credit shall be used for the tax year in which the new permanent employee qualified as a net new permanent employee.~~

~~—————(B) However, if the entire credit cannot be used in the tax year earned, the remainder may be applied against the income tax for the succeeding four (4) tax years, or until the credit is entirely used, whichever occurs first.~~

~~—————(3)(A) The credit allowed under this section shall increase by a factor of two (2) with a maximum credit of two thousand dollars (\$2,000) if the business is located in a county that had an unemployment rate in excess of:~~

~~—————(i) Ten percent (10%); or~~

~~—————(ii) Three percent (3%) above the state's average unemployment rate for the preceding calendar year.~~

~~—————(B) The unemployment rates used will be those published by the Division of Workforce Services.~~

~~———(b)(1) An income tax credit as provided for in subsection (a) of this section shall be authorized provided that:~~

~~—————(A) The request for such credit is accompanied by an endorsement resolution approved by the governing body of the appropriate municipality or county in whose jurisdiction the establishment is to be located; and~~

~~—————(B) All of the net new permanent employees are employed at the facility.~~

~~———(2)(A) In the event that any business receiving the benefits contained in subsection (a) of this section has failed to comply with the conditions contained in this subsection, that business shall be liable for the payment of such additional income taxes as may be due after the income tax credits provided for in subsection (a) of this section are disallowed, plus penalty and interest.~~

~~—————(B) For example, if the business has not hired the minimum number of employees required by the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., within the time required, then the business shall be liable for the payment of the additional income taxes attributable to the credits taken, plus penalty and interest.~~

~~— **26 CAR § 170-104. Refund of local sales and use tax.**~~

~~— (a) A municipality or county can authorize the refund of all or part of the sales or use tax levied by it but cannot authorize the refund of any tax not levied by it.~~

~~— (b) Therefore, all requests for refunds for local sales and use tax must be supported by the original sales receipt which must reflect that the tax to be refunded is the tax of a municipality or county that authorized the refund of its sales or use tax to the applicant.~~

~~— (c)(1) All requests for the refund of a local tax must be filed with and received by the Department of Finance and Administration, Tax Credits/Special Refunds Section, P. O. Box 1272, Little Rock, Arkansas 72203, within sixty (60) days of the invoice date which indicates that the local tax was paid.~~

~~— (2) If the request for refund is not received by the Department of Finance and Administration, Tax Credits/Special Refunds Section, within this time period, the request for refund will be denied.~~

~~— (3) However, in the event the request for refund is not timely filed with the Department of Finance and Administration, the request for refund of local tax can be filed with the local government that authorized the Department of Finance and Administration to refund the tax.~~

~~— **26 CAR § 170-105. Developers and contractors.**~~

~~— (a)(1) Developers building a structure for lease to an approved enterprise zone business and contractors performing work for an approved enterprise zone business may be permitted to receive a sales and use tax refund on eligible purchases directly from the state only when the approved enterprise zone business:~~

~~— (A) Requests to the Department of Finance and Administration, Tax Credit/Special Refunds Section, in writing, that this be permitted; and~~

~~— (B) States the basis for this request.~~

~~— (2) The Revenue Division of the Department of Finance and Administration will authorize this procedure only when it is satisfied that:~~

~~— (A) This arrangement is crucial to the success of the business project;~~

~~—————(B) All requirements of the Arkansas Enterprise Zone Act of 1993, Arkansas Code § 15-4-1701 et seq., and this part will be adhered to;~~

~~—————(C) A notarized affidavit (Form EZP 1201) is presented to the division from the contractor or developer stating the enterprise zone business will receive the benefit of the sales and use tax refunds by having the cost of construction or lease payments reduced by the amount of the tax refund; and~~

~~—————(D)(i) A notarized affidavit (Form EZP 1301) is presented to the division from the approved enterprise zone business:~~

~~—————(a) Waiving the right to claim a refund of sales and use taxes; and~~

~~—————(b) Passing on the right to claim refunds to the contractor or developer.~~

~~—————(ii) The affidavit must state that the enterprise zone business acknowledges that if the enterprise zone business fails to comply with the conditions contained in 26 CAR § 170-102(b), that business will be liable for the payment of all sales and use taxes that were refunded to contractors and developers under this section, plus penalty and interest.~~

~~———(b) An approved enterprise zone business may receive a sales and use tax refund on eligible purchases made by a contractor or developer performing work or building a structure for lease or sale to the approved enterprise zone business provided the enterprise zone business submits to the Department of Finance and Administration, Tax Credits/Special Refunds Section:~~

~~—————(1) A notarized Contractor's/Developer's Waiver of Refund Form (EZP form 1101) completed by the contractor or developer waiving any and all rights to claim a refund of sales and use taxes;~~

~~—————(2) An Enterprise Zone Business Sales and Use Tax Refund Request Form (EZP 1001) and a Schedule A listing the qualified enterprise zone purchases; and~~

~~—————(3) All other requirements of the Arkansas Enterprise Zone Act of 1993 and this part are adhered to.~~