State of Arkansas
93rd General Assembly
Second Extraordinary Session, 2021

A Bill

Call Item 7

SENATE BILL 10

By: Senator D. Wallace
By: Representatives Jett, M. Hodges, Rye

For An Act To Be Entitled

AN ACT TO AMEND CERTAIN TAX INCENTIVES; TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; TO CLARIFY THE DISTRIBUTION OF INCOME TAX CREDITS FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE INCOME TAX CREDIT FOR WASTE REDUCTION, REUSE, OR RECYCLING EQUIPMENT.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) Arkansas is one (1) of the leading producers of steel in the United States, and Mississippi County, Arkansas is ranked as one (1) of the ~~top~~ highest steel-producing counties in the United States;

(2) The steel industry in the United States is highly competitive, and there are presently rising prices and a high level of demand for raw materials in the domestic market;

(3) There is a need for the reshoring of well-paying manufacturing jobs, and Arkansas has an unprecedented opportunity to utilize existing incentive programs that are intended to encourage investment in this state to capitalize on this trend;

(4) When considering where to place new American manufacturing jobs, companies will consider the availability of incentives and credits; and

(5) In order to continue to attract well-paying manufacturing jobs to the State of Arkansas and encourage continuing capital investment by steel producers in this state, adjustments in the recycling tax credit are appropriate to allow the recycling tax credit to be utilized more fully to accomplish the purpose for which the recycling tax credit is intended.

SECTION 2. Arkansas Code 26-51-506(b), concerning the definitions used in the income tax credit for waste reduction, reuse, or recycling equipment, is amended to add an additional subdivision to read as follows:

(17) “Qualified growth project” means a steel mill facility that:

(A) Has common controlling ownership interest with a qualified manufacturer of steel as defined in § 26-51-1211, § 26-52-911, Acts 2013, No. 1084, or Acts 2013, No. 1476 at the time the facility commenced operation;

(B) Is commenced on or after January 1, 2021;

(C) Is conducted on the site of or adjacent to a qualified manufacturer of steel, as defined in § 26-51-1211, § 26-52-911, Acts 2013, No. 1084, or Acts 2013, No. 1476;

(D) Has a total investment of at least two billion dollars ($2,000,000,000);

(E)(i) Is undertaken by a taxpayer that has entered into an agreement with the State of Arkansas in which the taxpayer made a commitment to create at least seven hundred (700) net new direct positions with an average annual wage of at least one hundred twenty thousand dollars ($120,000) and two hundred (200) net new independent direct positions with an average annual wage of at least sixty thousand dollars ($60,000).

(ii) As used in subdivision (b)(17)(E)(i) of this section, "direct positions" and "independent direct positions" mean the same as defined in Acts 2013, No. 1084, § 8;

(F) Provides a positive cost-benefit analysis to the State of Arkansas as determined by the Arkansas Economic Development Commission and the Office of Economic Analysis and Tax Research of the Department of Finance and Administration before an incentive agreement between the state and the taxpayer is executed;

(G) Is certified as having a closing date before July 1,

<u>2023, by which the taxpayer has certified and the state has verified that necessary capital acquisition and borrowing for the qualified growth project have occurred to:</u>

<u>(i) Secure a site;</u>

<u>(ii) Obtain engineering services;</u>

<u>(iii) Purchase equipment; and</u>

<u>(iv) Commence initial construction; and</u>

<u>(H) Is undertaken by a taxpayer that has elected by agreement with the State of Arkansas for the taxpayer's facility to be classified as a qualified growth project under this section.</u>

SECTION 3. Arkansas Code 26-51-506(c)(3)(B), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to read as follows:

(B) Up to the following amounts of credit against tax or an amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., whichever is less, issued to the taxpayer making the purchases of waste reduction, reuse, or recycling equipment under subdivision (c)(1) of this section may be claimed each tax year if the tax credits are allowed with respect to a qualified steel specialty products manufacturing facility that is owned by a taxpayer that, at the time of the agreement described in subdivision (b)(11)(E) of this section <u>or a qualified growth project that is owned by a taxpayer that, at the time of the agreement described in subdivision (b)(17)(E) of this section,</u> is a proprietorship, partnership, limited liability company, or other business organization treated as a proprietorship or partnership for tax purposes, and that, as of the end of the taxable year in which such tax credits are first allowed, does not have a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder:

(i) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred million dollars ($200,000,000) but less than two hundred seventy-five million dollars ($275,000,000), four million dollars ($4,000,000);

(ii) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred seventy-five million dollars ($275,000,000) but less than three hundred fifty million dollars ($350,000,000), five million dollars ($5,000,000); ~~and~~

(iii) For a total investment in the qualified steel specialty products manufacturing facility of at least three hundred fifty million dollars ($350,000,000), six million five hundred thousand dollars ($6,500,000); and

(iv) For a qualified growth project, the lesser of the amount allowed under the incentive agreement between the taxpayer and the state or eleven million dollars ($11,000,000).

SECTION 4. Arkansas Code 26-51-506(c)(3)(D)(i)-(vi), concerning the income tax credit for waste reduction, reuse, or recycling equipment, are amended to read as follows:

(D)(i) If tax credits are allowed under this section with respect to a qualified expansion project ~~or~~, a qualified steel specialty products manufacturing facility, or a qualified growth project of a taxpayer that, at the time of the agreement described in subdivision (b)(10)(D) of this section for a qualified expansion project, ~~or~~ subdivision (b)(11)(E) of this section for a qualified specialty steel products manufacturing facility, or subdivision (b)(17)(E) of this section for a qualified growth project, is a proprietorship, partnership, limited liability company, or other business organization treated as a proprietorship or partnership for tax purposes, and any portion of the tax credits under this section would be apportioned to a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder of the taxpayer, the public retirement system shall have the possession and control of all tax credits that are subject to subdivision (c)(3)(F)(i)(b) of this section, including any such tax credits otherwise apportioned to the other proprietors, partners, members, shareholders, or beneficiaries allowed under this section.

(ii) The possession and control of the tax credits by the public retirement system under this subdivision (c)(3)(D) shall be confirmed in writing by a legal opinion issued by the department under the rules promulgated by the department.

(iii)(a) The public retirement system shall sell or transfer for value the tax credits allowed under this s~~ection~~ subdivision (c)(3)(D) to the State of Arkansas for eighty percent (80%) of the face value, in lieu of the right of a proprietor, partner, member, shareholder, or beneficiary of the qualified expansion project ~~or~~ the qualified steel specialty products manufacturing facility, or the qualified growth project to claim the tax credits under subdivision (c)(3)(D) as allowed pursuant to applicable state law.

(b) Subject to the total recycling tax credit certification for a qualified expansion project, the maximum amount of tax credits allowed under the agreement between the taxpayer and the state, and the annual transfer by the Arkansas Economic Development Commission as agreed by the state and the taxpayer, no more than eleven million dollars ($11,000,000) of the tax credits in possession and control of the public retirement system with respect to a qualified expansion project under subdivision (c)(3)(D)(i) of this section may be sold or transferred each year.

(c) No more than the following amounts of the tax credits in possession and control of the public retirement system pursuant to this subdivision (c)(3)(D) with respect to a qualified steel specialty products manufacturing facility pursuant to subdivision (c)(3)(D)(i) of this section may be sold or transferred each year:

(1) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred million dollars ($200,000,000) but less than two hundred seventy-five million dollars ($275,000,000), four million dollars ($4,000,000);

(2) For a total investment in the qualified steel specialty products manufacturing facility of at least two hundred seventy-five million dollars ($275,000,000) but less than three hundred fifty million dollars ($350,000,000), five million dollars ($5,000,000); ~~and~~

(3) For a total investment in the qualified steel specialty products manufacturing facility of at least three hundred fifty million dollars ($350,000,000), six million five hundred thousand dollars ($6,500,000)~~.~~; and

(4) Subject to the maximum amount of tax credits allowed to be sold under the agreement between the taxpayer and the state, and the annual transfer by the Arkansas Economic Development Commission as agreed by the state and the taxpayer, eleven million dollars ($11,000,000) of the tax credits to be sold or transferred that are in the

possession and control of the public retirement system, with respect to a qualified growth project under subdivision (c)(3)(D)(i) of this section.

(iv) Any unused tax credit that cannot be sold or transferred in a tax year by the operation of subdivision (c)(3)(D)(iii) of this section may be carried forward as allowed by law. If a tax credit amount disallowed by operation of subdivision (c)(3)(D)(iii) of this section would otherwise expire, the carry-forward period for such unused tax credit shall instead be extended each year, for one (1) additional year at a time, to preserve the ability of the public retirement system to sell or transfer all unused tax credits in future years.

(v) ~~Beginning July 1, 2020, by~~ Between July 1 and July 15 of each year, the public retirement system with possession and control of the tax credits under this subdivision (c)(3)(D) shall provide notice to the department of the amount of tax credits, including tax credits expected to receive certification during the fiscal year by the Division of Environmental Quality, subject to the limitations in subdivision (c)(3)(D)(iii) of this section, to be sold or transferred for value.

(vi) The State of Arkansas shall pay the purchase price equal to eighty percent (80%) of the face value of all of the tax credits included in the notice required in subdivision (c)(3)(D)(v) of this section on or before June 30 of the calendar year following the calendar year in which the notice was provided for all tax credits certified by the Division of Environmental Quality ~~by June 30 of the calendar year following the calendar year in which the notice was provided~~ by warrant from the Economic Development Incentive Fund funded by a transfer from general revenue.

SECTION 5. Arkansas Code § 26-51-506(c)(3)(E), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to read as follows:

(E) An expansion project or a manufacturing facility that does not meet the requirements to be a qualified expansion project, ~~or~~ a qualified steel specialty products manufacturing facility, or a qualified growth project is not subject to this subdivision (c)(3) and is eligible to receive the tax credits otherwise provided in this section and § 26-51-1215.

SECTION 6. Arkansas Code § 26-51-506(c)(3)(F), concerning the income tax credit for waste reduction, reuse, or recycling equipment, is amended to add an additional subdivision as follows:

(iii)(a) If a qualified growth project that, at the time of the agreement described in subdivision (b)(17)(E) of this section, is a proprietorship, partnership, limited liability company, or other business organization treated as a proprietorship or partnership for tax purposes, and that has any portion of the tax credits under this subdivision (c)(3) of this section that would be apportioned to a public retirement system of the State of Arkansas as a proprietor, partner, member, or shareholder of the taxpayer, would qualify for an amount of recycling tax credit under subsection (e) of this section in excess of the amount authorized in subdivision (c)(3)(F)(i)(b) of section, the amount of credits in excess of the amount authorized in subdivision (c)(3)(F)(i)(b) shall be:

(1) Acknowledged as part of the incentive agreement executed between the taxpayer and the State of Arkansas;

(2) In the possession and control of the taxpayer making the purchases of waste reduction, reuse, or recycling equipment notwithstanding subdivision (c)(3)(D)(i); and

(3) Claimed by the taxpayer making the purchases of waste reduction, reuse, or recycling equipment as a credit against each tax year in the lesser of twenty-seven million five hundred thousand dollars ($27,500,000) or the amount equal to the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.

(b) Any unused tax credit that cannot be claimed in a tax year by operation of subdivision (c)(3)(F)(iii)(a)(3) of this section may be carried forward as allowed by law. If the tax credit amount disallowed by operation of subdivision (c)(3)(F)(iii)(a)(3) of this section would otherwise expire, the carry-forward period for such unused tax credit shall be extended each year, for one (1) additional year at a time, to preserve the ability of the taxpayer to apply the unused tax credit to future tax liability.