

GROSS RECEIPTS AND USE TAX REGULATION
1989-1
ENTERPRISE ZONES

Pursuant to Ark. Code Ann. §26-18-301 (1987), the Commissioner of Revenues for the State of Arkansas promulgates the following regulation for the enforcement and administration of the provisions of Act 462 of 1989, as amended:

SECTION 1. (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 upon approval of the governing authority of the enterprise zone, from sales tax imposed by it, 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 (except motor vehicles) to be located in or in connection with such building.

(b) A sales and use tax refund as provided in Section 1(a) shall be authorized provided that:

(1) The qualified business is an industry that fits into Standard Industrial Classification (SIC) numbers 20 through 39, 7375 or 7376, or is a distribution center located within Arkansas. The term "Distribution Center" shall mean a facility for the reception, storage or shipping of a businesses own products or products which the business wholesales to retail businesses or ships to its own retail outlets. For a distribution center to qualify for the benefits provided in this Section, it must meet the following requirements:

(A) The distribution center must not make direct retail sales to the general public; and

(B) The distribution center must employ 100 or more employees. These employees must be employed by the distribution center within 18 months of the date distribution actually begins.

(C) If a distribution center does not meet the requirements of subparagraphs (A) and (B) above, then the distribution center will automatically be disqualified from receiving any benefits under this Section and will be required to repay any tax benefits already received under this Act, plus penalty and interest as allowed by law.

(2) The 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 added expense, substantial inconvenience or sacrifice in operation efficiency, and

(3) The firm is physically located within an enterprise zone, and

(4) The firm certifies that at least 35 percent of its net new employees will be:

(A) Residents of the same county as the location of the business or counties adjacent (having a common border) thereto, and

(B)(i) Are or were receiving some form of public assistance immediately prior to employment; or

(ii) Are or were considered unemployable by traditional standards or lacking in basic skills at the time of

employment with the business:

(5) The request for such refund is accompanied by an endorsement resolution approved by the governing body of a municipality or county in whose jurisdiction the facility is located; and

(6) A notarized Contractor's Waiver of Refund Form (EZP Form 1100) is presented to the Department of Finance and Administration, Revenue Division, from the contractor waiving any and all rights to claim refunds of sales and use taxes. This Waiver of Refund form must accompany the Enterprise Zone Business Sales and Use Tax Refund Request Form (Form EZP 1000) and the Schedule A listing of qualified Enterprise Zone purchases.

(7) 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 subsection (b) of this section, that business will be liable for the payment of all sales and use tax which were refunded under subsection (a) of this section.

(c) The Revenue Division of the Department of Finance and Administration shall authorize a two thousand dollar (\$2,000.00) income tax credit per net new employee of a business qualifying under this regulation as determined by the company's average annual employment as reported to the Employment Security Division. This tax credit shall be used for the taxable year in which the increase in average annual employment occurred. However, if the entire credit cannot be used in the year earned,

the remainder may be applied against the income tax for the succeeding two years, or until the credit is entirely used, whichever occurs first.

(d) An income tax credit as provided for in subsection (c) of this section shall be authorized provided that:

(1) 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

(2) The facility is located within the boundaries of an enterprise zone;

(3) All of the net new employees are employed at the facility, and

(4) The business certifies that at least thirty-five percent of its employees:

(A) Are residents of the same county as the location of the business or counties adjacent (having a common border) thereto, and

(B)(i) Are or were receiving some form of public assistance immediately prior to employment; or

(ii) Are or were considered unemployable by traditional standards or lacking in basic skills at the time of employment with the business:

(4) In the event it is found that any business receiving the benefits contained in subsection (c) of this section has failed to comply with the conditions contained in subsection (d) of this section,

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 (c) are disallowed, plus penalty and interest.

(5) In the event the company has a short tax year its average annual employment shall be calculated using the number of months the firm was in operation during that tax year.

SECTION 2. A business electing to change its tax status to that of Small Business Corporation may carry-forward any unused tax credits earned under this Act to the stockholders in the Small Business Corporation on a pro-rata basis, provided that the unused tax credit was earned during an income year which ended prior to January 1, 1989 and which unused tax credit was earned under the Arkansas Enterprise Zone Act of 1983 (Arkansas Code Annotated 15-4-80 et. seq.)

SECTION 3. No person or entity may file for benefits under this Act if an application for benefits has been filed and approved under the Manufacturer's Sales and Use Tax Credit Act of 1985 (Arkansas Code Annotated 26-52-701 et seq.) for the same project. Provided, however, that an application for benefits under the Manufacturer's Sales and Use Tax Credit Act of 1985 may be withdrawn if no tax credits have been taken under that Act. When a project has been approved under the Manufacturer's Sales and Use Tax Credit Act of 1985, no application for a project under this Act will be accepted until the expiration of one (1) year after the date of approval of the application under the Manufacturer's Sales and Use Tax Credit Act of 1985. When a project has been approved under this act, no application for projects under the Manufacturer's Sales and Use Tax Credit of 1985 shall be accepted until the expiration of one (1) year after the date of approval of the application under this Act.

SECTION 4. (a) Use of Arkansas Manufacturers and Suppliers - Act 462 of 1989 requires enterprise zone businesses and their contractors to give preference and priority to Arkansas manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax refund, special attention will be given to those applicants agreeing to use, purchase, and contract for machinery, supplies and equipment manufactured in Arkansas, or, in the absence of Arkansas manufacturers, sold by residents, and to the use of Arkansas contractors and labor in the construction and operation of proposed facilities.

(b) Contractor Eligibility - A contractor is not eligible to receive the tax credit or refunds afforded by Act 462 of 1989, as amended, unless the contractor is the owner/developer creating permanent new jobs within an eligible zone, or meets the requirements of subsection (c) herein. In such circumstances, the contractor will be considered the business of record and must comply with the regulations as set forth in Section 1 of these regulations.

(c) Refund to Contractors - Contractors performing work on behalf of the business of record (which is eligible for tax credits or refunds) may be permitted to receive a sales tax refund on eligible purchases directly from the State only when the business of record requests to the Department of Finance and Administration, Revenue Division, in writing, that this be permitted and states the basis for this request. Department of Finance and Administration, Revenue Division, will authorize this procedure only when it is satisfied that:

(1) This arrangement is crucial to the success of the business project;

(2) All requirements of the Act and these regulations will be adhered to;

(3) A notarized affidavit (Form EZP 1200) is presented to the Department of Finance and Administration, Revenue Division, from the contractor stating that the cost of sales and use taxes has not, or will not be, passed on to the prime certified business;

(4) A notarized affidavit (Form EZP 1300) is presented to the Department of Finance and Administration, Revenue Division from the prime certified business waiving the right to claim a refund of sales and use taxes, and passing on the right to claim refunds to the contractor.

SECTION 5. Branch Operations - Multi-location businesses will qualify provided that the branch located within an enterprise zone is treated as a separate entity for sales tax and income tax if it is a partnership or sole proprietorship. For a corporate multi-location business to qualify, the business location within the enterprise zone must be established as a separate operating unit.

SECTION 6. Arbitrary Termination of Employees - The Department of Finance and Administration, Revenue Division, will not accept an application for a business which has arbitrarily terminated employees and hired others in order to qualify for the benefits of this program.

SECTION 7. Items Eligible for Sales/Use Tax Refund - Only materials used in the construction of a building, or any addition or improvement thereon, for housing any legitimate business enterprise, and machinery and equipment used in that enterprise (except motor vehicles) will be considered eligible for sales/use tax refund.

SECTION 8. Refund on Sales/Use Taxes - The tax refund for State sales and use taxes outlined in section 1 will be effected through the issuance of tax refunds by the Department of Finance and Administration, Revenue Division. The Department of Finance and Administration must receive certification from AIDC that an enterprise zone business qualifies under this regulation before a refund will be authorized. Refunds will only apply to materials, machinery and equipment on which Arkansas sales or use tax has been paid. Refunds will be secured by the filing of affidavits for each calendar quarter with the Department of Finance and Administration, Revenue Division, including:

(a) A listing of purchases made during the quarter of movable property that is intended to be used on the enterprise zone project and the contract number of the project. The listing must include a brief description of the item, the invoice number, the vendor's name, date of the sale, sales price, and the amount of State sales or use tax paid. The items included in the listing must have been purchased by the owner of the project or by the builder or other party who has contracted with the owner or the builder to provide materials and services for the project.

(b) A certification that the materials included in the listing are reasonably expected to qualify upon completion of the project for the refund under provision of the statute; and

(c) A certification that the sales or use taxes have actually been paid on the items included in the listing. The affidavit shall be filed on appropriate state forms provided by the Department of Finance and Administration, Revenue Division. After the Department of Finance and Administration, Revenue Division, has verified the information, a refund check will be issued for the amount of State sales or use taxes paid. Local sales and use tax refunds will be handled in the manner prescribed by the local taxing authority, and refund applications shall be made to the local taxing authority.

SECTION 9. Enterprise Zone Business Must File State Income Tax Returns - An enterprise zone business qualifying for the \$2,000.00 tax credit per net new employee employed in the business located in the enterprise zone shall file the same required forms and returns with the Department of Finance and Administration, Revenue Division, as would be required if no credit were due. Each yearly return will have attached a copy of a letter of authorization from the Revenue Division of the Department of Finance and Administration, and other forms which the Revenue Division may require. If total tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the return. The tax credit shall be used for the taxable year in which the increases in average annual employment occurred. If the entire credit cannot be used in the year earned, the remainder may be applied against the income tax for the succeeding two years or until the entire credit is used, which occurs first.

SECTION 10. Violations of Rules, Statutes, or Documents - On the initiative of the Department of Finance and Administration, Revenue Division, or whenever a written complaint or violation of the terms of tax regulations or the statute is received, the Director of the Department of Finance and Administration shall cause to be made a full investigation on behalf of AIDC and shall have full authority for such investigation including authority to call for reports or pertinent records or other information from the enterprise zone business. If the investigation substantiates a violation, the Revenue Commissioner may revoke the qualified status of the enterprise zone business. The enterprise zone business shall then remit any and all taxes, plus penalty and interest pursuant to the Arkansas Tax Procedure Act, that would have been imposed but for the enterprise zone business status.

SECTION 11. Taxes Paid Prior to Enterprise Zone Designation - No sales or use tax refunds or income tax credits shall be authorized until such time as the area in which a business is located or is to locate has been designated as an enterprise zone by AIDC and the business has been certified as a participant in the program.

SECTION 12. Developer Eligibility - In the case where a developer owns or constructs a facility for sale or lease, the developer of the facility must occupy 51 percent of the total floor area of the building to be accepted into the program and be eligible to receive the incentives.

SECTION 13. Term of Applicability of Benefits - A business may receive the benefits afforded under the Arkansas Enterprise for an initial term of three years, with the possibility of renewing the term for an additional three years.

SECTION 14. Transfer of Income Tax Credits as Corporate Assets - When a firm certified as eligible to receive income tax credits under the provisions of this program, sells its assets or otherwise transfers its proprietary interest to any other person, association, corporation or other ownership, the unused income tax credits earned by the selling firm may be transferred to the new owner only if the Revenue Division of the Department of Finance and Administration is notified prior to the transaction, and:

- (a) The transfer of the tax credit as an asset is a condition of the sale, and
- (b) The buyer of the company is maintaining the company in operation and is not closing operations at this site.

This provision does not apply to any firm that undergoes a reorganization changing corporate status for tax purposes.

SECTION 15. Coordination of Enterprise Zone Laws

(a) Act 462 of 1989 shall apply to all applicants for State tax incentives who submit applications to the Arkansas Department of Finance and Administration, Revenue Division, and obtain the required endorsement resolution approved by the governing body of a municipality or county in whose jurisdiction the facility is to be located after June 30, 1989. The Arkansas Enterprise Zone Act of 1983 (Act 813 of 1983) shall apply to all applicants for State tax incentives who submitted application to the AIDC and obtained the required endorsement resolution approved by the governing body of a municipality or county in whose jurisdiction, the facility is to be located prior to June 30, 1989, notwithstanding the date on which a business takes or completes all actions necessary to receive a State tax incentive.

(b) Enterprise Zone businesses which qualified under Act 813 of 1983 but do not qualify under Act 462 of 1989 shall not be entitled to any income tax credit for employees hired after June 30, 1991, and shall not be entitled to any sales or use tax refund for purchases made after June 30, 1991. Enterprise zone businesses which qualified under Act 813 of 1983 but do not qualify under Act 462 of 1989 may continue to carry forward existing income tax credits or claims for refund pursuant to Act 813 of 1983.

(c) Enterprise zone businesses which qualified under Act 813 of 1983 and qualify pursuant to Act 462 of 1989 shall continue to participate as an Enterprise Zone business under Act 462 of 1989. The provisions of Act 462 of 1989 shall apply to any project by such a business which is covered by an application filed with the Arkansas Department of Finance and Administration, Revenue Division, and a required endorsement resolution dated after June 30, 1989. The provisions of Act 813 of 1983 shall apply to any project by such a business which is covered by an application to the AIDC and a required endorsement resolution dated before June 30, 1989.

Dated this 3rd day of October, 1989.

JIM C. PLEDGER, Director
Department of Finance
and Administration

TIMOTHY J. LEATHERS
Commissioner of Revenues