

**26-51-506. Tax credit for waste reduction, reuse, or recycling equipment — Eligibility.**

(a) The intent and purpose of this section is to increase capacity in the State of Arkansas for the use of recovered materials.

(b) For the purposes of this section:

(1) "Cost", in the case of a transfer of title or a finance lease, means the amount of the purchase price, and, in the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this section, means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(2) "Equipment to service waste reduction, reuse, or recycling equipment" means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing repair, maintenance, adjustment, inspection, or supplies;

(3) "Finance lease" means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;

(4) "Home scrap" means materials or by-products generated from and commonly reused within an original manufacturing process;

(5) "Maintenance" means expenditures, machinery, or equipment used to keep existing machinery or equipment in a condition that approaches or equates to its original condition;

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(6) "Motor vehicle" means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;

(7) "Postconsumer waste" means products or other materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling;

(8) "Preconsumer material" means material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap;

(9) "Purchase" means a transaction under which title to an item is transferred for consideration or a lease contract for a period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

(10) "Recovered materials" means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling and includes preconsumer material and postconsumer waste but not home scrap;

(11) "Recycling" means the systematic collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(12) "Repair" means expenditures, machinery, or equipment used to restore existing machinery or equipment to its original or similar condition and capacity after damage or after deterioration from use;

(13) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepapers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities; and

(14)(A) "Waste reduction, reuse, or recycling equipment" means new or used machinery or equipment located in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, convert, or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials. The term also includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separation, processing, modification, conversion, treatment, or manufacturing.

(B) "Waste reduction, reuse, or recycling equipment" does not include motor vehicles.

(c) There shall be allowed a credit against the tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., as amended, in an amount as determined in subsection (e) of this section for any taxpayer engaged in the business of reducing, reusing, or recycling solid waste for commercial purposes who purchases waste reduction, reuse, or recycling

clung equipment used exclusively for the purpose of reducing, reusing, or recycling solid waste.

(d) To claim the benefits of this section, a taxpayer must obtain a certification from the Director of the Arkansas Department of Pollution Control and Ecology certifying to the Revenue Division of the Department of Finance and Administration that:

(1) The taxpayer is engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes, whether or not for profit;

(2) The machinery or equipment purchased is waste reduction, reuse, or recycling equipment;

(3) The machinery or equipment is being used in the collection, separation, processing, modification, conversion, treatment, or manufacturing of products containing at least fifty percent (50%) recovered materials, provided that at least ten percent (10%) of the recovered materials shall be postconsumer waste; and

(4) The taxpayer has filed a statement with the Director of the Arkansas Department of Pollution Control and Ecology acknowledging that the taxpayer shall make a good faith effort to utilize postconsumer waste generated in Arkansas as at least ten percent (10%) of the postconsumer waste being used in the equipment, to the extent available at a competitive price.

(e)(1) The amount of the credit allowed under subsection (c) of this section shall be equal to thirty percent (30%) of the cost of waste reduction, reuse, or recycling equipment, including the cost of installation.

(2) The cost of installation shall not include the cost of:

(A) Feasibility studies;

(B) Engineering costs of a building to house the equipment and related machinery; or

(C) Equipment used to service the waste reduction, reuse, or recycling equipment.

(3) The cost of replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition shall not be included in determining the amount of the credit. The cost of replacement of existing waste reduction, reuse, or recycling equipment shall not be included in determining the amount of the credit unless the replacement provides greater capacity for recycling or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.

(4) The cost of service contracts, sales tax, maintenance, and repairs shall not be included in determining the amount of the credit.

(f)(1) The taxpayer shall refund the amount of the tax credit determined by subdivision (f)(2) of this section if, within three (3) years of the taxable year for which a credit is allowed:

(A) The waste reduction, reuse, or recycling equipment is removed from Arkansas, is disposed of, is transferred to another person, or the

taxpayer otherwise ceases to use the required materials or operate in the manner required by this section;

(B) The Director of the Arkansas Department of Pollution Control and Ecology finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.

(2) If the provisions of subdivision (f)(1) of this section apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:

(A) Within the first year, zero dollars (\$0);

(B) Within the second year, an amount equal to thirty-three percent (33%) of the amount of credit allowed; and

(C) Within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.

(3) Any refund required by subdivision (f)(1)(A) of this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which that subdivision applies.

(4) Any taxpayer who is required to refund part of a credit pursuant to this subsection shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date such refund is required.

(5)(A) This subsection shall apply to all credits which are certified as a result of applications for certification filed with the Arkansas Department of Pollution Control and Ecology on or after July 1, 1993.

(B) This subsection shall not apply to credits which are certified as a result of applications for certification filed with the Arkansas Department of Pollution Control and Ecology prior to July 1, 1993.

(C) Taxpayers who file written notice and a project plan with the Arkansas Department of Pollution Control and Ecology prior to July 1, 1993, shall be deemed to have filed an application for certification for purposes of this subdivision, provided that all the information necessary to complete the application for certification is provided to the department on or before December 31, 1993.

(g) Waste reduction, reuse, or recycling equipment shall only be eligible for one (1) tax credit. The sale or transfer of such equipment shall not recreate the eligibility for a tax credit.

(h)(1) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse, or recycling of solid waste, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.

(2) In the case of a Subchapter S corporation, as allowed by § 26-51-409, the amount of the credit determined under this section for any taxable year shall be apportioned among the persons who are shareholders of the corporation on the last day of the taxable year based on each person's percentage of ownership.

(3) In the case of an estate or trust:

(A) The amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each; and

(B) Any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to limitations contained in this section, a credit under this section for the amount.

(i) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of state, individual, or corporate income tax otherwise due. Any unused credit may be carried over for a maximum of three (3) consecutive years following the taxable year in which the credit originated.

(j) A taxpayer who receives a credit under this section shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the machinery or equipment, except for the deduction for normal depreciation.

(k)(1) The Arkansas Department of Pollution Control and Ecology and the Revenue Division of the Department of Finance and Administration shall promulgate rules or regulations as necessary to administer this section. These rules or regulations may include, but are not limited to, the establishment of technical specifications and of requirements for information and documentation for taxpayers seeking a credit under this section and shall encourage, but not require, the use of Arkansas contractors and postconsumer waste generated in Arkansas in recycling projects which qualify for credits provided by this section.

(2) In order to determine eligibility for the credit or to insure that the machinery or equipment is being utilized in the required manner, each agency shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this section.

(l) Any person or legal entity aggrieved by a decision of the Director of the Arkansas Department of Pollution Control and Ecology under subsections (d) or (f)(1)(B) of this section may appeal to the Arkansas Pollution Control and Ecology Commission, through administrative procedures adopted by the commission, and to the courts in the manner provided in §§ 8-4-222 — 8-4-229.

**History.** Acts 1991, No. 748, § 1; 1993, No. 654, § 1.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'. (a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Depart-

ment of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be con-

strued as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

**Publisher's Notes.** Acts 1991, No. 748, § 1, provided: "This section shall apply to

purchases of waste reduction, reuse, or recycling equipment made after January 1, 1991".

**Amendments.** The 1993 amendment rewrote this section.

#### RESEARCH REFERENCES

Am. Jur. 71 Am. Jur. 2d State Tax.  
§ 335.5.

UALR L.J. Survey—Environmental  
Law, 14 UALR L.J. 779.