

# Arkansas Biotechnology Development and Training Act (Act 1117 of 1997, as amended) Rules and Regulations

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## I. Introduction

In order to qualify for this incentive, a company must be an Arkansas taxpayer engaged in qualified research in biotechnology or a company engaged in the manufacturing of advanced biofuels. The Arkansas Department of Economic Development will certify to the Department of Finance and Administration that a company is engaged in qualified research in biotechnology or in the manufacturing of biofuels. See Arkansas Code Annotated 2-8-101 et seq.

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## II. Definitions

- A. “Advanced biofuels” means ethanol, methanol, or any derivatives thereof, which are produced through biological means other than direct fermentation of a food crop.
- B. “Advanced biofuels facilities” means the buildings and equipment necessary to produce advanced biofuels.
- C. “Base year qualified research costs” means the costs of qualified research for the 1996 tax year. For any new taxpayer not required to file an Arkansas tax return in 1996, the base year qualified research costs will be zero dollars (\$0).
- D. “Biomass” means any organic material, including solid waste, but excluding oil, natural gas, coal and lignite or any other product thereof.
- E. “Biotechnology” means the uses of biochemistry, molecular biology, genetics, and bioengineering to meet the needs of agriculture, aquaculture, forestry, energy, and environmental industries, as well as developing products useful for modern medicine, veterinary science, and pharmaceuticals.

- F. “Biotechnology Facilities” means facilities and equipment required to carry out Qualified Research.
- G. “Costs” means expenditures on or after the tax year beginning January 1, 1997, and following the certification by the director that the business qualifies for incentives offered by this program.
1. In the case of biotechnology facilities and advanced biofuels facilities, all activities and costs associated with site, construction, expansion, improvement, renovation, or purchase of such facilities, including costs incurred in the purchase and installation of equipment, and support infrastructure;
  2. For the purpose of “Higher Education Partnerships,” costs and expenses of conducting qualified research through a cooperative research project with one or more state-supported institutions of higher education in Arkansas for the conduct of qualified research;
  3. For the purpose of “Training,” costs shall be limited to:
    - (a) A six-month period of training at the facility; or
    - (b) The cost of tuition, books, and fees for a program of secondary, undergraduate, or post-graduate education in an accredited institution of higher learning.
    - (c) Training costs eligible for the income tax credit shall not include salaries and wages of the employees being trained. Total costs for training shall not exceed ten thousand dollars (\$10,000) per employee.
  4. In the case of transfer of title or finance lease, the amount of the purchase price; or
  5. In the case of a lease which is not a finance lease but which otherwise qualifies as a purchase, 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.
  6. Costs must be incurred within four (4) years of the date of the certification by the Department in order to qualify for tax credits.
- H. “Credit year” means the tax year in which costs are incurred.
- I. “Department” means the Arkansas Department of Economic Development
- J. “Director” means the executive director of the Department.
- K. “Finance lease” means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes.
- L. “Higher Education Partnerships” means any cooperative research project defined by terms of a written agreement whereby companies engaged in the business of biotechnology contract with state-supported institutions of higher learning in Arkansas for the conduct of qualified research or for contracts between institutions of

higher learning in Arkansas and companies involved in the manufacturing of advanced biofuels, where the purpose of the contract is to obtain rights to intellectual property or for specific research needs associated with the production of advanced biofuels.

- M. “Intellectual property” means patents, trade secrets, copyrights, and trademarks used in biotechnology; with respect to patents and trade secrets, this includes inventions, technology and know-how of a type protectable at some time under the law of patents or trade secrets; with respect to copyrights or trademarks, this includes works of art or indicia of origin, respectively, of a type protectable at some time under the law of copyrights or trademarks.
- N. “Program” means the Arkansas Biotechnology Development and Training Act of 1997, as amended.
- O. “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.
- P. “Qualified Research” means scientific research and development in the field of biotechnology, including experimental or laboratory activity to develop new products, improve existing products, or develop new uses of products, but only to the extent that activity is conducted in Arkansas, or is required by federal regulatory authorities to be conducted elsewhere. Qualified research must be performed primarily under laboratory, clinical, or field experimental conditions for the purpose of reducing a concept or idea to practice, or to advance a concept or idea or improvement thereon to the point of practical application. Qualified research does not include tests or inspection of materials or products for quality control, efficiency surveys, management studies, or other market research, or any other ordinary and necessary expenses of conducting business.
- Q. “Service Contracts” means written agreements to perform services in the future for a specified period and at a fixed price.
- R. “Solid waste” means any garbage, or sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, agricultural, residential and other community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- S. “Training” means employer-paid training within Arkansas that is necessary to prepare employees to work in biotechnology.

- T. “Undeveloped land” means land without the required infrastructure (access to utilities such as water, sewer, electricity, natural gas) to begin the construction of a biotechnology facility.

### III. **To Qualify for the Program a Business Must**

- A. Be an Arkansas taxpayer engaged in qualified research in biotechnology or be a company engaged in the manufacturing of advanced biofuels;
- B. Be certified by the Department as being engaged in a qualified biotechnology project or in the production of advanced biofuels; and
- C. Pay a nonrefundable application fee to the Department as described in section III below.

### IV. **Powers and Duties of the Department of Economic Development**

- A. Within 90 days of the receipt of an application, with all required supporting documents, the Department will notify the Company of approval or denial of the application. If the Company is approved, the Department will forward all documentation to the Department of Finance and Administration (DF&A).
- B. For applications involving a biotechnology facility, the Director will certify to the Commissioner of Revenues, DF&A, that the Company meets the eligibility requirements.
- C. For applications involving the manufacture of advanced biofuels, the Director will certify to the Commissioner of Revenues, DF&A, that the company meets the eligibility requirements. DF&A will provide the company with the necessary forms upon which to report expenditure estimates. Actual project expenditures will be verified by DF&A in accordance with established audit procedures.
- D. In the event the Company disagrees with the decision on qualification rendered by the Department, the Company may, within fifteen (15) days of receipt of notification of ineligibility, give notice of the disagreement and request a meeting to review the decision.
- E. The Department will arrange for a meeting to discuss the disagreement within fifteen (15) days of the Company’s notification of the disagreement.
- F. In the event the disagreement cannot be resolved by the Department and the Company, the applicant has the right to further appeal through the Arkansas Administrative Procedures Act.
- G. Any qualified research that is required by a federal regulatory authority to be conducted outside the State of Arkansas must be approved by the Department. In the event the company is notified of this requirement after their application to the program has been approved, the company can request to amend the original project plan to include this expenditure. Any request for approval of such expense must be

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accompanied by documentation from the federal authority explaining the need to conduct the activity. As with all claimed expenditures, qualified research conducted outside the state will be subject to verification by the DF&A to insure only those expenditures directly attributable to the federal regulatory requirement are allowed in accordance with established audit procedures.

## **V. Terms of the Incentive Agreement**

In order for an Arkansas taxpayer to benefit from the provisions of this incentive, the taxpayer must:

- A. Complete an application on a form prescribed by the Department;
- B. Include information on the form, or attached to the form, which clearly identifies:
  1. The name, address, physical location, company contact and telephone number of the business applying for the incentive;
  2. A detailed project plan that fully explains the costs of facility, equipment, training costs, qualified research and Higher Education Partnership costs and all other expenditures pertaining to the project;
  3. Employers Federal I.D. number and Arkansas sales and use tax number;
  4. Present and projected employment numbers;
  5. SIC classification;
  6. A copy of the agreement between the company and an institution of higher education for any Higher Education Partnership which may be a part of the project;
  7. A description of the biotechnology related activities to be pursued;
  8. Information on the ownership of the company applying for benefits; and
  9. A certification that the information contained in the application that the information contained in the application is true and correct.
- C. The Company shall pay to the Department a fee of \$500. (This fee may be waived by the Director of the Arkansas Department of Economic Development.)
  1. The application fee is to obtain a qualified expert's certification that the biotechnology facility, and its listed activities named in the application, is a qualified biotechnology facility, or advanced biofuels facility, meeting the requirements specified in the Act. The Department must approve the qualified expert.
  2. The fee shall be paid to the Department at the time an application is submitted. Applications will not be processed without the payment of the fee.
  3. The fee will be used to verify the qualification of the Company for this program. In the event the Company does not qualify for the program, the fee will not be refunded.

## **VI. Administration of Benefits**

- A. A qualified Arkansas taxpayer will be entitled to:
1. An income tax credit equal to five percent (5%) of the cost of a biotechnology facility;
    - (a) Service contracts costs, sales tax, and acquisition of undeveloped land cannot be included in determining the amount of the credit;
    - (b) No income tax credit can be claimed by any taxpayer for any facility or equipment which is in use on or before the certification of the company for tax credits, or for which a tax credit was previously claimed by any other taxpayer for any other tax year. The provisions of this subdivision will not apply if any entity is sold and the entity is entitled to an income tax credit under this program.
  2. An income tax credit equal to thirty percent (30%) of the cost of employee training or of Higher Education Partnerships for any Arkansas taxpayer engaged in the business of biotechnology;
  3. An income tax credit for qualified research in biotechnology equal to twenty percent (20%) of the amount of the cost of qualified research which exceeds the cost of such research in the base year.
  4. An income tax credit equal to thirty percent (30%) of the costs of buildings, equipment, higher education partnerships and intellectual property associated with the production of advanced biofuels.
- B. In case of a proprietorship, partnership, or S Corporation, the amount of credit determined will be apportioned to each proprietor, partner, or S Corporation shareholder in proportion to the amount of income from the entity which the proprietor, partner, or S Corporation shareholder is required to include as gross income.
- C. In case of an estate or trust, the amount of the credit determined for any taxable year will 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
1. Any beneficiary to whom any amount has been apportioned under this subsection will be allowed, subject to limitations contained in the program, to a credit for that amount.
- D. The income tax credits will be used to offset the first fifty thousand dollars (\$50,000) of income tax liability arising during the credit year and fifty percent (50%) of any remaining income tax liability for the year. Each year after the credit year in which the credit originated, any carry-forward amount should be first applied to offset the first \$50,000 of income tax liability during the year and fifty percent (50%) of any remaining income tax liability for the year. Any unused credit may be carried forward and applied against the income tax for the next succeeding tax year and annually

thereafter for a total of fourteen (14) years succeeding the year in which the credit originated or until the credit is exhausted, whichever occurs first.

- E. The approved company will file an annual expenditure report each year until the project is complete. The annual project report form, with instructions, will be provided by the DF&A.
- F. An Income Tax Credit Memorandum will be issued by the DF&A to the Company after the determination of the amount of credit. This credit memorandum must be attached to the tax return for the tax year in which the credit was earned. The issuance of this credit does not imply the eligibility of expenditures. If DF&A determines that the credit has been issued for ineligible expenditures, appropriate adjustments will be made.
- G. To determine eligibility for the credit or to insure that the facility or equipment is being utilized in the required manner, each agency, or their representative, will have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this act.
- H. The taxpayer will be required to refund the amount of the income tax credit utilized, if, within fourteen (14) years of the taxable year for which the credit is originated, the Department and the Department of Finance and Administration find that the taxpayer has ceased to qualify for tax credits under this program.
- I. In the event any taxpayer receiving the benefits of this program fails to comply with the conditions of the program, that taxpayer will be liable for:
  - 1. The payment of any additional income taxes as may be due after the income tax credits provided for are disallowed, plus penalty and interest.
  - 2. The original tax due plus a penalty of five percent (5%) of the additional tax due for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of, from the original due date of the tax year in question until date of payment not to exceed thirty-five percent (35%) in the aggregate.
  - 3. Interest will be assessed at ten percent (10%) per year from the date the original tax would have been due until date of payment.
- J. Accurate and up-to-date records of all expenditures for the approved project shall be maintained by the Company and available for inspection and audit by the Commissioner of Revenues pursuant to the Arkansas Tax Procedure Act. A taxpayer who receives a credit under this program shall maintain all documents and records relating to the biotechnology income tax credit for a minimum time period of three (3) tax years after the expiration of the fourteen (14) tax year carry-forward period.

## **VII. Restrictions**

- A. A taxpayer may not use the benefits of this incentive under the following circumstances:
1. When benefits are claimed under the InvestArk program (ACA § 26-52-701 et seq.);
  2. When benefits are claimed under the Arkansas Economic Development Act (ACA § 15-4-1901 et seq.);
  3. When benefits are claimed under the Arkansas Emerging Energy Technology Development Act (ACA 15-4-2101 et seq.); and,
  4. When benefits are claimed under the Arkansas Economic Development Incentive Act (ACA 15-4-1601 et seq.)
- B. A taxpayer that receives a credit under this program for any purchase of machinery or equipment will not be entitled to claim any other state or local tax credit or deduction based on the value of the purchase of machinery and equipment, except the deduction for normal depreciation.