

REFERENCE TITLE: enterprise zone tax credits; trusts

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1173

Introduced by
Senators Nelson: Barto, Melvin, Reagan; Representatives Gallego, Hobbs

AN ACT

AMENDING SECTIONS 43-1074 AND 43-1161, ARIZONA REVISED STATUTES; RELATING TO
INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-1074, Arizona Revised Statutes, is amended to
3 read:

4 43-1074. Credit for increased employment in enterprise zones:
5 definitions

6 A. A credit is allowed against the taxes imposed by this title for net
7 increases in qualified employment positions of residents of this state by a
8 business located in an enterprise zone established under title 41, chapter
9 10, article 2, except employment positions at a zone location where more than
10 ten per cent of the business conducted at the location consists of retail
11 sales of tangible personal property, measured by either the number of
12 employees assigned to retail sales or the square footage of the facility used
13 for retail sales activities at the location in the zone. Retail sales and
14 retail sales activities do not include:

- 15 1. Food and beverage for consumption on the premises solely by
16 employees and occasional guests of employees at the location.
- 17 2. Promotional products not available for sale and displaying the
18 company logo or trademark.
- 19 3. Products sold to company employees.

20 B. Subject to subsection E of this section, the amount of the credit
21 is equal to:

- 22 1. One-fourth of the taxable wages paid to an employee in a qualified
23 employment position, not to exceed five hundred dollars, in the first year or
24 partial year of employment.
- 25 2. One-third of the taxable wages paid to an employee in a qualified
26 employment position, not to exceed one thousand dollars per qualified
27 employment position, in the second year of continuous employment.
- 28 3. One-half of the taxable wages paid to an employee in a qualified
29 employment position, not to exceed one thousand five hundred dollars per
30 qualified employment position, in the third year of continuous employment.

31 C. To qualify for a credit under this section:

- 32 1. All of the employees with respect to whom a credit is claimed must
33 reside in this state.
- 34 2. Thirty-five per cent of the employees with respect to whom a credit
35 is claimed for the first year of employment must reside on the date of
36 employment in an enterprise zone that is located in the same county in which
37 the business is located. If an employee for whom a credit was allowed in the
38 first year of employment leaves employment during the second or third year,
39 the taxpayer may substitute another employee who meets the requirements of
40 paragraph 3 of this subsection and who was hired during the same year as the
41 original employee. If the original employee was counted toward the residency
42 requirement under this paragraph, the substitute employee must also have
43 resided in a zone at the time the substitute was hired.
- 44 3. A qualified employment position must meet all of the following
45 requirements:

1 (a) The position must be a minimum of one thousand seven hundred fifty
2 hours per year of full-time and permanent employment.

3 (b) The job duties must be performed primarily at the zone locations
4 of the business. If an eligible employee in a qualified employment position
5 is transferred or assigned to work in the taxpayer's workplace at a different
6 location that is also located in an enterprise zone and qualifies as a zone
7 location, it may be considered to be continuous employment if it continues to
8 meet all qualified employment position requirements.

9 (c) The employment must include health insurance coverage for the
10 employee for which the employer pays at least fifty per cent of the premium
11 or membership cost. If the taxpayer is self-insured, the taxpayer must pay
12 at least fifty per cent of a predetermined fixed cost per employee for an
13 insurance program that is payable whether or not the employee has filed
14 claims.

15 (d) The employer must pay compensation at least equal to the wage
16 offer by county as computed annually by the department of economic security
17 research administration division.

18 (e) The employee must have been employed for at least ninety days
19 during the first taxable year. An employee who is hired during the last
20 ninety days of the taxable year shall be considered a new employee during the
21 next taxable year. A qualified employment position that is filled during the
22 last ninety days of the taxable year is considered to be a new qualified
23 employment position for the next taxable year.

24 (f) The employee must not have been previously employed by the
25 taxpayer within twelve months before the current date of hire.

26 D. A credit is allowed for employment in the second and third year
27 only for qualified employment positions for which a credit was allowed and
28 claimed by the taxpayer on the original first and second year tax returns.
29 For the purposes of this subsection, the requirement to claim the credit on
30 the original tax return does not apply to qualified employment positions
31 created before January 1, 2002 and certified to the department of commerce.

32 E. The net increase in the number of qualified employment positions is
33 the lesser of the total number of filled qualified employment positions
34 created in the zone during the tax year or the difference between the average
35 number of full-time employees in the zone in the current tax year and the
36 average number of full-time employees during the immediately preceding
37 taxable year. The net increase in the number of qualified employment
38 positions computed under this subsection shall not exceed two hundred
39 qualified employment positions per taxpayer each year.

40 F. A taxpayer who claims a credit under section 43-1077, 43-1079 or
41 43-1083.01 shall not claim a credit under this section with respect to the
42 same employment positions.

43 G. If the allowable tax credit exceeds the income taxes otherwise due
44 on the claimant's income, or if there are no state income taxes due on the
45 claimant's income, the amount of the claim not used as an offset against

1 income taxes may be carried forward as a tax credit against subsequent
2 taxable years' income tax liability, not to exceed five taxable years,
3 provided the business remains in an enterprise zone.

4 H. Co-owners of a business, including partners in a partnership,
5 TRUSTS AND BENEFICIARIES OF A TRUST and shareholders of an S corporation, as
6 defined in section 1361 of the internal revenue code, may each claim only the
7 pro rata share of the credit allowed under this section based on the
8 ownership interest. The total of the credits allowed all such owners of the
9 business may not exceed the amount that would have been allowed for a sole
10 owner of the business.

11 I. If a person purchases a business in a zone or changes ownership
12 through reorganization, stock purchase or merger, the new taxpayer may claim
13 first year credits only for one or more qualified employment positions that
14 it created and filled with an eligible employee after the purchase or
15 reorganization was complete. If a person purchases a taxpayer that had
16 qualified for first or second year credits or changes ownership through
17 reorganization, stock purchase or merger, the new taxpayer may claim the
18 second or third year credits if it meets other eligibility requirements of
19 this section. Credits for which a taxpayer qualified before the changes
20 described in this subsection are terminated and lost at the time the changes
21 are implemented.

22 J. A failure to timely report and certify to the department of
23 commerce and the department of revenue the information prescribed by section
24 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by
25 section 41-1525, subsection C disqualifies the taxpayer from the credit under
26 this section. The department of revenue shall require written evidence of
27 the timely report to the department of commerce.

28 K. The termination of an enterprise zone does not affect the credit
29 under this section with respect to:

30 1. Taxpayers who have employees in the second and third years of
31 employment in qualified employment positions under subsections A, B and C of
32 this section if the business remains in the location that was in the
33 enterprise zone.

34 2. Amounts carried forward into subsequent taxable years under
35 subsection G of this section.

36 L. The department may adopt rules necessary for the administration of
37 this section.

38 M. For the purposes of this section:

39 1. "Assigned to retail" means working more than twenty-five per cent
40 of an employee's time in one or more retail sales activities.

41 2. "Retail sales" means the sale of tangible personal property to an
42 ultimate consumer.

43 3. "Retail sales activities" means all activities persons operating a
44 retail business normally engage in, including taking orders, filling orders,
45 billing orders, receiving and processing payment and shipping, stocking and

1 delivering tangible personal property to the ultimate consumer, except drop
2 shipments by a company acting on behalf of an unrelated company that has made
3 a sale to a final consumer.

4 4. "Zone location" means a single parcel or contiguous parcels of
5 owned or leased land, the structures and personal property contained on the
6 land or any part of the structures occupied by a taxpayer.

7 Sec. 2. Section 43-1161, Arizona Revised Statutes, is amended to read:
8 43-1161. Credit for increased employment in enterprise zones;
9 definitions

10 A. A credit is allowed against the taxes imposed by this title for net
11 increases in qualified employment positions of residents of this state by a
12 business located in an enterprise zone established under title 41, chapter
13 10, article 2, except employment positions at a zone location where more than
14 ten per cent of the business conducted at the location consists of retail
15 sales of tangible personal property, measured by either the number of
16 employees assigned to retail sales or the square footage of the facility used
17 for retail sales activities at the location in the zone. Retail sales and
18 retail sales activities do not include:

19 1. Food and beverage for consumption on the premises solely by
20 employees and occasional guests of employees at the location.

21 2. Promotional products not available for sale and displaying the
22 company logo or trademark.

23 3. Products sold to company employees.

24 B. Subject to subsection E of this section, the amount of the credit
25 is equal to:

26 1. One-fourth of the taxable wages paid to an employee in a qualified
27 employment position, not to exceed five hundred dollars, in the first year or
28 partial year of employment.

29 2. One-third of the taxable wages paid to an employee in a qualified
30 employment position, not to exceed one thousand dollars per qualified
31 employment position, in the second year of continuous employment.

32 3. One-half of the taxable wages paid to an employee in a qualified
33 employment position, not to exceed one thousand five hundred dollars per
34 qualified employment position, in the third year of continuous employment.

35 C. To qualify for a credit under this section:

36 1. All of the employees with respect to whom a credit is claimed must
37 reside in this state.

38 2. Thirty-five per cent of the employees with respect to whom a credit
39 is claimed for the first year of employment must reside on the date of hire
40 in an enterprise zone that is located in the same county in which the
41 business is located. If an employee for whom a credit was allowed in the
42 first year of employment leaves employment during the second or third year,
43 the taxpayer may substitute another employee who meets the requirements of
44 paragraph 3 of this subsection and who was hired during the same year as the
45 original employee. If the original employee was counted toward the residency

1 requirement under this paragraph, the substitute employee must also have
2 resided in a zone at the time the substitute was hired.

3 3. A qualified employment position must meet all of the following
4 requirements:

5 (a) The position must be a minimum of one thousand seven hundred fifty
6 hours per year of full-time and permanent employment.

7 (b) The job duties must be performed primarily at the zone locations
8 of the business. If an eligible employee in a qualified employment position
9 is transferred or assigned to work in the taxpayer's workplace at a different
10 location that is also located in an enterprise zone and qualifies as a zone
11 location, it may be considered to be continuous employment if it continues to
12 meet all qualified employment position requirements.

13 (c) The employment must include health insurance coverage for the
14 employee for which the employer pays at least fifty per cent of the premium
15 or membership cost. If the taxpayer is self-insured, the taxpayer must pay
16 at least fifty per cent of a predetermined fixed cost per employee for an
17 insurance program that is payable whether or not the employee has filed
18 claims.

19 (d) The employer must pay compensation at least equal to the wage
20 offer by county as computed annually by the department of economic security
21 research administration division.

22 (e) The employee must have been employed for at least ninety days
23 during the first taxable year. An employee who is hired during the last
24 ninety days of the taxable year shall be considered a new employee during the
25 next taxable year. A qualified employment position that is filled during the
26 last ninety days of the taxable year is considered to be a new qualified
27 employment position for the next taxable year.

28 (f) The employee must not have been previously employed by the
29 taxpayer within twelve months before the current date of hire.

30 D. A credit is allowed for employment in the second and third year
31 only for qualified employment positions for which a credit was allowed and
32 claimed by the taxpayer on the original first and second year tax returns.
33 For the purposes of this subsection, the requirement to claim the credit on
34 the original tax return does not apply to qualified employment positions
35 created before January 1, 2002 and certified to the department of commerce.

36 E. The net increase in the number of qualified employment positions is
37 the lesser of the total number of filled qualified employment positions
38 created in the zone during the tax year or the difference between the average
39 number of full-time employees in the zone in the current tax year and the
40 average number of full-time employees during the immediately preceding
41 taxable year. The net increase in the number of qualified employment
42 positions computed under this subsection may not exceed two hundred qualified
43 employment positions per taxpayer each year.

1 F. A taxpayer who claims a credit under section 43-1164.01, 43-1165 or
2 43-1167 may not claim a credit under this section with respect to the same
3 employment positions.

4 G. If the allowable tax credit exceeds the income taxes otherwise due
5 on the claimant's income, or if there are no state income taxes due on the
6 claimant's income, the amount of the claim not used as an offset against
7 income taxes may be carried forward as a tax credit against subsequent years'
8 income tax liability for the period, not to exceed five taxable years,
9 provided the business remains in an enterprise zone.

10 H. Co-owners of a business, including partners in a partnership,
11 TRUSTS AND BENEFICIARIES OF A TRUST, may each claim only the pro rata share
12 of the credit allowed under this section based on the ownership interest.
13 The total of the credits allowed all such owners of the business may not
14 exceed the amount that would have been allowed for a sole owner of the
15 business.

16 I. If a person purchases a business in a zone or changes ownership
17 through reorganization, stock purchase or merger, the new taxpayer may claim
18 first year credits only for one or more qualified employment positions that
19 it created and filled with an eligible employee after the purchase or
20 reorganization was complete. If a person purchases a taxpayer that had
21 qualified for first or second year credits or changes ownership through
22 reorganization, stock purchase or merger, the new taxpayer may claim the
23 second or third year credits if it meets other eligibility requirements of
24 this section. Credits for which a taxpayer qualified before the changes
25 described in this subsection are terminated and lost at the time the changes
26 are implemented.

27 J. A failure to timely report and certify to the department of
28 commerce and the department of revenue the information prescribed by section
29 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by
30 section 41-1525, subsection C disqualifies the taxpayer from the credit under
31 this section. The department of revenue shall require written evidence of
32 the timely report to the department of commerce.

33 K. The termination of an enterprise zone does not affect the credit
34 under this section with respect to:

35 1. Taxpayers that have employees in the second and third years of
36 employment in qualified employment positions under subsections A, B and C of
37 this section if the business remains in the location that was in the
38 enterprise zone.

39 2. Amounts carried forward into subsequent taxable years under
40 subsection G of this section.

41 L. The department may adopt rules necessary for the administration of
42 this section.

43 M. For the purposes of this section:

44 1. "Assigned to retail" means working more than twenty-five per cent
45 of an employee's time in one or more retail sales activities.

1 2. "Retail sales" means the sale of tangible personal property to an
2 ultimate consumer.

3 3. "Retail sales activities" means all activities persons operating a
4 retail business normally engage in, including taking orders, filling orders,
5 billing orders, receiving and processing payment and shipping, stocking and
6 delivering tangible personal property to the ultimate consumer, except drop
7 shipments by a company acting on behalf of an unrelated company that has made
8 a sale to a final consumer.

9 4. "Zone location" means a single parcel or contiguous parcels of
10 owned or leased land, the structures and personal property contained on the
11 land or any part of the structures occupied by a taxpayer.

12 Sec. 3. Retroactivity; amended returns

13 A. This act applies retroactively to taxable years beginning from and
14 after December 31, 2008.

15 B. The requirement under section 41-1525, subsection B, paragraph 3,
16 subdivision (e), Arizona Revised Statutes, section 43-1074, subsection D,
17 Arizona Revised Statutes and section 43-1161, subsection D, Arizona Revised
18 Statutes, to claim an income tax credit on an original income tax return does
19 not apply to amended returns filed within sixty after the effective date of
20 this act.

21 Sec. 4. Emergency

22 This act is an emergency measure that is necessary to preserve the
23 public peace, health or safety and is operative immediately as provided by
24 law.