ARIZONA STATE SENATE

Fiftieth Legislature, Second Regular Session

FINAL AMENDED
FACT SHEET FOR H.B. 2815

employment; incentives; regulatory tax credit

Purpose

Provides several changes tax statutes in the areas of capital gains, depreciation, net operating loss, exempt personal property and tax credits for new employment, renewable energy and qualified facilities. Also establishes an employer-funded job training program study committee.

Background

Most items owned and used for personal investment purposes are capital assets, including real estate, household furnishings, and stocks or bonds. If a capital asset is sold or disposed of, any gain or loss realized in the sale or disposition is know as a capital gain or capital loss. Capital gains and capital losses are considered short-term if the asset is held for one year or less. If the asset is held for more than one year before it is sold or disposed of, the capital gain or capital loss is considered long-term. For a given tax year, the net capital gain is the amount by which the net long-term capital gain for the year is more than the sum of the net short-term capital loss for the year and any long-term capital loss carried over from the previous year.

A tax credit is a dollar-for-dollar reduction in individual or corporate income tax liability. This is different from deductions, subtractions and exemptions, which reduce the amount of income that is considered taxable.

A company incurs a net operating loss (NOL) whenever its allowable deductions exceed its taxable income within the same tax year. Currently, Arizona allows a corporation that incurs a NOL to carry the amount forward in each of the five succeeding years to offset its taxable income.

See the back page of this fact sheet for the Joint Legislative Budget Committee's estimate of fiscal impact.

Provisions

Existing Tax Credit for New Employment
(Premium, Corporate and Individual)
Effective TY 2013

1. Extends the tax credit through TY 2019.

2. Removes the limit of 400 new employees in any taxable year.

3. Requires the capital investment and new qualified employment position requirements to be accomplished within twelve months after the start of the required capital investment. No credit may be claimed until both requirements are met.

4. Allows an eligible business to claim a first year credit for three years beginning with the taxable year in which requirements are completed.

5. Stipulates that employees hired at the location before the beginning of the taxable year but during the twelve-month period are considered to be new employees for the taxable year in which all of those requirements are completed.

6. Provides that an employee working at a temporary work site in this state while the designated location is under construction is considered to be working at the designated location if all of the following occur:
   a) the employee is hired after the start of the required investment at the designated location;
   b) the employee is hired to work at the designated location after it is completed;
   c) the payroll for the employees destined for the designated location is segregated from other employees; and
   d) the employee is moved to the designated location within 30 days after its completion.

7. Defines *designated location* as the location at which the required capital investment is made.

8. Requires, rather than allows, the ACA to prescribe preapproval requirements and additional reporting requirements.

9. Requires a qualifying business to:
   a) obtain preapproval from the ACA in a manner prescribed by the ACA. Preapproval shall cover all first year credits intended to be claimed for the designated location and all second and third year credits associated with those first year credits;
   b) report on the number of employees qualified for the credit at each location.

Existing Credit for Renewable Energy Industry
(Corporate and Individual)
Effective July 1, 2012

10. Extends the credit until 2019.

11. Combines the existing cap of $70 million with the credit for qualified facilities.

12. Prohibits DOR from preapproving the credit for any one taxpayer in excess of $30 million in any calendar year.

13. Requires any remaining unused balance under the cap accruing in 2012 and thereafter to lapse and not be reallocated in the following year.

New Credit for a Qualified Facility
(Corporate and Individual)
Effective July 1, 2012 for TY 2013

14. Establishes the qualified facility income tax credit for taxable years beginning from and after December 31, 2012 for individual taxpayers and taxable years beginning from and after December 31, 2011 though December 31, 2019 for corporate taxpayers for expanding or locating a qualified facility in this state. Only capital investments in a qualified facility that are made on or after July 1, 2012 are included.

15. Requires an employee to have been employed at the qualified facility for at least 90 days during the taxable year in a permanent full-time employment position of at least 1,750 hours per year to be counted for purposes of the credit. An employee who is hired during the last 90 days of the taxable year shall be considered a new employee during the next taxable year.

16. Prohibits the employee from having been previously employed by the taxpayer within 12 months for purposes of being counted during the first taxable year.

17. Allows the amount of the claim not used as an offset against income taxes to be paid to the taxpayer as a refund.

18. Disqualifies the taxpayer from subsequent credits if within five taxable years after first receiving a credit the certification of qualification is terminated or revoked.

19. Defines *qualified facility* as a facility in this state that devotes at least 80 percent of the property and payroll at the facility to one of the following: qualified manufacturing, qualified headquarters, or qualified research. Additionally defines those terms.

20. Defines *capital investment* as an expenditure to acquire, lease or improve property that is used in operating a business, including land, buildings, machinery, equipment and fixtures.

21. Requires a taxpayer to apply to the ACA for preapproval of the business as qualifying for the credits. The application shall include:
    a) the applicant's name, address, telephone number and federal taxpayer identification number;
    b) the name, address, telephone number and e-mail address of a contact person;
    c) the address of the site where the qualified facility will be located and a detailed description of the facility and fixed capital assets;
    d) an estimate of the capital investment and number of employment positions at the qualified facility;
    e) a nonrefundable processing fee in an amount determined by the ACA;
    f) letters of good standing from DOR stating the applicant is not delinquent in the payment of taxes;
    g) other information as required by the ACA to determine eligibility.

22. Requires an authorized executive to affirm that the applicant:
    a) agrees to furnish records of expenditures for qualifying investments;

b) will continue in business at the qualified facility for five full calendar years after postapproval, other than for reasons beyond the control of the applicant;
c) agrees to furnish to the ACA information regarding the amount of income tax credits claimed each year;
d) authorized DOR to provide tax information to the ACA for the purpose of determining inconsistency in information;
e) agrees to allow site visits and audits to verify the applicant's continuing qualification;
f) consents to the adjustment or recapture of any amount of income tax credit due to noncompliance.

23. Allows the applicant to qualify for the income tax credits if:
    a) the applicant makes new capital investment in this state after June 30, 2012 in a taxable year beginning from and after December 31, 2012 in a qualified facility;
    b) at least 51 percent of the net new full-time employment positions at the qualified facility pay a wage that equals or exceeds 125 percent of the median annual wage in this state, as determined by the most recent annual ACA occupational wage and employment estimates;
    c) all net new full-time employment positions include health insurance coverage for the employees for which the applicant pays at least 80 percent of the premium or membership cost.

24. Allows an applicant to separately apply and qualify for separate expansions of a qualified facility.

25. Limits the preapproval of the tax credit by the ACA to ten percent of the lesser of:
    a) the amount the applicant has projected in total qualifying investment in the qualified facility;
    b) $200,000 for each net new full-time employment position projected by the applicant at a qualified facility.

26. Stipulates that the approved credit must be claimed on a timely filed original income tax return and must be claimed in five equal installments.

27. Requires the ACA to establish a process for qualifying and preapproving applicants. Preapproval is based on priority placement established by the date of filing and the availability of capacity

28. Requires the ACA to:
    a) Either preapprove the credit or provide reasons for denial within 30 days after receiving a complete and correct application;
    b) Send copies of each preapproval to DOR.

29. Stipulates that the preapproved amount applies against the dollar limit for the year in which the application was submitted.

30. Prohibits a business from being preapproved for a qualified facility credit and a renewable energy credit for the same capital investment.

31. Prohibits DOR from preapproving the credit for any one taxpayer in excess of $30 million in any calendar year.

32. Requires the ACA to reallocate any amount of credit that is voluntarily relinquished or that lapses. The reallocation shall be to other businesses that applied for this credit or the renewable energy credit in the original credit year based on priority placement.

33. Allows a taxpayer to voluntarily relinquish unused credit in writing to the ACA.

34. Provides that preapproval lapses if, within 12 months after preapproval, the business fails to provide to the ACA documentation of its expenditure of $250,000 in qualifying investment or, if the period over which the qualifying investment will be made exceeds 12 months, documentation of additional expenditures for each 12-month period.

35. Requires the ACA to accept initial applications for the next calendar year after October 31 of each year, if it has preapproved the maximum calendar year credit amount, but the preapproval shall not be effective before the first business day of the following calendar year.

36. Requires an applicant to enter into a written managed review agreement with the chief executive officer (CEO) of the ACA before an applicant applies for postapproval. The agreement shall establish the requirements of a managed review to be conducted at the applicant's expense. Provides additional requirements for the managed review.

37. Requires a preapproved business to apply to the ACA in writing for postapproval when the qualified facility begins operations. *Begins operations* means the qualified facility opens for public business.

38. Requires that business to submit documentation certifying the total amount and dates of the qualifying investments and identifying the fixed capital assets associated with the facility incurred after June 30, 2012 through the date of application for postapproval.

39. Requires the ACA, for taxable years beginning in TY 2012, to provide postapproval to a business that has met eligibility requirements, and requires the ACA to notify DOR that the business may claim a credit.

40. States that the preapproved amount not incurred lapses and does not apply against the cap.

41. Prohibits DOR from allowing a credit for a qualified facility or renewable energy that exceeds the amount of the postapproval.

42. Allows the ACA to rescind a postapproval if the business no longer meets the terms and conditions required. The ACA may give special consideration, or allow temporary exemption from recapture, in the case of extraordinary hardship due to factors beyond the control of the qualifying business.
43. Requires the ACA to notify DOR of any rescission of preapproval or postapproval.

44. Requires DOR to notify the ACA of any information it receives indicating a possible failure to qualify and comply.

45. Requires any qualifying business to separately comply with all environmental, employment or other regulatory measure.

46. Provides that this state claims the position of a secured creditor of a business in any action involving the liquidation of the business assets or relocation out of state for five years after postapproval.

47. States that any information gathered is considered to be confidential taxpayer information except that the ACA shall publish the name of each business and the amount of income tax credits preapproved and postapproved.

48. Requires the ACA to:
    a) keep annual records of information provided on applications for qualified facilities;
    b) maintain annual data on growth in this state of qualified facilities;
    c) prepare and publish a report summarizing information collected not later than April 30 following each calendar year;
    d) adopt rules and prescribe forms and procedures as necessary.

49. Allows disclosure of confidential information to the ACA for its use in qualifying businesses with a qualified facility for income tax credits.

Capital Gain

50. Subtracts from Arizona gross income an amount of any net long-term capital gain included in federal adjusted gross income (FAGI) that is derived from an investment in an asset acquired after December 31, 2011 for individuals, as follows:

Taxable year	Subtraction of Net Long-Term Capital Gain included in FAGI
TY 2013	10%
TY 2014	20%
TY 2015 and thereafter	25%

Net Operating Loss

51. Extends the net operating loss carry forward period from five succeeding taxable years to 20 succeeding taxable years, beginning in TY 2012.

52. Applies the appropriate terminology by replacing “deduction” with “subtraction.”

Exempt Personal Property

53. Bases the maximum amount of the exemption on the percentage increase, if any, in the employment cost index for total compensation for private industry workers in the two most recent complete state fiscal years, rather than the average annual percentage increase in the employment index.

54. Defines *employment cost index* as the average of the employment cost indices for the eight quarters of the two most recent state fiscal years.

55. States that it is legislative intent that DOR recalculate the exempt amount as if the amendment had been continuously in effect since 1997.

56. States that this act does not apply to any tax year before tax year 2013.

Depreciation

57. Allows an individual income tax taxpayer to claim a subtraction for property placed in service in 2013 or after for depreciation as if the federal bonus depreciation allowed was ten percent of the amount allowed federally. For assets placed in service in tax year:
    a) 2012, the taxpayer would begin claiming depreciation based on opting out of the bonus depreciation;
    b) 2013, the taxpayer would be able to take a subtraction to make the depreciation claimed to date the same as if the taxpayer had claimed a bonus depreciation equal to ten percent of the federal bonus depreciation in the prior year.

Employer-Funded Job Training Program Study Committee

58. Establishes the employer-funded job training program study committee (committee) consisting of the following members:
    a) the CEO of the ACA, or the CEO's designee, who shall serve as chairperson;
    b) one member of the ACA board of directors who is appointed by the Governor;
    c) one public member who is appointed by the Governor;
    d) one public member representing businesses in this state who is appointed by the Speaker of the House of Representatives;
    e) one public member representing businesses in this state who is appointed by the President of the Senate;
    f) one president of a community college that is located in a county with a population of at least three million persons who is appointed by the President of the Senate; and
    g) one president of a community college that is located in a county with a population of not more than three million persons who is appointed by the Speaker of the House of Representatives.

59. Requires the committee to:
    a) evaluate the existing job training program established by the ACA.
    b) explore mechanisms for using community colleges as effective providers of job training as a component of this state's economic development objectives for relocating and expanding businesses throughout this state.

c) analyze the appropriate role of private fee based providers of job training as a component of this state's economic development objectives.
d) evaluate and consider proposals to target job training at skills required by jobs with wage levels above the median wage level.

60. Requires the committee to submit a report to the Governor, Legislature and Secretary of State on or before December 15, 2012.

Miscellaneous

61. Allows confidential information relating to any tax collected by DOR on behalf of a county to be disclosed to any county, city or town tax official if the information relates to a taxpayer who is or may be taxable by that county, city or town.

62. States that the purpose of the income tax credits enacted are intended to encourage business investment that will produce high quality employment opportunities for citizens of this state and enhance the position of this state as a center for corporate headquarters, commercial research and manufacturing.

63. Adds the qualified facility tax credit to the income tax credit review schedule.

64. Repeals a dual enactment.

65. Provides additional definitions.

66. Contains a purpose statement.

67. Contains technical and conforming changes.

68. Becomes effective on the general effective date, with certain stated exceptions.

<u>Amendments Adopted by FIN Committee</u>

1. Further limits regulatory tax aggregate amounts.

2. Removes the FTSE requirement for the community college job training program.

3. Provides a technical correction.

<u>Amendments Adopted by Committee of the Whole</u>

1. Removed provisions regarding regulatory tax credit.

2. Removed provisions regarding community college job training.
3. Added provisions regarding the renewable energy tax credit, credit for new employment and credit for qualified facilities.

4. Added provisions regarding exempt personal property.

5. Added provisions regarding the study committee.

House Action				Senate Action			
COM	2/15/12	DPA	5-3-0	FIN	3/15/12	DPA	4-2-1
3rd Read	3/1/12		39-18-2-0-1	APPROP	3/20/12		8-4-1
Final Read	5/3/12		39-16-5	3rd Read	5/3/12		9-9-2

Signed by the Governor 5/11/12
Chapter 343

Prepared by Senate Research
May 24, 2012
CS/ly

General Fund Impact of May 3 Senate Floor Amendments to HB 2815 ($ in Millions) [1/]

Description (Effective Date)	Tax	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
Phases in (over 3 years) a 25% reduction of long-term capital gains on assets purchased after CY 2011 (TY 2013) [2/]	Individual Income	(17.5)	(40.5)	(56.5)	(61.4)	(65.6)	(69.3)
Extends the net operating loss (NOL) carry forward from 5 years to 20 years (TY 2012) [3/]	Corporate Income	0.0	0.0	0.0	0.0	0.0	(12.2)
Amends calculation of the index used to determine the annual business personal property exemption amount (TY 2013) [4/]	Property	(0.9)	(0.9)	(0.9)	(0.9)	(0.9)	(0.9)
Provides income tax deduction equal to 10% of federal bonus depreciation for assets placed in service in CY 2012 (TY 2013) [5/ 6/]	Individual Income	(4.2)					
Creates a new income tax credit for capital investments in new or expanded manufacturing facilities, commercial headquarters, or research facilities (TY 2013) [7/]	Individual & Corporate Income	(4.0)	(8.0)	(12.0)	(16.0)	(20.0)	(20.0)
Eliminates individual company cap of 400 credit-eligible new employees for purposes of claiming the $3,000 job tax credit (TY 2013) [8/]	Individual & Corporate Income	(1.8)	(3.6)	(5.4)	(5.4)	(5.4)	(5.4)
Total General Fund Impact [9/]		**$ (28.4)**	**$ (53.0)**	**$ (74.8)**	**$ (83.7)**	**$ (91.9)**	**$(107.8)**

Notes:

1/ Estimates prepared by JLBC Staff on May 3, 2012.

2/ Reduction, which is 10% in FY14, 20% in FY15, and 25% in FY16 and thereafter, applies to long-term capital gains.

3/ This provision is the same as in SB 1084. For more detail, see fiscal note for SB 1084.

4/ This provision is the same as in SB 1367. For more detail, see fiscal note for SB 1367.

5/ Estimate provided by the Department of Revenue (DOR) on April 30, 2012.

6/ Revenue impact after FY14 will depend on whether federal bonus depreciation is extended.

7/ Estimate assumes new capital investments totaling $200 million each year. Credit must be claimed in equal installments over 5 years.

8/ Estimate assumes that 600 additional employees will qualify for the $3,000 new job tax credit each year as a result of the bill's elimination of the individual company credit cap of 400 new employees.

9/ Does not include an estimate of "dynamic" revenue impacts.