Senate Engrossed House Bill

~~DOR; administrative rulings; procedures~~
(now: qualified facilities)

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 80

HOUSE BILL 2321

AN ACT

AMENDING SECTIONS 41-1512, 42-5032.02, 43-1083.03, 43-1164.04, ARIZONA REVISED STATUTES; RELATING TO STATE REVENUES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 41-1512, Arizona Revised Statutes, is amended to read:

41-1512. Qualified facility income tax credits; qualification; definitions

A. For taxable years beginning from and after December 31, 2012, income tax credits are allowed for expanding or locating a qualified facility in this state pursuant to sections 43-1083.03 and 43-1164.04. Only capital investments in a qualified facility that are made not more than thirty-six months before submitting an application for preapproval are included in the computation of the credit.

B. To be eligible for the income tax credits, a taxpayer must apply to the authority, on a form prescribed by the authority, for preapproval of the business as qualifying for the credits. The application must include:

1. The applicant's name, address, telephone number and federal taxpayer identification number or numbers.

2. The name, address, telephone number and email address of a contact person for the applicant.

3. The address of the site where the qualified facility will be located.

4. A detailed description of the qualified facility and fixed capital assets.

5. An estimate of the capital investment and number of employment positions with job duties associated with the qualified facility, including:

(a) A schedule of qualifying investments.

(b) A list of full-time employment positions, the estimated number of employees to be hired for the positions each year during the first five years of operation and the annual wages for each position, calculated without employee-related benefits.

6. A nonrefundable processing fee in an amount determined by the authority.

7. Other information as required by the authority to determine eligibility for the income tax credits and the amount of income tax credits, as prescribed by this section.

8. An affirmation, signed by an authorized executive representing the business, that the applicant:

(a) Agrees to furnish records of expenditures for qualifying investments to the authority on request.

(b) Will continue in business at the qualified facility for five full calendar years after postapproval for the credit, other than for reasons beyond the control of the applicant.

(c) Agrees to furnish to the authority information regarding the amount of income tax credits claimed each year.

(d) Authorizes the department of revenue to provide tax information to the authority pursuant to section 42-2003 for the purpose of determining any inconsistency in information furnished by the applicant.

(e) Agrees to allow site visits and audits to verify the applicant's continuing qualification and the accuracy of information submitted to the authority.

(f) Consents to the adjustment or recapture of any amount of income tax credit due to noncompliance with this section.

9. Letters of good standing from the department of revenue stating that the applicant is not delinquent in paying taxes.

C. The applicant may qualify for the income tax credits pursuant to section 43-1083.03 or 43-1164.04, as applicable, if:

1. The applicant makes new capital investment in this state after June 30, 2012 in a qualified facility that is completed in a taxable year beginning from and after December 31, 2012.

2. At least fifty-one percent of the net new full-time employment positions with job duties associated with the qualified facility pay a wage that equals or exceeds one hundred twenty-five percent, or one hundred percent in the case of a qualified facility in a rural location, of the median annual wage for production occupations in this state, as determined by the most recent annual Arizona commerce authority occupational wage and employment estimates issued before the preapproval is issued pursuant to subsection I of this section.

3. All net new full-time employment positions include health insurance coverage for the employees for which the applicant pays at least sixty-five percent of the premium or membership cost.

D. Final eligibility for an income tax credit is subject to any additional requirements prescribed by section 43-1083.03 or 43-1164.04, as applicable.

E. An applicant may separately apply and qualify with respect to investments for separate expansions of a qualified facility.

F. The amount of the income tax credit to be preapproved by the authority to a qualifying applicant is ten percent of the lesser of:

1. The amount the applicant has projected in total qualifying investment in the qualified facility.

2. EITHER:

(a) IF THE TOTAL QUALIFYING INVESTMENT IS LESS THAN $2,000,000,000, $200,000 for each net new full-time employment position projected by the applicant that has job duties associated with a qualified facility.

(b) IF THE TOTAL QUALIFYING INVESTMENT IS $2,000,000,000 OR MORE, $300,000 FOR EACH NET NEW FULL-TIME EMPLOYMENT POSITION PROJECTED BY THE APPLICANT THAT HAS JOB DUTIES ASSOCIATED WITH A QUALIFIED FACILITY.

G. Beginning with income tax credits allocated for 2013, an approved credit:

1. Must be claimed on a timely filed original income tax return, including extensions.

2. Must be claimed in five equal installments as provided by section 43-1083.03 or 43-1164.04.

H. The authority shall establish a process for qualifying and preapproving applicants for the income tax credits. The authority shall not preapprove applicants as qualifying for credits under this section for any taxable year beginning from and after December 31, 2030. Preapproval is based on:

1. Priority placement established by the date that the applicant files its initial application with the authority.

2. The availability of income tax credit capacity under the dollar limit prescribed by subsection J of this section.

I. Within thirty days after receiving a complete and correct application, the authority shall review the application to determine whether the applicant satisfies all of the criteria prescribed by this section and either preapprove the project as qualifying for the purposes of an income tax credit or provide reasons for its denial. The authority shall send copies of each preapproval to the department of revenue.

J. The authority shall not preapprove income tax credits under this section that combined would exceed ~~$70,000,000~~ $125,000,000 in any calendar year, except as provided by this subsection and subsection K of this section. A preapproved amount applies against the dollar limit for the year in which the application was submitted regardless of whether the initial preapproval period extends into the following year or years. The authority shall not preapprove income tax credits under this section for any taxpayer in excess of $30,000,000 in any calendar year.

K. The authority shall reallocate the amount of income tax credits that are voluntarily relinquished under subsection L of this section, that lapse under subsection M of this section or that lapse under subsection P of this section. The reallocation shall be to other businesses that applied under this section in the original credit year based on priority placement. Once reallocated, the amount of the credit applies against the dollar limit of the original credit year regardless of the year in which the reallocation occurs.

L. A taxpayer may voluntarily relinquish unused credit amounts in writing to the authority.

M. Preapproval under this section lapses, the application is void and the amount of the preapproved income tax credits does not apply against the dollar limit prescribed by subsection J of this section if, within twelve months after preapproval, the business fails to provide to the authority documentation of its expenditure of $250,000 in qualifying investment or, if the period over which the qualifying investment will be made exceeds twelve months, documentation of additional expenditures as required in this subsection for each twelve-month period.

N. After October 31 of each year, if the authority has preapproved the maximum calendar year income tax credit amount pursuant to subsection J of this section, the authority may accept initial applications for the next calendar year, but the preapproval of any application pursuant to this subsection shall not be effective before the first business day of the following calendar year.

O. Before an applicant applies for postapproval under subsection P of this section, the applicant must enter into a written managed review agreement with the chief executive officer of the authority that establishes the requirements of a managed review to be conducted under this subsection at the applicant's expense. The managed review must be conducted by a certified public accountant who is selected by the applicant, who is licensed in this state or who has a limited reciprocity privilege pursuant to section 32-725 and who is approved by the chief executive officer. The certified public accountant and the firm the certified public accountant is affiliated with shall not regularly perform services for the applicant or its affiliates. The managed review shall include an analysis of the applicant's invoices, checks, accounting records and other documents and information to verify its base investment and other requirements prescribed by section 43-1083.03 or 43-1164.04 to confirm the amount of credit. The certified public accountant shall furnish written findings of the managed review to the chief executive officer. The chief executive officer shall review the findings and may examine records and perform other reviews that the chief executive officer considers necessary to verify that the managed review substantially conforms to the terms of the managed review agreement. The chief executive officer shall accept or reject the findings of the managed review. If the chief executive officer rejects all or part of the managed review, the chief executive officer shall provide written reasons for the rejection.

P. When the qualified facility begins operations, a business that was preapproved for income tax credits under this section shall apply to the authority in writing for postapproval of the credits and submit documentation certifying the total amount and dates of the qualifying investments and identifying the fixed capital assets associated with the qualified facility incurred after June 30, 2012 through the date of application for postapproval. For taxable years beginning from and after December 31, 2012, the authority shall provide postapproval to a business that has met the eligibility requirements of this section and shall notify the department of revenue that the business may claim an income tax credit pursuant to section 43-1083.03 or 43-1164.04. If the amount of qualifying investment actually spent is less than the amount preapproved for income tax credits, the preapproved amount not incurred lapses and does not apply against the dollar limit prescribed by subsection J of this section for that year. The department of revenue shall not allow an income tax credit under section 43-1083.03 or 43-1164.04 that exceeds the amount of the postapproval for the project under this subsection. For the purposes of this subsection, "begins operations" means the qualified facility opens for public business.

Q. The authority may rescind an applicant's postapproval if the business no longer meets the terms and conditions required for qualifying for the credit. The authority may give special consideration, or allow temporary exemption from recapture of the credit, in the case of extraordinary hardship due to factors beyond the control of the qualifying business.

R. If the authority rescinds an applicant's preapproval or postapproval under subsection Q of this section, the authority shall notify the department of revenue of the action and the conditions of noncompliance. If the department of revenue obtains information indicating a possible failure to qualify and comply, the department shall provide that information to the authority. The department of revenue may require the business to file appropriate amended tax returns reflecting any recapture of the credit under section 43-1083.03 or 43-1164.04.

S. Preapproval and postapproval of an applicant for the purposes of income tax credits under this section do not constitute or imply compliance with any other provision of law or any regulatory rule, order, procedure, permit or other measure required by law. To maintain qualification for a credit under this section, a business must separately comply with all environmental, employment and other regulatory measures.

T. For five years after postapproval of an income tax credit under this section, in any action involving the liquidation of the business assets or relocation out of state, this state claims the position of a secured creditor of the business in the amount of the credit the business received pursuant to section 43-1083.03 or 43-1164.04. The transfer of part or all of a company's assets that are then leased back by the company is not considered a liquidation under this section.

U. Any information gathered from a business for the purposes of this section is considered to be confidential taxpayer information and shall be disclosed only as provided in section 42-2003, subsection B, paragraph 12, except that the authority shall publish the following information in its annual report:

1. The name of each business and the amount of income tax credits preapproved for each qualifying investment.

2. The amount of income tax credits postapproved with respect to each qualifying investment.

V. The authority shall:

1. Keep annual records of the information provided on applications for qualified facilities. These records shall reflect a percentage

comparison of the annual amount of monies credited to qualified facilities to the estimated amount of monies spent in this state in the form of qualifying investments.

2. Maintain annual data on growth in this state of qualified facilities and related employment and wages.

3. Not later than April 30 following each calendar year, prepare and publish a report summarizing the information collected pursuant to this subsection. The authority shall make copies of the annual report available to the public on request.

W. The authority shall adopt rules and prescribe forms and procedures as necessary for the purposes of this section. The authority and the department of revenue shall collaborate in adopting rules as necessary to avoid duplication and inconsistencies while accomplishing the intent and purposes of this section.

X. For the purposes of this section:

1. "Capital investment" means an expenditure to acquire, lease or improve property that is used in operating a business, including land, buildings, machinery, equipment and fixtures.

2. "Facility" means a single parcel or contiguous parcels of owned or leased land in this state, the structures and personal property contained on the land or any part of the structures occupied by the owner. Parcels that are separated only by a public thoroughfare or right-of-way are considered to be contiguous.

3. "Headquarters" means a principal central administrative office where primary headquarters related functions and services are performed, including financial, personnel, administrative, legal, planning and similar business functions.

4. "Manufacturing" means fabricating, producing or manufacturing raw or prepared materials into usable products, imparting new forms, qualities, properties and combinations. Manufacturing does not include generating electricity.

5. "Qualified facility" means a facility in this state that devotes at least eighty percent of the property and payroll at the facility to one or more of the following:

(a) Qualified manufacturing.

(b) Qualified headquarters.

(c) Qualified research.

6. "Qualified headquarters" means a global, national or regional headquarters for a taxpayer ~~that is involved in manufacturing and~~ that derives at least sixty-five percent of its revenue from out-of-state sales.

7. "Qualified manufacturing" means manufacturing tangible products in this state if at least sixty-five percent of the product ~~will be~~ IS AT LEAST ONE OF THE FOLLOWING:

(a) DIRECTLY sold out of state.

(b) DIRECTLY SOLD TO ONE OR MORE QUALIFIED FACILITIES, REGARDLESS OF WHETHER THE QUALIFIED FACILITIES ARE PREAPPROVED BY THE AUTHORITY PURSUANT TO THIS SECTION.

8. "Qualified research" has the same meaning prescribed by section 41(d) of the internal revenue code, as defined by section 43-105, except that the research must be conducted by a taxpayer involved in manufacturing that derives at least sixty-five percent of its revenue from out-of-state sales.

9. "Qualifying investment" means investment in land, buildings, machinery, equipment and fixtures for expansion of an existing qualified facility or establishment of a new qualified facility in this state after June 30, 2012 for a facility completed in a taxable year beginning from and after December 31, 2012. If the qualified facility is a build-to-suit facility leased to the taxpayer, qualifying investment includes the costs prescribed in this paragraph that are spent by the third-party developer with respect to the qualified facility. Qualifying investment does not include relocating an existing qualified facility in this state to another location in this state without additional capital investment of at least $250,000.

10. "Rural location" means a location that is within the boundaries of tribal lands or a city or town with a population of less than fifty thousand persons or a county with a population of less than eight hundred thousand persons.

Sec. 2. Section 42-5032.02, Arizona Revised Statutes, is amended to read:

42-5032.02. Distribution of revenues for city, town or county infrastructure improvements related to manufacturing facilities; definitions

A. Subject to subsection B of this section, from and after September 30, 2013 through September 30, ~~2023~~ 2033, each month the state treasurer shall pay a city, town or county the amount determined under subsection C of this section for the purpose of funding up to eighty percent of the cost of public infrastructure improvements for the benefit of a manufacturing facility.

B. The state treasurer shall not make any payments under subsection C of this section until both of the following apply:

1. Ten percent of the qualifying capital investment that is certified under subsection D of this section and that constitutes construction phase services, as defined in section 42-5075, has been made by the manufacturing facility.

2. From and after June 30, 2014.

C. The amount to be paid to a city, town or county under subsection A of this section is the total amount of state transaction privilege tax revenues collected under section 42-5010, subsection A from persons conducting business under section 42-5075 derived from contracts to construct buildings and associated improvements for the benefit of a manufacturing facility. The total amount paid to all cities, towns and counties under this subsection shall not exceed a maximum of ~~fifty million dollars~~ $50,000,000.

D. Within one hundred eighty days after the commencement of the construction of buildings and associated improvements for the benefit of a manufacturing facility that will require a city, town or county to make infrastructure improvements, the manufacturing facility shall file a sworn certification with the Arizona commerce authority and submit a copy of this sworn certification to the applicable city, town or county that the manufacturing facility agrees to either:

1. Make at least ~~five hundred million dollars~~ $500,000,000 in capital investment if the manufacturing facility is located in a county that has a population of eight hundred thousand persons or more.

2. Make at least ~~fifty million dollars~~ $50,000,000 in capital investment if the manufacturing facility is located in a county that has a population of less than eight hundred thousand persons.

E. The certification under subsection D of this section shall contain a sworn statement or certification, signed by an officer of the manufacturing facility under penalty of perjury, that the information contained is true and correct according to the best belief and knowledge of the person submitting the information after a reasonable investigation of the facts.

F. Before submitting the certification to the Arizona commerce authority, the manufacturing facility and the city, town or county must enter into a written agreement that:

1. Identifies and states the cost of the public infrastructure improvements that will be constructed.

2. Identifies the sources of monies, including monies received pursuant to this section, that will be used to pay for the public infrastructure improvements.

G. On receipt of the sworn certification from a manufacturing facility pursuant to subsection D of this section, the city, town or county shall enter into a written agreement with the department. This agreement and any amendments or changes to the agreement shall:

1. State the cost of the public infrastructure improvements and separately identify the particular improvements that will be made.

2. State that the monies received under this section will be used exclusively to pay for public infrastructure improvements that are necessary to support the activities of the manufacturing facility.

3. State that the city, town or county will commit all of its portion of the revenue received pursuant to section 42-5029, subsection D derived from contracts subject to section 42-5075 ~~for the construction of~~ TO CONSTRUCT buildings and associated improvements for the benefit of the

manufacturing facility for public infrastructure improvements that benefit the manufacturing facility.

4. State that the city, town or county will immediately notify the department when monies received under this section exceed eighty percent of the cost of the infrastructure improvements and will return the amount of the excess to the state treasurer for deposit in the state general fund.

5. Stipulate the actual amount of the construction funding that will be derived from sources other than ~~the~~ THIS state.

6. Identify the persons who will be prime contractors on the construction of buildings and associated improvements for the benefit of a manufacturing facility and state that each prime contractor has been notified as to which portion of the contractor's income shall be separately identified to the department pursuant to section 42-5075, subsection H.

7. State that the city, town or county agrees that any amounts paid by the department to a prime contractor as identified under paragraph 6 of this subsection resulting from an audit adjustment or claim for credit or refund of taxes described in subsection C of this section shall be recovered by the department from the city, town or county by reducing the amount paid to the city, town or county under section 42-5029 from monies designated as distribution base in the month next succeeding the month in which the adjustment or claim is paid.

8. State that the city, town or county agrees that the department will use the amounts subject to any distribution required under subsection A of this section in calculating the maximum amount set by subsection C of this section.

9. State that the city, town or county agrees that if, on notification by the department, the state treasurer ceases payments because of the condition described in subsection H of this section, the city, town or county has no claim to additional payments if the department subsequently pays amounts to a prime contractor identified in an agreement with any city, town or county, as described in paragraph 6 of this subsection, due to an audit adjustment or claim for credit or refund of taxes described in subsection C of this section.

10. Provide any other information deemed necessary by the department.

H. On notification by the department, the state treasurer shall cease payments under subsection A of this section if either of the following occurs:

1. The city, town or county has received monies that meet or exceed eighty percent of the cost of the public infrastructure improvements that are necessary to support the activities related to the manufacturing facility as described in the written agreement pursuant to subsection G of this section.

2. The total amount subject to any distribution required under subsection A of this section has met the maximum amount set by subsection C of this section.

I. For the purposes of this section:

1. "Associated improvement" includes any public infrastructure improvement that is made for the benefit of the manufacturing facility outside of the parcel or parcels of real property where the manufacturing facility is located.

2. "Capital investment" means an expenditure to acquire, lease or improve property that is used for the benefit of a manufacturing facility, including land, buildings, machinery and fixtures.

3. "Manufacturing facility":

(a) Means an establishment that is engaged in the mechanical, physical or chemical transformation or fabrication of materials, substances or components into new products in this state, that is classified within sections 31 through 33 inclusive of the 2007 edition of the north American industry classification system as published by the national technical information service of the United States department of commerce and that agrees to either:

(i) Make at least ~~five hundred million dollars~~ $500,000,000 in capital investment if the manufacturing facility is located in a county that has a population of eight hundred thousand persons or more.

(ii) Make at least ~~fifty million dollars~~ $50,000,000 in capital investment if the manufacturing facility is located in a county that has a population of less than eight hundred thousand persons.

(b) Does not include mining, milling or smelting mineral ore or generating electricity.

4. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28-6532.

5. "Public infrastructure" means water production, delivery and disposal facilities, wastewater production, delivery and disposal facilities and roads that are necessary to support the activities of the manufacturing facility.

Sec. 3. Section 43-1083.03, Arizona Revised Statutes, is amended to read:

43-1083.03. Credit for qualified facilities

A. For taxable years beginning from and after December 31, 2012 through December 31, 2030, a credit is allowed against the taxes imposed by this title for qualifying investment and employment in expanding or locating a qualified facility in this state. To qualify for the credit, after June 30, 2012 the taxpayer must invest in a new qualified facility or expand an existing qualified facility in this state and produce new full-time employment positions where the job duties are associated with the location of the qualifying investment. The taxpayer must meet the employee compensation and employee health benefit requirements prescribed by section 41-1512.

B. The amount of the credit is computed as follows:

1. Ten percent of the lesser of:

(a) The total qualifying investment in the qualified facility.

(b) EITHER:

(i) IF THE TOTAL QUALIFYING INVESTMENT IS LESS THAN $2,000,000,000, $200,000 for each net new full-time employment position that has duties associated with the qualified facility.

(ii) IF THE TOTAL QUALIFYING INVESTMENT IS $2,000,000,000 OR MORE, $300,000 FOR EACH NET NEW FULL-TIME EMPLOYMENT POSITION THAT HAS DUTIES ASSOCIATED WITH THE QUALIFIED FACILITY.

2. The amount of the credit shall not exceed the postapproval amount determined by the Arizona commerce authority under section 41-1512, subsection P.

3. Subject to subsections G and J of this section:

(a) The credit amount computed under paragraph 1 of this subsection is apportioned, and the taxpayer shall claim the credit in five equal annual installments in each of five consecutive taxable years.

(b) The taxpayer may claim all five annual installments of a credit that was preapproved before January 1, 2031 by the Arizona commerce authority notwithstanding any intervening repeal or other termination of the credit.

C. To claim the credit the taxpayer must:

1. Conduct a business that qualifies under section 41-1512.

2. Receive preapproval and postapproval from the Arizona commerce authority pursuant to section 41-1512.

3. Submit to the department a copy of a current and valid certification of qualification issued to the taxpayer by the Arizona commerce authority.

D. To be counted for the purposes of the credit, an employee must have been employed with job duties associated with the qualified facility for at least ninety days during the taxable year in a permanent full-time employment position of at least one thousand seven hundred fifty hours per year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. To be counted for the purposes of the credit during the first taxable year of employment, the employee must not have been previously employed by the taxpayer within twelve months before the current date of hire. The terms of employment must comply in all cases with the requirements of section 41-1512 and be certified by the Arizona commerce authority.

E. Co-owners of a business, including partners in a partnership, members of a limited liability company and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

F. If the allowable tax credit for a taxable year exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be paid to the taxpayer in the same manner as a refund under section 42-1118. Refunds made pursuant to this subsection are subject to setoff under section 42-1122. If the department determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to section 42-1108.

G. Except as provided by subsection H of this section, if, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1512, other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the taxpayer is disqualified from credits under this section in subsequent taxable years. On a determination that the taxpayer has committed fraud or relocated outside of this state within five taxable years after first receiving a credit pursuant to this section, the credits allowed the taxpayer in all taxable years pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification under section 41-1512. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed under this section.

H. A taxpayer who claims a credit under section 43-1074 may not claim a credit under this section with respect to the same full-time employment positions.

I. The department of revenue shall adopt rules and prescribe forms and procedures as necessary for the purposes of this section. The department of revenue and the Arizona commerce authority shall collaborate in adopting rules as necessary to avoid duplication and contradictory requirements while accomplishing the intent and purposes of this section.

J. Each taxable year after the postapproval of the credit under section 41-1512, subsection P, when the taxpayer files the taxpayer's income tax return, the taxpayer shall:

1. Notify the department, on a form prescribed by the department, of any full-time employment position for which a credit was claimed under this section and that was vacant for more than one hundred fifty days after the date the full-time employment position was originally filled to

the end of that taxable year. The period that a full-time employment position was vacant may not include the period before the full-time employment position was filled for the first time.

2. Reduce the portion of the credit claimed for the taxable year pursuant to subsection B, paragraph 3 of this section by $4,000 for each full-time employment position reported pursuant to paragraph 1 of this subsection.

Sec. 4. Section 43-1164.04, Arizona Revised Statutes, is amended to read:

43-1164.04. Credit for qualified facilities

A. For taxable years beginning from and after December 31, 2012 through December 31, 2030, a credit is allowed against the taxes imposed by this title for qualifying investment and employment in expanding or locating a qualified facility in this state. To qualify for the credit, after June 30, 2012 the taxpayer must invest in a new qualified facility or expand an existing qualified facility in this state and produce new full-time employment positions where the job duties are associated with the location of the qualifying investment. The taxpayer must meet the employee compensation and employee health benefit requirements prescribed by section 41-1512.

B. The amount of the credit is computed as follows:

1. Ten percent of the lesser of:

(a) The total qualifying investment in the qualified facility.

(b) EITHER:

(i) IF THE TOTAL QUALIFYING INVESTMENT IS LESS THAN $2,000,000,000, $200,000 for each net new full-time employment position that has job duties associated with the qualified facility.

(ii) IF THE TOTAL QUALIFYING INVESTMENT IS $2,000,000,000 OR MORE, $300,000 FOR EACH NET NEW FULL-TIME EMPLOYMENT POSITION THAT HAS JOB DUTIES ASSOCIATED WITH THE QUALIFIED FACILITY.

2. The amount of the credit shall not exceed the postapproval amount determined by the Arizona commerce authority under section 41-1512, subsection P.

3. Subject to subsections G and J of this section:

(a) The credit amount computed under paragraph 1 of this subsection is apportioned, and the taxpayer shall claim the credit in five equal annual installments in each of five consecutive taxable years.

(b) The taxpayer may claim all five annual installments of a credit that was preapproved before January 1, 2031 by the Arizona commerce authority notwithstanding any intervening repeal or other termination of the credit.

C. To claim the credit the taxpayer must:

1. Conduct a business that qualifies under section 41-1512.

2. Receive preapproval and postapproval from the Arizona commerce authority pursuant to section 41-1512.

3. Submit to the department a copy of a current and valid certification of qualification issued to the taxpayer by the Arizona commerce authority.

D. To be counted for the purposes of the credit, an employee must have been employed with job duties associated with the qualified facility for at least ninety days during the taxable year in a permanent full-time employment position of at least one thousand seven hundred fifty hours per year. An employee who is hired during the last ninety days of the taxable year shall be considered a new employee during the next taxable year. To be counted for the purposes of the credit during the first taxable year of employment, the employee must not have been previously employed by the taxpayer within twelve months before the current date of hire. The terms of employment must comply in all cases with the requirements of section 41-1512 and be certified by the Arizona commerce authority.

E. Co-owners of a business, including corporate partners in a partnership and members of a limited liability company, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

F. If the allowable tax credit for a taxable year exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be paid to the taxpayer in the same manner as a refund under section 42-1118. Refunds made pursuant to this subsection are subject to setoff under section 42-1122. If the department determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to section 42-1108.

G. Except as provided by subsection H of this section, if, within five taxable years after first receiving a credit pursuant to this section, the certification of qualification of a business is terminated or revoked under section 41-1512, other than for reasons beyond the control of the business as determined by the Arizona commerce authority, the taxpayer is disqualified from credits under this section in subsequent taxable years. On a determination that the taxpayer has committed fraud or relocated outside of this state within five taxable years after first receiving a credit pursuant to this section, the credits allowed the taxpayer in all taxable years pursuant to this section are subject to recapture pursuant to this subsection. This subsection applies only in the case of the termination or revocation of a certification of qualification under section 41-1512. This subsection does not apply if, in any taxable year, a taxpayer otherwise does not qualify for or fails to claim the credit under this section. The recapture of credits is computed by increasing the amount of taxes imposed in the year following the year of termination or revocation by the full amount of all credits previously allowed under this section.

H. A taxpayer that claims a credit under section 43-1161 may not claim a credit under this section with respect to the same full-time employment positions.

I. The department of revenue shall adopt rules and prescribe forms and procedures as necessary for the purposes of this section. The department of revenue and the Arizona commerce authority shall collaborate in adopting rules as necessary to avoid duplication and contradictory requirements while accomplishing the intent and purposes of this section.

J. Each taxable year after the postapproval of the credit under section 41-1512, subsection P, when the taxpayer files the taxpayer's income tax return, the taxpayer shall:

1. Notify the department, on a form prescribed by the department, of any full-time employment position for which a credit was claimed under this section and that was vacant for more than one hundred fifty days after the date the full-time employment position was originally filled to the end of that taxable year. The period that a full-time employment position was vacant may not include the period before the full-time employment position was filled for the first time.

2. Reduce the portion of the credit claimed for the taxable year pursuant to subsection B, paragraph 3 of this section by $4,000 for each full-time employment position reported pursuant to paragraph 1 of this subsection.

APPROVED BY THE GOVERNOR MARCH 23, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2021.