Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 289

HOUSE BILL 2045

AN ACT

AMENDING SECTIONS 41-1525, 43-222, 43-1074 AND 43-1161, ARIZONA REVISED STATUTES; REPEALING SECTIONS 43-1085 AND 43-1173, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1052, ARIZONA REVISED STATUTES; RELATING TO THE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

STATE OF SENATE

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

Section 1. Section 41-1525, Arizona Revised Statutes, is amended to read:

41-1525. Tax incentives; definitions

A. The owner of a business or an insurer located in an enterprise zone before July 1, 2006 is eligible for an income tax credit under section 43-1074 or 43-1161 or a premium tax credit under section 20-224.03 for net increases in qualified employment positions, except employment positions at a zone location where more than ten per cent of the business conducted at the location consists of ~~selling~~ RETAIL SALES OF tangible personal property ~~at retail~~, measured either by the number of employees assigned to retail SALES or the square footage of the facility used for retail ~~transactions~~ SALES ACTIVITIES at the location in the zone. ~~and limited solely to the following retail activity at the location~~ RETAIL SALES AND RETAIL SALES ACTIVITIES DO NOT INCLUDE:

~~1. Products manufactured, fabricated or otherwise produced at the location.~~

~~2.~~ 1. Food and beverage for consumption on the premises solely by employees and occasional guests of employees at the location.

~~3.~~ 2. Promotional products NOT AVAILABLE FOR SALE AND displaying the company logo or trademark.

3. PRODUCTS SOLD TO COMPANY EMPLOYEES.

B. To qualify for a tax credit, the owner must:

1. Certify to the department of revenue or the department of insurance, as applicable, on or before the due date of the tax return, including any extensions for the year for which the credit is claimed, in a form prescribed by the department of revenue including electronic media, information that the department of revenue may require, including the ownership interests of co-owners of the business if the business is a partnership, limited liability company or an S corporation, and the following information for each employee in the zone location:

(a) The date of initial employment.

(b) The number of hours worked during the year.

(c) Whether the position was full-time.

(d) The residence of the employee.

(e) Whether the residence was in or outside the zone.

(f) If the residence was in the zone, where in the zone it is located.

(g) The employee's annual compensation.

(h) The total cost of health insurance for the employee and the cost paid by the employer.

(i) If the employee had been previously employed, the last date of previous employment.

2. Report and certify to the department of commerce the following information, and provide supporting documentation, on a form and in a manner approved by the department of commerce and, as specified in subsection C of

1 this section, for each year in which the taxpayer earned and claimed or used
2 credits or is carrying forward amounts from previously earned and claimed
3 credits:
4 (a) The business name and mailing address and any other contact
5 information requested by the department of commerce.
6 (b) The business location and the name of the zone in which the
7 business is located.
8 (c) The average hourly wage and the total amount of compensation paid
9 to employees qualified for the credit and for all employees at the zone
10 location.
11 (d) The total number of qualified employment positions and the amount
12 of income tax or premium tax credits qualified for in the tax year.
13 (e) The estimated amount of tax credits to be used in the tax year to
14 offset tax liability.
15 (f) The estimated amount of tax credits to be available for
16 carryforward in the tax year and the tax year in which the credits expire.
17 (g) The number of jobs and the amount of credits earned and claimed
18 on the prior year's income tax or insurance premium tax returns.
19 (h) The amount of credits used to offset tax liabilities on the prior
20 year's income tax or insurance premium tax return.
21 (i) The amount of credits available for carryforward as reported on
22 the prior year's tax return and the tax year the credits expire.
23 (j) Capital investment made in the zone during the tax year and the
24 preceding tax year.
25 (k) That each qualified employment position meets all of the following
26 requirements:
27 (i) The position is at least one thousand seven hundred fifty hours
28 per year of full-time permanent employment.
29 (ii) All credits that are being claimed are for wages for job duties
30 performed at the zone locations of the business.
31 (iii) The employment includes health insurance coverage for the
32 employee for which the employer pays at least fifty per cent of the premium
33 or membership cost. if the taxpayer is self-insured, the employer pays at
34 least fifty per cent of a predetermined fixed cost per employee for an
35 insurance program that is payable whether or not the employee has filed
36 claims.
37 (iv) The employer pays compensation at least equal to the wage offer
38 by county as computed annually by the department of economic security
39 research administration division.
40 (l) That the only retail activities engaged in at the zone location
41 were as specified in subsection A of this section.
42 (m) Other information necessary for the management and reporting of
43 the incentives under this section.
44 3. For any year in which the taxpayer is claiming first year credits,
45 report and certify the following additional information and provide

supporting documentation to the department of commerce on a form and in a manner approved by the department, and as specified in subsection C of this section:

(a) That thirty-five per cent of the employees with respect to whom a credit is claimed for the first year of employment resided on the date of employment in an enterprise zone that is located in the same county in which the business is located.

(b) That the increase in the number of qualified employment positions for which credit is sought is the least of:

(i) The total number of filled qualified employment positions created at the zone location during the tax year.

(ii) The difference between the average number of full-time employees at a zone location in the current tax year and the average number of full-time employees during the immediately preceding tax year.

(iii) Two hundred qualified employment positions per taxpayer each year.

(c) All employees filling a qualified employment position were employed for at least ninety days during the first taxable year.

(d) None of the employees filling qualified employment positions were employed by the taxpayer during the twelve months before the current date of hire.

(e) All employees for whom second and third year credits are claimed are in qualified employment positions for which first year credits were allowed and claimed by the taxpayer on the original first and second year tax returns. FOR THE PURPOSES OF THIS SUBSECTION, THE REQUIREMENT TO CLAIM THE CREDIT ON THE ORIGINAL TAX RETURN DOES NOT APPLY TO QUALIFIED EMPLOYMENT POSITIONS CREATED BEFORE JANUARY 1, 2002 AND WERE CERTIFIED TO THE DEPARTMENT OF COMMERCE.

(f) All employees for whom credits are taken performed their job duties primarily at the zone locations of the business.

C. To qualify for first year credits, the report and certification prescribed by subsection B, paragraphs 2 and 3 of this section must be filed with the department of commerce by the earlier of six months after the end of the tax year in which the qualified employment positions were created or by the date the tax return is filed for the tax year in which the qualified employment positions were created. To qualify for second year credits, the report and certification prescribed by subsection B, paragraph 2 of this section must be filed with the department of commerce by the earlier of six months after the end of the taxable year or the date the tax return is filed for the tax year in which the second year credits are allowable. To qualify for third year credits, the report and certification prescribed by subsection B, paragraph 2 of this section must be filed with the department of commerce by the earlier of six months after the end of the tax year or the date the tax return is filed for the tax year in which the third year credits are allowable.

1 D. Any information submitted to the department of commerce under
2 subsection B, paragraph 2, subdivisions (e) through (i) of this section is
3 exempt from the provisions of title 39, chapter 1, article 2 and considered
4 to be confidential and is not subject to disclosure except:
5 1. To the extent that the person or organization that provided the
6 information consents to the disclosure.
7 2. To the department of revenue for use in tax administration.
8 E. Real and personal property within an enterprise zone which is owned
9 or used by a small manufacturing business that is certified by the department
10 pursuant to section 41-1525.01 before July 1, 2006 shall be assessed as class
11 six property as provided by section 42-12006.
12 F. Documents filed with the department of commerce, the department of
13 insurance and the department of revenue under subsection B of this section
14 shall contain either a sworn statement or certification, signed by an officer
15 of the company under penalty of perjury, that the information contained is
16 true and correct according to the best belief and knowledge of the person
17 submitting the information after a reasonable investigation of the facts. If
18 the document contains information that is materially false, the taxpayer is
19 ineligible for the tax incentives under subsection A of this section and is
20 subject to recovery of the amount of tax incentives allowed in preceding
21 taxable years based on the false information, plus penalties and interest.
22 G. The department of commerce may make site visits to a taxpayer's
23 facilities if it is necessary to further document or clarify reported
24 information. The taxpayer must freely provide the access.
25 H. The department by rule may prescribe additional reporting
26 requirements for taxpayers who claim tax benefits pursuant to this section.
27 I. For the purposes of this section:
28 1. "Assigned to retail" means working more than twenty-five per cent
29 of an employee's time in one or more retail SALES activities.
30 2. "Retail SALES" means the sale of tangible personal property to an
31 ultimate consumer.
32 3. "Retail SALES activities" means all activities persons operating
33 a retail business normally engage in, including taking orders, filling
34 orders, billing orders, receiving and processing payment and shipping,
35 stocking and delivering tangible personal property to the ultimate consumer,
36 except drop shipments by a company acting on behalf of an unrelated company
37 that has made a sale to a final consumer.
38 4. "Zone location" means a single parcel or contiguous parcels of
39 owned or leased land, the structures and personal property contained on the
40 land or any part of the structures occupied by a taxpayer.
41 Sec. 2. Section 43-222, Arizona Revised Statutes, is amended to read:
42 43-222. Income tax credit review schedule
43 Each year the joint legislative income tax credit review committee
44 shall review the following income tax credits:

~~1. In 2003, sections 43-1074.01, 43-1081, 43-1085, 43-1168, 43-1170, 43-1173 and 43-1178.~~

~~2.~~ 1. In 2004, sections 43-1081.01, 43-1083, 43-1084 and 43-1170.01.

~~3.~~ 2. In 2005, sections 43-1087, 43-1088~~,~~ and 43-1175.

~~4.~~ 3. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02, 43-1090, 43-1176 and 43-1181.

~~5.~~ 4. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165, 43-1166, 43-1167 and 43-1169.

5. IN 2008, SECTIONS 43-1074.01, 43-1081, 43-1168, 43-1170 AND 43-1178.

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

43-1074. Credit for increased employment in enterprise zones; definitions

A. A credit is allowed against the taxes imposed by this title for net increases in qualified employment positions of residents of this state by a business located in an enterprise zone established under title 41, chapter 10, article 2, except employment positions at a zone location where more than ten per cent of the business conducted at the location consists of ~~selling~~ RETAIL SALES OF tangible personal property ~~at retail~~, measured by either the number of employees assigned to retail SALES or the square footage of the facility used for retail ~~transactions~~ SALES ACTIVITIES at the location in the zone. ~~and limited solely to the following retail activity at the location~~ RETAIL SALES AND RETAIL SALES ACTIVITIES DO NOT INCLUDE:

~~1. Products manufactured, fabricated or otherwise produced at the location.~~

~~2.~~ 1. Food and beverage for consumption on the premises solely by employees and occasional guests of employees at the location.

~~3.~~ 2. Promotional products NOT AVAILABLE FOR SALE AND displaying the company logo or trademark.

3. PRODUCTS SOLD TO COMPANY EMPLOYEES.

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

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

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

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

C. To qualify for a credit under this section:

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

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

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

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

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

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

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

(e) The employee must have been employed for at least ninety days during the first taxable 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. A qualified employment position that is filled during the last ninety days of the taxable year is considered to be a new qualified employment position for the next taxable year.

(f) The employee ~~has~~ MUST not HAVE been previously employed by the taxpayer within twelve months before the current date of hire.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was allowed and claimed by the taxpayer on the original first and second year tax returns. FOR THE PURPOSES OF THIS SUBSECTION, THE REQUIREMENT TO CLAIM THE CREDIT ON THE ORIGINAL TAX RETURN DOES NOT APPLY TO QUALIFIED EMPLOYMENT POSITIONS CREATED BEFORE JANUARY 1, 2002 AND WERE CERTIFIED TO THE DEPARTMENT OF COMMERCE.

1 E. The net increase in the number of qualified employment positions
2 is the lesser of the total number of filled qualified employment positions
3 created in the zone during the tax year or the difference between the average
4 number of full-time employees in the zone in the current tax year and the
5 average number of full-time employees during the immediately preceding
6 taxable year. The net increase in the number of qualified employment
7 positions computed under this subsection shall not exceed two hundred
8 qualified employment positions per taxpayer each year.
9 F. A taxpayer who claims a credit under section 43-1077 or 43-1079
10 shall not claim a credit under this section with respect to the same
11 employees.
12 G. If the allowable tax credit exceeds the income taxes otherwise due
13 on the claimant's income, or if there are no state income taxes due on the
14 claimant's income, the amount of the claim not used as an offset against
15 income taxes may be carried forward as a tax credit against subsequent
16 taxable years' income tax liability, not to exceed five taxable years,
17 provided the business remains in an enterprise zone.
18 H. Co-owners of a business, including partners in a partnership and
19 shareholders of an S corporation, as defined in section 1361 of the internal
20 revenue code, may each claim only the pro rata share of the credit allowed
21 under this section based on the ownership interest. The total of the credits
22 allowed all such owners of the business may not exceed the amount that would
23 have been allowed for a sole owner of the business.
24 I. If a person purchases a business in a zone or changes ownership
25 through reorganization, stock purchase or merger, the new taxpayer may claim
26 first year credits only for one or more qualified employment positions that
27 it created and filled with an eligible employee after the purchase or
28 reorganization was complete. If a person purchases a taxpayer that had
29 qualified for first or second year credits or changes ownership through
30 reorganization, stock purchase or merger, the new taxpayer may claim the
31 second or third year credits if it meets other eligibility requirements of
32 this section. Credits for which a taxpayer qualified before the changes
33 described in this subsection are terminated and lost at the time the changes
34 are implemented.
35 J. A failure to timely report and certify to the department of
36 commerce and the department of revenue the information prescribed by section
37 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by
38 section 41-1525, subsection C, disqualifies the taxpayer from the credit
39 under this section. The department of revenue shall require written evidence
40 of the timely report to the department of commerce.
41 K. The termination of an enterprise zone does not affect the credit
42 under this section with respect to:
43 1. Taxpayers who have employees in the second and third years of
44 employment in qualified employment positions under subsections A, B and C of

this section if the business remains in the location that was in the enterprise zone.

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

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

M. For the purposes of this section:

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

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

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

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

Sec. 4. Section 43-1161, Arizona Revised Statutes, is amended to read:

43-1161. Credit for increased employment in enterprise zones; definitions

A. A credit is allowed against the taxes imposed by this title for net increases in qualified employment positions of residents of this state by a business located in an enterprise zone established under title 41, chapter 10, article 2, except employment positions at a zone location where more than ten per cent of the business conducted at the location consists of ~~selling~~ RETAIL SALES OF tangible personal property ~~at retail~~, measured by either the number of employees assigned to retail SALES or the square footage of the facility used for retail ~~transactions~~ SALES ACTIVITIES at the location in the zone. ~~and limited solely to the following retail activity at the location~~ RETAIL SALES AND RETAIL SALES ACTIVITIES DO NOT INCLUDE:

~~1. Products manufactured, fabricated or otherwise produced at the location.~~

~~2.~~ 1. Food and beverage for consumption on the premises solely by employees and occasional guests of employees at the location.

~~3.~~ 2. Promotional products NOT AVAILABLE FOR SALE AND displaying the company logo or trademark.

3. PRODUCTS SOLD TO COMPANY EMPLOYEES.

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

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

1 2. One-third of the taxable wages paid to an employee in a qualified
2 employment position, not to exceed one thousand dollars per qualified
3 employment position, in the second year of continuous employment.
4 3. One-half of the taxable wages paid to an employee in a qualified
5 employment position, not to exceed one thousand five hundred dollars per
6 qualified employment position, in the third year of continuous employment.
7 C. To qualify for a credit under this section:
8 1. All of the employees with respect to whom a credit is claimed must
9 reside in this state.
10 2. Thirty-five per cent of the employees with respect to whom a credit
11 is claimed for the first year of employment must reside on the date of hire
12 in an enterprise zone that is located in the same county in which the
13 business is located. If an employee for whom a credit was allowed in the
14 first year of employment leaves employment during the second or third year,
15 the taxpayer may substitute another employee who meets the requirements of
16 paragraph 3 of this subsection and who was hired during the same year as the
17 original employee. If the original employee was counted toward the residency
18 requirement under this paragraph, the substitute employee must also have
19 resided in a zone at the time the substitute was hired.
20 3. A qualified employment position must meet all of the following
21 requirements:
22 (a) The position must be a minimum of one thousand seven hundred fifty
23 hours per year of full-time and permanent employment.
24 (b) The job duties must be performed primarily at the zone locations
25 of the business. If an eligible employee in a qualified employment position
26 is transferred or assigned to work in the taxpayer's workplace at a different
27 location that is also located in an enterprise zone and qualifies as a zone
28 location, it may be considered to be continuous employment if it continues
29 to meet all qualified employment position requirements.
30 (c) The employment must include health insurance coverage for the
31 employee for which the employer pays at least fifty per cent of the premium
32 or membership cost. If the taxpayer is self-insured, the taxpayer must pay
33 at least fifty per cent of a predetermined fixed cost per employee for an
34 insurance program that is payable whether or not the employee has filed
35 claims.
36 (d) The employer must pay compensation at least equal to the wage
37 offer by county as computed annually by the department of economic security
38 research administration division.
39 (e) The employee must have been employed for at least ninety days
40 during the first taxable year. An employee who is hired during the last
41 ninety days of the taxable year shall be considered a new employee during the
42 next taxable year. A qualified employment position that is filled during the
43 last ninety days of the taxable year is considered to be a new qualified
44 employment position for the next taxable year.

(f) The employee ~~has~~ MUST not HAVE been previously employed by the taxpayer within twelve months before the current date of hire.

D. A credit is allowed for employment in the second and third year only for qualified employment positions for which a credit was allowed and claimed by the taxpayer on the original first and second year tax returns. FOR THE PURPOSES OF THIS SUBSECTION, THE REQUIREMENT TO CLAIM THE CREDIT ON THE ORIGINAL TAX RETURN DOES NOT APPLY TO QUALIFIED EMPLOYMENT POSITIONS CREATED BEFORE JANUARY 1, 2002 AND WERE CERTIFIED TO THE DEPARTMENT OF COMMERCE.

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

F. A taxpayer who claims a credit under section 43-1165 or 43-1167 may not claim a credit under this section with respect to the same employees.

G. If the allowable tax credit 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 may be carried forward as a tax credit against subsequent years' income tax liability for the period, not to exceed five taxable years, provided the business remains in an enterprise zone.

H. Co-owners of a business, including partners in a partnership, 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 such owners of the business may not exceed the amount that would have been allowed for a sole owner of the business.

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

J. A failure to timely report and certify to the department of commerce and the department of revenue the information prescribed by section 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by section 41-1525, subsection C, disqualifies the taxpayer from the credit

1 under this section. The department of revenue shall require written evidence
2 of the timely report to the department of commerce.
3 K. The termination of an enterprise zone does not affect the credit
4 under this section with respect to:
5 1. Taxpayers that have employees in the second and third years of
6 employment in qualified employment positions under subsections A, B and C of
7 this section if the business remains in the location that was in the
8 enterprise zone.
9 2. Amounts carried forward into subsequent taxable years under
10 subsection G of this section.
11 L. The department may adopt rules necessary for the administration of
12 this section.
13 M. For the purposes of this section:
14 1. "Assigned to retail" means working more than twenty-five per cent
15 of an employee's time in one or more retail SALES activities.
16 2. "Retail SALES" means the sale of tangible personal property to an
17 ultimate consumer.
18 3. "Retail SALES activities" means all activities persons operating
19 a retail business normally engage in, including taking orders, filling
20 orders, billing orders, receiving and processing payment and shipping,
21 stocking and delivering tangible personal property to the ultimate consumer,
22 except drop shipments by a company acting on behalf of an unrelated company
23 that has made a sale to a final consumer.
24 4. "Zone location" means a single parcel or contiguous parcels of
25 owned or leased land, the structures and personal property contained on the
26 land or any part of the structures occupied by a taxpayer.
27 Sec. 5. Repeal
28 Sections 43-1085 and 43-1173, Arizona Revised Statutes, are repealed.
29 Sec. 6. Section 49-1052, Arizona Revised Statutes, is amended to read:
30 49-1052. Coverage of corrective action costs
31 A. The department shall provide from the assurance account coverage
32 in the amounts authorized by subsection I of this section and sections
33 49-1017, 49-1022 and 49-1054 of the costs incurred after September 15, 1989
34 of the following:
35 1. Sampling, analysis and reporting initiated pursuant to section
36 49-1004 that confirms the presence of a release that requires corrective
37 action pursuant to section 49-1005.
38 2. Sampling, analysis and reporting initiated pursuant to section
39 49-1008 that confirms the presence of a release that requires corrective
40 action pursuant to section 49-1005.
41 3. Permanent closure pursuant to section 49-1008 before July 1, 1999,
42 if the owner or operator satisfies both of the following requirements:
43 (a) A release associated with the tank being closed was reported to
44 the department.

1 (b) The closure of the tank met all applicable closure requirements
2 of section 49-1008 and rules adopted pursuant to that section.
3 4. Permanent closure of a tank pursuant to section 49-1008 on or after
4 July 1, 1999, if the owner or operator satisfies all of the following
5 requirements:
6 (a) The closure of the tank meets all applicable closure requirements
7 of section 49-1008 and the rules adopted pursuant to that section.
8 (b) A release to native soils was confirmed and reported to the
9 department before closure activities were initiated.
10 (c) The source of the release is the tank that is being closed.
11 (d) The tank that is being closed met the temporary closure
12 requirements or the new or upgraded tank requirements in rules adopted
13 pursuant to section 49-1014 at the time of the release.
14 (e) The tank cannot be repaired under the rules adopted pursuant to
15 section 49-1014.
16 5. Corrective actions initiated pursuant to section 49-1005.
17 6. Permanent closure pursuant to section 49-1008, for persons
18 described in subsection I of this section, if all of the following are met:
19 (a) The underground storage tank being closed is the source of a
20 release to native soil that requires corrective action.
21 (b) Permanent closure of the underground storage tank met all of the
22 applicable closure requirements of section 49-1008 and the rules adopted
23 pursuant to that section.
24 (c) A release to native soil associated with the underground storage
25 tank being closed was reported to the department.
26 (d) The person described in subsection I of this section meets the
27 requirements of section 49-1016, subsection C.
28 7. Costs incurred for professional fees directly related to the
29 preparation of an assurance account application. The department shall credit
30 these fees toward the applicant's copayment obligation.
31 B. The department may provide the coverage required by this section
32 either by paying the owner, the operator or a designated representative of
33 the owner or operator or any combination of these persons or a political
34 subdivision covered by subsection H of this section or by making direct
35 payments for eligible actions on behalf of the owner, operator or political
36 subdivision. If the department determines that an application for direct
37 payment or reimbursement is incomplete, the department within forty-five days
38 of the application shall notify the owner or operator of the missing
39 information as specifically as possible and shall permit the owner or
40 operator to provide the additional information within thirty days. On the
41 request of an applicant, the department shall grant an additional sixty days
42 to submit the missing information. The grant of additional time tolls the
43 period for making an interim determination on matters relating to direct
44 payment or reimbursement pursuant to section 49-1091.

C. An owner, an operator, a designated representative of an owner or operator or a political subdivision covered by subsection H of this section may apply to the department for coverage of the eligible costs pursuant to this article and rules adopted pursuant to this article. Any employee of the owner or operator may submit an application to the department on behalf of the owner or operator.

D. The department shall not pay for eligible costs unless the department determines that the eligible activities have met, or when completed will meet, the applicable requirements of section 49-1004 or 49-1005. The department may require by rule that persons who perform payable eligible activities meet specified standards of qualification and be approved by the department.

E. The department shall not provide any coverage described in this article to an owner or operator of underground storage tanks described in section 49-1031, subsection C. The department shall not provide any coverage described in this article with respect to the substances described in section 49-1031, subsection C, unless the tax imposed by article 2 of this chapter applies to such substances.

F. The department shall not provide any coverage described in this article to an owner or operator or any person or entity employed or retained by an owner or operator, if any of the following applies:

1. The owner or operator is delinquent in the payment of any fee, penalty or interest thereon imposed under this chapter and fails to cure that delinquency within thirty days after receiving notice from the department. If the owner or operator cures the delinquency more than thirty days after receiving notice from the department, the owner or operator may submit a new application for coverage. The new application shall be prioritized for review and payment in the ordinary course of ranking. If the owner or operator cures the delinquency within thirty days after receiving notice from the department, the owner or operator retains the owner's or operator's place in the priority system. The department shall provide notice of the delinquency within thirty days after receiving an application for payment from the assurance account or within sixty days after a work plan is submitted for preapproval. If the department does not provide notice pursuant to this paragraph, the department shall not withhold payment based on that delinquency nor shall the department use that delinquency as a basis for the department to delay preapproval of corrective actions and related costs. An owner or operator remains eligible for coverage for other underground storage tank sites if no fees, penalties or interest is delinquent for those sites.

2. The owner or operator is delinquent in filing any excise tax return required by section 49-1032, subsection B and fails to cure that delinquency within thirty days after receiving notice of the delinquency from the department. If the owner or operator cures the delinquency more than thirty days after receiving notice from the department, the owner or operator may

1 submit a new application for coverage. The new application shall be
2 prioritized for review and payment in the ordinary course of ranking. If the
3 owner or operator cures the delinquency within thirty days, after receiving
4 notice from the department, the owner or operator retains the owner's or
5 operator's place in the priority system. The department shall provide notice
6 of the delinquency within thirty days after receiving an application for
7 payment from the assurance account or within sixty days after a work plan is
8 submitted for preapproval. If the department does not provide notice
9 pursuant to this paragraph, the department shall not withhold payment based
10 on that delinquency. The department shall not use a delinquency pursuant to
11 this paragraph as a basis for the department to delay preapproval or
12 corrective actions and related costs.
13 3. The underground storage tanks included in the application for
14 coverage are located at a site that is the subject of an enforcement
15 proceeding under section 49-1013. The owner or operator remains eligible for
16 coverage for other sites where underground storage tanks are located if the
17 owner or operator is not the subject of an enforcement proceeding regarding
18 those sites. Payment from the assurance account will be withheld during the
19 time that a final compliance order is in effect only for those costs directly
20 associated with those activities that are the subject of the compliance
21 order. Any payment costs that are incurred prior to a compliance order
22 becoming final and that are not directly associated with the subject of that
23 compliance order shall be eligible for payment pursuant to this
24 section. Processing of payment from the assurance account shall not be
25 delayed until a compliance order becomes final. An owner or operator shall
26 not be considered to be the subject of an enforcement proceeding for purposes
27 of eligibility for assurance account payments if any of the following
28 applies:
29 (a) The department has filed an action in superior court unless the
30 court determines in its discretion on the merits of the action that
31 withholding payment is an appropriate sanction. Processing of payment shall
32 be postponed until the court determines the owner's or operator's
33 eligibility.
34 (b) The department takes corrective actions pursuant to section
35 49-1017, subsection A, paragraphs 1 and 2, without the consent of the owner
36 or operator.
37 (c) An owner or operator formally consents in writing to an
38 administrative order. If the department determines that the owner or
39 operator is in violation of the consent order, the owner or operator shall
40 not be considered to be subject to an enforcement proceeding and processing
41 of payment from the assurance account shall not be delayed until a final
42 administrative decision is rendered finding that the owner or operator is in
43 violation of the consent order. Payment from the assurance account shall be
44 withheld only for those costs determined in the final administrative decision
45 to be incurred for those activities that are the direct subject of the

1 determined violation of the consent order. Any other payment costs that are
2 incurred prior to a final administrative decision finding a violation of the
3 consent order or payment costs that are not the direct subject of the consent
4 order violation shall be eligible for payment pursuant to this section. For
5 compliance orders and violated consent orders that become final on or before
6 November 1, 2000, on satisfaction of a final compliance order or a final
7 administrative decision on a violated consent order, an owner or operator
8 regains eligibility of coverage for costs incurred for activities that are
9 the subject of the final compliance order or final violated consent order.
10 For compliance orders and violated consent orders that become final after
11 November 1, 2000, an owner or operator regains coverage for costs incurred
12 for activities that are the subject of the final compliance order or final
13 violated consent order, except that the director may withhold coverage of up
14 to twenty-five per cent of the eligible costs incurred for activities that
15 are performed to cure the violation and that gave rise to the final
16 compliance order or final violated consent order if the owner or operator has
17 not demonstrated good faith attempts to meet the requirements of the final
18 compliance order or to correct the violation of the consent order. Any
19 decision by the director to withhold coverage under this subdivision is an
20 appealable agency action.
21 4. An individual, an owner or operator or any entity seeking coverage
22 is convicted of fraud relating to performance of eligible activities or to
23 any claim made for payment from the assurance account. This paragraph
24 applies only to the individual, the owner or operator or the entity that is
25 actually convicted of fraud relating to a corrective action or to a claim
26 made for payment.
27 5. The owner or operator has failed to comply with the financial
28 responsibility requirements of 40 Code of Federal Regulations part 280,
29 subpart H with respect to the underground storage tanks included in the
30 application for coverage and all of the following conditions are met:
31 (a) On or after July 1, 1996, the person seeking coverage is an owner
32 or operator of the tank.
33 (b) As of July 1, 1996, there are no preexisting conditions precluding
34 the ability to obtain financial responsibility which would have covered the
35 release.
36 (c) The release is reported on or after July 1, 1996.
37 (d) The owner or operator fails to provide information to refute both
38 of the following conditions:
39 (i) The tank was not pumped before July 1, 1996 for the purposes of
40 removing free product.
41 (ii) Regulated substances were placed in or dispensed from the tank
42 on or after July 1, 1996.
43 The owner or operator remains eligible for coverage for other sites where the
44 owner or operator has complied with the financial responsibility requirements

of this paragraph. The conditions described in subdivision (d) of this paragraph shall not apply to releases reported after January 1, 2000.

G. The department shall establish criteria for determining priorities among the applications for coverage under this article. The criteria shall include:

1. The need for financial assistance. The financial need evaluation shall include the owner's or operator's corrective action liabilities at all of the owner's or operator's underground storage tank sites in the state.

2. The risk to human health and the environment.

3. Whether the coverage is provided as a direct payment to a person performing an eligible activity.

4. The extent to which a delay in providing coverage will affect an eligible activity in progress.

5. The date on which an application for coverage is made.

6. The date on which an eligible activity for which coverage is sought is to be or was taken.

7. Whether the payment has been previously deferred because of insufficient monies in the assurance account and, if deferred, the length of such deferral.

H. The department may provide the coverage described in this article for eligible activity costs incurred by a political subdivision with respect to a release from an underground storage tank if the underground storage tank or the property where the underground storage tank is located comes into the possession or control of the political subdivision under either title 12, chapter 8, article 2 or 3.

I. The department may provide the coverage described in this article for eligible activity costs with respect to a release from an underground storage tank incurred by a person who currently owns the property or a person with principal control of the property or the underground storage tank and who undertakes to meet the requirements of section 49-1005, but who is not an owner or operator. A person who undertakes to meet the requirements and who is not an owner or an operator is eligible for one hundred per cent coverage. ~~By December 31 of each year, the department of environmental quality shall forward a list of the parties who received payment pursuant to this subsection during the previous calendar year to the department of revenue for purposes of determining eligibility for the income tax credit provided in sections 43-1085 and 43-1173. By December 31 of each year, the department of environmental quality shall also provide the department of revenue verification of the corrective actions taken by each person during the previous calendar year pursuant to this subsection.~~

J. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purpose of assisting the department in reviewing work plans, site characterization reports, corrective action plans, monitoring reports and other information to determine whether corrective actions meet the criteria and requirements

of this chapter and the rules adopted by the director. If the department contracts with a consultant pursuant to this section, an owner or operator may request that the department expedite the review or inspection process by requesting that the department use the services of the consultant and by agreeing to pay to the department the costs of the consultant's services. The department shall not use a private consultant if the fee charged for that service would be more than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant to the department pursuant to this section.

K. Claims for coverage that are not paid within one hundred eighty days after receipt by the department of a complete and correct claim accrue interest at the rate of eight per cent per year. Interest shall not accrue on any claim that is unpaid as a result of insufficient monies in the area account for that claim.

L. Requests by the department for additional information from claimants shall be reasonably related to the determination of the validity of the claim as prescribed by this article.

M. Except for claims for appeals costs authorized pursuant to section 49-1091.01, claims for coverage, or a work plan for preapproval, at a site shall be submitted to the department no more than one year after the claimant receives a site closure letter sent by the department by certified mail with notice that the claimant has one year to submit a claim for that site. If the claim is submitted in a timely manner, the claimant may correct or supplement the claim within a reasonable time as specified by the department without loss of coverage. If a work plan is submitted in a timely manner, the claimant, at any time thereafter, may correct, supplement or resubmit the work plan. Failure to submit a timely claim or work plan shall result in denial of the claim. Any monies encumbered or set aside regarding the claim shall be returned to the assurance account, except for those monies encumbered or set aside for the purpose of well abandonment or site restoration. The time limit prescribed by this subsection does not apply to closed sites that are subsequently reopened for the performance of additional corrective actions or at which corrective actions are proceeding pursuant to a work plan for preapproval submitted before the site was closed.

N. The department shall provide coverage for the costs of corrective actions relating to soil remediation that are consistent with remediation standards developed pursuant to chapter 1, article 4 of this title. Payment shall only be made for corrective action costs to remediate to levels approved by the department pursuant to rule. The department shall not enforce this subsection until final rules are adopted.

O. If a person intends to seek payment from the assurance account, the corrective action selected in a corrective action plan shall be the most cost-effective alternative that meets the requirements of section 49-1005. Monies from state appropriations shall not be used for administrative costs.

1 If the most inexpensive corrective action alternative is not selected, the
2 person shall demonstrate to the department the criteria supporting the
3 corrective action selected in the corrective action plan. Nothing in this
4 subsection shall affect the department's review of corrective action costs
5 pursuant to article 3 of this chapter.
6 P. The coverage provided by this section is available only to the
7 extent of the monies available in the assurance account. If there are
8 insufficient monies available in the assurance account to pay all eligible
9 costs which the department has determined should be paid, the department
10 shall defer such payment until sufficient monies are available to pay such
11 eligible costs. The department shall not provide any coverage and the
12 assurance account is not liable for compensating third parties for bodily
13 injury or property damage caused by releases from underground storage tanks.
14 Sec. 7. Retroactivity
15 Sections 41-1525, 43-1074 and 43-1161, Arizona Revised Statutes, as
16 amended by this act, apply retroactively to taxable years beginning from and
17 after December 31, 2003.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.

STATE OF ARIZONA SENATE

Passed the House February 3, 2004

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate May 24, 2004,

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Christine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2045

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 25, 2004,

by the following vote: 53 Ayes,

4 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25th day of May, 2004,

at 4:20 o'clock P. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 1 day of

June, 2004,

at 3 45 o'clock P. M.

Governor of Arizona

H.B. 2045

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of June, 2004,

at 4:36 o'clock P. M.

Janice K. Brewer
Secretary of State