STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

March 13, 2020

The Honorable Katie Hobbs
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Hobbs:

I am transmitting to you the following bill from the Fifty-fourth Legislature, 2nd Regular Session, which I signed on March 13th, 2020:

H.B. 2771 tax credits; qualified facilities; extension (Toma)

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

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FILED
KATIE HOBBS
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

CHAPTER 7
HOUSE BILL 2771

AN ACT

AMENDING SECTIONS 41-1512, 41-1520, 43-1083.03, 43-1164.04, 43-1164.05 AND 43-1168, ARIZONA REVISED STATUTES; AMENDING LAWS 2016, CHAPTER 372, SECTION 68; RELATING TO TAX CREDITS.

(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 ~~on or after July 1, 2012~~ 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 ~~e-mail~~ 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 ~~at~~ 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 ~~the payment of~~ 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 ~~at~~ 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. ~~Two hundred thousand dollars~~ $200,000 for each net new full-time employment position projected by the applicant ~~at~~ 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, ~~2022~~ 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 ~~seventy million dollars~~ $70,000,000 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 ~~thirty million dollars~~ $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 ~~two hundred fifty thousand dollars~~ $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, ~~it~~ 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, ~~it~~ 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 sold out of state.

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 ~~two hundred fifty thousand dollars~~ $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 41-1520, Arizona Revised Statutes, is amended to read:

41-1520. International operations center; utility relief; certification; revocation; definitions

A. Utility relief is allowed for the owner or operator of an international operations center that is certified pursuant to this section.

B. To qualify for the utility relief, the owner or operator must submit to the authority an application in a form prescribed by the authority that includes all of the following:

1. The owner's or operator's name, address and telephone number.

2. The address of the site where the facility is or will be located, including, if applicable, information sufficient to identify the specific portion or portions of the facility comprising the international operations center.

C. Within sixty days after receiving a complete and correct application, the authority shall review the application and either issue a written certification that the international operations center qualifies for the utility relief or provide written reasons for its denial. A failure to approve or deny the application within sixty days after the date of submittal constitutes certification of the international operations center, and the authority shall issue written certification to the owner or operator within fourteen days. The authority shall send a copy of the certification to the department of revenue.

D. The owner or operator of the international operations center must achieve both of the following investment requirements after taking into account the combined investments made by the owner or operator:

1. A minimum annual investment of $100,000,000 in new capital assets, including costs of land, buildings and international operations center equipment in each of ten consecutive taxable years of the owner or operator. Investments greater than $100,000,000 in any taxable year may be carried forward as a credit toward the investment requirement in future years.

2. On or before the tenth anniversary of certification, a minimum investment of at least $1,250,000,000 in new capital assets, including costs of land, buildings and international operations center equipment.

E. Within thirty days after the end of each taxable year following certification, and within thirty days after the tenth anniversary of certification, the owner or operator shall furnish the authority written information demonstrating whether the certified international operations center has or has not satisfied the investment requirements prescribed in subsection D of this section. Until the investment requirements prescribed in subsection D of this section are met, the owner or operator shall keep detailed records of all capital investment in the international operations center, including costs of land, buildings and international operations center equipment, and all utility relief directly received by the owner or operator.

F. If the authority determines that the requirements of this section have not been satisfied, the authority may revoke the certification of the international operations center and notify the department of revenue in writing. The owner or operator may appeal the revocation. The authority may give special consideration or allow a temporary exception if there is extraordinary hardship due to factors beyond the owner's or operator's control. If certification is revoked, the department of revenue shall order the owner or operator to forfeit further entitlement to utility relief. If the owner or operator fails to make a minimum capital investment of $100,000,000 in a taxable year, taking into account any excess investment amounts carried forward from previous years, the owner or operator may avoid revocation of its certification by paying to the department of revenue within sixty days after the end of the taxable year the amount of the utility relief provided pursuant to this section in that year.

G. The authority and the department of revenue shall prescribe forms and procedures as necessary for the purposes of this section.

H. Proprietary business information contained in the application form described in subsection B of this section and the written notice described in subsection F of this section are confidential and may not be disclosed to the public, except that the information shall be transmitted to the department of revenue. The authority or the department of revenue may disclose the name of an international operations center that has been certified pursuant to this section.

I. Except as provided in subsection F of this section, on certification, the international operations center remains certified unless ownership of the international operations center is sold, conveyed, transferred or otherwise directly or indirectly disposed of to another entity in which the original owner holds less than a controlling interest. For the purposes of this subsection, "controlling interest" means at least eighty percent of the voting shares of a corporation or of the interests in a noncorporate entity.

J. An owner or operator may be composed of a single entity or affiliated entities.

K. For the purposes of this section:

1. "International operations center" means a facility OR CONNECTED FACILITIES UNDER THE SAME OWNERSHIP that ~~is~~ ARE subject to the investment thresholds under subsection D of this section and that ~~self-consumes~~ SELF-CONSUME renewable energy from a qualified facility pursuant to section 43-1164.05, subsection ~~C~~ B.

2. "Utility relief" means the mitigation of the tax burden on the retail purchaser of electricity or natural gas through the application of section 42-5063, subsection C, paragraph 7, section 42-5159, subsection G, paragraph 2 and section 42-6012, paragraph 2.

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, ~~2022~~ 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 ~~performed at~~ 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) ~~Two hundred thousand dollars~~ $200,000 for each net new full-time employment position ~~at~~ 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, ~~2023~~ 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 ~~at~~ 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 ~~from~~ 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 ~~four thousand dollars~~ $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. <u>Credit for qualified facilities</u>

A. For taxable years beginning from and after December 31, 2012 through December 31, ~~2022~~ 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 ~~performed at~~ 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) ~~Two hundred thousand dollars~~ $200,000 for each net new full-time employment position ~~at~~ 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, ~~2023~~ 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 ~~at~~ 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 ~~who~~ 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 ~~from~~ 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 ~~four thousand dollars~~ $4,000 for each full-time employment position reported pursuant to paragraph 1 of this subsection.

Sec. 5. Section 43-1164.05, Arizona Revised Statutes, is amended to read:

43-1164.05. Credit for renewable energy investment and production for self-consumption by international operations centers; definitions

A. A credit is allowed against the taxes imposed by this title for investment in new renewable energy facilities that produce energy for self-consumption using renewable energy resources if the power will be used primarily for an international operations center.

B. The taxpayer is eligible for the credit if all of the following apply:

1. The taxpayer invests at least $100,000,000 in one or more new renewable energy facilities in this state that produce energy for self-consumption using renewable energy resources. The minimum investment must be completed within a three-year period beginning on the date the initial application is received or by December 31, ~~2018~~ 2030, whichever is earlier.

2. A portion of the energy produced at each renewable energy facility is used for self-consumption in this state. By the fifth year a renewable energy facility is in operation, at least fifty-one percent of the energy produced must be used for self-consumption in this state. Self-consumption includes the power used by related entities if the related entities are directly or indirectly under the same ownership interests that collectively own more than eighty percent. Power that a renewable energy facility transfers to a utility qualifies as self-consumption if the utility is the same utility that provides power to the owner's international operations center in this state.

3. The power that is used for self-consumption under paragraph 2 of this subsection is used for an international operations center in this state. A lessor of an international operations center facility that uses power for self-consumption under paragraph 2 of this subsection satisfies the requirements of this paragraph if the lessee is an international operations center and the power is transferred as part of the lease to the lessee.

C. Subject to subsection F of this section, the credit authorized by this section is $5,000,000 per year for five years for each renewable energy facility. The maximum credit allowed per taxpayer per year is $5,000,000. The taxpayer, including all affiliates of the taxpayer, may not cumulate tax credits under this section over different taxable

years exceeding, in the aggregate, $25,000,000. The initial credit for each facility is claimed in the year that the facility becomes operational. A credit, other than carryovers allowed under subsection M of this section, may not be claimed for any taxable year beginning after December 31, 2025. AN INTERNATIONAL OPERATIONS CENTER THAT IS INITIALLY CERTIFIED PURSUANT TO SECTION 41-1520, SUBSECTION C AFTER DECEMBER 31, 2018 MAY NOT CLAIM THE TAX CREDIT AUTHORIZED BY THIS SECTION.

D. To qualify as a separate renewable energy facility for the purposes of this section, a facility must be located at least one mile from any other renewable energy facility for which the taxpayer is claiming a credit under this section.

E. To be eligible for the credit under this section, the taxpayer must apply to the department for certification of the credit on a form prescribed by the department. The application shall include:

1. The name, address and social security number or federal employer identification number of the applicant.

2. An estimate of the total investment the taxpayer will make, over a three-year period beginning on the date the application is received, in new renewable energy facilities in this state that produce energy for self-consumption using renewable energy resources.

3. The expected location of each of the taxpayer's facilities that comprise the total investment in paragraph 2 of this subsection and the earliest date that each facility is expected to be operational.

4. A statement that the portion of the power generated by each facility, as required by subsection B, paragraph 2 of this section, shall be for self-consumption and shall be used for international operations center use.

5. Any additional information that the department requires.

F. The department shall review each application under subsection E of this section and preapprove the taxpayer for a specified amount of credit that is authorized. Credits are allowed under this section on a first-come, first-served basis. The department may not authorize tax credits under this section that exceed in the aggregate a total of $10,000,000 for any calendar year. The portion of each year's limit that is reserved for each taxpayer must be based on the year that each credit is expected to be claimed using the dates provided in subsection E, paragraph 3 of this section. If the year a facility is completed is different from the estimated completion date provided in subsection E, paragraph 3 of this section, the taxpayer must amend the application with the new dates. If an application is received that, if authorized, would require the department to exceed the $10,000,000 limit, the department shall grant the applicant only the remaining credit amount that would not exceed the $10,000,000 limit. After the department authorizes $10,000,000 in tax credits, the department shall deny any subsequent applications that are received for that calendar year. The department may not authorize any

additional tax credits that exceed the $10,000,000 limit even if the amounts that have been certified to any taxpayer are not claimed or a taxpayer otherwise fails to meet the requirements to claim the additional credit.

G. If a taxpayer fails to start construction within six months after submitting the application under subsection E of this section, the preapproval issued under subsection F of this section is void and all monies reserved from the limits specified in subsection F of this section revert back to the limit for the year for which they were reserved.

H. Each year after initial preapproval, on or before the anniversary date of the application specified in subsection E of this section, the taxpayer must submit to the department:

1. Documentation of the taxpayer's progress toward the investment required by subsection B, paragraph 1 of this section. This documentation is not required after the department receives a report stating that the required investment threshold has been reached.

2. Documentation for each facility that demonstrates that the required portion of the power generated by each renewable energy facility is for self-consumption as required by subsection B, paragraph 2 of this section.

3. If applicable, certification from the Arizona commerce authority pursuant to section 41-1520.

I. The taxpayer must submit a request for final certification to the department within thirty days after each of the renewable energy facilities for which an authorization was given under subsection F of this section becomes operational. Within thirty days after receiving a completed request under this subsection, the department shall review the request and either issue a final certification of the credit to the taxpayer or issue a denial of the credit if it is determined that the requirements of this section have not been met. Every final certification issued under this subsection must include a facility code issued by the department that is unique to each facility. To show that the facility has been certified, the taxpayer shall include with the tax return the facility code for each facility for which a credit is claimed. If the taxpayer is the owner or operator of an international operations center, the taxpayer must submit the request for final certification for each of the renewable energy facilities for which capital investment will be claimed towards the required investment threshold and must submit additional evidence to the department within sixty days after the end of the fifth year of operation of each facility that the requirements of subsection B, paragraph 2 of this section have been met.

J. If the taxpayer fails to make the required investment in renewable energy facilities within the time period required by subsection B, paragraph 1 of this section or if the certification of an international operations center has been revoked under section 41-1520 due to a failure

1 to make a $1,250,000,000 investment in the center within ten years after
2 certification or if the taxpayer fails to receive final certification of
3 the credit under subsection I of this section, the taxpayer is not
4 eligible and must cease claiming any further credits under this section
5 and shall reimburse the amount of all credits previously received under
6 this section. The reimbursement must be made on the taxpayer's income tax
7 return for the taxable year in which it is first known that the required
8 investment would not be made within the required time or the taxable year
9 in which the certification was revoked. The department may give special
10 consideration or allow a temporary exemption from reimbursement if there
11 is extraordinary hardship due to factors beyond the taxpayer's control.
12 If the reimbursement is due to revocation of the certification of an
13 international operations center due to a failure to invest $1,250,000,000
14 in the center within ten years after certification, the credits shall be
15 reimbursed in inverse proportion to the total capital investment made in
16 the international operations center divided by $1,250,000,000. The
17 department may require reimbursement before the tenth anniversary of
18 certification of an international operations center if the facility has
19 been closed or relocated or the taxpayer has otherwise demonstrated that
20 the $1,250,000,000 investment will not be timely made.
21 K. If a particular facility ceases to meet the requirements of this
22 section or if the facility is sold, the taxpayer may not claim any future
23 credits related to that facility.
24 L. Co-owners of a business, including corporate partners in a
25 partnership and corporate members of a limited liability company treated
26 as a partnership, may each claim the pro rata share of the credit allowed
27 under this section based on ownership interest. Only co-owners that are
28 corporations may claim a share of the credit allowed under this section.
29 The total of the credits allowed all the owners of the business may not
30 exceed the amount that would have been allowed for a sole owner of the
31 business.
32 M. If the allowable tax credit for a taxpayer exceeds the taxes
33 otherwise due under this title on the claimant's income, or if there are
34 no taxes due under this title, the amount of the claim not used to offset
35 taxes under this title may be carried forward for not more than five
36 consecutive taxable years as a credit against subsequent years' income tax
37 liability.
38 N. A taxpayer may not claim a credit under this section and section
39 43-1164.03 regarding the same facilities.
40 O. The department shall adopt rules and publish and prescribe forms
41 and procedures as necessary to effectuate the purposes of this section.
42 P. For the purposes of this section:
43 1. "Biomass" means organic material that is available on a
44 renewable or recurring basis, including:

(a) Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement.

(b) Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws and stover, aquatic plants and agricultural processed coproducts and waste products, including fats, oils, greases, whey and lactose.

(c) Animal waste, including manure and slaughterhouse and other processing waste.

(d) Solid woody waste materials, including landscape or right-of-way tree trimmings, rangeland maintenance residues, waste pallets, crates and manufacturing, construction and demolition wood wastes but excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic.

(e) Crops and trees planted for the purpose of being used to produce energy.

(f) Landfill gas, wastewater treatment gas and biosolids, including organic waste by-products generated during the wastewater treatment process.

2. "International operations center" means a facility that is certified by the Arizona commerce authority pursuant to section 41-1520.

3. "Renewable energy facility" means a facility in which the taxpayer invested at least $30,000,000, that has at least twenty megawatts generating capacity or a minimum typical annual generation of forty thousand megawatt hours, that is located on land in this state owned or leased by the taxpayer and that produces electricity using a renewable energy resource.

4. "Renewable energy resource" means a resource that generates electricity through the use of only the following energy sources:

(a) Solar light.

(b) Solar heat.

(c) Wind.

(d) Biomass, including fuel cells supplied directly or indirectly with biomass generated fuels.

Sec. 6. Section 43-1168, Arizona Revised Statutes, is amended to read:

43-1168. <u>Credit for increased research activity</u>

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to section 41 of the internal revenue code, except that:

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

(a) Add:

(i) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(ii) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

(b) If the sum computed under subdivision (a) of this paragraph is ~~two million five hundred thousand dollars~~ $2,500,000 or less:

(i) For taxable years beginning before December 31, ~~2021~~ 2030, the credit is equal to twenty-four percent of that amount.

(ii) For taxable years beginning from and after December 31, ~~2021~~ 2030, the credit is equal to twenty percent of that amount.

(c) If the sum computed under subdivision (a) of this paragraph is over ~~two million five hundred thousand dollars~~ $2,500,000:

(i) For taxable years beginning before December 31, ~~2021~~ 2030, the credit is equal to ~~six hundred thousand dollars~~ $600,000 plus fifteen percent of any amount exceeding ~~two million five hundred thousand dollars~~ $2,500,000.

(ii) For taxable years beginning from and after December 31, ~~2021~~ 2030, the credit is equal to ~~five hundred thousand dollars~~ $500,000 plus eleven percent of any amount exceeding ~~two million five hundred thousand dollars~~ $2,500,000.

(d) For taxable years beginning from and after December 31, 2011, an additional credit amount is allowed if the taxpayer made basic research payments during the taxable year to a university under the jurisdiction of the Arizona board of regents. The additional credit amount is equal to ten percent of the excess, if any, of the basic research payments over the qualified organization base period amount for the taxable year. The department shall not allow credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) that exceed, in the aggregate, a combined total of ~~ten million dollars~~ $10,000,000 in any calendar year. Subject to that limit, on application by the taxpayer, the department shall certify credit amounts under this subdivision and section 43-1074.01, subsection A, paragraph 1, subdivision (c) based on priority placement established by the date that the taxpayer filed the application. For taxable years beginning from and after December 31, 2014, any basic research payments used to determine the additional credit under this subdivision must first receive certification from the Arizona commerce authority pursuant to section 41-1507.01. The additional credit amount under this subdivision shall not exceed the amount allowed based on actual basic research payments or the department's certification, whichever is less. If an application, if certified in full, would exceed the ~~ten million dollar~~ $10,000,000 limit, the department shall certify only an amount within that limit. After the limit is attained, the department shall deny any subsequent applications regardless of whether other certified amounts are not actually claimed as

a credit or other taxpayers fail to qualify to actually claim certified amounts. Notwithstanding subsections B and D of this section, any amount of the additional credit under this subdivision that exceeds the taxes otherwise due under this title is not refundable, but may be carried forward to the next five consecutive taxable years. For the purposes of this subdivision, "basic research payments" and "qualified organization base period amount" have the same meanings prescribed by section 41(e) of the internal revenue code.

2. Qualified research includes only research conducted in this state, including research conducted at a university in this state and paid for by the taxpayer.

3. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

4. The credit under this section applies only to expenses incurred from and after December 31, 1993.

5. The termination provisions of section 41 of the internal revenue code do not apply.

B. Except as provided by subsection D of this section, if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit CLAIMED FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 2022 not used to offset taxes may be carried forward to the next fifteen consecutive taxable years, AND THE AMOUNT OF THE CREDIT CLAIMED FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2021 NOT USED TO OFFSET TAXES MAY BE CARRIED FORWARD TO THE NEXT TEN CONSECUTIVE TAXABLE YEARS. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or ~~five hundred thousand dollars~~ $500,000, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses. A taxpayer that carries forward any amount of credit under this subsection may not thereafter claim a refund of any amount of the credit under subsection D of this section.

C. If a taxpayer has qualified research expenses that are carried forward from taxable years beginning before January 1, 2001, the amount of the expenses carried forward shall be converted to a credit carryforward by multiplying the amount of the qualified expenses carried forward by twenty percent. A credit carryforward determined under this subsection FROM TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 2022 may be carried forward

to not more than fifteen years from the year in which the expenses were incurred. A CREDIT CARRYFORWARD DETERMINED UNDER THIS SUBSECTION FROM TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 2021 MAY BE CARRIED FORWARD TO NOT MORE THAN TEN YEARS FROM THE YEAR IN WHICH THE EXPENSES WERE INCURRED. The amount of credit carryforward from taxable years beginning before January 1, 2001 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or ~~five hundred thousand dollars~~ $500,000, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The total amount of credit carryforward from taxable years beginning before January 1, 2003 that may be used in any taxable year under subsection B and this subsection may not exceed the taxpayer's tax liability under this title or ~~five hundred thousand dollars~~ $500,000, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses.

D. For taxable years beginning from and after December 31, 2009, if a taxpayer that claims a credit under this section employs fewer than one hundred fifty persons in the taxpayer's trade or business and if the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, in lieu of carrying the excess amount of credit forward to subsequent taxable years under subsection B of this section, the taxpayer may elect to receive a refund as follows:

1. The taxpayer must apply to the Arizona commerce authority for qualification for the refund pursuant to section 41-1507 and submit a copy of the authority's certificate of qualification to the department of revenue with the taxpayer's income tax return.

2. The amount of the refund is limited to seventy-five percent of the amount by which the allowable credit under this section exceeds the taxpayer's tax liability under this title for the taxable year. The remainder of the excess amount of the credit is waived.

3. The refund shall be paid in the manner prescribed by section 42-1118.

4. The refund is subject to setoff under section 42-1122.

5. If the department determines that a credit refunded pursuant to this subsection is incorrect or invalid, the excess credit issued may be treated as a tax deficiency pursuant to section 42-1108.

Sec. 7. Laws 2016, chapter 372, section 68 is amended to read:

Sec. 68. Delayed repeal

Sections 41-1512, 43-1083.03 and 43-1164.04, Arizona Revised Statutes, as amended by this act, are repealed from and after December 31, ~~2023~~ 2031.

APPROVED BY THE GOVERNOR MARCH 13, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 13, 2020.

Passed the House February 27, 20 20

by the following vote: 45 44 Ayes,

16 ~~15~~ Nays, 0 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 5, 20 20

by the following vote: 20 Ayes,

9 Nays, 1 Not Voting

President of the Senate

Pro Tempore

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

9th day of March, 20 20

at 2:52 o'clock P M.

Secretary to the Governor

Approved this 13th day of

March 2020

at 3:29 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13th day of March, 20 20

at 3:59 o'clock P. M.

Secretary of State

H.B. 2771