

## **Title 26. Taxation**

### **Chapter XII. Arkansas Pollution Control and Ecology Commission,**

#### **Department of Energy and Environment**

#### **Subchapter A. Generally**

### **Part 270. Rule of the State of Arkansas for Waste Reduction, Reuse, or Recycling Tax Credits**

#### **Subpart 1. General Provisions**

#### **26 CAR § 270-101. Purpose.**

This part is promulgated pursuant to Arkansas Code § 26-51-506, which provides for an income tax credit, as well as recapture of the credit in certain instances, as an incentive for taxpayers to engage in waste reduction, reuse, or recycling activities including the use of postconsumer recyclables generated in Arkansas.

#### **26 CAR § 270-102. Definitions.**

For the purposes of this part, unless otherwise stated herein, the following definitions apply:

(1) "Cost", in the case of a transfer of title or a finance lease, means the amount of the purchase price and, in the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this part, means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance, and taxes;

(2) "Director" means the Director of the Division of Environmental Quality;

(3) "Division" means the Division of Environmental Quality;

(4) "Equipment to service waste reduction, reuse, or recycling equipment" means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing:

(A) Repair;

(B) Maintenance;

(C) Adjustment;

(D) Inspection; or

(E) Supplies;

(5) "Finance lease" means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;

(6) "For commercial purposes" means collecting, separating, processing, modifying, converting, or treating solid waste other than waste that is self-generated;

(7) "Home scrap" means materials or byproducts generated from and commonly reused within an original manufacturing process;

(8) "Maintenance" means expenditures, machinery, or equipment used to keep existing machinery or equipment in a condition that approaches or equates to its original condition;

(9) "Motor vehicle" means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;

(10)(A) "Postconsumer waste" means waste materials generated by a business, governmental entity, or consumer which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling.

(B) This term does not include home scrap and preconsumer materials;

(11) "Preconsumer material" means waste material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling but does not include home scrap;

(12) "Project startup" means the first day a waste reduction, reuse, or recycling project begins collecting, separating, processing, modifying, converting, or treating solid waste or manufacturing products containing recovered materials, as applicable;

(13) "Purchase" means a transaction under which title and possession to an item is transferred for valuable consideration, or a finance lease contract or finance lease transaction for a period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

(14) "Recovered materials" means those materials which have been separated,

diverted, or removed from the waste stream for the purpose of recycling and includes preconsumer material and postconsumer waste but not home scrap;

(15) "Recycling" means the systematic collecting, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(16) "Repair" means expenditures, machinery, or equipment used to restore existing machinery or equipment to its original or similar condition and capacity after damage or after deterioration from use;

(17) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, waste papers, waste paperboard, and all other solid or semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities; and

(18)(A) "Waste reduction, reuse, or recycling equipment" means new or used machinery or equipment located and operating in Arkansas on the last day of the taxable year which is operated or used exclusively in Arkansas to collect, separate, process, modify, convert, or treat solid waste so that the resulting product may be used as a raw material or for productive use or to manufacture products containing recovered materials.

(B) The term also includes devices which are directly connected with or are an integral and necessary part of such machinery or equipment and are necessary for such collection, separation, processing, modification, conversion, treatment, or manufacturing, but not motor vehicles.

## **26 CAR § 270-103. Eligible costs.**

(a) Expenditures eligible for tax credit certification by the Director of the Division of Environmental Quality include waste reduction, reuse, or recycling equipment used exclusively for waste reduction, reuse, or recycling of solid waste for commercial purposes, whether or not for profit, including the cost of installation of such equipment by outside contractors.

(b) Waste reduction, reuse, or recycling equipment must be used in the collection,

separation, processing, modification, conversion, treatment, or manufacturing of products containing at least fifty percent (50%) recovered materials, of which at least ten percent (10%) of the recovered materials shall be postconsumer waste.

(c) The cost of replacing existing waste reduction, reuse, or recycling equipment shall be eligible for certification only if the replacement provides greater capacity for recycling or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.

(d) The amount of credit allowed under this part shall be equal to thirty percent (30%) of the cost of waste reduction, reuse, or recycling equipment, including the cost of installation by outside contractors.

#### **26 CAR § 270-104. Ineligible costs.**

The following costs shall be ineligible for computing the allowable tax credit:

- (1) Expenditures for land and buildings;
- (2) Feasibility studies;
- (3) Engineering costs of buildings;
- (4) Equipment used to service the waste reduction, reuse, or recycling equipment;
- (5) Replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition;
- (6) Service contracts;
- (7) Sales tax;
- (8) Maintenance;
- (9) Repairs; and
- (10) Expenditures for waste reduction, reuse, or recycling equipment for which a tax credit has been previously issued.

#### **26 CAR § 270-105. Recordkeeping.**

(a) Taxpayers claiming a tax credit for waste reduction, reuse, or recycling equipment shall maintain accurate and timely records for all expenditures relating to

such equipment.

(b) In order to determine eligibility for the credit or to ensure that the machinery or equipment is being utilized in the required manner, the Division of Environmental Quality shall have the right to inspect facilities and records of a taxpayer requesting or receiving a credit under this section.

**26 CAR § 270-106. Eligible applicants.**

A taxpayer must be engaged in the business of reducing, reusing, or recycling solid waste material for commercial purposes in Arkansas, whether or not for profit, in order to be eligible for tax credit certification under this part.

**26 CAR § 270-107. Application forms.**

The Division of Environmental Quality will furnish forms to be used in the certification and reporting processes.

**26 CAR § 270-108. Credit determination, maximum, and carryforward.**

(a) Final determination of the amount of eligible cost and available tax credits will be determined by the Commissioner of Revenues.

(b) The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the amount of state, individual, or corporate income tax otherwise due.

(c) Any unused credit may be carried over for a maximum of three (3) consecutive tax years following the taxable year for which the credit was certified.

**26 CAR § 270-109. Apportionment of credit.**

(a) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse, or recycling of solid waste, the amount of the credit determined under this part for any tax year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.

(b) In the case of a Subchapter S corporation, the amount of the credit determined

under this part for any taxable year shall be apportioned among the persons who are shareholders of the corporation on the last day of the taxable year based on each person's percentage of ownership.

(c) In the case of an estate or trust:

(1) The amount of the credit determined under this part for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each; and

(2) Any beneficiary to whom any amount has been apportioned under this section shall be allowed, subject to limitations contained in this part, a credit under this section for the amount.

#### **26 CAR § 270-110. Refund of credit.**

(a) The taxpayer shall refund the amount of the tax credit determined under this part if, within three (3) tax years of the tax year for which a credit is allowed:

(1) The waste reduction, reuse, or recycling equipment is removed from Arkansas, is disposed of, is transferred to another person, or the taxpayer otherwise ceases to use the required materials or operate in the manner required by this part; or

(2) The Director of the Division of Environmental Quality finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.

(b) If the provisions of subsection (a) of this section apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax liability which exceeds the following amounts:

(1) Within the first year, zero dollars (\$0);

(2) Within the second year, an amount equal to thirty-three percent (33%) of the amount of the credit allowed; and

(3) Within the third year, an amount equal to sixty-seven percent (67%) of the credit allowed.

(c) Any refund required by this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which subsection (a) of this section applies.

(d) Any taxpayer who is required to refund part of a credit pursuant to this section shall no longer be eligible to carry forward any amount of that credit which had not been used as of the date such refund is required.

### **26 CAR § 270-111. Limitations on other deductions.**

A taxpayer who receives a credit under this part shall not be entitled to claim any other state or local tax credit or deduction based on the purchase of the waste reduction, reuse, or recycling equipment, except for the deduction for normal depreciation.

## **Subpart 2. Certification Procedures**

### **26 CAR § 270-201. Application process.**

(a)(1) Taxpayers must submit an application for tax credit certification no later than ninety (90) days following the calendar year in which waste reduction, reuse, or recycling equipment was purchased, final equipment expenditures are made, or project startup occurs, whichever is later.

(2) Final equipment expenditures for purposes of this section include installation costs, construction progress payments, and payments of retainage, but do not include finance lease payments, financing payments, or installment payments following purchase according to an installment payment plan.

(3) For equipment bought or leased on installment, the date of the last expenditure shall be the date of the last purchase, not the last installment payment.

(4) Expenditures made for routine maintenance or repairs shall not be considered equipment expenditures.

(b) Taxpayers must use a form provided by the Division of Environmental Quality.

(c) Complete applications shall contain the following:

- (1) A completed application form;
- (2) Invoices detailing each expenditure which include:
  - (A) The seller's name;
  - (B) The cost of each item claimed as waste reduction, reuse, or recycling equipment; and
  - (C) The date on which such equipment was purchased;
- (3) The cost of installation;
- (4)(A) A narrative describing the project or equipment purpose.
  - (B) The narrative must also contain a list of suppliers and approximate percentage of recovered materials and postconsumer waste, and products collected, separated, processed, modified, converted, treated, or manufactured;
- (5) An acknowledgment that, to the best of the taxpayer's knowledge, a good faith effort is being made to utilize postconsumer waste generated in Arkansas as at least ten percent (10%) of the postconsumer waste being used in such equipment, to the extent available at a competitive price; and
- (6)(A) The signature of the taxpayer claiming the credit.
  - (B) The taxpayer's signature shall be by:
    - (i) An officer if a corporation;
    - (ii) A partner or authorized manager if a partnership;
    - (iii) A member or manager if a limited liability company;
    - (iv) A proprietor if a sole proprietorship; or
    - (v) The individual applicant if the taxpayer is an individual.
- (d) The division may require the taxpayer to report the serial number for each piece of such equipment, or in the absence of a serial number, the division may require the taxpayer to assign a number to the equipment and permanently affix it thereto when applicable.
- (e) The application must be mailed or delivered to the address specified by the division.

## **26 CAR § 270-202. Deadlines.**



If any applicable deadline under this part falls on a Saturday, Sunday, or legal holiday, the application shall be due on the next business day.

**26 CAR § 270-203. Determination of eligibility.**

(a)(1) Applications for certification of tax credits made under this part shall be reviewed by the Division of Environmental Quality for completeness and accuracy.

(2) The Director of the Division of Environmental Quality shall make a determination on the application within ninety (90) days of its receipt.

(b) The director shall notify the Revenue Division of the Department of Finance and Administration and the taxpayer in writing of his or her decision.

(c)(1) The director may request any additional information from the taxpayer which he or she deems necessary to properly evaluate the taxpayer's application.

(2) The Division of Environmental Quality shall have the right to inspect facilities and records in order to assist the director in his or her decision.

**26 CAR § 270-204. Informal settlement.**

(a) If a taxpayer disputes a decision on eligibility rendered by the Director of the Division of Environmental Quality, the taxpayer shall give notice in writing of said dispute no later than fifteen (15) days from the date which appears on the decision.

(b) The director shall meet with the aggrieved taxpayer within fifteen (15) days of his or her receipt of the taxpayer's dispute of the decision.

(c) The director shall render an opinion within thirty (30) days following the meeting.

**26 CAR § 270-205. Preliminary approval.**

(a)(1) The Arkansas Pollution Control and Ecology Commission recognizes that the waste reduction, reuse, or recycling equipment tax credit was enacted in part to stimulate economic development.

(2) In order to achieve this purpose, a taxpayer may ask the Director of the Division of Environmental Quality for preliminary approval regarding an anticipated

purchase of waste reduction, reuse, or recycling equipment or construction of a waste reduction, reuse, or recycling project.

(b) In order to request preliminary approval for a potential tax credit, the taxpayer must do the following:

(1) At least thirty (30) days prior to purchasing any equipment or machinery which may, either individually or as part of a waste reduction, reuse, or recycling project, be eligible for a tax credit under this part, submit an application for preliminary approval and any other necessary forms to the Division of Environmental Quality; and

(2) The application for preliminary approval must contain the following:

(A) A narrative describing the project purpose and the product or products or service or services expected to be produced or provided;

(B) A brief description of each piece of waste reduction, reuse, or recycling equipment expected to be purchased;

(C) The expected costs to be incurred;

(D) The date waste reduction, reuse, or recycling equipment is expected to be purchased or the date a waste reduction, reuse, or recycling project is expected to become operational;

(E) The expected cost of installation; and

(F)(i) The signature of the taxpayer that will claim the credit if an individual, partner, or shareholder of a Subchapter S corporation.

(ii) In the case of a Subchapter C corporation, the treasurer or chief executive officer will sign the application.

(c) The director shall, within thirty (30) days of the receipt of a complete preliminary approval application, notify the taxpayer of his or her decision concerning tax credit eligibility.

(d)(1) The director may request any additional information from the taxpayer which he or she deems necessary to properly evaluate the taxpayer's application.

(2) The division shall have ten (10) days to examine any requested information, regardless of the deadline imposed by subsection (c) of this section.

(3) The division shall have the right to inspect facilities and records in order to

assist the director in his or her decision.

(e) For any items which the director preliminarily approves, the taxpayer shall timely submit an application for tax credit certification as otherwise required herein.

(f) In the event the taxpayer disagrees with any decision of the director concerning the preliminary approval process, the settlement and appeal sections of this part shall apply.

### **26 CAR § 270-206. Appeal of director's decision.**

Any person or legal entity aggrieved by a decision of the Director of the Division of Environmental Quality made under this part may file an appeal under Administrative Procedures, 8 CAR pt. 11, and thereafter to the courts in the manner provided in Arkansas Code §§ 8-4-222 – 8-4-229.

### **Subpart 3. Severability – Effective Date**

#### **26 CAR § 270-301. Severability.**

If any provision of this part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are declared to be severable.

#### **26 CAR § 270-302. Effective date.**

This part shall be effective ten (10) days after filing the same with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research following adoption by the Arkansas Pollution Control and Ecology Commission.