

**NOTICE OF ADOPTION**

**RULE NO. 19-02**

**1. Rule.**

Qualified Facility Tax Credit Program Guidelines

**2. Date of Posting Notice of Rule Making.**

February 4, 2019

**3. Public Comment Period.**

February 4, 2019 to March 6, 2019

**4. Hearing Date**

none

**5. The deadline for the Authority to file a Notice of Adoption.**

August 3, 2019

**6. Notice of Adoption Posting Date.**

March 6, 2019

**7. Preamble**

**An explanation of the agency's action pertaining to the Rule**

The proposed Rules will govern the Qualified Facility Tax Credit program. The Rules are necessary to update considerations for the program that have not previously received clarity in the Rules. Terms found in the Rules are also streamlined for easier understanding by the reader.

**8. Amendments**

One comment was received, and an administrative change was made to conform cap management and rights of appeal with the latest version of the statute. The Arizona Commerce Authority hereby gives notice that Rule 19-02 has been adopted. The effective date of the Rule is March 6, 2019.



Michael Kellis  
Associate Counsel



## Qualified Facility Tax Credit Program Program Rules & Guidelines<sup>1</sup>

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### Section 1. Overview

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#### I. Introduction.

- A. The Qualified Facility Tax Credit program (as set forth in A.R.S. § 41-1512, the “Qualified Facility Program” or the “Program”) was established by the Arizona legislature in 2012 to promote the location and expansion of manufacturing facilities, including manufacturing-related research & development or headquarters facilities. The goal of the Program is to encourage business investment that will produce high-quality employment opportunities for the citizens of Arizona and enhance Arizona’s position as a center for corporate headquarters, commercial research and manufacturing. The Program accomplishes this goal by providing a refundable tax credit to Taxpayers that are expanding or locating a Qualified Facility in Arizona.
- B. The Qualified Facility Program, subject to eligibility requirements, offers a refundable income tax credit equal to the lesser of:
- (i) 10% of the Qualifying Investment, or
  - (ii) \$20,000 per net new full-time employment position at the facility, or
  - (iii) \$30,000,000 per Taxpayer in any calendar year.
- C. The tax credit is claimed in five equal installments over five consecutive taxable years.

#### II. Applying for the Qualified Facility Program

- A. On or after the first business day of January 2013, a Taxpayer seeking tax credits under the Qualified Facility Program must obtain Pre-Approval from the Arizona Commerce Authority (the “Authority”). However, prior to applying to the Authority for Pre-Approval, a Taxpayer must request a letter of good standing from the Arizona Department of Revenue (“Revenue”) by submitting a Tax Clearance Application form to Revenue. Once the Taxpayer has received its letter of good standing, it may submit a “Request for Pre-Approval” to the Authority. If the Request is qualified, the Authority will issue Pre-Approval and will transmit a copy to Revenue.
- B. Following receipt of Pre-Approval, the Taxpayer must maintain eligibility by providing documentation to the Authority that it has spent at least \$250,000 on the proposed project within twelve months of the Pre-Approval date. Regardless of the date of Pre-Approval, if the period in which the Qualifying Investment has been or is made exceeds twelve months, the Taxpayer must also demonstrate it has realized Additional Expenditures of Qualifying Investment relating to the project during each twelve-month period that Qualifying Investment is made before applying for Post-Approval to maintain eligibility.

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<sup>1</sup> These Rules & Guidelines are provided to assist applicants. In case of conflict between what is presented here and the Arizona Revised Statutes, the statutes shall prevail. See A.R.S. §§ 41-1512, 43-1083.03 and 43-1164.04.

- C. When the proposed project is operational but prior to applying for Post-Approval, a Taxpayer must enter into a written managed review agreement with the Authority. A certified public accountant must verify the Taxpayer's eligibility for tax credits under the Program and furnish its findings to the Authority in writing. Following receipt of the approved written managed review, the Taxpayer must submit to the Authority an "Application for Post-Approval." The Authority may issue Post-Approval to a Taxpayer after verification that all eligibility requirements have been met by the Taxpayer. Once Post-Approval is received, a Taxpayer may claim the tax credits with Revenue. Annually thereafter, for five consecutive years, a post-approved Taxpayer must submit an "Annual Report" to the Authority verifying it is still operating at the facility, has not liquidated its assets, and continues to meet the qualifications for the credit.

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## **Section 2. Eligibility Requirements**

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Eligibility for tax credits is available for a Taxpayer beginning in the tax year the Qualified Facility is operational and in compliance with requirements of A.R.S. § 41-1512, if the Taxpayer:

- A. Makes a Qualifying Investment, on or after July 1, 2012, to establish or expand a facility in Arizona that devotes at least 80% percent of the square footage of the facility and payroll at the facility to one or more of the following:
1. Manufacturing facility where at least 65% of the products are sold outside of Arizona.
  2. Research and development facility where activities are conducted for a manufacturing company that derives at least 65% of its revenues from sales outside of Arizona.
  3. Headquarters facility for a manufacturing company that derives at least 65% of its revenues from sales outside of Arizona.
- B. Creates net new full-time employment positions at the facility of which at least 51% 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.
- C. Pays at least 65% of the health insurance costs for all net new full-time employment positions.
- D. Spends at least \$250,000 in Qualifying Investment during the first twelve-month period following Pre-Approval and Additional Expenditures for each twelve-month period during which the Qualifying Investment continues.
- E. Supplies a letter of good standing from Revenue.
- F. Remits a non-refundable 1% processing fee.
- G. Submits a Request for Pre-Approval and receives Pre-Approval from the Authority.

- H. Submits an Application for Post-Approval and receives Post-Approval from the Authority.
- I. Agrees to continue qualifying business activities at the facility for five full calendar years after receipt of Post-Approval and cannot be involved in any action that liquidates the Arizona business assets or relocates the Arizona operation out-of-state for five years after receipt of Post-Approval.
- J. Complies with the employer and business sanctions set forth in A.R.S. §§ 23-214(B) and 35-393.

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### **Section 3. Explanation of Tax Credits**

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- A. Under A.R.S. §§ 43-1083.03 and 43-1164.04, for tax years beginning January 1, 2013 through December 31, 2022, a refundable tax credit is allowed for an eligible Taxpayer. The tax credit is the lesser of 1) ten percent (10%) of the new Qualifying Investment amount, or 2) twenty thousand dollars (\$20,000) per net new full-time employment position created at the Qualified Facility in Arizona, or 3) \$30,000,000 per Taxpayer per year. When tax credits are approved the limitations described in Section 4 of the Program Rules & Guidelines must also be upheld. Post-approved tax credits must first be used to offset all of the Taxpayer's current income tax liability on a dollar for dollar basis. The amount of tax credits not used to offset Arizona income tax liability will be paid to the Taxpayer in the same manner as a cash refund (A.R.S. § 42-1118).
- B. The tax credit must be timely claimed by an eligible Taxpayer on an original Arizona tax return along with the Revenue Form 349. The tax credit must be timely claimed in five consecutive equal installments as identified in the Authority's Post-Approval, starting with the year in which Post-Approval was received. If the eligible Taxpayer does not timely claim the credit on its Arizona tax return, the tax credit for that year is permanently lost. However, the eligible Taxpayer may still claim the remaining year(s) identified by the Authority assuming it timely claims the credit with Revenue for those tax year(s). A taxpayer will be able to claim all five annual installments of the tax credit that was preapproved by the Authority before January 1, 2023, notwithstanding any intervening repeal or termination of the credit.
- C. Likewise, co-owners of a company (including partners in a partnership, LLC members and shareholders of an S corporation) must each timely claim the pro rata share of the credit allowed based on ownership interest. The total credit allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the company (A.R.S. §§ 43-1083.03(E) and 43-1164.04(E)).
- D. To download Revenue's forms, visit <http://www.azdor.gov/>

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### **Section 4. Tax Credit Limitations**

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- A. The Authority cannot authorize tax credits in an amount more than:
  - 1. 10% of the total new Qualifying Investment amount made in a Qualified Facility;OR

2. \$20,000 per net new full-time employment position created at the Qualified Facility; OR
3. \$30,000,000 per calendar year to a single Taxpayer.

The tax credit the Authority authorizes to a Taxpayer shall be the lesser of 1, 2 or 3.

- B. The Authority cannot pre-approve a total amount of tax credits that exceeds \$70,000,000 per calendar year. The calendar year's cap will be issued on a first-come, first-served basis pursuant to Section 5 of these Program Rules & Guidelines.
- C. The tax credit amount issued to an eligible Taxpayer is apportioned. The allocation of credits shall be timely claimed in five equal installments over five consecutive tax years as outlined in the Post-Approval. The first year the tax credit will be available to the Taxpayer is the tax year in which the proposed project or phase identified in the Request for Pre-Approval Begins Operations. An applicant may also allow the Authority to conduct a site visit to verify operations have begun. In order to claim installments in respect to job creation for all five tax years, each net new full-time employment position must (i) be maintained for at least 90 days as of the date of the Post-Approval and through the four (4) tax years following the year of post-approval and (ii) not be vacant for a cumulative period of time exceeding 150 days after creating the net new full-time employment position.
- D. The Authority shall not certify an amount of tax credits that is greater than the amount approved on the Taxpayer's Pre-Approval application.
- E. If a Taxpayer has more than one non-contiguous location and can demonstrate eligibility for each separate Qualified Facility, the Authority may issue multiple Pre-Approvals. Aggregation of job creation and/or Qualifying Investment for non-contiguous locations is prohibited. Aggregation of job creation and/or Qualifying Investment for separate projects/phases at the same location is also prohibited but may be combined in a single Request that meets the requirements of this Section 4.
- F. A Taxpayer that claims a Quality Jobs credit may not claim a tax credit with respect to the same employee under the Qualified Facility Program (A.R.S. §§ 43-1083.03(H) and 43-1164.04(H)).

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## **Section 5. Calendar Year Cap Management**

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- A. The Authority shall pre-approve tax credits according to A.R.S. §§ 41-1512(J). The Date and Time Stamp on a Request for Pre-Approval dictates the cap year from which the allocation is made. The total amount of credits pre-approved for a single Request shall be applied against the calendar year cap in which Pre-Approval occurred. If a calendar year's cap is exhausted by October 31st, the Authority may begin accepting Requests during November and December of that year, for an allocation of tax credits from the next calendar year's cap. However, the Pre-Approval issued to the Taxpayer will not be effective until January 1st of the next calendar year.
- B. Tax credits are reserved on a first-come, first-served basis according to the Priority Placement Number established by the Date and Time Stamp of the Taxpayer's Request for Pre-Approval.

- C. Any cap amount that has not been pre-approved by the end of the calendar year lapses and shall not be reallocated. Reallocation of cap may occur if the credits were voluntarily relinquished, lapsed or returned due to ineligibility. Cap will be reallocated to a qualified Applicant with the next Priority Placement Number in the original calendar year's cap, regardless of the year in which the credits were returned to the cap (A.R.S. § 41-1512(K)). If there are no applicants to accept the unused cap, the calendar year's excess cap is permanently lost.
- D. Notwithstanding C above, if in any year there is unused calendar cap, the Authority shall allocate the balance to a qualified Applicant that successfully appeals the denial of tax incentives under this Program. If sufficient unused calendar cap is not available from the current year's cap to satisfy a successful appeal, the Authority shall allocate from the next calendar year's cap (A.R.S. § 41-1512(N)).
- E. Requests for Pre-Approval can be accepted by the Authority year-round for the Qualified Facility Program. When a Request is submitted, if sufficient cap is not available the Applicant may either:
  - 1. Accept any remaining cap amount and irrevocably relinquish rights to the remaining amount, or
  - 2. Withdraw the Request and submit a separate Request when sufficient cap is available.
- F. A Taxpayer may voluntarily relinquish all or part of the pre-approved tax credit amount by submitting the Authority form "Voluntary Relinquishment of Tax Credits." It is important to note that when a Taxpayer relinquishes tax credits, the Taxpayer is voluntarily relinquishing any and all rights to the tax credits and is prohibited from claiming or using the amount of the relinquished tax credits. (A.R.S. § 41-1512(L))
- G. Income tax credits must be claimed in five equal annual installments in each of five consecutive taxable years following receipt of Post-Approval. (A.R.S. §§ 43-1083.03(B)(3) and 43-1164.04(B)(3))

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## **Section 6. Submittal of Applications**

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- A. The acceptance process described in this section will determine the Priority Placement Number assigned to Requests for Pre-Approval. The Authority will assign a Priority Placement Number to each Request following the order established by the Date and Time Stamp on a Request. The Priority Placement Number determines the order in which the Authority allocates that calendar year's cap.
- B. In an effort to streamline and expedite applications for incentives, the Authority is pleased to offer a service that enables Taxpayers to apply for incentives electronically. All materials submitted through the Electronic Application System (EASY), including, without limitation, Requests and Applications for Qualified Facility tax credits, are subject to the EASY terms and conditions. The EASY being utilized by the Authority will Date and Time Stamp each Request or Application on the date of receipt.
- C. If a Taxpayer insists on submitting a written Request or Application, the Authority shall only accept original Requests or Applications delivered via private delivery service or

hand delivery. Any other form of delivery, including mailed, emailed or faxed copies, will not be accepted by the Authority. When a written Request or Application is submitted, the Authority will Date and Time Stamp each Request or Application on the date of receipt.

- D. In the instance where a Request or an Application is submitted via the EASY that bears the same Date and Time Stamp as a written Request or Application, the Request or Application submitted through EASY will take precedence.

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## **Section 7. Processing Requests for Pre-Approval**

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- A. The Authority shall accept Requests for Pre-Approval for a calendar year's cap on or after the first business day of every calendar year. Any Request for a calendar year's cap received prior to the first business day of the calendar year will not be accepted by the Authority. If a calendar year's cap is exhausted by October 31st of a year, the Authority may begin accepting Requests for the next calendar year's cap. The Authority will notify stakeholders via the website ([azcommerce.com](http://azcommerce.com)) when the cap has been exhausted and that it will begin accepting Requests on or after November 1st for the next calendar year.
- B. A Taxpayer can apply for Pre-Approval by submitting either 1) the EASY form "Pre-Approval for Qualified Facility" or 2) the Authority written form "Request for Pre-Approval." A Taxpayer with more than one Qualified Facility may have more than one Request for Pre-Approval at any given time.
- C. The Request for Pre-Approval, according to A.R.S. § 41-1512(B), shall include at a minimum:
1. Name, contact information and federal identification number for the Taxpayer.
  2. Name and contact information of an individual who can be contacted at the facility with regard to the Request.
  3. Name and contact information of the Applicant's third-party consultant (if applicable).
  4. The address of where the Qualified Facility will be located.
  5. A detailed description of the Qualified Facility and fixed capital assets.
  6. An estimate of the planned Qualifying Investment and number of employment positions to be hired at the Qualified Facility.
  7. Any other information required by the Authority.
  8. An affidavit signed by an officer of the Applicant or its authorized representative. By signing the affidavit, the Applicant agrees, but is not limited, to the following:
    - i. That the information contained in the Request is true and correct under penalty of perjury.
    - ii. To furnish records of expenditures to the Authority or Revenue on request.
    - iii. To not be involved in any action that liquidates the Arizona business assets or relocates the Arizona operation out-of-state for five years after Post-Approval.
    - iv. To continue in business at the Qualified Facility for five full calendar years after receipt of Post-Approval

- v. To furnish information regarding the amount of tax credits claimed each year to the Authority.
  - vi. To authorize Revenue to provide tax information to the Authority pursuant to A.R.S. § 42-2003 for the purpose of determining any inconsistency in information.
  - vii. To allow site visits and audits to verify the Applicant's continuing qualification and the accuracy of information submitted to the Authority.
  - viii. To allow for the adjustment or recapture of any amount of income tax credit(s) due to noncompliance.
9. A copy of the letter of good standing from Revenue.
- D. Prior to submitting a Request for Pre-Approval to the Authority, a Taxpayer must request a letter of good standing from Revenue by submitting form "Tax Clearance Application." If an Applicant files multiple Requests for different proposed projects or phases, a separate Tax Clearance Application must be submitted to Revenue for each.
- E. During review of the Substantially Complete Request, the Authority may request additional information, conduct a site visit or discuss the Request with the Applicant. If the Applicant does not satisfy a request for additional information within the allotted timeframe (maximum of 28 calendar days as per the definition of Substantially Complete), the Request will be considered inactive and the Applicant will be deemed to have withdrawn the Request.
- F. The Authority shall make a determination with regard to each Request within 30 calendar days after the Date and Time Stamp of a Substantially Complete Request.
- G. If the Authority denies Pre-Approval, the Applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10. However, the denial of Pre-Approval prohibits a Taxpayer from receiving tax credits under this Program unless the appeal is successful.
- H. If an Applicant is qualified for tax credits, the Program Manager will request the Applicant to remit a non-refundable processing fee equal to 1% of the pre-approved credit amount. Acceptable methods of payment include: check, cashier check or wire transfer. No other form of payment will be accepted by the Authority. After the fee has been processed, the Authority shall issue a Pre-Approval and transmit a copy to Revenue. Pre-Approval is issued to a qualified Applicant for each Request and is effective until an Application for Post-Approval is submitted, as long as the Applicant maintains eligibility. A Pre-Approval includes an estimated dollar amount of calendar year cap allocated, the effective date, the Priority Placement Number and the project name. Pre-Approval does not guarantee receipt of tax incentives under this Program because Pre-Approval is issued before the Authority determines final eligibility. Nor does Pre-Approval of an Applicant for the purposes of this tax credit imply compliance with any other provision of law or any regulatory rule, order, procedure, permit or other measure required by law. Note: January 1 will be the effective date of the Pre-Approvals for all Requests received between November 1 and December 31 that are intended for the next calendar year's cap.

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## Section 8. Satisfying Requirements for the Program

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### I. Qualifying Investment

- A. For the purposes of this Program, total Qualifying Investment means total 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 January 1, 2013 or any taxable year thereafter. If the Qualified Facility is a build-to-suit facility leased to the Taxpayer, Qualifying Investment includes the costs prescribed in this section 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 Qualifying Investment of at least \$250,000. Further, Qualifying Investment does not include costs incurred on or before June 30, 2012, operating expenses (except for a lease with the attributes set forth below) or employee payroll expenses. Any expense incurred subsequent to submittal of the "Application for Post-Approval" will not be included as a Qualifying Investment, nor will it be counted toward the \$250,000 Investment Threshold. (A.R.S. §§ 41-1512(P) and 41-1512(X)(9)) Please note: a Taxpayer with two or more Requests must make a separate \$250,000 Qualifying Investment to individually qualify each phase or facility.
- B. Only expenditures by the Taxpayer that are directly attributable to a phase or facility as shown in the Request for Pre-Approval can be counted toward the Investment Threshold and the total amount of Qualifying Investment. Investments in leased property may be a Qualifying Investment if the ownership of the asset transfers to the Taxpayer at the end of the capital lease or if the term of the lease extends for the entire period for which credits will be claimed hereunder (i.e., until 5 taxable years following Post-Approval).
- C. Relocation or shipping expenses for machinery and equipment that will be placed at the Qualified Facility are included as capital expenditures. The value of machinery and equipment in operation outside the State that is then relocated to the Qualified Facility (the "Relocated Equipment") is included in Qualifying Investment at the purchase price if purchased less than two years prior to the submission date of the preapproval application. If acquisition of the Relocated Equipment occurred more than two years prior to the submission date of the preapproval application, the value for purposes of calculating Qualifying Investment shall be determined pursuant to an appraisal performed at the expense of the Applicant by an appraiser acceptable to the Authority. Any tax credit associated with the Relocated Equipment shall be reduced by an amount that is equal to any incentive previously paid to the Applicant by a foreign jurisdiction as a result of such purchase of machinery and equipment; provided, however, that federal tax incentives shall not be included in such analysis.
- D. A taxpayer may include in Qualifying Investment both the costs of tenant improvements associated with the Qualified Facility as well as the costs of the lease associated with the Qualified Facility (assuming such lease extends for the entire period for which credits will be claimed). However, the same expenses may not be double counted. For example, if a landlord provides a tenant \$2 million in allowance for tenant improvements, the \$2 million may be treated as Qualifying Investment, but any payments made through the lease for repayment of the \$2 million are not also treated as Qualifying Investment.

- E. In respect to lease expense, the amount of Qualifying Investment for the initial 12-month period and any subsequent 12-month period is the amount of lease expense paid during such 12-month period. The total amount of lease expense that relates to future leasehold periods are treated as Qualifying Investment for any 12-month period only if such amount is nonrefundable.
- F. In respect to new construction, the Taxpayer's Qualifying Investment will also include costs incurred by a third-party developer in respect to the construction of a build-to-suit facility that is leased to the Taxpayer for use by the Taxpayer as a Qualified Facility commencing before Post-Approval. If less than all of the tenantable square footage of the build-to-suit facility is leased to the Taxpayer's Qualified Facility, only the corresponding percentage of construction costs will constitute a Taxpayer's Qualifying Investment.
- G. Prior to issuing Post-Approval, the Authority may check all or some of the expenses to ensure compliance and will request documentation of the expenses, as necessary. Acceptable documentation of Qualifying Investment includes copies of paid invoices and cancelled checks. Other documentation may include: a real estate settlement sheet, a county affidavit of property value, an Arizona business property statement, copies of capital leases for equipment or Federal IRS Form 4562 with all supporting schedules which identifies, at a minimum, the pieces of equipment, the dates acquired and the costs.
- H. A qualified Applicant must maintain records of expenditures for each Request in order to certify costs to the Authority or Revenue upon completion of the project. The Authority may require additional documentation and conduct inspections or audits as necessary to verify compliance.

## **II. Levels of Employment**

- A. An Applicant must maintain records of employment for each Request for Pre-Approval in order to certify employment numbers to the Authority or Revenue upon completion of the project/phase. The Authority may require additional documentation and conduct inspections or audits as necessary to verify compliance.
- B. To be eligible to receive tax credits, a Taxpayer must create new jobs and make new Qualifying Investment for the creation or expansion of the Qualified Facility.
- C. Of the net new full-time employment positions (NFEP) created at the facility, at least 51% must be paid qualifying wages at least equal to a specified percentage of the state median wage comprising Arizona production occupations. If the Qualified Facility is in a rural location, the qualifying wage must be at least 100% of the state median wage comprising Arizona production occupations. If the Qualified Facility is not in a Rural location, the required wage must be at least 125% of the state median wage comprising Arizona production occupations. The Required Wage Threshold table is available on the Authority website ([azcommerce.com](http://azcommerce.com)). In addition, all net new full-time employment positions must be:
  - 1. Permanent with a minimum of 1,750 hours per year. The 1,750-hour requirement relates to the minimum number of hours considered full-time based on the

employee's normal work week. Although the position must be full-time, if an individual does not actually work 1,750 hours because of the date hired or because of a short taxable year, the employment position could still be qualified. A permanent position is an employment position that is not (i) established for a specified or limited period of time, or (ii) an independent contractor position.

2. In order to allow hiring of NFEPs to occur as early as possible in the process for selecting a site for the Qualifying Investment, NFEPs whose duties are performed at least fifty percent (50%) at the location of the Qualifying Investment, but which are temporarily located elsewhere due to the practical impossibility of the job duties being immediately performed at the site of the Qualifying Investment will still qualify if all the following conditions are met:
  - i. The location and nature of the Qualifying Investment has been specifically identified on or before the date of the Request for Pre-Approval; and,
  - ii. The NFEP is identified at the time of creation as one whose duties shall be performed at the location of the Qualifying Investment; and,
  - iii. The NFEP is promptly moved for permanent location to the site of the Qualifying Investment within thirty (30) days or as soon as practicable following the date the Qualified Facility Begins Operations; and,
  - iv. Payroll for employees temporarily located at a location other than the location of the Qualifying Investment must be segregated from the payroll of other employees in order to specifically identify which positions are being attributed to the Program.
  - v. \$250,000 in Qualifying Investment occurs during the first twelve-month period following the hiring of any NFEP to be counted for these purposes and Additional Expenditures occur for each subsequent twelve-month period.
3. Maintained for at least 90 days as of the date of Post-Approval and through the four (4) tax years following the year of Post-Approval and not be vacant for a cumulative period of time exceeding 150 days following the creation of the position.
4. Filled by an employee who has NOT been previously employed by the Taxpayer within 12 months before the current date of hire. Filled by either a U.S. citizen or an employee authorized to work legally in the U.S.

D. When determining the median wage paid to employees, the following wages can be included:

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|------------------------------|--------------------------|
| 1. Base Rate                 | 7. Incentive Wage        |
| 2. Commission Earnings       | 8. Longevity Pay         |
| 3. Cost-of-Living Adjustment | 9. Piece Rate            |
| 4. Deadheading               | 10. Portal-to-Portal Pay |
| 5. Guaranteed Rate           | 11. Production Bonus     |
| 6. Hazard Pay                | 12. Tips                 |

E. Excluded as wages are the following:

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|-------------------------------------|------------------------|
| 1. Attendance Bonus                 | 5. Holiday Bonus       |
| 2. Back Pay                         | 6. Holiday Premium Pay |
| 3. Draw Account                     | 7. Jury Duty Leave     |
| 4. Employee Purchases and Discounts | 8. Nonproduction Bonus |
|                                     | 9. On-call Pay         |

- 10. Overtime Pay
- 11. Perquisites
- 12. Profit Sharing
- 13. Relocation Allowance
- 14. Severance Pay
- 15. Shift Differential
- 16. Stock Bonus Plan

- 17. Subsistence Allowance (lodging/meals)
- 18. Supplement Pay (including weekend)
- 19. Tool Allowance
- 20. Tuition Repayments
- 21. Uniform Allowance

Definitions for these terms are posted at: <http://www.bls.gov/ncs/ocs/sp/ncbl0062.pdf>

- F. The Applicant must offer health insurance coverage for ALL net new full-time employees for which the employer pays at least 65% of premium or membership costs. The position can still be qualified if the employee declines the coverage offered by the employer. When determining the percentage, Taxpayers must include health/medical insurance benefits, but may also include other benefits to reach the sixty-five (65) percent threshold, including but not limited to:
  - 1. Dental insurance
  - 2. Vision insurance
  - 3. Short-term disability
  - 4. Long-term disability
- G. The day the health insurance coverage is offered to the employee is the day the eligibility begins (as long as all other eligibility requirements have been met.)
- H. Taxpayers that are self-insured for employee health insurance must provide different documentation than those Taxpayers offering standard group health insurance coverage.
- I. For standard group health insurance, the costs to the employee for treatment are not included in the calculation (e.g. co-pays and other out-of-pocket expenses). Further Taxpayers that are not self-insured must pay their share at the time the net new full-time employment position is created. It is the Authority's interpretation that self-insured employers would have an advantage if allowed to count actual medical costs as part of the equation because the costs are not incurred at the time the net new full-time employment position is created. Rather, the cost should be identifiable up-front, regardless of whether the insurance is used (like a premium) and must be based on a fixed cost to each employee for insurance coverage.
- J. For example, a Taxpayer might establish a health insurance "premium" for its employees in the same manner that a traditional insurance company does. Claims from prior years would determine a "premium" amount based on an expected claim rate per employee. The Taxpayer would be expected to pay at least sixty-five (65) percent of this "premium." The Taxpayer would need to bear any additional costs in the event the actual claims were more than the expected claims.
- K. Another example might be a Taxpayer that hires a plan administrator to manage its self-insurance Program. In this case, there may be a monthly administration fee per employee, similar to a membership fee or premium. The Taxpayer would need to pay at least sixty-five (65) percent of those regular fees to qualify. The Taxpayer would then pay all of the actual medical costs as incurred. Below is an example of a format that can be used to show the allocation of health insurance costs.

EXAMPLE OF COSTS PAID BY SELF-INSURED EMPLOYERS

Fee Allocation	Coverage Type	Coverage Period 1/16 to 12/16
Monthly premium charged to employee	Single	175.00
	Family	730.00
Monthly premium charged to plan	Single	325.00
	Family	730.00
Percent charged to employee	Single	35%
	Family	50%

**III. Written Managed Review**

- A. Pursuant to A.R.S. § 41-1512(O), before a qualified Applicant applies for Post-Approval, the Applicant must enter into a written managed review agreement with the Authority. At the Applicant’s expense, the Applicant will select a Certified Public Accountant, who is licensed in Arizona and who is approved by the Authority, to conduct the written managed review. 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.
- B. To confirm the amount of credit, the managed review shall include an analysis of the Taxpayer’s invoices, checks, accounting records and other documents and information to verify its Qualified Investment and other requirements of A.R.S. §§ 41-1512, 43-1083.03 or 43-1164.04. The managed review shall also certify that all expenditures and hiring were completed before the end of the tax year that the Applicant wishes to begin claiming tax credits. The Certified Public Accountant shall furnish its findings in writing to the Authority; who will review the findings and may examine records and perform other reviews it considers necessary to verify that the managed review substantially conforms to the terms of the managed review agreement. The Authority and the Certified Public Accountant will work collaboratively to resolve any concerns regarding the substance or form of the Managed Review. The Authority shall accept or reject the findings of the managed review. If the Authority rejects all or part of the managed review, the Authority shall provide written reasons for the rejection.

**IV. If Application for Post-Approval is not Received Within 12-Months After Pre-Approval**

- A. An Applicant must submit either 1) the EASY form “Qualified Facility 12-Month Interim Report” or 2) the written form “12-Month Interim Report” to the Authority. The Interim Report must be Substantially Complete and demonstrate that if the period over which the Qualifying Investment is made exceeds an initial twelve-month period, the Taxpayer has made expenditures related to the Qualifying Investment whose timing, amount, or substance indicate continuing progress toward completion of the planned investment in the Qualified Facility. If the period over which the Qualifying Investment has ceased, no further expenditures will be counted for purposes of the Qualifying Investment. If the

period over which the Qualifying Investment will be made continues beyond the initial twelve-month period, Additional Expenditures related to the Qualifying Investment must be made during the following twelve-month period. Additional Expenditures must be made toward Qualifying Investment during each consecutive twelve months period – a twelve-month period without Additional Expenditures toward the Qualifying Investment will cease the Qualifying Investment that will be counted for purposes of the credit. An Interim Report must be submitted to the Authority for each twelve-month period of Pre-Approval until the Applicant applies for Post-Approval.

- B. If the Taxpayer fails to timely submit the Interim Report to demonstrate its expenditures (or lack thereof), the Pre-Approvalapses, the Request is void and the pre-approved tax credits will be returned to the calendar year cap from which they came. The Authority may require additional documentation or conduct inspections or audits as necessary to verify compliance.

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## **Section 9. Processing Applications for Post-Approval**

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- A. Pursuant to A.R.S. § 41-1512(P), an Applicant can apply to the Authority for Post-Approval once the facility “begins operations.” All Qualifying Investment and employment requirements must be met no later than the taxable year for which the credit is claimed.
- B. The Managed Review is required to be completed and Applications for Post-Approval are required to be submitted to the Authority not less than 90 days before the Applicant’s original tax return is required to be filed.
- C. To generate a tax credit, an Applicant must document compliance with the provisions of A.R.S. § 41-1512 and the requirements established by these Program Rules & Guidelines.
- D. During review of a Substantially Complete Application for Post-Approval, the Authority may request additional information, conduct a site visit or discuss the Application with the Applicant. It is the Applicant’s responsibility to ensure timely submittal of any additional information requested by the Authority. If the additional information is not timely submitted, the Authority cannot continue processing the Application for Post-Approval until all necessary information is supplied. the Authority shall attempt to make a determination with regard to the Application for Post-Approval within ninety days after the date of receipt of a Substantially Complete Application.
- E. If the Authority denies Post-Approval, the Applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- F. If the Applicant is eligible for tax credits, the Authority shall issue Post-Approval. Post-Approval will include the project name and the specific dollar amount of tax credits the Applicant may claim. The Authority will review total qualifying investments and employment to calculate the final amount of tax credits. The post-approved amount may be less than the pre-approved amount, but never higher. Note: Post-Approval of an Applicant for the purposes of the Qualified Facility Program does not constitute or imply compliance with any other provision of law or any regulatory rule, order, procedure, permit or other measure required by law.
- G. The post-approved Applicant must claim the tax credits with Revenue on its original Arizona tax return for the tax year including the date of Post-Approval. If the return is not timely filed or if it is not on an original return, Revenue may deny the credit.

- H. The Taxpayer may only claim credits beginning in the year Post-Approval is issued. The Authority cannot award tax credits for prior tax years.

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## **Section 10. Annual Reporting Requirements Following Post-Approval**

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- A. An Applicant must maintain eligibility for five (5) calendar years following receipt of Post-Approval. Each year, an Applicant must submit an Annual Report, either the 1) EASY form "Qualified Facility Annual Report" or 2) the Authority written form "Annual Report" and demonstrate that the Qualified Facility is still in operation and has maintained eligibility for the tax credit.
- B. The Annual Report shall include, at a minimum:
1. The amount of tax credits claimed by the eligible Taxpayer during the previous twelve-month period.
  2. Proof that operations have continued at the Qualified Facility.
  3. Other documentation required by the Authority.
- C. Failure to submit the Annual Report in a timely manner may result in the revocation of Post-Approval and therefore the Applicant's eligibility to claim tax credits under this Program and may subject the Applicant to recapture of tax credits previously claimed.

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## **Section 11. Revocation of Certification and Recapture of Incentives**

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- A. If Revenue determines that a refund is incorrect or invalid, the excess refund may be treated as a tax deficiency pursuant to A.R.S. § 42-1108. If qualification is terminated or revoked, all or part of the tax credits received under this Program are subject to recapture under A.R.S. §§ 43-1083.03(G) and 43-1164.04(G).
- B. As provided by A.R.S. § 41-1512(M), if a Taxpayer fails to notify the Authority of expenditures of at least \$250,000 in Qualifying Investment within each twelve-month period after Pre-Approval, the Pre-Approval lapses, the Request is void, and the pre-approved tax credits will be returned to the calendar year cap from which they came.
- C. The Authority may rescind the Applicant's certification if the business no longer meets the terms and conditions required for the tax credit. The Authority may give special consideration, or allow temporary exemption from recapture of tax credits, in the case of extraordinary hardship due to factors beyond the control of the Applicant (A.R.S. § 41-1512(Q)). If the Authority rescinds an Applicant's Pre-Approval, it shall notify Revenue of the action and the conditions of noncompliance (A.R.S. § 41-1512(R)).
- D. In accordance with A.R.S. § 41-1512(R), Revenue may require the Taxpayer to file appropriate amended tax returns reflecting any recapture of income tax credits under A.R.S. §§ 43-1083.03 or 43-1164.04.
- E. To maintain qualification for tax credits under the Qualified Facility Program, an Applicant must separately comply with all environmental, employment and other regulatory measures. The Authority may periodically request information or conduct a site visit to verify compliance with these regulatory measures (A.R.S. § 41-1512(S)).
- F. Pursuant to A.R.S. § 41-1512(T), for five (5) calendar years after a Taxpayer receives Post-Approval, any action involving the liquidation of the business assets or relocation out of state, the State of Arizona claims the position of a secured creditor of the business in the amount of the income tax credits the Taxpayer received pursuant to A.R.S. §§ 43-

1083.03 or 43-1164.04. The transfer of part or all of a Taxpayer's assets that are then leased back by the Taxpayer is not considered liquidation.

- G. Pursuant to A.R.S. §§ 43-1083.03(G) and 43-1164.04(G), if within five (5) taxable years after first receiving a credit, the certification of an Applicant is terminated or revoked, other than for reasons beyond the control of the business as determined by the Authority, the Taxpayer is permanently disqualified from credits under the Qualified Facility Program in subsequent taxable years. Any credits allowed the Taxpayer in all taxable years are subject to recapture. 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.
- H. Failure to submit the Annual Report may result in the revocation of the Applicant's Post-Approval and therefore its eligibility to receive tax incentives under this Program.
- I. Pursuant to A.R.S. §§ 43-1083.03(J) and 43-1164.04(J), in order to claim installments in respect to job creation for all five tax years, each Qualified Employment Position must (i) be maintained for at least 90 days as of the date of post-approval and through the four (4) tax years following the year of Post-Approval and (ii) not be vacant for a cumulative period of time exceeding 150 days following creation of the Qualified Employment Position.

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## **Section 12. Definition of Program Terms**

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For purposes of applying for and maintaining eligibility for the Qualified Facility Program, the following terms are either defined by the Authority or defined in A.R.S. §§ 41-1512, 43-1083.03 or 43-1164.04. If a term is not defined, the most commonly accepted meaning will apply. For purposes of this Program:

1. "Additional Expenditures" means, in respect to a qualifying investment that exceeds twelve months, expenditures occurring within each twelve-month period following the twelve-month anniversary of the initial qualifying investment, whose timing, amount, or substance indicate continuing progress toward completion of the planned investment in the qualified facility. The Authority may require documentation, conduct inspections, perform audits, or take other measures as may be necessary to verify compliance.
2. "Affiliate" means a member of an Arizona affiliated group as defined by A.R.S. § 43-947 or a member who files a combined return pursuant to A.A.C. 15-2D-401.
3. "Annual Report" means either 1) the EASY form "Qualified Facilities Annual Report" and all required uploads or 2) the Authority written form "Annual Report" and all required attachments that demonstrates an Applicant's continued eligibility for tax credits.
4. "Applicant" means a C corporation, a unitary group of corporations, an Arizona affiliated group as defined in A.R.S. § 43-947(I)(2), a limited liability company, an S corporation, a sole proprietorship or a partnership.
5. "Application for Post-Approval" or "Application" means either 1) the EASY form "Qualified Facility Application for Post-Approval" and all required uploads or 2) the Authority written form "Application for Post-Approval" and all required attachments that demonstrates eligibility for tax credits.
6. "Begins Operations" means the Qualified Facility is open for public business. Applicants can demonstrate that a Qualified Facility begins operations by submitting either: a certificate of

occupancy, a copy of the Taxpayer's profit and loss statement for the facility, or other evidence approved by the Authority.

7. "Build-to-suit" refers to a project whereby the developer or landlord improves existing land or buildings or constructs new real estate to the specifications required by the taxpayer.
8. "Business day" means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes as a legal holiday or a day on which the Authority is authorized or obligated by law or executive order to be closed.
9. "Calendar year cap" or "cap" means the tax credit amount prescribed by A.R.S. § 41-1512(J) for allocation under the Qualified Facility Program. The cap is available for allocation in a specific calendar year.
10. "Costs incurred" means an expenditure by the Taxpayer or its affiliate to a retailer, lessor or contractor that is directly attributable to the creation of or expansion of a Qualified Facility.
11. "Date and Time Stamp" means the day and time a Request or Application is submitted via EASY or delivered to and accepted by the Authority via private delivery service or hand delivery. Any other form of delivery for a Request or an Application, including mailed, emailed or faxed copies will not be accepted by the Authority. Postmarks will be disregarded when determining the Date and Time Stamp.
12. "Eligible" means a Taxpayer for which an Application for Post-Approval has been submitted and the Authority has issued a notice of Post-Approval.
13. "Employee" means an individual for whom a business is required to remit Federal Insurance Contributions Act (FICA) tax, whether or not FICA is actually remitted.
14. "Expenditure" means payment of cash or cash-equivalent for goods or services, or a charge against available funds in settlement of an obligation as evidenced by an invoice, receipt, voucher or other such document.
15. "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.
16. "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.
17. "Interim Report" means either 1) the EASY form "Qualified Facility 12-Month Interim Report" and all required uploads or 2) the Authority written form "12-Month Interim Report" and all required attachments that demonstrates continued eligibility for tax credits.
18. "Investment Threshold" means a Taxpayer's Expenditure of Qualifying Investment in a Qualified Facility totaling at least \$250,000.
19. "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. A To demonstrate eligibility as a manufacturer, a Taxpayer must be able to document four separate and unique processes that impart new forms, qualities, properties and combinations
20. "Net-New Full-time Employment Position (NFEP)" has the meaning as established in Section 8 (B) of these Guidelines.

21. "Out-of-state sale" and "Sold out-of-state" and "sold outside of Arizona" mean the product is not destined for use in Arizona. If the Applicant doesn't know the destination of the goods, then sales are determined by the location of delivery.
22. "Permanent" means an employment position that is not established for a specified or limited period of time.
23. "Phase" means distinct activities undertaken by a Taxpayer leading to expansion or location of a Qualified Facility in this state.
24. "Pre-Approval" means the written correspondence from the Authority indicating the Applicant is qualified for an allocation of tax credits under A.R.S. § 41-1512. The Pre-Approval is valid until the project becomes operational as long as the Applicant maintains eligibility. Pre-Approval is only a reservation of calendar cap for the Applicant. Pre-Approval does not guarantee the receipt of tax credits as final eligibility is determined after an Application for Post-Approval is submitted to the Authority.
25. "Priority Placement Number" means the order in which the calendar year cap is allocated to applicants of the Qualified Facility Program. The order is established by the Date and Time Stamp on a Request for Pre-Approval
26. "Post-Approval" means the written correspondence from the Authority indicating the Applicant is eligible to claim tax credits under A.R.S. § 41-1512.
27. "Qualified" means an Applicant for which a Request for Pre-Approval has been submitted and the Authority has issued a Pre-Approval.
28. "Qualified Facility" means a facility in this state that devotes at least eighty per cent of the property and payroll at the facility to one or more of the following:
  - a) Qualified manufacturing.
  - b) Qualified headquarters.
  - c) Qualified research.
29. "Qualified headquarters" means a global, national or regional headquarters for a Taxpayer that is involved in manufacturing and that derives at least sixty-five per cent of its revenue from out-of-state sales.
30. "Qualified manufacturing" means manufacturing tangible products in this state if at least sixty-five per cent of the product will be sold out-of-state. For the purposes of Qualified Facilities Tax Credit Program, the square footage necessary to store raw materials, work-in-process, and finished goods related to the manufacturing function performed at the Qualified Facility may be included as part of the Qualified Manufacturing square footage. Such square footage shall vary among manufacturers, depending on the process, seasonality, products being manufactured, or other variables, but shall in no case be more than a reasonable amount necessary to support the manufacturing operation at the qualified facility. The Authority may require site visits, documentation, audits, or other actions to verify compliance.
31. "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 per cent of its revenue from out-of-state sales.
32. "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 Arizona after June 30, 2012 for a Facility completed in a taxable year beginning January 1, 2013 or any taxable year thereafter. 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.

33. "Relocated Equipment" means machinery and equipment in operation outside the State that is then relocated to the Qualified Facility.
34. "Request for Pre-Approval" or "Request" means either 1) the EASY form "Qualified Facility Request for Pre-Approval" and all required uploads or 2) the Authority written form "Request for Pre-Approval" and all required attachments to apply for Pre-Approval.
35. "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.
36. "Substantially Complete" means all questions in the Request for Pre-Approval or Application for Post-Approval are fully addressed by the Applicant and all documents required by the Authority are attached or can be supplied within 14 calendar days after receipt of notification by the Authority of any deficiencies. One extension of an additional 14 calendar days may be requested and granted by the Program manager. Requests or Applications that are not made Substantially Complete within the stated timeframe will be considered inactive and withdrawn by the Applicant. The Date and Time Stamp on a withdrawn Request is void and the cap it was allocated from will be authorized to the next Eligible Applicant.
37. "Tax Clearance Application" means the written Revenue form "Tax Clearance Application."
38. "Tax credit" or "credit" means the credit against Arizona income tax liability provided under A.R.S. §§ 43-1083.03 and 43-1164.04.
39. "Taxpayer" means an individual, a corporation, an S corporation, a partnership or a limited liability company. A unitary group required to file a combined return shall be treated as a single Taxpayer. An Arizona affiliated group required to file a consolidated return shall be treated as a single Taxpayer.
40. "Timely claimed" means the Taxpayer and individual co-owners file a return with Revenue by the due date of the return, including extensions, for the tax year for which tax credits are authorized.

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