

NOTICE OF EMERGENCY RULE MAKING

Arizona Commerce Authority Rule Notice of Rule Making No. 13-03

1. Rule(s):

Qualified Facility Tax Credit Program

2. Preamble.

A. Reference to the specific statutory authority for the Rule(s).

A.R.S. §41-1512

B. An explanation of the Rule(s), including the agency's reasons for initiating the rule making.

The proposed Rules will govern the Qualified Facility Tax Credit program. The Rules are necessary to implement the program, which was created in 2012 by the Arizona legislature.

3. The exact wording of the Rule(s).

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the Rule(s).

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5. Where written submissions on the proposed Rule(s) may be inspected (by appointment only).

Arizona Commerce Authority
333 North Central, Suite 1900
Phoenix, Arizona 85004

6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. No hearing to receive oral comments has been scheduled at this time.

7. Any known timetable for agency decisions or other action in the proceeding.

None at this time

8. The date of posting the Notice of Rule Making.

January 2, 2013

9. The deadline for the Authority to file a notice of adoption of the Rule(s).

One hundred and Eighty Days from the date of posting of the Notice of Rule Making.

10. Emergency Rule Making.

Pursuant to Section III(G)(1) (b) of the Arizona Commerce Authority Rules Policy, these rules are being adopted through Emergency Rule Making in order to align the provisional effective date of the Rules with the first business day of the tax year in which the Rules are operative.

Arizona Commerce Authority
Qualified Facility Tax Credit Program
Program Rules & Guidelines¹
“Preliminary – Pending ACA Rules Process”

Section 1. Overview

The Qualified Facility Tax Credit Program (A.R.S. §41-1512) 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 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 who are expanding or locating a Qualified Facility in Arizona.

The Qualified Facility Tax Credit (Qualified Facility) program, subject to eligibility requirements, offers a refundable income tax credit equal to the lesser of:

- (i) 10% of the qualifying capital investment, or
- (ii) \$20,000 per net new job at the facility, or
- (iii) \$30,000,000 per taxpayer.

Applying for the Qualified Facility Program

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 (Commerce). However, prior to applying for pre-approval to Commerce, 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 Commerce. If the Request is qualified, Commerce will issue Pre-Approval and will transmit a copy Revenue.

To maintain eligibility, following receipt of Pre-Approval, the Taxpayer must provide documentation to Commerce that it has spent at least \$250,000 on the proposed project within twelve months of the Pre-Approval date. Depending on the length of the project, the Taxpayer must also demonstrate it has spent an additional \$250,000 each twelve-month period to maintain eligibility.

When the proposed project is operational but prior to applying for Post-Approval, a Taxpayer must enter into a written managed review agreement with Commerce. A certified public accountant must verify the Taxpayer’s eligibility for tax credits under the program and furnish its findings to Commerce in writing. Following receipt of the approved written managed review, the Taxpayer must submit to Commerce an “Application for Post-Approval”. Commerce 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 Commerce verifying it is still operating at the facility and has not liquidated its assets.

¹ 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.

Section 2. Eligibility Requirements

A Taxpayer may be eligible for tax credits once the Qualified Facility is operational and in compliance with requirements of A.R.S. §41-1512, if it:

- Makes a Capital Investment, on or after July 1, 2012, to establish or expand a facility in Arizona that devotes at least eighty percent of the square footage of the facility and payroll at the facility to one or more of the following:
 - Manufacturing facility where at least 65% of the products are sold outside of Arizona.
 - 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.
 - Headquarters facility for a manufacturing company that derives at least 65% of its revenues from sales outside of Arizona.
- Creates net new full-time employment positions for the facility of which at least 51% are Qualified Employment Positions
- Offers to pay at least 80% of the health insurance costs for all net new full-time employment positions
- Spends at least \$250,000 in Qualifying Investment during each twelve-month period in the Pre-Approval period
- Supplies a Letter of Good Standing from Revenue
- Remits a non-refundable 1% processing fee
- Submits a Request for Pre-Approval and receives Pre-Approval from Commerce
- Submits an Application for Post-Approval and receives Post-Approval from Commerce
- 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
- Complies with the employer and business sanctions set forth in A.R.S. §23-214(B) and A.R.S. §§35-391 and 35-393.

Section 3. Explanation of Tax Credits

Income Tax Credits. Under A.R.S. §§43-1083.03 and 43-1164.04, for tax years beginning from and after December 31, 2012 through December 31, 2019, 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 job created at the Qualified Facility in Arizona. 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).

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 Commerce's Post-Approval; starting with the year in which Post-Approval was received. If in any year 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 Commerce assuming it timely claimed the credit with Revenue for the tax year(s).

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 credits allowed based on ownership interest. The total credits 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))

To download Revenue's forms, visit <http://www.azdor.gov/>

Section 4. Tax Credit Limitations

A. Commerce 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 million per calendar year to a single Taxpayer.

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

B. Commerce cannot pre-approve a total amount of tax credits that exceeds \$70,000,000 per calendar year. It is important to note that the program cap is shared between the Qualified Facility program and the Renewable Energy Tax Incentive Program. (A.R.S. §§41-1512(J) & 41-1511(J)) 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. For purposes of this section, "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 Commerce. An applicant may also allow Commerce to conduct a site visit to verify operations have begun.

D. If a Taxpayer files an Application for Post-Approval, Commerce shall not pre-approve any additional tax credits for the specific project/phase identified in the Request for which Pre-Approval was issued.

E. If a Taxpayer has more than one non-contiguous location and can demonstrate eligibility for each separate Qualified Facility, Commerce may issue multiple Pre-Approvals. Aggregation of job creation and/or capital investment for non-contiguous locations is prohibited. Aggregation of job creation and/or capital investment for separate projects/phases at the same location is also prohibited, unless submitted in a single Request.

F. A Taxpayer that claims a military reuse zone or 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))

Section 5. Calendar Year Cap Management

A. Commerce shall pre-approve tax credits according to A.R.S. §§41-1512(J) and 41-1511(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, Commerce 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 that were voluntarily relinquished, lapsed or returned due to ineligibility. Cap will be reallocated to a qualified Applicant with the next Priority Placement Number, 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. (A.R.S. §41-1511(J)(3))
- D. Notwithstanding C above, if in any year there is an unused tax credit amount Commerce shall allocate the balance to a qualified Applicant that successfully appeals the denial of tax incentives under this program. If sufficient unused tax credit amount is not available from the current year's cap to satisfy a successful appeal, Commerce shall allocate tax credits from the next calendar year's cap. (A.R.S. §41-1511(J)(1))
- E. Requests for Pre-Approval can be accepted by Commerce 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 Commerce 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))

Section 6. Submittal of Applications

The acceptance process described in this section will determine the Priority Placement Number assigned to Requests for Pre-Approval. Commerce 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 Commerce allocates that calendar year's cap.

In an effort to streamline and expedite applications for incentives, Commerce is pleased to offer a new 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 Commerce will Date and Time Stamp each Request or Application on the date of receipt.

If a taxpayer insists on submitting a written Request or Application, Commerce 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 Commerce. When a written Request or Application is submitted, Commerce will Date and Time Stamp each Request or Application on the date of receipt.

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.

Section 7. Processing Requests for Pre-Approval

A. Commerce 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 Commerce. If a calendar year's cap is exhausted by October 31st of a year, Commerce can begin accepting Requests for the next calendar year's cap. Commerce will notify stakeholders via the website (<http://www.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.

A Taxpayer can apply for Pre-Approval by submitting either 1) the EASY form "Pre-Approval for Qualified Facility" or 2) the Commerce 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.

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 Applicant
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 3rd 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 Capital Investment and number of employment positions at the Qualified Facility
7. Any other information required by Commerce
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:
 - a. That the information contained in the Request is true and correct under penalty of perjury
 - b. To furnish records of expenditures to Commerce or Revenue on request
 - c. 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
 - d. Continue in business at the Qualified Facility for five full calendar years after receipt of Post-Approval
 - e. To furnish information regarding the amount of tax credits claimed each year to Commerce.
 - f. Revenue providing tax information to Commerce pursuant to A.R.S. §42-2003 for the purpose of determining any inconsistency in information

- g. To allow site visits and audits to verify the Applicant's continuing qualification and the accuracy of information submitted to Commerce
 - h. To the adjustment or recapture of any amount of income tax credit due to noncompliance
 - 9. Revenue's [Form 285B](#) authorizing Commerce to obtain confidential Taxpayer information from Revenue
 - 10. A copy of the Letter of Good Standing from Revenue
- B. Prior to submittal of a Request for Pre-Approval to Commerce, 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.
- C. During review of the Substantially Complete Request, Commerce 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 withdrawn by the Applicant.
- D. Commerce shall make a determination with regard to each Request within 30 calendar days after the Date and Time Stamp of a Substantially Complete Request.
- E. If Commerce denies pre-approval, the Applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10. A Taxpayer may appeal this decision; however, the denial of pre-approval prohibits a Taxpayer from receiving tax credits under this program unless the appeal is successful.
- F. 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 Commerce. After the fee has been processed, Commerce 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 Commerce determines final eligibility. Nor does Pre-Approval of an Applicant for the purposes of 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 1st will be the effective date of the Pre-Approvals for all Requests received between November 1st and December 31st that are intended for the next calendar year's cap.

Section 8. Next Steps: Following Pre-Approval

A. Within 12-Months After Pre-Approval

An Applicant must submit either 1) the EASY form "Qualified Facility 12-Month Interim Report" or 2) the Commerce written form "12-Month Interim Report" to Commerce. The Interim Report must be Substantially Complete and demonstrate that the Taxpayer has expended at least \$250,000 in Qualifying Investment. An Interim Report must be submitted to Commerce for each twelve-month period of Pre-Approval until the Applicant applies for Post-Approval.

If the Taxpayer fails to timely submit the Interim Report to demonstrate its expenditures, 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. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

B. Qualifying Investment

For the purposes of this program, total 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. Qualifying Investment does not include relocating an existing Qualified Facility in this state to another location in this state without additional Capital Investment of at least \$250,000. Further, Qualifying Investment does not include costs incurred on or before June 30, 2012, operating expenses, true leases and 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.

Only expenditures by the Taxpayer and 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. Ownership of all assets must be in the name of the Taxpayer. 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.

Prior to issuing Post-Approval, Commerce 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 include: copies of paid invoices and cancelled checks. Other documentation may include: a real estate settlement sheet, county affidavit of property value, Arizona business property statement, copies of capital leases for equipment, or a Federal IRS Form 4562 and all supporting schedules that identify, at a minimum, the piece of equipment, the date acquired and the cost.

A qualified Applicant must maintain records of expenditures for each Request in order to certify costs to Commerce or Revenue upon completion of the project. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

C. Levels of Employment & Qualified Employment Positions (QEP)

An Applicant must maintain records of employment for each Request for Pre-Approval in order to certify employment numbers to Commerce or Revenue upon completion of the project/phase. Commerce may require additional documentation, conduct inspections or audits, as necessary, to verify compliance.

To be eligible to receive tax credits, a Taxpayer must create new jobs and make new Capital Investment for the creation or expansion of the Qualified Facility.

Of the **net new full-time employment positions** created at the facility, at least 51% must be paid at least 125% of the median annual wage computed annually by Commerce. In addition, all net new full-time employment positions must be:

- Permanent with a minimum of 1,750 hours per year. The 1,750 hours requirement relates to the minimum number of hours considered a full-time job based on the employee's normal work week. Although the position must be a full-time job, 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 established for a specified or limited period of time.

- Filled for at least 90 days during the first taxable year. (A new qualified employment position filled during the last 90 days of the taxable year shall be considered a new qualified employment position for the next taxable year.)
- 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 employee having authorization to work legally in the U.S.
- The Applicant must offer health insurance coverage for all net new full-time employees for which the employer pays at least 80% of premium or membership cost. The position can still be qualified if the employee declines 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 eighty (80) percent threshold, including but not limited to:
 - Dental insurance
 - Vision insurance
 - Short-term disability
 - Long-term disability

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.)

Taxpayers that are self-insured for employee health insurance must provide different documentation than those taxpayers offering standard group health insurance coverage.

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 QEP is created. It is Commerce'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 QEP 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.

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 eighty (80) 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.

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 eighty (80) 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 COST PAID BY SELF-INSURED EMPLOYERS

Fee Allocation	Coverage Type	Coverage Period 1/12 to 12/12
Monthly premium charged to employee	Single	29.00
	Family	84.00
Monthly premium charged to plan	Single	195.00
	Family	465.00
Percent charged to employee	Single	14.8%
	Family	18.0%

Pursuant to A.R.S. §41-1512(C), a **Qualified Employment Position (QEP)** is a position that meets all of the requirements of a net new full-time employment position and is paid at least 125% of the states median wage as computed annually by Commerce.

Year	For Tax Periods Beginning	AZ Median Wage	125% of the Median Wage
2011	6/1/12 through 5/31/13	\$34,105	\$42,631 per year

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

- Base Rate
- Commissions
- Tips
- Deadheading Pay
- Guaranteed Pay
- Hazard Pay
- Incentive Pay
- Longevity Pay
- Piece Rate
- Portal-to-Portal Rate
- Production Bonus
- Cost-of-Living Allowance

Excluded as wages are the following:

- Attendance Bonus
- Back Pay
- Draw
- Holiday Premium Pay
- Jury Duty Pay
- Lodging Payments
- Meal Payments
- Merchandise Discounts
- Overtime Pay
- Perquisites
- Profit Sharing Payment
- Relocation Allowance
- Tuition Repayments
- Nonproduction Bonus
- Severance Pay
- Shift Differential
- Stock Bonuses
- Tool Allowance
- Holiday Bonus
- Weekend Pay
- Uniform Allowance
- On-call Pay



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

D. Written Managed Review

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 Commerce. At the Applicant's expense, the Applicant will select a certified public accountant, who is licensed in Arizona and who is approved by Commerce, 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.

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 certified public accountant shall furnish its findings in writing to Commerce; 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. Commerce shall accept or reject the findings of the managed review. If Commerce rejects all or part of the managed review, Commerce shall provide written reasons for the rejection.

Section 9. Processing Applications for Post-Approval

- A. Pursuant to A.R.S. §41-1512(P), an Applicant can apply to Commerce for Post-Approval once the facility "begins operations."
- B. 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.
- C. During review of a Substantially Complete Application for Post-Approval, Commerce 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 Commerce. If the additional information is not timely submitted, Commerce cannot continue processing the Application for Post-Approval until all necessary information is supplied. Commerce 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.
- D. If Commerce denies post-approval, the Applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- E. If the Applicant is eligible for tax credits, Commerce shall issue Post-Approval. The Post-Approval will include the project name, a specific dollar amount of tax credits the Applicant may claim. Commerce will review total qualifying costs and recalculate the final amount of tax credits, as needed. The post-approved amount may be less than the pre-approved amount (if expenses were less than estimated), but never

higher. Note: Post-Approval of an Applicant for the purposes of Qualified Facility 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.

- F. 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.

Section 10. Annual Reporting Requirements Following Post-Approval

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) Commerce written form "Annual Report" and demonstrate that the Applicant is still in operations and has maintained eligibility for the tax credit.

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 Commerce

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.

Section 11. Revocation of Certification and Recapture of Incentives

- 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 Commerce 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. Commerce may rescind the Applicant's Certification if the business no longer meets the terms and conditions required for qualifying for the tax credit. Commerce 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 Commerce rescinds an Applicant's Pre-Approval, it shall notify Revenue of the action and the conditions of noncompliance. A.R.S. §41-1512(R)

In accordance with A.R.S. §41-1512(R), the Department of 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.

- D. To maintain qualification for tax credits under the Qualified Facility program, an Applicant must separately comply with all environmental, employment and other regulatory measures. Commerce may periodically request information or conduct a site visit to verify compliance with these regulatory measures. A.R.S. §41-1512(S)
- E. 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 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.
- F. 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 Qualification of an Applicant is terminated or revoked, other than for reasons beyond the control of the business as determined by Commerce, 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.
- G. 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.

Section 12. Definition of Program Terms

For purposes of applying for and maintaining eligibility for the Qualified Facility Program, the following terms are either defined by Commerce 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. "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.
2. "Annual Report" means either 1) the EASY form "Qualified Facilities Annual Report" and all required uploads or 2) the Commerce written form "Annual Report" and all required attachments to demonstrate an Applicant's continued eligibility for tax credits.
3. "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.
4. "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 Commerce written form "Application for Post-Approval" and all required attachments to demonstrate eligibility for tax credits.

5. "Business day" means a day other than Saturday, Sunday, a legal holiday or the day the State of Arizona observes a legal holiday or a day on which Commerce is authorized or obligated by law or executive order to be closed.
6. "Calendar year cap" or "cap": means the tax credit amount prescribed by A.R.S. §§41-1512(J) and 41-1511(J) for allocation under both the Qualified Facility and Renewable Energy Tax Incentive programs. The cap is available for allocation in a specific calendar year.
7. "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.
8. "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.
9. "Date and Time Stamp" means the day and time a Request or Application is submitted via EASY or delivered to and accepted by Commerce 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 Commerce. Postmarks will be disregarded when determining the Date and Time Stamp.
10. "Eligible" means a Taxpayer for which an Application for Post-Approval has been submitted and Commerce has issued a notice of Post-Approval.
11. "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.
12. "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.
13. "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.
14. "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.
15. "Interim Report" means either 1) the EASY form "Qualified Facility 12-Month Interim Report" and all required uploads or 2) the Commerce written form "12-Month Interim Report" and all required attachments to demonstrate continued eligibility for tax credits.
16. "Investment threshold" means a Taxpayer's Expenditure of Qualifying Investment in a Qualified Facility totaling at least \$250,000.
17. "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. To demonstrate eligibility as a manufacturer, a Taxpayer must document four separate and unique processes that impart new forms, qualities, properties and combinations.

18. "Out-of-state sale" and "Sold out-of-state" mean the product is not destined for use in Arizona.
19. "Permanent" means an employment position that is not established for a specified or limited period of time.
20. "Phase" means activities undertaken by a Taxpayer to expand or locate a Qualified Facility in this state.
21. "Pre-Approval" means the written correspondence from Commerce 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 tax credits 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 Commerce.
22. "Priority Placement Number" means the order in which calendar year cap is allocated to applicants of both the Qualified Facility and Renewable Energy Tax Incentive Programs. The order is established by the Date and Time Stamp on a Request for Pre-Approval for either program.
23. "Post-Approval" means the written correspondence from Commerce indicating the Applicant is eligible to claim tax credits under A.R.S. §41-1512.
24. "Qualified" means an Applicant for which a Request for Pre-Approval has been submitted and Commerce has issued a Certification of Qualification.
25. "Qualified Employment Position" or "QEP" means a position that is paid a wage that equals or exceeds 125% of the state's median wage as computed annually by Commerce.
26. "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.
27. "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.
28. "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.
29. "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.

30. "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 taxable year beginning from and after December 31, 2011. 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.
31. "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 Commerce written form "Request for Pre-Approval" and all required attachments to apply for Pre-Approval.
32. "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 Commerce are attached or can be supplied within 14 calendar day after receipt of notification by Commerce 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.
33. "Tax Clearance Application" means the written Revenue form "Tax Clearance Application"
34. "Tax credit" or "credit": means the credit against Arizona income tax liability provided under A.R.S. §§43-1083.03 and 43-1164.04.
35. "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.
36. "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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