For An Act To Be Entitled
"AN ACT TO AMEND ARKANSAS CODE TITLE 26, CHAPTER 51, SUBCHAPTER 5 TO CLARIFY ELIGIBILITY FOR THE ARKANSAS INCOME TAX CREDIT FOR THE PURCHASE OF WASTE REDUCTION, REUSE OR RECYCLING EQUIPMENT; TO ENCOURAGE THE USE OF ARKANSAS POST-CONSUMER WASTE FOR THOSE RECEIVING THE CREDIT; TO REQUIRE REFUND OF THE CREDIT IN CERTAIN INSTANCES AND FOR OTHER PURPOSES."

Subtitle
"AN ACT CONCERNING THE ARKANSAS INCOME TAX CREDIT FOR THE PURCHASE OF WASTE REDUCTION, REUSE OR RECYCLING EQUIPMENT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §26-51-506 is amended to read as follows:
"26-51-506 (a) For the purposes of this section:
(1) 'Cost' in the case of a transfer of title or a finance lease means the amount of the purchase price, and in the case of a lease which is not a finance lease but which otherwise qualifies as a purchase under this Act means the amount of the lease payments due to be paid during the term of the lease after deducting any portion of the lease payments attributable to interest, insurance and taxes;
(2) _Equipment to service waste reduction, reuse, or recycling equipment_ means expenditures, machinery, or equipment that keeps existing machinery or equipment in running order by providing repair, maintenance, adjustment, inspection, or supplies;
(3) 'Finance lease' means a lease agreement which is treated as a purchase by a lessee for Arkansas income tax purposes;
(4) _Home scrap_ means materials or by-products generated from and commonly reused within an original manufacturing process;

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

(6) _Motor vehicle_ means a vehicle or trailer that is licensed, or that normally would be licensed, for use on highways in Arkansas;

(7) _Post-consumer waste_ means products or other materials, generated by a business, governmental entity, or a consumer, which have served their intended end use and have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling;

(8) _Pre-consumer material_ means material generated during any step in the production of a product and recovered or otherwise diverted from the solid waste stream for the purpose of recycling, but does not include home scrap;

(9) _Purchase_ means a transaction under which title to an item is transferred for consideration, or a lease contract for a period of at least three (3) years regardless of whether title to the item is transferred at the end of such period;

(10) _Recovered materials_ means those materials which have been separated, diverted, or removed from the waste stream for the purpose of recycling, and includes pre-consumer materials and post-consumer waste but not home scrap;

(11) _Recycling_ means the systematic collection, sorting, decontaminating and returning of waste materials to commerce as commodities for use or exchange;

(12) _Repair_ means expenditures, machinery, or equipment used to restore existing machinery or equipment to original or similar condition and capacity after damage or after deterioration from use;

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

(13)(A) _Waste reduction, reuse, or recycling equipment_ means new or used machinery or equipment located in Arkansas on the last day of the taxable
year, which is operated or used exclusively in Arkansas to collect, separate,
process, modify, convert, or treat solid waste so that the resulting product
may be used as a raw material or for productive use or to manufacture products
containing recovered materials. The term also includes devices which are
directly connected with or are an integral and necessary part of such
machinery or equipment and are necessary for such collection, separation,
processing, modification, conversion, treatment, or manufacturing.

(B) Waste reduction, reuse or recycling equipment does not
include motor vehicles.

(b) The intent and purpose of this section is to increase capacity in
the State of Arkansas for the use of recovered materials.

(c) There shall be allowed a credit against the tax imposed by the
Arkansas Income Tax Act, as amended, §26-51-101 et seq., an amount as
determined in subsection (e) of this section, for any taxpayer engaged in the
business of reducing, reusing or recycling solid waste for commercial purposes
who purchases waste reduction, reuse or recycling equipment used exclusively
for the purpose of reducing, reusing or recycling solid waste.

(d) To claim the benefits of this section, a taxpayer must obtain a
certification from the Director of the Arkansas Department of Pollution
Control and Ecology certifying to the Revenue Division of the Department of
Finance and Administration that:

(1) the taxpayer is engaged in the business of reducing,
reusing or recycling solid waste material for commercial purposes,
whether or not for profit;

(2) the machinery or equipment purchased is waste reduction, reuse
or recycling equipment;

(3) the machinery or equipment is being used in the collection,
separation, processing, modification, conversion, treatment, or manufacturing
of products containing at least fifty percent (50%) recovered materials,
provided that at least ten percent (10%) of the recovered materials shall be
post consumer waste; and (4) the taxpayer has filed a statement with the
Director of the Arkansas Department of Pollution Control and Ecology
acknowledging that the taxpayer shall make a good faith effort to utilize
post-consumer waste generated in Arkansas as at least ten percent (10%) of the
post-consumer waste being used in the equipment, to the extent available at a
competitive price.

(e)(1) The amount of the credit allowed under subsection (c) of this section shall be equal to thirty percent (30%) of the cost of waste reduction, reuse or recycling equipment including the cost of installation.

(2) The cost of installation shall not include the cost of:

(i) Feasibility studies;

(ii) Engineering costs of a building to house the equipment and related machinery; or

(iii) Equipment used to service the waste reduction, reuse or recycling equipment.

(3) The cost of replacement parts which serve only to keep existing waste reduction, reuse, or recycling equipment in its ordinary efficient operating condition shall not be included in determining the amount of the credit. The cost of replacement of existing waste reduction, reuse, or recycling equipment shall not be included in determining the amount of the credit unless the replacement provides greater capacity for recycling or provides the capability to collect, separate, process, modify, convert, treat, or manufacture additional or a different type of solid waste.

(4) The cost of service contracts, sales tax, maintenance, and repair shall not be included in determining the amount of the credit.

(f)(1) The taxpayer shall refund the amount of the tax credit determined by subdivision (f)(2) if, within three (3) years of the taxable year for which a credit is allowed:

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

(B) the Director of the Arkansas Department of Pollution Control and Ecology finds that the taxpayer has demonstrated a pattern of intentional failure to comply with final administrative or judicial orders, which clearly indicates a disregard for environmental regulation or a pattern of prohibited conduct which could reasonably be expected to result in adverse environmental impact.

(2) If the provisions of subdivision (f)(1) apply, the taxpayer shall refund the amount of the tax credit which was deducted from income tax.
liability which exceeds the following amounts:

(A) within the first year, zero dollars;

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

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

(3) Any refund required by subdivision (f)(1)(A) of this section shall apply only to the credit given for the particular waste reduction, reuse, or recycling equipment to which that subdivision applies.

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

(5) This subsection (f) shall apply to all credits which are certified as a result of applications for certification filed with the Arkansas Department of Pollution Control and Ecology on or after July 1, 1993. Subsection (f) shall not apply to credits which are certified as a result of applications for certification filed with the Arkansas Department of Pollution Control and Ecology prior to July 1, 1993. Taxpayers who file written notice and a project plan with the Arkansas Department of Pollution Control and Ecology prior to July 1, 1993 shall be deemed to have filed an application for certification for purposes of this subdivision provided that all the information necessary to complete the application for certification is provided to the Department on or before December 31, 1993.

(g) Waste reduction, reuse, or recycling equipment shall only be eligible for one tax credit. The sale or transfer of such equipment shall not recreate the eligibility for a tax credit.

(h)(1) In the case of a proprietorship or partnership engaged in the business of waste reduction, reuse or recycling of solid waste, the amount of the credit determined under this section for any taxable year shall be apportioned to each proprietor or partner in proportion to the amount of income from the entity which the proprietor or partner is required to include as gross income.

(2) In the case of a Subchapter S corporation, as allowed by §26-51-409, the amount of the credit determined under this section for any taxable
year shall be apportioned among the persons who are shareholders of the
1 corporation on the last day of the taxable year based on each person's
2 percentage of ownership.
3
4 (3) In the case of an estate or trust:
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6 (A) the amount of the credit determined under this section
7 for any taxable year shall be apportioned between the estate or trust and the
8 beneficiaries on the basis of the income of the estate or trust allocable to
9 each; and
10
11 (B) any beneficiary to whom any amount has been apportioned
12 under this subsection shall be allowed, subject to limitations contained in
13 this section, a credit under this section for the amount.
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15 (i) The amount of the credit that may be used by a taxpayer for a
16 taxable year may not exceed the amount of state, individual or corporate
17 income tax otherwise due. Any unused credit may be carried over for a maximum
18 of three (3) consecutive years following the taxable year in which the credit
19 originated.
20
21 (j) A taxpayer who receives a credit under this section shall not be
22 entitled to claim any other state or local tax credit or deduction based on
23 the purchase of the machinery or equipment, except for the deduction for
24 normal depreciation.
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26 (k) The Arkansas Department of Pollution Control and Ecology and the
27 Revenue Division of the Department of Finance and Administration shall
28 promulgate rules or regulations as necessary to administer this section.
29 These rules or regulations may include but are not limited to the
30 establishment of technical specifications and of requirements for information
31 and documentation for taxpayers seeking a credit under this section and shall
32 encourage but not require the use of Arkansas contractors and post-consumer
33 waste generated in Arkansas in recycling projects which qualify for credits
34 provided by this section. In order to determine eligibility for the credit or
35 to insure that the machinery or equipment is being utilized in the required
36 manner, each agency shall have the right to inspect facilities and records of
37 a taxpayer requesting or receiving a credit under this section.
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39 (l) any person or legal entity aggrieved by a decision of the Director
40 of the Arkansas Department of Pollution control and Ecology under subsections
41 26-51-506(d) or 26-51-506(f)(1)(B) may appeal to the Commission on Pollution
Control and Ecology through administrative procedures adopted by the Commission and to the courts in the manner provided in sections 8-4-222 - 8-4-229.

SECTION 2. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 4. All laws or parts of laws in conflict with this Act are hereby repealed.

SECTION 5. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that clarification of the law for the tax credit for waste reduction, reuse, or recycling equipment is necessary; that the use of Arkansas post-consumer waste should be encouraged by means of this credit; that the credit should be refunded or disallowed under certain circumstances; and that for the effective administration of this act, the act should become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/Senator Wilson

APPROVED: 3/24/93