

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

SENATE BILL 9

5 By: Senator Altes
6
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH AN INCOME TAX CREDIT FOR THE
10 REHABILITATION OF HISTORIC STRUCTURES LOCATED IN
11 ARKANSAS; AND FOR OTHER PURPOSES.
12

Subtitle

13 TO ESTABLISH AN INCOME TAX CREDIT FOR
14 THE REHABILITATION OF HISTORIC
15 STRUCTURES LOCATED IN ARKANSAS.
16
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 26, Chapter 51 is amended to add an
22 additional subchapter to read as follows:

23 SUBCHAPTER 22. ARKANSAS HISTORIC STRUCTURES REHABILITATION TAX CREDIT ACT.

24 26-51-2201. Title.

25 This subchapter shall be known and may be cited as the "Arkansas
26 Historic Structures Rehabilitation Tax Credit Act".
27

28 26-51-2202. Purpose.

29 The purpose of this subchapter is to encourage economic development
30 within existing infrastructure and to promote the rehabilitation of historic
31 structures throughout Arkansas.
32

33 26-51-2203. Definitions.

34 As used in this subchapter:

35 (1) "Arkansas historic tax credit" means the income tax credit
36 provided for eligible property;



1 (2) “Certified rehabilitation” means a substantial
2 rehabilitation of an eligible property completed under this subchapter and
3 for which an eligibility certificate is issued;

4 (3) “Eligibility certificate” means a certificate issued by the
5 Department of Arkansas Heritage certifying that a project is a certified
6 rehabilitation that qualifies for the Arkansas historic tax credit;

7 (4) “Eligible property” means property that is located in the
8 state and that is:

9 (A) Income-producing property that qualifies as a
10 certified historic structure under 26 U.S.C. § 47, as in effect January 1,
11 2009, or that will be eligible for that designation following certified
12 rehabilitation; or

13 (B) Non-income producing property that is either:

14 (i) Listed in the National Register of Historic
15 Places;

16 (ii) Designated as contributing to a district listed
17 in the National Register of Historic Places; or

18 (iii) Will be eligible for designation as
19 contributing to a district listed in the National Register of Historic Places
20 following certified rehabilitation;

21 (5) “Federal rehabilitation tax credit” means the federal tax
22 credit as provided by 26 U.S.C. § 47, and the regulations promulgated
23 thereunder, as in effect on January 1, 2009;

24 (6) “Holder” means the holder of an eligibility certificate that
25 is:

26 (A) A person, a firm, a corporation, a financial
27 institution, or another legal entity subject to the income tax imposed by the
28 Income Tax Act of 1929, § 26-51-101 et seq.; or

29 (B) An insurance company paying an annual tax on its gross
30 premium receipts in this state under §§ 26-57-601 - 26-57-605;

31 (7)(A) “Owner” means any owner of eligible property that
32 completes the certified rehabilitation and is the initial recipient of the
33 eligibility certificate from the department.

34 (B) Any individual or entity empowered to own real
35 property in this state may qualify as an owner;

36 (8) “Premium tax” means a tax levied under §§ 26-57-601 - 26-57-

1 605; and

2 (9)(A) "Qualified rehabilitation expense" means any cost or
 3 expense incurred to complete a certified rehabilitation that would be
 4 considered a qualified rehabilitation expense for purposes of the federal
 5 historic rehabilitation tax credit, as determined by the State Historic
 6 Preservation Officer of the department.

7 (B) For purposes of this subchapter, a qualified
 8 rehabilitation expense on a non-income producing property shall be treated
 9 the same as a qualified rehabilitation expense for income producing property.

10
 11 26-51-2204. Tax credits -- Establishing amount -- Limitations.

12 (a) There is allowed an Arkansas historic tax credit against the
 13 income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or the
 14 premium tax levied under §§ 26-57-601 – 26-57-605 for any holder of an
 15 eligibility certificate up to the amount of the Arkansas historic tax credit
 16 allocable to that holder.

17 (b) The Arkansas historic tax credit shall be in an amount equal to
 18 twenty-five percent (25%) of the total qualified rehabilitation expenses
 19 incurred by the owner to complete a certified rehabilitation.

20 (c) The Arkansas historic tax credit is available for eligible
 21 property with a completed certified rehabilitation that was placed in service
 22 after January 1, 2009.

23 (d) Upon completion of the rehabilitation work, the owner shall submit
 24 the documentation that is required by the Department of Arkansas Heritage to
 25 verify that a certified rehabilitation has been successfully completed.

26 (e) If the department determines that a certified rehabilitation has
 27 been successfully completed, it shall issue a freely transferable eligibility
 28 certificate specifying the total amount of the Arkansas historic tax credit
 29 allowed.

30 (f) If the owner is dissatisfied with the determination made by the
 31 department under subsection (e) of this section, the owner may request that a
 32 review of that determination be made by the State Historic Preservation
 33 Officer or the officer's designee.

34 (g) The request for review under subsection (f) of this section shall
 35 be made in writing to the State Historic Preservation Officer within thirty
 36 (30) days from the date of the determination under subsection (e) of this

1 section by the department.

2 (h)(1) The owner shall certify to the department the correctness of
3 any cost and expense claimed as a qualified rehabilitation expense and shall
4 maintain the records supporting the claim for at least five (5) years after
5 the issuance of the eligibility certificate.

6 (2) The owner's records supporting the claim for a qualified
7 rehabilitation expense may be reviewed at any time requested by the
8 department, the appropriate tax collection authority, or any holder.

9
10 26-51-2205. Procedure to claim tax credit and transfer of credit.

11 (a)(1) The holder shall submit the eligibility certificate and
12 documents proving the assignment, if any, with the appropriate tax collection
13 authority at the time of filing the holder's income tax return or premium tax
14 return.

15 (2) The appropriate tax collection authority may refuse to
16 recognize the Arkansas historic tax credit claimed if the holder fails to
17 submit the eligibility certificate and any assignment document.

18 (b) The amount of the Arkansas historic tax credit that may be used by
19 a holder for a taxable year may equal but shall not exceed the amount of
20 income tax or premium tax due from the holder.

21 (c) Any unused Arkansas historic tax credit may be carried back two
22 (2) taxable years and carried forward for a maximum of five (5) consecutive
23 taxable years for credit against the income tax due or premium tax due.

24 (d)(1) An owner may freely transfer, sell, or assign part or all of
25 the Arkansas historic tax credit amount identified in the eligibility
26 certificate.

27 (2) A later holder may freely transfer, sell, or assign part or
28 all of the remaining Arkansas historic tax credit.

29 (3) An owner is free to sell his or her eligible property after
30 the issuance of the eligibility certificate.

31 (e) An Arkansas historic tax credit granted to a partnership or to a
32 limited liability company taxed as a partnership, or multiple owners of
33 property shall be passed through to the partners, members, or owners
34 respectively on a pro rata basis or pursuant to an executed agreement among
35 the partners, members, or owners documenting an alternate distribution
36 method.

1 (f)(1) Any holder may use the Arkansas historic tax credit to offset
 2 up to one hundred percent (100%) of the income tax or premium tax due from
 3 the taxpayer.

4 (2) The holder is not required to have any ownership or other
 5 interest in the eligible property for which the Arkansas historic tax credit
 6 is claimed.

7 (3) The Arkansas historic tax credit may be used up to the full
 8 amount by any holder without limitation and without regard to limitations
 9 imposed by federal law or regulation on the use of a federal rehabilitation
 10 tax credit, such as an alternative minimum tax, at risk rule, or passive
 11 income restriction.

12 (g) An owner or holder wishing to assign part or all of an Arkansas
 13 historic tax credit shall perfect the transfer by notifying the Department of
 14 Arkansas Heritage in writing within thirty (30) calendar days following the
 15 effective date of the transfer and shall provide any information as may be
 16 required by the department to administer and carry out this subchapter and
 17 ensure proper tracking of the ownership of the outstanding Arkansas historic
 18 tax credit.

19 (h)(1) Any consideration received for the transfer of the Arkansas
 20 historic tax credit shall not be included as income taxable by the State of
 21 Arkansas.

22 (2) Any consideration paid for the transfer of the Arkansas
 23 historic tax credit shall not be deducted from income taxable by the State of
 24 Arkansas.

25
 26 26-51-2206. Rules for enforcement.

27 (a) The Department of Arkansas Heritage shall promulgate rules and
 28 prescribe forms for the proper enforcement of this subchapter.

29 (b)(1) The department may charge a fee for the processing of an
 30 application and review for an Arkansas historic tax credit and may charge a
 31 fee to process a request to record a transfer of interest in an Arkansas
 32 historic tax credit to another holder.

33 (2) The fee for processing and reviewing an application for an
 34 Arkansas historic tax credit shall not exceed two and one-half percent (2.5%)
 35 of the amount of Arkansas historic tax credit requested or three-fourths of
 36 one percent (.75%) of the amount of the Arkansas historic tax credit

1 transferred.

2 (c) Any fee collected under subsection (b) of this section by the
 3 department shall be deposited into the State Treasury cash fund of the
 4 department.

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 6 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5 is amended
 7 to add an additional section to read as follows:

8 26-51-513. Rehabilitation of historic structure tax credit.

9 (a) In addition to any income tax credit for which a taxpayer
 10 qualifies under this subchapter, the taxpayer is allowed an income tax credit
 11 for the amount of the Arkansas historic tax credit allowed by the eligibility
 12 certificate issued by the Department of Arkansas Heritage under the Arkansas
 13 Historic Structures Rehabilitation Tax Credit Act, § 26-51-2201 et seq.

14 (b) The amount of the income tax credit under this section that may be
 15 claimed by the taxpayer in a tax year shall not exceed the amount of state
 16 income tax due by the taxpayer.

17 (c) Any unused income tax credit under this section may be carried
 18 back two (2) tax years and carried forward for a maximum of five (5)
 19 consecutive tax years for credit against the state income tax.

20 (d) The Director of the Department of Finance and Administration shall
 21 promulgate rules to implement this section.

22
 23 SECTION 3. Arkansas Code § 26-57-604, concerning the remittance of
 24 premium taxes, is amended to add an additional subsection as follows:

25 (c)(1) In addition to any premium tax credit for which an insurer
 26 qualifies under subsection (a) of this section, there is allowed a premium
 27 tax credit for the amount of the Arkansas historic tax credit allowed by the
 28 eligibility certificate issued by the Department of Arkansas Heritage under
 29 the Arkansas Historic Structures Rehabilitation Tax Credit Act, § 26-51-2201
 30 et seq.

31 (2) This premium tax credit under this subsection may be used to
 32 offset the premium tax imposed by §§ 26-57-603 - 26-57-605.

33 (3) The amount of the premium tax credit under this section that
 34 may be claimed by the taxpayer in a tax year shall not exceed the amount of
 35 premium tax due by the taxpayer.

36 (4) Any unused premium tax credit may be carried back two (2)

1 taxable years and carried forward for a maximum of five (5) consecutive
2 taxable years for credit against the premium tax.

3 (5) The Insurance Commissioner shall promulgate rules to
4 implement this section.

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6 SECTION 4. This act shall apply to tax years beginning on and after
7 January 1, 2009.

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