

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 9

"TO ESTABLISH AN INCOME TAX CREDIT FOR THE REHABILITATION OF HISTORIC
STRUCTURES LOCATED IN ARKANSAS."

Amendment No. 1 to Senate Bill No. 9.

Amend Senate Bill No. 9 as originally introduced:

Add Representative Moore as a cosponsor of the bill

AND

Delete everything after the Enacting Clause and substitute the following:

"SECTION 1. Arkansas Code Title 26, Chapter 51 is amended to add an additional subchapter to read as follows:

SUBCHAPTER 22. ARKANSAS HISTORIC REHABILITATION INCOME TAX CREDIT ACT

26-51-2201. Title.

This subchapter shall be known and may be cited as the "Arkansas Historic Rehabilitation Income Tax Credit Act".

26-51-2202. Purpose.

The purpose of this subchapter is to encourage economic development and community revitalization within existing state and federal infrastructure by providing an income tax credit to promote the rehabilitation of historic structures throughout Arkansas.

26-51-2203. Definitions.

As used in this subchapter:

(1) "Arkansas historic rehabilitation income tax credit" means an income tax credit against the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601 – 26-57-605 that includes:

(A) An income tax credit for an income-producing property that qualifies for a federal rehabilitation tax credit; and

(B) An income tax credit for a nonincome-producing property;

(2) "Certified rehabilitation" means a substantial rehabilitation of an eligible property that has been issued an eligibility certificate;



(3) "Certification of completion" means a certificate issued by the Department of Arkansas Heritage certifying that a project is a certified rehabilitation of an eligible property that qualifies for the Arkansas historic rehabilitation income tax credit;

(4) "Eligible property" means property that is located in the state that is:

(A) Income-producing property that:

(i) Qualifies as a certified historic structure under 26 U.S.C. § 47, as it existed on January 1, 2009; or

(ii) Will qualify as a certified historic structure following certified rehabilitation; or

(B) Nonincome-producing property that is:

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

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

(iii) Eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation;

(5) "Federal rehabilitation tax credit" means the federal tax credit as provided under 26 U.S.C. § 47, as it existed on January 1, 2009;

(6) "Holder" means the holder of a certification of completion that is:

(A) A person, firm, or corporation subject to the income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

(B) An insurance company paying the premium tax on its gross premium receipts;

(7) "Owner" means a person or an entity that owns eligible property and is the initial recipient of the certification of completion from the Department of Arkansas Heritage;

(8) "Premium tax" means a tax levied under §§ 26-57-603 - 26-57-605; and

(9) "Qualified rehabilitation expenses" means costs and expenses incurred to complete a certified rehabilitation that are qualified rehabilitation expenses under the federal rehabilitation tax credit or under the Arkansas historic rehabilitation income tax credit.

26-51-2204. Arkansas historic rehabilitation income tax credit.

(a) There is allowed an income tax credit up to the amount of tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or the premium tax to a holder of an Arkansas historic rehabilitation income tax credit.

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

(1) Five hundred thousand dollars (\$500,000) of qualified rehabilitation expenses on income-producing property; or

(2) One hundred thousand dollars (\$100,000) of qualified rehabilitation expenses on nonincome-producing property.

(c)(1) The Department of Arkansas Heritage shall only issue Arkansas historic rehabilitation income tax credits for up to four million dollars (\$4,000,000) in any one (1) fiscal year.

(2) Any unused Arkansas historic rehabilitation income tax credits shall not be carried over to the following fiscal year for use by the Department of Arkansas Heritage.

(3) Any certification of completion that would cause the Arkansas historic rehabilitation income tax credit to exceed the amounts listed in subdivision (c)(1) of this section during the fiscal year will be carried forward for consideration during the following fiscal year.

(d) The Arkansas historic rehabilitation income tax credit shall be available to an owner of an eligible property that:

(1) Completes a certified rehabilitation that is placed in service after January 1, 2009;

(2) Has a minimum investment of twenty-five thousand dollars (\$25,000) in qualified rehabilitation expenses; and

(3) Is not receiving a tax credit under any other state law for the same eligible property.

(e) Upon completion of a rehabilitation, the owner shall submit documentation required by the Department of Arkansas Heritage to verify that the completed rehabilitation qualifies as a certified rehabilitation.

(f) If the Department of Arkansas Heritage determines that a rehabilitation qualifies as a certified rehabilitation and that the certified rehabilitation is complete, the Department of Arkansas Heritage shall issue a freely transferable certification of completion specifying the total amount of the qualified rehabilitation expenses and Arkansas historic rehabilitation income tax credit allowed.

(g)(1) If the owner requests a review of the Department of Arkansas Heritage's determination under subsection (f) of this section, the owner shall submit a written request for review of the determination.

(2) The owner shall submit the request in writing to the Department of Arkansas Heritage within thirty (30) days of the date of notification to the owner of the determination.

(h)(1) The owner shall certify to the Department of Arkansas Heritage the validity of costs and expenses claimed as qualified rehabilitation expenses and shall maintain a record supporting the claim for at least five (5) years after the issuance of the certification of completion.

(2) An owner's record supporting a claim for qualified rehabilitation expenses may be reviewed by the Department of Arkansas Heritage, the appropriate tax collection authority, or a holder.

26-51-2205. Procedure to claim tax credit – Transferring credit.

(a)(1) A holder shall submit the certification of completion and documents proving an assignment, if any, with the appropriate tax collection authority at the time of filing the holder's income tax return or premium tax return.

(2) The appropriate tax collection authority may refuse to recognize the Arkansas historic rehabilitation income tax credit claimed if the holder fails to submit the certification of completion and any assignment documents.

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

(c) A holder of an unused Arkansas historic rehabilitation income tax credit may carry forward part or all of an Arkansas historic rehabilitation

income tax credit for five (5) consecutive taxable years to apply against the holder's income taxes due or the holder's premium tax due.

(d)(1) An owner of an Arkansas historic rehabilitation income tax credit may freely transfer, sell, or assign part or all of the Arkansas historic rehabilitation income tax credit amount identified in the certification of completion.

(2) A subsequent holder may transfer, sell, or assign part or all of the remaining Arkansas historic rehabilitation income tax credit.

(3) The sale of the Arkansas historic rehabilitation income tax credit must be reported as income under the Income Tax Act of 1929, § 26-51-101 et seq., or the premium tax.

(e) An owner may sell the owner's eligible property after the issuance of the certification of completion.

(f) An Arkansas historic rehabilitation income tax credit granted to a partnership, Subchapter S corporation, a limited liability company taxed as a partnership, or multiple owners of property shall be passed through to the partners, members, or owners respectively on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method.

(g)(1) A holder may use the Arkansas historic rehabilitation income tax credit to offset up to one hundred percent (100%) of the state income taxes due or premium tax due from the holder.

(2) A holder is not required to have any ownership or other interest in the eligible property for which an Arkansas historic rehabilitation income tax credit is claimed.

(3) An Arkansas historic rehabilitation income tax credit may be used up to its total amount by any holder without limitation and is not subject to limits imposed by federal law or regulation on the use of federal rehabilitation tax credits.

(h) An owner or holder that assigns part or all of an Arkansas historic rehabilitation income tax credit shall perfect the transfer by notifying the Department of Arkansas Heritage and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer and shall provide any information as may be required by the Department of Arkansas Heritage and the appropriate tax collection authority to administer and carry out this subchapter and to ensure proper tracking of the ownership of the unused Arkansas historic rehabilitation income tax credit.

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

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

26-51-2206. Fees.

(a)(1) The Department of Arkansas Heritage may charge a fee to process:

(A) An application for an Arkansas historic rehabilitation income tax credit; and

(B) A request to record transfers of interests in an Arkansas historic rehabilitation income tax credit to other holders.

(2) The fee for processing an application for an Arkansas historic rehabilitation income tax credit shall not exceed two and one-half percent (2.5%) of the amount of the Arkansas historic rehabilitation income tax credit applied for, or seventy-five hundredths percent (0.75%) of the amount of the Arkansas historic rehabilitation income tax credit transferred, whichever is less.

(b) A fee collected under this subchapter by the Department of Arkansas Heritage shall be considered cash funds of the Department of Arkansas Heritage and shall be used for the administration of this act.

26-51-2207. Rules.

(a) The Department of Arkansas Heritage shall promulgate rules to implement this subchapter that shall include criteria for the prioritizing of the rehabilitation applications and that will stimulate the local economy where the property is located, including without limitation the criteria that the rehabilitation project will be prioritized in the following order:

- (1) Result in the creation of a new business;
- (2) Result in the expansion of an existing business;
- (3) Establish or contribute to the establishment of a tourism attraction as defined by the Department of Parks and Tourism;
- (4) Contribute to the revitalization of a specific business district; or
- (5) Be a key property in the revitalization of a specific neighborhood.

(b) The Department of Arkansas Heritage shall consult with the Department of Finance and Administration, the Arkansas Economic Development Commission, and the State Insurance Department in promulgating rules under this subchapter.

(c) The Department of Parks and Tourism shall promulgate rules to define a "tourism attraction" as provided in subdivision (a)(3) of this section.

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

26-51-513. Arkansas historic rehabilitation income tax credit.

(a) In addition to any income tax credit not related to the same eligible property for which a taxpayer qualifies, the taxpayer is allowed an income tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

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

(c) Any unused income tax credit under this section may be carried forward for a maximum of five (5) consecutive tax years for credit against the state income tax.

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

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

(c)(1) In addition to any premium tax credit not related to the same eligible property for which an insurer qualifies under subsection (a) of this section, there is allowed a premium tax credit for the amount of the Arkansas historic rehabilitation income tax credit allowed by the certification of completion issued by the Department of Arkansas Heritage under the Arkansas Historic Rehabilitation Income Tax Credit Act, § 26-51-2201 et seq.

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

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

(4) Any unused premium tax credit may be carried forward for a maximum of five (5) consecutive taxable years for credit against the premium tax.

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

SECTION 4. This act is effective for tax years beginning on and after January 1, 2009, and ending on or before December 31, 2015."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Altes

MMC/MAJ - 02-27-2009 08:39

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Secretary