

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.

INTERIM STUDY PROPOSAL 2007-198

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

SENATE BILL 775

By: Senator Altes

Filed with: Senate Interim Committee on Revenue and Taxation
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

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

Subtitle

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

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

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

26-51-2201. Title.

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

26-51-2202. Purpose.

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

26-51-2203. Definitions.

As used in this subchapter:



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

3 (2) "Certified rehabilitation" means a substantial
4 rehabilitation of an eligible property completed pursuant to this subchapter
5 and for which an eligibility certificate is issued;

6 (3) "Eligibility certificate" means a certificate issued by the
7 Department of Arkansas Heritage certifying that a project is a certified
8 rehabilitation which qualifies for the Arkansas historic tax credit;

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

11 (A) Income-producing property that qualifies as a
12 certified historic structure under 26 U.S.C. § 47, as in effect January 1,
13 2007, or that will be eligible for that designation following certified
14 rehabilitation; or

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

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

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

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

23 (5) "Federal rehabilitation tax credit" means the federal tax
24 credit as provided by 26 U.S.C. § 47, and the regulations promulgated
25 thereunder, as in effect on January 1, 2007;

26 (6) "Holder" means the holder of an eligibility certificate that
27 is:

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

31 (B) An insurance company paying an annual tax on its gross
32 premium receipts in this state pursuant to §§ 26-57-601 - 26-57-605;

33 (7)(A) "Owner" means any owner of eligible property that
34 completes the certified rehabilitation and is the initial recipient of the
35 eligibility certificate from the department.

36 (B) Any individual or entity empowered to own real

1 property in this state may qualify as an owner;

2 (8) "Premium tax" means a tax levied pursuant to §§ 26-57-601 -
3 26-57-605; and

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

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

12
13 26-51-2204. Tax credits, establishing amount, and limitations.

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

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

22 (c) The Arkansas historic tax credit is available for eligible
23 property with a completed certified rehabilitation that was placed in service
24 after January 1, 2007.

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

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

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

36 (g) The request for review under subsection (f) of this section shall

1 be made in writing to the State Historic Preservation Officer within thirty
2 (30) days from the date of the determination under subsection (e) of this
3 section by the department.

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

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

11
12 26-51-2205. Procedure to claim tax credit and transfer of credit.

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

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

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

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

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

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

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

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

1 the partners, members, or owners documenting an alternate distribution
2 method.

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

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

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

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

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

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

26
27 26-51-2206. Rules for enforcement.

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

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

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

1 one percent (.75%) of the amount of the Arkansas historic tax credit
2 transferred.

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

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

9 26-51-513. Rehabilitation of historic structure tax credit.

10 (a) In addition to any income tax credit for which a taxpayer
11 qualifies for under this subchapter, the taxpayer is allowed an income tax
12 credit for the amount of the Arkansas historic tax credit allowed pursuant to
13 the eligibility certificate issued by the Department of Arkansas Heritage
14 under the Arkansas Historic Structures Rehabilitation Tax Credit Act, § 26-
15 51-2201 et seq.

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

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

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

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

27 (c)(1) In addition to any premium tax credit that an insurer qualifies
28 for under subsection (a) of this section, there is allowed a premium tax
29 credit for the amount of the Arkansas historic tax credit allowed pursuant to
30 the eligibility certificate issued by the Department of Arkansas Heritage
31 under the Arkansas Historic Structures Rehabilitation Tax Credit Act, § 26-
32 51-2201 et seq.

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

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

1 premium tax due by the taxpayer.

2 (4) Any unused premium tax credit may be carried back two (2)
3 taxable years and carried over for a maximum of five (5) consecutive taxable
4 years for credit against the premium tax.

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

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8 SECTION 4. This act shall apply to tax years beginning on and after
9 January 1, 2007.

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