

INTERIM STUDY PROPOSAL 2009-225

State of Arkansas  
87th General Assembly  
First Extraordinary Session, 2010

**A Bill**

Call Item ##  
MMC/CDS  
SENATE BILL

By: Senator Altes

Filed with: Senate 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:

SUBCHAPTER 22. ARKANSAS HISTORIC STRUCTURES REHABILITATION TAX CREDIT ACT.

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.

1 As used in this subchapter:

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

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

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

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

12 (A) Income-producing property that qualifies as a  
13 certified historic structure under 26 U.S.C. § 47, as in effect January 1,  
14 2009, or that will be eligible for that designation following certified  
15 rehabilitation; or

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

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

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

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

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

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

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

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

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

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

3                   (8) "Premium tax" means a tax levied under §§ 26-57-601 - 26-57-  
4 605; and

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

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

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14                   26-51-2204. Tax credits -- Establishing amount -- Limitations.

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

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

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

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

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

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

1       (g) The request for review under subsection (f) of this section shall  
2 be made in writing to the State Historic Preservation Officer within thirty  
3 (30) days from the date of the determination under subsection (e) of this  
4 section by the department.

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

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

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13       26-51-2205. Procedure to claim tax credit and transfer of credit.

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

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

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

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

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

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

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

34       (e) An Arkansas historic tax credit granted to a partnership or to a  
35 limited liability company taxed as a partnership, or multiple owners of  
36 property shall be passed through to the partners, members, or owners

1 respectively on a pro rata basis or pursuant to an executed agreement among  
2 the partners, members, or owners documenting an alternate distribution  
3 method.

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

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

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

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

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

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

28  
29 26-51-2206. Rules for enforcement.

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

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

36 (2) The fee for processing and reviewing an application for an

1 Arkansas historic tax credit shall not exceed two and one-half percent (2.5%)  
2 of the amount of Arkansas historic tax credit requested or three-fourths of  
3 one percent (.75%) of the amount of the Arkansas historic tax credit  
4 transferred.

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

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

11 26-51-513. Rehabilitation of historic structure tax credit.

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

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

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

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

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

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

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

36 (3) The amount of the premium tax credit under this section that

1 may be claimed by the taxpayer in a tax year shall not exceed the amount of  
2 premium tax due by the taxpayer.

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

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

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

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