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RULE 2024-3
ACT 881 OF 2023 – IMPLEMENTATION RULE

Pursuant to the authority granted by Act 881 of 2023, and in compliance with the requirements thereof, the secretary of the Arkansas Department of Finance and Administration hereby promulgates the following rule.

Waterways Investment Income Tax Credit

This rule shall be cited as the “Arkansas Waterways Investment Tax Credit Rule.”

1. DEFINITIONS – As used in this rule:
 - a. “Eligible costs” means costs of:
 - i. Construction of a new waterway facility;
 - ii. Improvement of an existing waterway facility or property;
 - iii. Capital facility rehabilitation of an existing waterway facility or property;
 - iv. Expansion of an existing waterway facility or property; or
 - v. Construction or improvement of rail or road access to a waterway facility.
 - b. “Office” means the Office of Tax Credits/Special Refunds of the Department of Finance and Administration.
 - c. “Secretary” means the Secretary of the Arkansas Department of Commerce.
2. TAX CREDIT - An income tax credit is allowed against the Arkansas income tax due from a taxpayer for eligible costs incurred by a taxpayer to make capital improvements to a waterway facility or property related to water transportation in Arkansas.
3. APPLICATION – A taxpayer may submit an application for a Waterways Investment Income Tax Credit to the Office of Tax Credits/Special Refunds of the Department of Finance and Administration at 1816 W. 7th Street (Suite 2370), Little Rock, Arkansas, 72203.
 - a. The taxpayer’s application shall be on the form required by the Office.
 - b. The taxpayer’s application shall include documentation of eligible costs incurred that:
 - i. The taxpayer’s capital investment is in a facility or property related to water transportation in Arkansas;
 - ii. The taxpayer’s capital investment will provide an economic benefit to the state;
and
 - iii. The capital investment was made between January 1, 2024 and December 31, 2025.
 - c. The taxpayer’s documentation of eligible costs shall include construction contracts, purchase invoices, and receipts.

4. COST-BENEFIT ANALYSIS – The Office shall forward the application and documentation provided by the taxpayer to the Secretary of the Arkansas Department of Commerce.
 - a. The Secretary shall review the documentation provided by the taxpayer.
 - b. If the Secretary determines that the taxpayer’s capital investment meets the eligibility requirements of Rule (I)(3)(b) of these Rules and will provide an economic benefit to the state that will be equal to or greater than the amount of the tax credit allowed, the Secretary shall issue a positive cost-benefit analysis and provide a copy to the taxpayer and the Office.
 - c. If the Secretary is unable to issue a positive cost-benefit analysis, the Secretary shall notify the taxpayer and the Office, who shall close the taxpayer’s application.
5. ISSUANCE OF TAX CREDIT – The Office shall issue tax credits on a first-come, first-served basis, based on the date of receipt of the application by the Office.
6. LIMITATIONS – Income tax credits for eligible costs related to a waterway facility or property are allowed only if the eligible costs are incurred on or after January 1, 2024 and on or before December 31, 2025.
 - a. The total cumulative tax credits awarded in a calendar year for all taxpayers shall not exceed two million, five hundred thousand dollars (\$2,500,000.00).
 - b. A taxpayer may not claim an income tax credit in any one tax year in excess of ten percent (10%) of the total tax credit for which the taxpayer is eligible.
 - c. The maximum tax credit allowed by a taxpayer for eligible costs related to a waterway facility or property is three million dollars (\$3,000,000.00).
 - d. Unused tax credits may be carried forward for nine (9) consecutive years following the tax year in which the credit was earned.
 - e. A taxpayer who has received funds under the Arkansas Port, Intermodal, and Waterway Development Grant Program is not eligible for a Waterways Investment Income Tax Credit.
7. REVIEW – The Department of Finance and Administration shall review Waterways Investment Income Tax Credits to verify eligibility for the credit. The Department may disallow an income tax credit claimed in excess of the limitations described in Rule (I)(6) of these Rules or for which a taxpayer did not meet the eligibility requirements of Rule (I)(3)(b) of these Rules.

Issued this 25th day of November in the City of Little Rock, Pulaski County, Arkansas.



Jim Hudson, Secretary
Department of Finance and Administration

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/29/23

A Bill

SENATE BILL 478

5 By: Senator J. Dismang
6 By: Representative Eaves
7

For An Act To Be Entitled

9 AN ACT CONCERNING FUNDING AND INCENTIVES FOR CERTAIN
10 WATERWAYS SYSTEMS, PROGRAMS, AND INVESTMENTS; TO
11 AMEND THE ARKANSAS PORT, INTERMODAL, AND WATERWAY
12 DEVELOPMENT GRANT PROGRAM; TO PROVIDE ADDITIONAL
13 FUNDING FOR THE ARKANSAS PORT, INTERMODAL, AND
14 WATERWAY DEVELOPMENT GRANT PROGRAM FUND; TO CREATE IN
15 INVESTMENT TAX CREDIT FOR CAPITAL IMPROVEMENTS
16 RELATING TO WATER TRANSPORTATION IN THE STATE; AND
17 FOR OTHER PURPOSES.

Subtitle

21 TO PROVIDE ADDITIONAL FUNDING FOR THE
22 ARKANSAS PORT, INTERMODAL, AND WATERWAY
23 DEVELOPMENT GRANT PROGRAM FUND; AND TO
24 CREATE A WATERWAYS INVESTMENT INCOME TAX
25 CREDIT.

26
27
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. Arkansas Code § 15-23-205(a), concerning the Arkansas Port,
31 Intermodal, and Waterway Development Grant Program, is amended to read as
32 follows:

33 (a)~~(1)~~ The Arkansas Waterways Commission shall establish and
34 administer the Arkansas Port, Intermodal, and Waterway Development Grant
35 Program that shall be used for one (1) or more of the following purposes: ~~to~~
36 (1) To provide financial assistance to port authorities and



1 intermodal authorities for the purpose of funding port development projects,
2 including without limitation the construction, improvement, capital facility
3 rehabilitation, and expansion of a public port facility, including without
4 limitation an intermodal facility and a maritime-related industrial park
5 infrastructure development-;

6 (2) ~~Wharves~~ To construct, install, or repair wharves, cargo
7 handling equipment, utilities, railroads, primary access roads, and buildings
8 that are an integral part of a port development project ~~are also eligible for~~
9 ~~funding under this section-;~~ and

10 (3) To share in the expense of United States Army Corps of
11 Engineers navigation enhancements, improvements, and emergency assistance
12 projects.

13
14 SECTION 2. Arkansas Code § 15-23-205(c), concerning the Arkansas Port,
15 Intermodal, and Waterway Development Grant Program, is amended to read as
16 follows:

17 (c)(1) An Arkansas public port authority or intermodal authority may
18 apply for funding of a port development project under the program.

19 (2) The Director of the Arkansas Waterways Commission shall
20 provide the commission with the following information for any proposed
21 projects under subdivision (a)(3) of this section:

22 (A) A description;

23 (B) Preliminary designs;

24 (C) Cost estimates;

25 (D) Cost-sharing percentages between the program and the
26 United State Army Corps of Engineers; and

27 (E) Any other information or documentation required by the
28 commission.

29 (3) The Chief Fiscal Officer of the State shall notify the
30 commission when funding is available for the program.

31
32 SECTION 3. Arkansas Code § 26-26-1616(d)(2), concerning the
33 disposition of ad valorem taxes and penalties collected from water
34 transportation companies, is amended to read as follows:

35 (2) Any taxes and penalties collected in excess of two million
36 five hundred fifty thousand dollars (\$2,550,000) each calendar year shall be

1 ~~deposited as follows:~~

2 ~~(A) Seventy percent (70%) shall be credited to the~~
3 ~~Arkansas River Navigation System Fund; and~~

4 ~~(B) Thirty percent (30%) shall be credited to the Arkansas~~
5 ~~Port, Intermodal, and Waterway Development Grant Program Fund to be used~~
6 ~~exclusively for the purposes stated in § 15-23-205.~~

7

8 SECTION 4. Arkansas Code Title 26, Chapter 51, Subchapter 5, is
9 amended to add an additional section to read as follows:

10 26-51-517. Waterways investment tax credit.

11 (a) There is allowed an income tax credit against the income tax
12 imposed by this chapter in the amount stated in subsection (b) of this
13 section for the cost of making capital improvements to a facility or property
14 related to using water transportation in the state, including without
15 limitation the construction, improvement, capital facility rehabilitation,
16 and expansion of a waterway facility and the construction or improvement of
17 rail or road access to a waterway facility, on or after January 1, 2024, and
18 on or before December 31, 2025.

19 (b)(1) Except as otherwise provided in this subsection, the tax credit
20 allowed under subsection (a) of this section shall not exceed three million
21 dollars (\$3,000,000) for a taxpayer that makes the capital improvements to a
22 facility or property related to using water transportation in the state.

23 (2) The amount of the tax credit that a taxpayer may claim each
24 year is limited to a maximum of ten percent (10%) of the total tax credit for
25 which the taxpayer is eligible.

26 (3) The total cumulative amount of tax credits for all taxpayers
27 under this section in a tax year shall:

28 (A) Not exceed two million five hundred thousand dollars
29 (\$2,500,000); and

30 (B) Be issued on a first-come, first served basis.

31 (4) A tax credit allowed under this section shall be issued only
32 after the Secretary of the Department of Commerce has determined, based on
33 the information provided by the applicant for a tax credit under this
34 section, that the taxpayer's capital investment in a facility or property
35 related to using water transportation in the state will provide an economic
36 benefit to the state that will likely be equal to or greater than the amount

1 of the tax credit allowed under this section.

2 (c) Any unused income tax credit that cannot be claimed in a tax year
3 because of the limit stated in subdivision (b)(2) of this section may be
4 carried forward for nine (9) consecutive tax years following the tax year in
5 which the income tax credit was earned.

6 (d) A taxpayer is not eligible for the credit allowed under this
7 section if the taxpayer has received funds under the Arkansas Port,
8 Intermodal, and Waterway Development Grant Program.

9 (e) The Secretary of the Department of Finance and Administration
10 shall:

11 (1) Promulgate rules to implement this section;

12 (2) Review the overall economic impact of this section on or
13 before December 31, 2030, and again on or before December 31, 2035; and

14 (3) Report his or her findings under subdivision (e)(2) of this
15 section to the Legislative Council or, if the General Assembly is in session,
16 to the Joint Budget Committee within thirty (30) days of completing the
17 required review.

18
19 SECTION 5. EFFECTIVE DATE. Section 4 of this act is effective for tax
20 years beginning on or after January 1, 2024.

21
22 */s/J. Dismang*

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24
25 **APPROVED: 4/13/23**