

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

As Engrossed: S3/3/09 S3/16/09

A Bill

SENATE BILL 9

5 By: Senator Altes
6 By: Representative Moore
7

For An Act To Be Entitled

10 AN ACT TO ESTABLISH AN INCOME TAX CREDIT FOR THE
11 REHABILITATION OF HISTORIC STRUCTURES LOCATED IN
12 ARKANSAS; AND FOR OTHER PURPOSES.
13

Subtitle

14 TO ESTABLISH AN INCOME TAX CREDIT FOR
15 THE REHABILITATION OF HISTORIC
16 STRUCTURES LOCATED IN ARKANSAS.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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

24 *SUBCHAPTER 22. ARKANSAS HISTORIC REHABILITATION INCOME TAX CREDIT ACT*

25
26 *26-51-2201. Title.*

27 *This subchapter shall be known and may be cited as the "Arkansas*
28 *Historic Rehabilitation Income Tax Credit Act".*
29

30 *26-51-2202. Purpose.*

31 *The purpose of this subchapter is to encourage economic development and*
32 *community revitalization within existing state and federal infrastructure by*
33 *providing an income tax credit to promote the rehabilitation of historic*
34 *structures throughout Arkansas.*
35

36 *26-51-2203. Definitions.*



1 As used in this subchapter:

2 (1) "Arkansas historic rehabilitation income tax credit" means
3 an income tax credit against the income tax imposed by the Income Tax Act of
4 1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601 –
5 26-57-605 that includes:

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

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

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

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

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

19 (A) Income-producing property that:

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

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

24 (B) Nonincome-producing property that is:

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

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

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

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

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

36 (A) A person, firm, or corporation subject to the income

1 tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq.; or

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

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

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

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

13
14 26-51-2204. Arkansas historic rehabilitation income tax credit.

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

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

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

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

26 (c)(1) The Department of Arkansas Heritage shall only issue Arkansas
27 historic rehabilitation income tax credits for up to four million dollars
28 (\$4,000,000) in any one (1) fiscal year.

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

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

36 (d) The Arkansas historic rehabilitation income tax credit shall be

1 available to an owner of an eligible property that:

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

4 (2) Has a minimum investment of twenty-five thousand dollars
5 (\$25,000) in qualified rehabilitation expenses; and

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

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

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

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

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

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

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

30
31 26-51-2205. Procedure to claim tax credit – Transferring credit.

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

36 (2) The appropriate tax collection authority may refuse to

1 recognize the Arkansas historic rehabilitation income tax credit claimed if
2 the holder fails to submit the certification of completion and any assignment
3 documents.

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

7 (c) A holder of an unused Arkansas historic rehabilitation income tax
8 credit may carry forward part or all of an Arkansas historic rehabilitation
9 income tax credit for five (5) consecutive taxable years to apply against the
10 holder's income taxes due or the holder's premium tax due.

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

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

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

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

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

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

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

35 (h) An owner or holder that assigns part or all of an Arkansas
36 historic rehabilitation income tax credit shall perfect the transfer by

1 notifying the Department of Arkansas Heritage and the appropriate tax
2 collection authority in writing within thirty (30) calendar days following
3 the effective date of the transfer and shall provide any information as may
4 be required by the Department of Arkansas Heritage and the appropriate tax
5 collection authority to administer and carry out this subchapter and to
6 ensure proper tracking of the ownership of the unused Arkansas historic
7 rehabilitation income tax credit.

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

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

14
15 26-51-2206. Fees.

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

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

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

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

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

31
32 26-51-2207. Rules.

33 (a) The Department of Arkansas Heritage shall promulgate rules to
34 implement this subchapter that shall include criteria for the prioritizing of
35 the rehabilitation applications and that will stimulate the local economy
36 where the property is located, including without limitation the criteria that

1 the rehabilitation project will be prioritized in the following order:

2 (1) Result in the creation of a new business;

3 (2) Result in the expansion of an existing business;

4 (3) Establish or contribute to the establishment of a tourism
5 attraction as defined by the Department of Parks and Tourism;

6 (4) Contribute to the revitalization of a specific business
7 district; or

8 (5) Be a key property in the revitalization of a specific
9 neighborhood.

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

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

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

20 26-51-513. Arkansas historic rehabilitation income tax credit.

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

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

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

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

35
36 SECTION 3. Arkansas Code § 26-57-604, concerning the remittance of

1 premium taxes, is amended to add an additional subsection to read as follows:

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

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

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

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

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

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

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22 /s/ Altes
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