

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.

Act 498 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: H3/13/09

A Bill

HOUSE BILL 1953

5 By: Representatives Moore, Hyde, Abernathy, Adcock, Allen, T. Baker, Barnett, Betts, Blount, T.
6 Bradford, Breedlove, J. Brown, J. Burris, M. Burris, Carnine, Carroll, Carter, Cash, Cheatham, Clemmer,
7 Cole, Cook, Cooper, L. Cowling, D. Creekmore, Dale, Davenport, Davis, J. Dickinson, Dismang, Dunn,
8 J. Edwards, English, Everett, Flowers, Garner, Gaskill, George, Glidewell, R. Green, Hall, Hardy,
9 Harrelson, Hawkins, Hobbs, Hopper, House, Hoyt, D. Hutchinson, Ingram, Kerr, Kidd, King, Lea, W.
10 Lewellen, Lindsey, Lovell, Lowery, Maloch, S. Malone, M. Martin, Maxwell, McCrary, McLean,
11 Nickels, Nix, Overbey, Patterson, Pennartz, Perry, Pierce, Powers, Pyle, Ragland, Rainey, Reep,
12 Reynolds, Rice, J. Roebuck, J. Rogers, T. Rogers, Sample, Saunders, Shelby, Slinkard, G. Smith, L.
13 Smith, Stewart, Summers, Tyler, Wagner, Webb, Wells, B. Wilkins, Williams, Wills, Woods, Word
14 By: Senators Altes, G. Jeffress, J. Jeffress, J. Key
15
16

17 **For An Act To Be Entitled**

18 AN ACT TO ENCOURAGE AND FOSTER ECONOMIC
19 DEVELOPMENT AND REVITALIZE COMMUNITIES BY
20 ALLOWING A TAX CREDIT FOR THE REHABILITATION OF
21 HISTORIC STRUCTURES LOCATED IN ARKANSAS; AND FOR
22 OTHER PURPOSES.
23

24 **Subtitle**

25 TO ENCOURAGE AND FOSTER ECONOMIC
26 DEVELOPMENT AND REVITALIZE COMMUNITIES
27 BY ALLOWING A TAX CREDIT FOR THE
28 REHABILITATION OF HISTORIC STRUCTURES
29 LOCATED IN ARKANSAS.
30

31
32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
33

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



1 SUBCHAPTER 22 ARKANSAS HISTORIC REHABILITATION INCOME TAX CREDIT ACT

2
3 26-51-2201. Title.

4 This subchapter shall be known and may be cited as the “Arkansas
5 Historic Rehabilitation Income Tax Credit Act”.

6
7 26-51-2202. Purpose.

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

12
13 26-51-2203. Definitions.

14 As used in this subchapter:

15 (1) “Arkansas historic rehabilitation income tax credit” means
16 an income tax credit against the income tax imposed by the Income Tax Act of
17 1929, § 26-51-101 et seq., and the premium tax levied under §§ 26-57-601 –
18 26-57-605 that includes:

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

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

23 (2) “Certified rehabilitation” means a substantial
24 rehabilitation of an eligible property that has been issued an eligibility
25 certificate;

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

30 (4) “Eligible property” means property that is located in the
31 state that is:

32 (A) Income-producing property that:

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

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

1 (B) Nonincome-producing property that is:

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

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

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

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

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

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

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

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

20 (8) "Premium tax" means a tax levied under §§ 26-57-603 - 26-57-
21 605; and

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

26
27 26-51-2204. Arkansas historic rehabilitation income tax credit.

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

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

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

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

3 (c)(1) The Department of Arkansas Heritage shall only issue Arkansas
4 historic rehabilitation income tax credits for up to four million dollars
5 (\$4,000,000) in any one (1) fiscal year.

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

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

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

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

17 (2) Has a minimum investment of twenty-five thousand dollars
18 (\$25,000) in qualified rehabilitation expenses; and

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

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

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

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

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

36 (h)(1) The owner shall certify to the Department of Arkansas Heritage

1 the validity of costs and expenses claimed as qualified rehabilitation
2 expenses and shall maintain a record supporting the claim for at least five
3 (5) years after the issuance of the certification of completion.

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

7
8 26-51-2205. Procedure to claim tax credit – Transferring credit.

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

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

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

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

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

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

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

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

1 alternate distribution method.

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

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

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

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

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

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

27

28 26-51-2206. Fees.

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

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

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

35 (2) The fee for processing an application for an Arkansas
36 historic rehabilitation income tax credit shall not exceed two and one-half

1 percent (2.5%) of the amount of the Arkansas historic rehabilitation income
2 tax credit applied for, or seventy-five hundredths percent (0.75%) of the
3 amount of the Arkansas historic rehabilitation income tax credit transferred,
4 whichever is less.

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

8
9 26-51-2207. Rules.

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

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

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

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

19 (4) Contribute to the revitalization of a specific business
20 district; or

21 (5) Be a key property in the revitalization of a specific
22 neighborhood.

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

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

30
31 SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5 is amended
32 to add an additional section to read as follows:

33 26-51-513. Arkansas historic rehabilitation income tax credit.

34 (a) In addition to any income tax credit not related to the same
35 eligible property for which a taxpayer qualifies, the taxpayer is allowed an
36 income tax credit for the amount of the Arkansas historic rehabilitation

1 income tax credit allowed by the certification of completion issued by the
2 Department of Arkansas Heritage under the Arkansas Historic Rehabilitation
3 Income Tax Credit Act, § 26-51-2201 et seq.

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

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

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

12
13 SECTION 3. Arkansas Code § 26-57-604, concerning the remittance of
14 premium taxes, is amended to add an additional subsection to read as follows:

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

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

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

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

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

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

34
35
36 /s/ Moore

APPROVED: 3/24/2009