

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

**John Thurston**

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office

Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency \_\_\_\_\_

Department \_\_\_\_\_

Contact \_\_\_\_\_ E-mail \_\_\_\_\_ Phone \_\_\_\_\_

Statutory Authority for Promulgating Rules \_\_\_\_\_

Rule Title: \_\_\_\_\_

### Intended Effective Date

(Check One)

Date

☐

Emergency (ACA 25-15-204)

Legal Notice Published ..... \_\_\_\_\_

☐

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment ..... \_\_\_\_\_

☐

Other \_\_\_\_\_

(Must be more than 10 days after filing date.)

Reviewed by Legislative Council ..... \_\_\_\_\_

Adopted by State Agency ..... \_\_\_\_\_

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

*Renée M. Doty*  
Signature

Phone Number

E-mail Address

Title

Date

# Arkansas Public Roads Improvements Tax Credit Program

## Rules

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### I. Introduction

In order to facilitate the construction of specific capital improvement projects, Act 1347 of 1999, the Arkansas Public Roads Improvements Credit Act was passed by the 82<sup>nd</sup> General Assembly of the State of Arkansas. The Arkansas Economic Development Commission (AEDC) has the authority to administer the program under the Act.

The goal of the program is to provide an income tax credit incentive to any individual, fiduciary, or corporation subject to Arkansas state income tax to make contributions in aid of the construction of public roads through the Public Roads Incentive Fund.

### II. Definitions

- A. "Capital improvements" means capital improvements for public roads.
- B. "Contribution" means a contribution in aid of construction of a public road project made by a taxpayer to the Public Roads Incentive Fund.
- C. "Contribution in aid of construction" is a direct contribution of cash made by a taxpayer for public road improvements.
- D. "County" means any county in the State of Arkansas.
- E. "Commission" means the Arkansas Economic Development Commission.
- F. "Director" is the director of the Arkansas Economic Development Commission.
- G. "Fund" means the Public Roads Incentive Fund.
- H. "Governing Authority" means the quorum court of a county, the governing body of a municipality, and the Arkansas State Highway Commission.
- I. "Municipality" means any city or incorporated town in the State of Arkansas.
- J. "Project" means all, any combination or any part of the capital improvements for public roads, which are authorized by a governing authority and approved by the director.
- K. "Public roads" means roads maintained by a governing authority.

- L. “Taxpayer” includes any individual, fiduciary, or corporation subject to Arkansas State Income Tax.

### **III. To Contribute to the Public Roads Incentive Fund**

#### **A. Contributions**

1. Eligible contributors include any taxpayer subject to Arkansas state income tax that contributes to the Public Roads Incentive Fund of the Arkansas Economic Development Commission.
2. The Public Roads Incentive Fund shall consist of contributions made by taxpayers for public roads projects approved by the director, and any other funds as are designated or deposited to the fund by law.
3. Each taxpayer that contributes to the Public Roads Incentive Fund may make a general contribution or may designate a project for which the contribution is earmarked. When donations are made for dedicated projects, a separate account will be established.
4. To contribute to the Public Roads Incentive Fund, the taxpayer must send a completed application and a contribution for the Public Roads Incentive Fund to the Arkansas Economic Development Commission. An application can be obtained by contacting the AEDC Incentives Manager.
5. The contribution will be transmitted to the Treasurer of the State for deposit into the Public Roads Incentive Fund.

#### **B. Applicants**

1. Governing authorities may apply to the director of AEDC for funding assistance for capital improvement projects for public roads. as provided by Act 1347 of 1999. The director is authorized to approve capital improvements for funding assistance upon a finding that a project is in the public interest and that there are sufficient dedicated project funds, when combined with the requested funds from the Public Roads Incentive Fund, to complete the project.
2. Applicants must provide documentation that there are sufficient dedicated project funds available, when combined with the amount requested from the Public Roads Incentive Fund, to complete the improvement project.
3. The application, endorsement resolution, and project plan must be sent to AEDC for review. An application may be obtained by contacting the AEDC Incentives Manager.

4. The application must include:

- (a) A city or county endorsement resolution or a copy of a minute order from the Arkansas State Highway Commission.
- (b) A completed application with a project plan.
- (c) Documentation of sufficient dedicated project funds to complete the improvement project.

#### **IV. Powers and Duties of the Arkansas Economic Development Commission**

- A. The director of the Arkansas Economic Development Commission will determine whether or not the project is in the public interest and whether or not there are sufficient dedicated project funds, when combined with the requested funds from the Public Roads Incentive Fund, to complete the project. If the director determines that the project is in the public interest and that sufficient funding is available, the governing authority will be informed and a sub-account will be established for the project.
- B. Any project that is submitted to AEDC for approval will have to be fully funded before AEDC will release of funds for the project.
- C. Any contributions which remain in a project account after a project is completed or terminated will be held and applied to other public roads projects approved by the director.
- D. A separate account will be established for each project, and contributions specified for a project shall be applied to that account. The director is authorized to assist the governing authority in obtaining assistance from any other department of state government. When sufficient funds are accumulated for a particular project, the director will authorize the release of funds for the project.

#### **V. Administration of Benefits**

Eligible taxpayers will be entitled to a state income tax credit that may be applied in any tax year after January 1, 1999.

The credit shall be determined in the following manner:

- A. The credit is limited to an amount not to exceed 33% of the taxpayer's contribution;
- B. In any one (1) tax year, the credit allowed shall not exceed 100% of the taxpayer's net Arkansas state income tax liability; and
- C. Any credit over 100% of the taxpayer's net Arkansas state income tax liability for any one (1) tax year may be carried forward and applied against Arkansas state income tax for the next-succeeding tax year (subject to the same terms as in "B.")

above) and annually thereafter for a total period of ten(10) years next-succeeding the year in which the credit arose or until the credit is exhausted, whichever occurs first.

- D. The Arkansas Economic Development Commission will issue a letter certifying the amount contributed to the Public Roads Incentive Fund. This certification must be attached to the taxpayers' income tax return in order to claim the credit.



Michael Preston  
Secretary of Commerce,  
Executive Director  
Arkansas Economic Development Commission

## **Arkansas Public Roads Improvements Tax Credit Program Rule Summary**

The Arkansas Economic Development Commission (AEDC) has promulgated an amended administrative rule for the Public Roads Improvements Tax Credit Program to conform the rule to changes made by Act 628 of 2021.

### **Background**

Act 1347 of 1999 created the Public Roads Improvements Credit Act that established the Public Roads Tax Credit Program. The program provides a tax credit to a taxpayer that contributes to the Public Roads Incentive Fund. The tax credit is equal to 33% of the taxpayer's contribution. The Public Roads Incentive Fund may be used to fund approved public roads projects. Governing bodies may apply to AEDC for funding assistance for capital improvement projects for public roads. Act 628 of 2021 amended the existing program. Changes made to the program were retroactively effective for tax years on or after January 1, 2020.

### **Key Points**

The final rule includes the following changes:

- Increases the amount of tax credits a taxpayer may use of offset their tax liability in any 1 year from 50% to 100%;
- Extends the carry forward period for unused tax credits from 3 years to 10 years; and
- Clarifies definitions and makes various technical corrections to the rule.

### **Effective Date**

The amended rule for the Arkansas Public Roads Improvements Tax Credit Program is effective on November 29, 2021.

## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE**

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ \_\_\_\_\_

\$ \_\_\_\_\_



7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes      No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.