

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



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

Rule Summary

Arkansas Public Roads Improvements Tax Credit Program

Purpose

AEDC is seeking to promulgate a proposed amended administrative rule for the existing Public Roads Improvements Tax Credit Program.

Background

In 1999, Act 1347 created the Public Roads Improvements Credit Act that established the Public Roads Tax Credit Program. The program provides a tax credit to individuals and corporations who donate to the Public Roads Incentive Fund. The Public Roads Incentive Fund may be used to fund approved public roads projects. Act 628 of 2021 amended the program to increase the amount of tax liability a contributor may offset in any one year and increase the carry forward period for unused tax credits.

Key Points

- The amended proposed rule sets the tax credit at 33% of a taxpayer's contribution to the Public Roads Incentive Fund.
- The amended proposed rule increases the amount of tax credits a taxpayer may use of offset their tax liability in any one year from 50% to 100%.
- The proposed rule extends the carry forward period for unused tax credits from three years to ten years.
- Clarifies definitions and makes various technical corrections to the rule.

Arkansas Public Roads Improvements Tax Credit Program Act
~~(Act 1347 of 1999)~~
~~Public Roads Project~~

Rules & Regulations

MARK UP

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 82nd 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 ~~this~~ 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. ~~by providing an income tax credit based on the amount of the taxpayer's contribution.~~

~~For additional information contact:
Incentives Manager
Arkansas Economic Development Commission
900 West Capitol
Little Rock, AR 72201
(501) 682-1682~~

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. ~~"Department Commission"~~ means the Department of Arkansas Economic Development Commission.

- F. "Director" is the ~~d~~Director of the Arkansas Department of 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 ~~State Highway Commission~~ Arkansas Department of Transportation.
- 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 Qualify for~~ To Contribute to the Public Roads Incentive Fund Program

A. Contributions

- 1. Eligible contributors include any ~~taxpayer individual, fiduciary, or corporation~~ subject to Arkansas state income tax that contributes to the Public Roads Incentive Fund of the Arkansas ~~Department of Economic Development~~ Commission.
- 2. The Public Roads Incentive Fund shall consist of contributions made by taxpayers for public roads projects approved by the ~~D~~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. ~~Any contributions which remain in the separate account when a project is completed or terminated shall be held and applied to other public roads projects in such manner as the Director shall direct.~~
- 4. To contribute to the Public Roads Incentive Fund, the taxpayer must send ~~an a~~ a completed application and a contribution to for the Public Roads Incentive Fund to the Department of Arkansas Economic Development Commission. An application can be obtained by contacting the AEDC Incentives Manager ~~Coordinator at the Department of Economic Development~~.

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 ~~D~~director of AEDC for funding assistance for capital improvement projects for public roads. as provided by Act 1347 of 1999. The ~~D~~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 ~~(see Attachment)~~ must be sent to AEDC for review. An application may be obtained by contacting the AEDC Incentives Manager.:

~~Arkansas Economic Development Commission
Incentives Manager
900 West Capitol
Little Rock, AR 72201~~

4. The application must include:
 - (a) A city or county endorsement resolution ~~(also known as an endorsement resolution)~~ or a copy of a minute order from the Arkansas Highway and Department of Transportation ~~Department Commission~~.
 - (b) A completed application ~~filled out completely~~ with a project plan.
 - (c) ~~Send above to AEDC for processing~~ Documentation of sufficient dedicated project funds to complete the improvement project.

IV. Powers and Duties of the ~~Department of~~ Arkansas Economic Development Commission

- A. The ~~D~~director of the ~~Department of~~ 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 the ~~Department AEDC~~ for approval will have to be fully funded before the ~~Department AEDC~~ will release of funds for the project. ~~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.~~
- C. ~~However, if the project is terminated before completion, any~~ Any contributions additional funds which remain remaining in a the project account after a project is completed or terminated will be held and distributed applied to other public roads projects approved by the Ddirector.
- D. A separate account will be established for each project, and contributions specified for a project shall be applied to that account. ~~approved by the Director of the Department.~~ The ~~D~~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 ~~D~~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. ~~Contributions are to be sent to the Department of Economic Development.~~

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 ~~50%~~ 100% of the taxpayer's net Arkansas state income tax liability after all other credits and reductions in tax have been calculated; and
- C. Any credit over ~~50~~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 ~~three- ten~~ (310) years next-succeeding the year in which the credit arose or until the credit is exhausted, whichever occurs first.
- D. The ~~Department of~~ 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.

Notice of Rulemaking and Public Hearing

The Arkansas Economic Development Commission (AEDC) is revising the administrative rule for the Arkansas Public Roads Improvement Tax Credit Program to conform the program to revisions by Act 628 of 2021.

AEDC is soliciting comments on the proposed revised rule filed with the Secretary of State on August 31, 2021. A public hearing on the proposed revised rule will be held on 8:30am on October 1, 2021, at the Arkansas Department of Commerce, Riverview Conference Room, 2nd Floor, 1 Commerce Way, Little Rock, Arkansas 72202.

The objective of the program is to provide a tax credit against income tax when a taxpayer donates funds to the Public Roads Incentives Fund. The fund may be used for approved city, county, or state capital improvements of public roads.

The rule would be amended as follows: 1) Setting the tax credit at a fixed rate of 33% of a taxpayer's contribution; 2) increasing the amount of the tax credit that may be taken against a donating taxpayer's income tax liability from 50% to 100% in any one year; 3) increasing the carry forward period from 3 years to 10 years; 4) various technical changes.

The proposed rule is available at www.arkansasedc.com/data-reports/rules or may be obtained contacting (501) 682-2460. Written comments may be submitted through October 1, 2021, by mailing them to Arkansas Economic Development Commission, Policy & Legislative Affairs Division, 1 Commerce Way, Suite 601, Little Rock, Arkansas 72202 or via email at AEDC.Machinery.Rules@Arkansas.gov.

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 _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

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.