

Arkansas Natural Resources Commission*
Rules and Procedures for Claiming Tax Credit
Title 9
(As Amended October, 1993)

*In 2005, the agency known as 'Arkansas Soil and Water Conservation Commission' was renamed 'Arkansas Natural Resources Commission' pursuant to Act 1243 of 2005. References to the Commission in these rules have been updated to reflect the 2005 name change.

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**Arkansas Natural Resources Commission
Rules and Procedures for Claiming Tax Credit
(As Amended October, 1993)**

Subtitle I. Tax credit for the construction of water impoundments or water control structures

Section 901.1 Introductory provisions.

A. This Regulation establishes the procedure for Arkansas income taxpayers to claim as a tax credit against their Arkansas income tax liability, an amount equal to fifty percent (50%) of the cost of construction and installation or restoration of water impoundments or water control structures of 20 acre/feet or more thereby encouraging the private sector of our economy to invest in the construction of soil and water conserving impoundments and control structures thereby reducing the use of groundwater and the potential of further groundwater depletion.

B. Credit may be claimed for fifty percent (50%) of the costs which are actually incurred in completing a project subject to the following limitations: No taxpayer may claim credit under this regulation for more than three thousand dollars (\$3,000.00) per year. Unused credit may be carried forward for a period of ten years from the first year in which the cost for which credit is claimed was incurred. The maximum credit which may be claimed in any single year for any single project shall not exceed three thousand dollars (\$3,000) regardless of the number of taxpayers paying the costs of the project.

C. To qualify for this credit, the project must be designed and used for agricultural purposes to produce food and fiber as part of a business (excluding aquaculture), or for industrial purposes. The fact that water from the impoundment may also be put to domestic use, does not disqualify the cost of the impoundment or structure for this credit.

D. Any taxpayer claiming credits for the costs of construction of water impoundments or water control structures shall not claim a credit for the costs of abandoning the use of groundwater for the same project. Any taxpayer claiming credits for the costs of abandoning the use of groundwater shall not claim a credit for the costs of construction or water impoundments or water control structures.

E. The credits provided by this regulation may be claimed for income tax year 1985 and all succeeding tax years. Taxpayers reporting on a fiscal year basis may claim the credit for fiscal years beginning in 1985 and all succeeding fiscal years.

F. This credit is not transferable from one taxpayer to another.

Section 901.2 Definitions.

A. Commission means the Arkansas Natural Resources Commission, established pursuant to Ark. Code Ann. § 15-20-201 to 208.

B. District means the local conservation district established pursuant to Ark. Code Ann. § 14-125-101 to 907.

C. Domestic Use means the use of water for ordinary household purposes including human consumption, washing, the watering of farm livestock, poultry and domestic animals, and the watering or irrigation of home gardens and lawns.

D. Project means an impoundment of water characterized by a dam, levee or device to control the flow of water and all structures, pipes and devices for the transportation and delivery to the water from or into the impoundment.

E. Restoration means activities undertaken to bring an impoundment back to original condition. Routine and ordinary maintenance activities are not considered restoration under this program.

1. Activities that are considered restoration under this program:
 - (a) Changing the height of a dam.
 - (b) Increasing the spillway capacity of a dam.
 - (c) Removing sediment from an impoundment.
 - (d) Removing trees greater than five inches in diameter from a dam, including removing stumps and replacing with impervious material.
 - (e) Installing a filter or drainage system to control seepage through a dam.
 - (f) Excavation into the embankment fill or foundation of a dam (e.g., replacing deteriorated pipe).
 - (g) Removal or replacement of major structural components of a dam (e.g., replacing deteriorated concrete, gates, etc).
 - (h) Any other work to improve the capacity, service or safety of an impoundment or water control structure, except the items below.
2. Activities that are not considered restoration under this program:
 - (a) Routine care (e.g., cutting grass)
 - (b) Reseeding eroded embankment and shore areas.
 - (c) Removing brush and small trees (up to 5 inches in diameter) from a dam.
 - (d) Replacing stop logs or flash boards with identical components.
 - (e) Sealing cracks in spillway slabs.
 - (f) Replacing trash guards.
 - (g) Replacing or repairing any component of a water supply or irrigation system when the work is done on a component that is not part of the dam, water impoundment or their appurtenant works.
 - (h) Any other work that does not improve the capacity, service or safety of a water impoundment or water control structure.

Section 901.3 Requirements for application for credit.

A. Plans, designs or specifications must be submitted to the Commission for approval and:

1. Shall meet or exceed minimum standards as established by the Commission's Chief Engineer;

2. Shall have been developed by an agent of the USDA-SCS or by a registered professional engineer, licensed in Arkansas;

3. Must be certified by the district as being adopted as a part of the cooperators conservation plan, or if the plan is prepared by someone other than an agent of the USDA-SCS, then the plan must be certified by the District as being in conformance with accepted soil and water conservation practices.

B. The plans and construction must comply with all state or local codes, rules, regulations and laws as they may apply to construction, operation and maintenance.

C. Structures must be built and maintained so as to provide a minimum useful life of ten years.

D. A final construction inspection shall be conducted by a representative of the Commission. The applicant shall allow representatives of the Commission to inspect the construction, operation or maintenance of facilities at any reasonable time.

Section 901.4 Procedure for claiming tax credit.

A. Application. The applicant shall submit an Application for Dam Permit or Exemption Certificate and Tax Credit Approval. This application form may be obtained from the district or Commission. All applicable information required by the form shall be supplied by the applicant.

B. Application Fees.

1. The applicant shall pay to the Commission a fee in an amount equal to three percent (3%) of the total tax credit approved by the Commission. The minimum fee shall be one hundred and fifty dollars (\$150.00).

2. All fees shall be paid to the Commission when an application for tax credit approval is filed. Should payment be based on an estimate of cost which is less than actual final total cost of the project, the balance will be due and payable when a request for a Certificate of Completion for Tax Credit is filed. No completion certificate shall be issued until the balance due has been paid. If the applicant's estimate exceeded the actual cost of installation, the Commission will refund the fee overcharge when the completion certificate is issued.

3. In the case of a project involving multiple landowners, the fee shall be paid according to the percentage of tax credit each participating party receives.

4. All fees collected shall be deposited in the Water Development Fund.

C. Certificate of Tax Credit Approval. Upon review and approval of the project, the original Certificate of Tax Credit Approval will be issued to the taxpayer. In the case of a project involving multiple landowners an original certificate will be issued to each landowner.

D. Final Inspection and Certificate of Completion. Upon completion of the project the taxpayer shall request the Commission make a final inspection of the project and issue a Certificate of Completion for Tax Credit. The request shall be a letter notifying the Commission of project completion and requesting a final inspection and issuance of the completion certificate. This letter must contain a statement of the total cost of the project. On receipt of this request, a representative of the Commission will conduct the final construction inspection. If the final construction meets the requirements of applicable law and regulations, a Certificate of Completion shall be issued. The Certificate shall contain a statement that the construction has been completed and a statement of the final total cost of the project as reported by the Applicant.

E. Claiming Credit. Taxpayers may claim credit for costs to a project only after receiving a Certificate of Tax Credit Approval from the Commission.

F. Income Tax Returns. Taxpayers claiming credit shall attach the original Certificate of Tax Credit Approval to the state income tax return for the first year credit is claimed prior to the completion of construction. In the first year after completion of construction, taxpayers shall attach the original Certificate of Completion for Tax Credit to the tax return. The taxpayer shall also complete and attach the proper form for claiming credit for each year for which credit is claimed.

G. Calculating Net Income. In determining net income for Arkansas Income Tax purposes, taxpayers claiming credits provided for in this regulation may also claim a deduction equal to the total cost of the project less the total amount of costs used to determine the credits to which the taxpayer is entitled under these regulations. The deduction for costs incurred in a project may be taken only during the year the expenditures for the project were actually incurred.

Subtitle II. Tax credit for utilizing surface water in place of ground water

Section 902.1 General.

A. This regulation establishes the procedure for Arkansas income taxpayers to claim as a tax credit against their Arkansas income tax liability an amount equal to ten percent (10%) of the cost incurred by the taxpayer in abandoning or reducing the extraction of the groundwater and utilizing surface water in lieu of groundwater thereby encouraging the private sector of our economy to invest in the installation of equipment to conserve groundwater, thus reducing the use of groundwater and the potential of further groundwater depletion.

B. Credit may be claimed for ten percent (10%) of the costs of a project. This tax credit shall be applicable against the tax liability for the income year during which the extraction of surface water commenced. Any unused portion of this credit may be carried forward for 2 years. The credit shall be limited to ten percent (10%) of the costs incurred in completing the project.

C. Any taxpayer claiming credits for the costs of construction of water impoundments or water control structures shall not claim a credit for the costs of abandoning the use of groundwater for the same project. Any taxpayer claiming credits for the costs of abandoning the use of groundwater shall not claim a credit for the costs of construction of water impoundments or water control structures.

D. The credits provided by this regulation may be claimed for income tax year 1985 and all succeeding tax years. Taxpayers reporting on a fiscal year basis may claim the credit for fiscal years beginning in 1985 and all succeeding fiscal years.

E. This credit is not transferable from one taxpayer to another.

Section 902.2 Definitions.

A. Commission means the Arkansas Natural Resources Commission established pursuant to Ark. Code Ann. § 15-20-201 to 208.

B. District means the local conservation district established pursuant to Ark. Code Ann. § 4-125-101 to 907.

Section 902.3 Requirements for application for credit.

A. Plans, designs or specifications must be submitted to the Commission for approval and:

1. Shall meet or exceed minimum standards as established by the Commission's Chief Engineer;

2. Shall have been developed by an agent of the USDA-SCS or by a registered professional engineer, licensed in Arkansas;

3. Must be either certified by the District as being adopted as a part of the cooperators conservation plan, or if the plan is prepared by someone other than an agent of the USDA-

SCS, then the plan must be certified by the District as being in conformance with accepted soil and water conservation practices.

B. The plans and construction must comply with all state and local codes, rules, regulations and laws as they may apply to construction, operation and maintenance.

C. Structures must be built and maintained so as to provide a minimum useful life to ten years.

D. A final construction inspection shall be conducted by a representative of the Commission. The applicant(s) for credit shall allow representatives of the Commission to inspect the construction, operation or maintenance or facilities at any reasonable time.

E. Applicants shall provide reasonable proof and evidence that groundwater was previously being used and that the new equipment and construction work will reduce or replace the use of groundwater.

Section 902.4 Procedure for claiming tax credit.

A. Application. The applicant shall submit an Application for Tax Credit Approval. This form may be obtained from the District or Commission. All applicable information required by the form shall be supplied by the applicant.

B. Fees.

1. The applicant shall pay to the Commission a fee in an amount equal to three percent (3%) of the total tax credit approved by the Commission. The minimum fee shall be one hundred and fifty dollars (\$150.00).

2. All fees shall be paid to the Commission when an application for tax credit approval is filed. Should payment be based on an estimate of cost which is less than actual final total cost of the project, the balance will be paid when a request for a Certificate of Completion for Tax Credit is filed. No completion certificate shall be issued until the balance due has been paid. If the applicant's estimate exceeded the actual cost of installation, the Commission will refund the fee overcharge when the completion certificate is issued.

3. In the case of a project involving multiple landowners, liability for the fee shall be paid according to the percentage of tax credit each participating party receives.

4. All fees collected shall be deposited in the Water Development Fund.

C. Certificate of Tax Credit Approval. Upon review and approval of the project, the original Certificate of Tax Credit Approval will be issued to the taxpayer. In the case of a project involving multiple landowners an original certificate will be issued to each landowner.

D. Final Inspection and Certificate of Completion. Upon completion of the project the taxpayer shall request the Commission make a final inspection of the project and issue a Certificate of Completion for Tax Credit. This request shall be a letter notifying the Commission of project completion and requesting a final inspection and issuance of the completion certificate. This letter must contain a statement of the total cost of the project. On receipt of the request, a representative of the Commission will conduct the final construction inspection. If the final construction meets the requirements of applicable laws and regulations, a Certificate of Completion shall be issued. The Certificate shall contain a statement that the construction has been completed and a statement of the final total cost of the project as reported by the Applicant.

E. Claiming Credit. Taxpayers may claim credit for costs of a project only after receiving a Certificate of Tax Credit Approval from the Commission.

F. Income Tax Returns. Taxpayers claiming credit shall attach the original Certificate of Tax Credit Approval to the state income tax return filed in the first year for which credit is claimed.

The taxpayer shall also complete and attach the proper form for claiming credit for each year for which credit is claimed. This form is attached to and is a part of this regulation.

G. Calculating Net Income. In determining net income for Arkansas Income Tax purposes, taxpayers claiming credits provided for in this regulation may also claim a deduction equal to the total cost of the project less the total amount of costs used to determine the credits to which the taxpayer is entitled under these regulations. The deduction for costs incurred in a project may be taken only during the year the expenditures for the project were actually incurred.