

## **Title 26. Taxation**

### **Chapter VIII. Division of Arkansas Heritage, Department of Parks, Heritage, and Tourism**

#### **Subchapter A. Generally**

#### **Part 250. Rules Governing the Arkansas Historic Rehabilitation Income Tax Credit Program**

##### **Subpart 1. Generally**

##### **26 CAR § 250-101. Purpose.**

(a) Arkansas's historic sites and districts provide the state with significant benefits in the areas of:

- (1) Community and economic development;
- (2) Tourism;
- (3) Civic pride; and
- (4) An overall sense of place for Arkansas.

(b) Yet Arkansas continues to experience significant loss of historic structures.

(c) Since the overwhelming majority of historic properties are held by private owners, the state has developed this program to encourage these owners to restore and rehabilitate historic structures.

**Authority.** Arkansas Code § 26-51-2207.

##### **26 CAR § 250-102. Legislation.**

(a) The Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq., (Acts 2009, No. 498) allows a credit against the tax imposed by the Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq., and the premium tax levied under Arkansas Code §§ 26-57-603 – 26-57-605 for any taxpayer engaged in the qualified rehabilitation of certified historic structures.

(b) Acts 2015, No. 567, effective March 24, 2015:

- (1) Limited the credit to one (1) credit per eligible property per twenty-four-month period; and
- (2) Extended the program to December 31, 2027.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-103. Definitions.**

As used herein, unless the context otherwise requires:

(1) "Act" means the Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq., as amended by Acts 2015, No. 567;

(2) "AHPP" means the Arkansas Historic Preservation Program, an agency of the Division of Arkansas Heritage;

(3)(A) "Application" means the Arkansas Historic Rehabilitation Tax Credit Application and constitutes a written plan for development and operation of a rehabilitation project.

(B) Applications are submitted in three (3) parts:

(i)(a) Determination of Eligibility (Part 1) is used by the Arkansas Historic Preservation Program to determine whether a property is of historic significance and eligible to receive tax credits.

(b) Upon approval of a Part 1, the Arkansas Historic Preservation Program will issue a certificate of eligibility;

(ii) Proposed Rehabilitation Project (Part 2) is used by the Arkansas Historic Preservation Program to determine whether a proposed rehabilitation project will comply with the United States Secretary of the Interior's Standards for Rehabilitation; and

(iii) Completed Rehabilitation Project (Part 3) is used by the Arkansas Historic Preservation Program to determine whether a completed rehabilitation project successfully complied with the United States Secretary of the Interior's Standards for Rehabilitation.

(C) Upon approval of a Part 3, the Arkansas Historic Preservation Program will issue a certificate of completion.

(D) Holders will submit certificates of completion to the appropriate taxing authority to claim tax credits;

(4) "Certified rehabilitation" means a substantial rehabilitation of an eligible property, consistent with the historic character of the eligible property and, where applicable, with the district in which such structure is located;

(5)(A) "Eligible property" means property that is located in Arkansas that is:

(i) Income-producing property that:

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

(b) Will qualify as a certified historic structure following certified rehabilitation; and

(ii) Nonincome-producing property that is:

(a) Listed in the National Register of Historic Places;

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

(c) Eligible for designation as contributing to a district listed in the National Register of Historic Places following certified rehabilitation.

(B) For purposes of the certification decisions set forth in this part, an eligible property encompasses the historic building and its:

(i) Site;

(ii) Landscape features; and

(iii) Environment.

(C)(i) The National Park Service's decision to list a property in the National Register of Historic Places, including boundary determinations, does not limit the scope of review of the rehabilitation project for tax certification purposes.

(ii) Such review will include the entire historic property as it existed prior to rehabilitation and any related new construction;

(6)(A) "Historic district" means a geographically definable area, urban or rural, that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

(B) A district may also comprise individual elements separated geographically during the period of significance but linked by association or function;

(7) "Holder" means the holder of a certification of completion that is:

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

(B) An insurance company paying the premium tax levied under Arkansas Code §§ 26-57-603 – 26-57-605 on its gross premium receipts;

(8)(A) "Income-producing property" means nonresidential real property and residential rental property, as defined by the Internal Revenue Code, Section 168.

(B) For the purpose of the Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq., income-producing property includes properties to be rehabilitated for resale as condominium units;

(9)(A) "National Register of Historic Places" means the national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, 54 U.S.C. § 300101 et seq.

(B) The procedures of the National Register of Historic Places appear in 36 C.F.R. pt. 60;

(10) "Nonincome-producing property" means residential real property, as defined by the Internal Revenue Code, Section 168;

(11)(A) "Owner" means a person or an entity that owns eligible property and is the initial recipient of the certification of completion from the Division of Arkansas Heritage.

(B) An owner can be:

(i) An individual, partnership, limited liability company, corporation, or public agency holding a fee-simple interest in a property; or

(ii) Any other person or entity recognized for purposes of the applicable tax benefits;

(12) "Qualified rehabilitation expenses" means costs and expenses incurred to complete a certified rehabilitation in accordance with the United States Secretary of the Interior's Standards for Rehabilitation, as determined by the Arkansas Historic Preservation Program;

(13) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment that are significant to its historic, architectural, and cultural values;

(14) "Standards for Rehabilitation" means the United States Secretary of the Interior's Standards for Rehabilitation;

(15) "State Historic Preservation Officer" means the Director of the Division of Arkansas Heritage, or other official designated by the Governor or statute to act as liaison for purposes of administering historic preservation programs within Arkansas;

(16) "Tax credits" means the authorized amount that may be applied against Arkansas corporate income tax or premium tax, whether earned by:

- (A) An individual;
- (B) A partnership;
- (C) A limited liability company;
- (D) A Subchapter S corporation; or
- (E) A corporation; and

(17)(A) "Tourism attraction" means a property designed to attract at least twenty-five percent (25%) of its visitors from out of state.

(B) "Tourism attraction" does not include:

- (i) Retail sales facilities (unless the goods are created on-site or if sales are incidental to the overall property);
- (ii) Facilities not open to the general public;
- (iii) Facilities not likely to attract overnight guests from outside the state who would stay in commercial lodging near the attraction;

- (iv) Facilities owned by the State of Arkansas or its political subdivisions;
- (v) Gambling facilities (unless for approved pari-mutuel racing currently regulated under Arkansas Code); or
- (vi) Lodging facilities, unless it meets the following tests:
  - (a) It must constitute a portion of a larger tourism attraction project and represent less than sixty percent (60%) of the total approved costs of the tourism attraction project; or
  - (b) If the approved cost for the lodging facility exceeds five million dollars (\$5,000,000) and one (1) of the following is met:
    - (1) The lodging facility is attached to a convention center containing a minimum of seventy-five thousand square feet (75,000 sq. ft.); or
    - (2) The lodging facility contains a minimum of twelve thousand square feet (12,000 sq. ft.) of meeting or exhibit space.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-104. Delegation of authority.**

(a) The State Historic Preservation Officer is delegated all powers necessary and convenient to carry out the responsibilities contained in this rule.

(b)(1) The Department of Finance and Administration and State Insurance Department are responsible for all procedures, legal determinations, and rules concerning the tax consequences relating to the Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq.

(2) Any certification made by the State Historic Preservation Officer pursuant to the Arkansas Historic Rehabilitation Income Tax Credit Act or this rule shall not be considered as binding upon the Department of Finance and Administration and State Insurance Department with respect to tax consequences.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-105. Introduction to certifications of eligibility and rehabilitation.**

**(a) Who may apply.**

(1)(A) Ordinarily, only the fee simple owner of the property in question may apply for the certifications described below.

(B) If an application for an evaluation of significance or rehabilitation project is made by someone other than the fee simple owner, however, the application must be accompanied by a written statement from the fee simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(2)(A) Upon receipt of an application, the Arkansas Historic Preservation Program may determine whether or not a particular structure qualifies as an eligible property.

(B) The program shall do so, however, only after:

(i) Notifying the fee simple owner of record of the request;

(ii) Informing such owner of the possible tax consequences of such a decision; and

(iii)(a) Permitting the property owner a thirty-day time period to submit written comments to the program's staff prior to decision.

(b) Such time period for comment may be waived by the fee simple owner.

(3)(A) Owners of properties that appear to meet National Register of Historic Places criteria but are not yet listed in the National Register of Historic Places or that are located within potential historic districts may request preliminary determinations from the program as to whether such structures may qualify as eligible properties when and if the properties or the potential historic districts in which they are located are listed in the National Register of Historic Places.

(B) Preliminary determinations may also be requested for properties outside the period or area of significance of registered historic districts.

(C) Procedures for obtaining these determinations shall be the same as those described above.

(D) Such determinations are preliminary only and are not binding on the program.

(E) Preliminary determinations of significance will become final as of the date of the listing of the individual property or district in the National Register of Historic Places.

(F) For properties outside the period or area of significance of a registered historic district, preliminary determinations of significance will become final, except as provided below, when the district documentation on file with the National Park Service is formally amended.

(G) If during review of a request for certification of rehabilitation, it is determined that the property does not contribute to the significance of the district because of changes that occurred after the preliminary determination of significance was made, eligible property designation will be denied.

(4)(A) Owners of structures not yet designated eligible properties may obtain determinations from the program on whether or not rehabilitation proposals meet the United States Secretary of the Interior's Standards for Rehabilitation.

(B) Such determinations will be made only when the owner has requested a preliminary determination of the significance of the property as described above and such request for determination has been acted upon by the program.

(C) Final certifications of rehabilitation will be issued only to owners of eligible properties.

(5) Owners of properties who have not taken a rehabilitation tax credit on the eligible property within the past twenty-four (24) months.

**(b) How to apply.**

(1)(A) Requests for certifications of eligibility and of rehabilitation shall be made on Historic Preservation Certification Applications.

(B) Part 1 of the application shall be used in requesting a certification of eligibility and for preliminary determinations of eligibility, while Part 2 of the application shall be used in requesting an evaluation of a proposed rehabilitation project.

(2)(A) Application forms are available by contacting the program and requesting a hard copy or an electronic version via email.

(B) It is important that an applicant makes contact with program staff prior to taking any action on the proposed tax credit project.

(3)(A) Applications should be reviewed within thirty (30) days of receipt of a complete, adequately documented application.

(B) Where adequate documentation is not provided, the owner will be notified of the additional information needed to undertake or complete review.

(C)(i) The time periods in this part are based on the receipt of a complete application.

(ii) They will be adhered to as closely as possible and are defined as calendar days.

(iii) They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement.

(D) It is the applicant's responsibility to notify the State Historic Preservation Officer if application reviews are not completed within the time periods specified above.

(E) The State Historic Preservation Officer in turn will consult with the program staff to ensure that the review is completed in as timely a manner as possible in the circumstances.

(4)(A) Approval of applications and amendments to applications is conveyed only in writing by duly authorized officials of the program acting on behalf of the State Historic Preservation Officer.

(B) Decisions with respect to certifications are made on the basis of the descriptions contained in:

(i) The application form; and

(ii) Other available information.

(C) In the event of any discrepancy between the application form and other, supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing.

(D) In the event the discrepancy is not resolved, the description in the application form shall take precedence.

(E) Intentional falsification of factual representations in the application is subject to criminal and civil sanctions.

(5)(A) Although certifications of eligibility and rehabilitation are considered separately, owners must submit Part 1 of the Historic Preservation Certification Application prior to, or with, Part 2.

(B) Part 2 of the application will not be processed until an adequately documented Part 1 is on file and acted upon unless the property is already individually listed on the National Register of Historic Places.

(C) Applications will not be considered if the property owner has objected to the listing of the property in the National Register of Historic Places.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-106. Certifications of eligibility (Part 1 application).**

(a) Requests for certifications of historic significance should be made by the owner to determine:

(1) That a property:

(A) Located within a National Register Historic District is of historic significance to such district;

(B) Not yet listed on the National Register of Historic Places appears to meet National Register of Historic Places criteria; or

(C) Located within a potential historic district appears to contribute to the significance of such district; and

(2) If a property has received a rehabilitation tax credit within the past twenty-four (24) months.

(b) To determine whether or not a property is individually listed or is part of a district in the National Register of Historic Places, the owner may consult the Arkansas Historic Preservation Program for current information.

(c)(1) If a property is located within the boundaries of a National Register Historic District and the owner wishes the program to certify whether the property contributes or does not contribute to the historic significance of the district, or if the owner is requesting a preliminary determination of eligibility in accordance with, the owner must complete Part 1 of the Historic Preservation Certification Application according to instructions accompanying the application.

(2) Such documentation includes but is not limited to:

(A) Name and mailing address of owner;

(B) Name and address of property;

(C) Name of historic district;

(D) Current photographs of property, photographs of the building and its site and landscape features prior to alteration if rehabilitation has been completed, a photograph or photographs showing the property along with adjacent properties and structures on the street, and photographs of interior features and spaces adequate to document significance;

(E) Brief description of appearance, including:

(i) Alterations;

(ii) Distinctive features and spaces; and

(iii) Date or dates of construction;

(F) Brief statement of significance:

(i) Summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character; and

(ii) Explaining any significance attached to the property itself (i.e., unusual building techniques, important event that took place there, etc.);

(G) Sketch map clearly delineating property's location within the district;  
and

(H) Signature of fee simple owner requesting or concurring in a request for evaluation.

(d) If a structure is individually listed in the National Register of Historic Places, it is generally considered an eligible property certified historic structure and no further certification is required, with the following exceptions:

(1) If the property is individually listed in the National Register of Historic Places and the owner believes it has lost the characteristics that caused it to be nominated and therefore wishes it delisted, the owner should refer to the delisting procedures outlined in 36 C.F.R. pt. 60; and

(2)(A) Some properties individually listed in the National Register of Historic Places include more than one (1) structure.

(B) In such cases, the owner must submit a single Part 1 application and include descriptions of all the buildings within the listing.

(C) Program staff will determine which of the structures included within the listing are of historic significance to the property.

(e)(1) Properties containing more than one (1) structure where the structures are judged by the program to have been functionally related historically to serve an overall purpose (such as a mill complex or a residence and carriage house) will be treated as a single eligible property, whether the property is individually listed in the National Register of Historic Places or is located within a historic district, when rehabilitated as part of an overall project.

(2) Structures that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance.

(3) In the case of a property within a registered historic district that contains more than one (1) structure where the structures are judged to be functionally related historically, an evaluation will be made to determine:

(A) Whether the component buildings contribute to the historic significance of the property; and

(B) Whether the property contributes to the significance of the historic district.

(f)(1) Applications for preliminary determinations for individual listing must show how the property individually meets the National Register of Historic Places criteria for evaluation.

(2) An application for a property located in a potential historic district must document how the:

(A) District meets the criteria; and

(B) Property contributes to the significance of that district.

(3) An application for a preliminary determination for a property in a historic district that is outside the period of significance in the district documentation on file with the program must:

(A) Document and justify the expanded significance of the district and how the property contributes to the significance of the district; or

(B) Document the individual significance of the property.

(4) Applications must contain substantially the same level of documentation as National Register of Historic Places nominations, as specified in:

(A) 36 C.F.R. pt. 60; and

(B) National Register Bulletin 16, "Guidelines for Completing National Register of Historic Places Forms" (available from the program).

(5)(A) Owners should understand that intent to nominate to the National Register of Historic Places or amend an existing National Register of Historic Places listing does not constitute listing in the National Register of Historic Places, nor does it constitute a certification of eligibility as required by law for tax incentives.

(B) Owners should further understand that they are proceeding at their own risk.

(C) If the property or district is not listed in the National Register of Historic Places for procedural, substantive, or other reasons, if the district

documentation is not formally amended, or if the significance of the property has been lost as a result of alterations or damage, these preliminary determinations of significance will not become final.

(6) The State Historic Preservation Officer must nominate the property or the district before the preliminary certification of eligibility can become final.

(g)(1) The program discourages the moving of historic buildings from their original sites.

(2) However, if a building is to be moved as part of a rehabilitation project for which certification is sought, the owner must follow different procedures depending on whether the building is:

- (A) Individually listed in the National Register of Historic Places; or
- (B) Within a historic district.

(3) When a building is moved, every effort should be made to reestablish its:

- (A) Historic orientation;
- (B) Immediate setting; and
- (C) General environment.

(4) Moving a building may result in:

- (A) Removal of the property from the National Register of Historic Places;

or

(B) For buildings within a historic district, denial or revocation of a certification of eligibility.

(5) Consequently, a moved building may, in certain circumstances, be ineligible for tax credits.

(6) Documentation must be submitted that demonstrates:

- (A) The effect of the move on the building's integrity and appearance (any proposed demolition, proposed changes in foundations, etc.);
- (B) Photographs of the site and general environment of the proposed site;
- (C) Evidence that the proposed site does not possess historical significance that would be adversely affected by the moved building;

(D) The effect of the move on the distinctive historical and visual character of the district, where applicable; and

(E) The method to be used for moving the building.

(7) For buildings individually listed in the National Register of Historic Places, the procedures contained in 36 C.F.R. pt. 60 must be followed prior to the move or the building will:

(A) Be removed from the National Register of Historic Places;

(B) Not be considered an eligible property; and

(C) Have to be renominated to the National Register of Historic Places.

(8)(A) The owner may submit a Part 1 application in order to receive a preliminary determination from the program of whether a move will cause the property to be removed from the National Register of Historic Places.

(B) However, preliminary approval of such a Part 1 application does not satisfy the requirements for property eligibility.

(C) The applicant must follow the remaining National Register of Historic Places procedures to ensure that the moved building will:

(i) Remain listed in the National Register of Historic Places; and

(ii) Retain its status as an eligible property.

(9)(A) If an owner moves (or proposes to move) a building into a National Register Historic District or moves (or proposes to move) a building elsewhere within a historic district, a Part 1 application containing the required information must be submitted.

(B) The building to be moved will be evaluated to determine if it contributes to the historic significance of the district both before and after the move.

(h) Properties within historic districts will be evaluated to determine if they contribute to the historic significance of the district by application of the United States Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts (listed below).

(i) Once the significance of a property located within a registered historic district or a potential historic district has been determined by the program, written notification will be sent to the owner in the form of a certification of eligibility.

(j)(1) Owners shall report to the program any substantial damage, alteration, or changes to a property that occurs after issuance of a certification of eligibility and prior to a final certification of completion.

(2)(A) The program may withdraw a certification of eligibility, upon thirty (30) days' notice to the owner, if a property has been damaged, altered, or changed effective as of the date of the occurrence.

(B) The property may also be removed from the National Register of Historic Places.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-107. Standards for Evaluating Significance within Historic Districts.**

(a) Properties located within historic districts are reviewed by the Arkansas Historic Preservation Program to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within Historic Districts:

(1) A building contributing to the historic significance of a district is one (1) that by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;

(2) A building not contributing to the historic significance of a district is one (1):

(A) That does not add to the district's sense of time and place and historical development; or

(B) Where the location, design, setting, materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost; and

(3) Ordinarily, buildings that have been built within the past fifty (50) years shall not be considered to contribute to the significance of a district unless:

(A) A strong justification concerning their historical or architectural merit is given; or

(B) The historical attributes of the district are considered to be less than fifty (50) years old.

(b)(1) A condemnation order may be presented as evidence of physical deterioration of a building but will not of itself be considered sufficient evidence to warrant certification of nonsignificance for loss of integrity.

(2) In certain cases it may be necessary for the owner to submit a structural engineer's report to help substantiate physical deterioration and/or structural damage.

(3) Guidance on preparing a structural engineer's report is available from the program.

(c)(1) Some properties listed in the National Register of Historic Places, primarily districts, are resources whose concentration or continuity possesses greater historical significance than many of their individual component buildings and structures.

(2) These usually are documented as a group rather than individually.

(3) Accordingly, this type of National Register of Historic Places documentation is not conclusive for the purposes of determining eligibility and must be supplemented with information on the significance of the specific property.

(4) Certifications of significance and nonsignificance will be made on the basis of:

(A) The application documentation;

(B) Existing National Register of Historic Places documentation; and

(C) Other available information as needed.

(5) The program may submit an amended National Register of Historic Places nomination to the National Park Service if the application material warrants such an amendment.

(6) If a certification request is received for a property that is not yet listed on the National Register of Historic Places or that is outside a district's established period or area of significance, a preliminary determination of eligibility will be issued only if:

(A) The request includes adequate documentation; and

(B) There is written assurance that the:

(i) Owner plans to nominate the property or district; or

(ii) District nomination in question is being revised to expand its significance.

(7) Certifications will become final when the property or district is listed or when the district documentation is officially amended, unless the significance of the property has been lost as a result of alteration or damage.

(8) For procedures on amending listings to the National Register of Historic Places and additional information on the use of National Register of Historic Places documentation, owners should contact the program.

(d) Where rehabilitation credits are sought, certifications of eligibility will be made on the appearance and condition of the property before rehabilitation was begun.

(e)(1) If a nonhistoric surface material obscures a facade, it may be necessary for the owner to remove a portion of the surface material prior to requesting certification so that a determination of significance or nonsignificance can be made.

(2) After the material has been removed, if the obscured facade has retained substantial historic integrity and the property otherwise contributes to the historic district, it will be determined to be an eligible property.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-108. Certifications of proposed rehabilitation (Part 2 application).**

(a) Owners who want rehabilitation projects for eligible properties to be certified by the Arkansas Historic Preservation Program as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is

located, thus qualifying as a certified rehabilitation, shall comply with the procedures listed below:

(1)(A) To initiate review of a rehabilitation project for certification purposes, an owner must complete Part 2 of the Historic Preservation Certification Application according to instructions accompanying the application.

(B) The application may describe a:

- (i) Proposed rehabilitation project;
- (ii) Project in progress; or
- (iii) Completed project;

(2)(A) These instructions explain in detail the documentation required for certification of a rehabilitation project.

(B) In all cases, documentation, including photographs (color processed or color digital accepted) adequate to document the appearance of the structure or structures, both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application.

(C) The Social Security or taxpayer identification number or numbers of all owners must be provided in the application.

(D) Other documentation, such as window surveys or cleaning specifications, may be required by the program to evaluate certain rehabilitation projects.

(E) Plans for any attached, adjacent, or related new construction must also accompany the application.

(F) Where necessary documentation is not provided:

- (i) Review and evaluation may not be completed; and
- (ii) A denial of certification will be issued on the basis of lack of information;

(3)(A) Owners are strongly encouraged to submit Part 2 of the application prior to undertaking any rehabilitation work.

(B) Owners who undertake rehabilitation projects without prior approval from the program do so strictly at their own risk.

(C) Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects; and

(4)(A) A project does not become a certified rehabilitation until it is completed and so designated by the program.

(B) A determination that the completed rehabilitation of a structure not yet designated an eligible property meets the United States Secretary of the Interior's Standards for Rehabilitation does not constitute a certification of completion.

(C) When requesting certification of a completed rehabilitation project, the owner shall submit a Request for Certification of Completion (Part 3) and provide the project completion date and a signed statement that the completed rehabilitation project:

(i) Meets the United States Secretary of the Interior's Standards for Rehabilitation; and

(ii) Is consistent with the work described in Part 2 of the Historic Preservation Certification Application.

(D) Also required in requesting certification of completion are:

(i) Costs attributed to the rehabilitation;

(ii) Photographs adequate to document the completed rehabilitation;

and

(iii) The Social Security or taxpayer identification number or numbers of all owners.

(b)(1)(A) For certification purposes, a rehabilitation project encompasses all work on the interior and exterior of the eligible property and its site and environment, as determined by the program, as well as related demolition, new construction, or rehabilitation work that may affect the historic qualities, integrity or site, landscape features, and environment of the eligible property.

(B) More specific considerations in this regard are as follows.

(2)(A) All elements of the rehabilitation project must meet the United States Secretary of the Interior's Standards for Rehabilitation.

(B) Portions of the rehabilitation project not in conformance with the United States Secretary of the Interior's Standards for Rehabilitation may not be exempted.

(C) In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project or rehabilitation work that was undertaken by previous owners or third parties.

(3)(A) However, if the program considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project subject to review hereunder, the program may choose to deny a certificate of completion or to withhold a decision on such a certification until such time as the program has determined the proper scope of the rehabilitation project to be reviewed.

(B) Factors to be taken into account by the program in this regard include, but are not limited to:

(i) The facts and circumstance of each application;

(ii) Whether previous demolition, construction, or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought; and

(iii)(a) Whether property conveyances, reconfigurations, ostensible ownership transfers, or other transactions were transactions that purportedly limit the scope of a rehabilitation project for the purpose of review by the program without substantially altering beneficial ownership or control of the property.

(b) The fact that a structure may still qualify as eligible after having undergone inappropriate rehabilitation, construction, or demolition work does not preclude the program from determining that such inappropriate work is part of the rehabilitation project to be reviewed.

(4) Conformance to the United States Secretary of the Interior's Standards for Rehabilitation will be determined on the basis of the application documentation and other available information by evaluating the property as it existed prior to the

commencement of the rehabilitation project, regardless of when the structure becomes or became an eligible property.

(5)(A) For rehabilitation projects involving more than one (1) eligible property where the structures are judged by the program to have been functionally related historically to serve an overall purpose (such as a mill complex or a residence and carriage house) a certificate of completion will be issued on the merits of the overall project rather than for each structure or individual component.

(B) For rehabilitation projects where there is no historic functional relationship among the structures, the decision will be made for each separate eligible property regardless of how they are grouped for ownership or development purposes.

(6)(A) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of a certificate of completion.

(B) In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction that physically expands one (1) eligible property undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure, will generally result in denial of a certificate of completion unless a determination has been made that the building to be demolished is not an eligible property.

(C) In rehabilitation projects where the structures have been determined to be functionally related historically, demolition of a component may be approved, in limited circumstances, when the component is:

- (i) Outside the period of significance of the property;
- (ii) So deteriorated or altered that its integrity has been irretrievably

lost; or

(iii) A secondary one that generally lacks historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

(7) In situations involving rehabilitation of an eligible property in a historic district, the program will review the rehabilitation project first as it affects the eligible property and second as it affects the district and make a decision accordingly.

(8) In the event that an owner of a portion of an eligible property requests a certificate of completion related only to that portion, but there is or was a larger related rehabilitation project or projects occurring with respect to the eligible property, the program's decision on the requested certificate of completion will be based on review of the overall rehabilitation project or projects for the eligible property.

(c)(1) Upon receipt of the complete application describing the rehabilitation project, the program shall determine if the project is consistent with the United States Secretary of the Interior's Standards for Rehabilitation.

(2) If the project does not meet the United States Secretary of the Interior's Standards for Rehabilitation, the owner shall be advised of that fact in writing and, where possible, will be advised of necessary revisions to meet such standards.

(d)(1) Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application must be brought promptly to the attention of the program by written statement to ensure continued conformance to the United States Secretary of the Interior's Standards for Rehabilitation.

(2) The program will notify the owner in writing whether the revised project continues to meet the standards.

(3) Oral approvals of revisions are not authorized or valid.

(e)(1) Projects in progress may be inspected by an authorized representative of the State Historic Preservation Officer to determine if the work meets the Standards for Rehabilitation.

(2) The program may deny a certificate of completion if it is determined that the rehabilitation project was not undertaken as represented by the owner in the application.

(f)(1) If a proposed, ongoing, or completed rehabilitation project does not meet the Standards for Rehabilitation, an explanatory letter will be sent to the owner by the program.

(2) A rehabilitated property not in conformance with the Standards for Rehabilitation and that is determined to have lost those qualities that caused it to be nominated to the National Register of Historic Places will be removed from the National Register of Historic Places in accordance with United States Department of the Interior regulations.

(g)(1) All rehabilitation projects receiving tax credits must address one (1) or more of the following program priorities.

(2) Applications should indicate which of these priorities their project addresses when submitting the Part 2 application:

- (A) Creation of a new business;
- (B) Expansion of an existing business;
- (C) Establishment of a tourism attraction;
- (D) Revitalization of a commercial historic district; and
- (E) Rehabilitation of a significant property in a historic neighborhood.

**Authority.** Arkansas Code § 26-51-2207.

### **26 CAR § 250-109. Standards for Rehabilitation.**

(a)(1) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation.

(2) The intent of the standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features.

(3) The standards:

- (A) Pertain to historic buildings of all:
  - (i) Materials;
  - (ii) Construction types;
  - (iii) Sizes; and
  - (iv) Occupancy;
- (B) Encompass the exterior and the interior of historic buildings; and

(C) Encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction.

(4) To be certified, a rehabilitation project must be determined by the Arkansas Historic Preservation Program to be consistent with the historic character of the structure or structures and, where applicable, the district in which it is located.

(b) The following standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility:

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment;

(2)(A) The historic character of a property shall be retained and preserved.

(B) The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;

(3)(A) Each property shall be recognized as a physical record of its time, place, and use.

(B) Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken;

(4)(A) Most properties change over time.

(B) Those changes that have acquired historic significance in their own right shall be retained and preserved;

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;

(6)(A) Deteriorated historic features shall be repaired rather than replaced.

(B) Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in:

(i) Design;

(ii) Color;

(iii) Texture; and

(iv) Other visual qualities and, where possible, materials.

(C) Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence;

(7)(A) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used.

(B) The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;

(8)(A) Significant archeological resources affected by a project shall be protected and preserved.

(B) If such resources must be disturbed, mitigation measures shall be undertaken;

(9)(A) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property.

(B) The new work shall be:

(i) Differentiated from the old; and

(ii) Compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment; and

(10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future the essential form and integrity of the historic property and its environment would be unimpaired.

(c)(1) The quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question.

(2) Certain treatments, if improperly applied, or certain materials, by their physical properties, may cause or accelerate physical deterioration of historic buildings.

(3) Inappropriate physical treatments include, but are not limited to, improper:

(A) Repointing techniques;

(B) Exterior masonry cleaning methods; or

(C) Introduction of insulation where damage to historic fabric would result.

(4) In almost all situations, use of these materials and treatments will result in denial of a certificate of completion.

(5) Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial.

(6) For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the National Park Service.

(7) Technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the United States Secretary of the Interior's Standards for Rehabilitation is available from the program.

(8) Owners are responsible for procuring this material as part of planning for a rehabilitation project.

(d)(1) In certain limited cases, it may be necessary to dismantle and rebuild portions of an eligible property to stabilize and repair weakened structural members and systems.

(2) In such cases, the program will consider such extreme intervention if:

- (A) The necessity for dismantling is justified in supporting documentation;
- (B) Significant architectural features and overall design are retained; and
- (C)(i) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(ii) Owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems.

(iii) In limited instances, rehabilitations involving removal of existing external walls (i.e., external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration) may be certified as meeting the Standards for Rehabilitation.

(e)(1) Prior approval of a project by other state, federal, or local agencies or organizations does not ensure certification by the program for tax purposes.

(2) The United States Secretary of the Interior's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.

(f)(1) The qualities of a structure and its environment which qualify it as an eligible property are determined by taking into account all available information, including information derived from the physical and architectural attributes of the building.

(2) Such determinations are not limited to information contained in National Register of Historic Places or related documentation.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-110. Certificates of completion (Part 3 application).**

(a)(1) Upon completion of a rehabilitation project, the owner shall submit documentation required by the Arkansas Historic Preservation Program to verify that the completed rehabilitation qualifies as a certified rehabilitation.

(2) The owner shall:

(A) Certify to the program the validity of costs and expenses claimed as qualified rehabilitation expenses; and

(B) Maintain a record supporting the claim for at least five (5) years after the issuance of the certification of completion.

(3) An owner's record supporting a claim for qualified rehabilitation expenses may be reviewed by:

(A) The program;

(B) The appropriate tax collection authority; or

(C) A holder.

(b)(1) If the program determines that a completed rehabilitation project qualifies as a certified rehabilitation and that the certified rehabilitation is complete, the program

shall issue a freely transferable certificate of completion specifying the total amount of the qualified rehabilitation expenses and Arkansas historic rehabilitation income tax credit allowed.

(2) The tax credit allowed shall be an amount equal to twenty-five percent (25%) of the total qualified rehabilitation expenses incurred by the owner to complete the certified rehabilitation up to the first:

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

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

(3)(A) The program shall only issue certificates of completion allowing tax credits for up to four million dollars (\$4,000,000) in any one (1) fiscal year.

(B) Any unused tax credits shall not be carried over to the following fiscal year for use by the program or the Division of Arkansas Heritage.

(C) Any certification of completion that would cause the Arkansas historic rehabilitation income tax credit to exceed the amounts listed above during the fiscal year will be carried forward for consideration during the following fiscal year.

(c) Upon issuance of a certificate of completion, the program will notify the appropriate tax authority within fifteen (15) business days.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-111. Transfer of credits.**

(a)(1) An owner of an Arkansas historic rehabilitation income tax credit may freely transfer, sell, or assign all or part of the tax credit amount identified in the certificate of completion.

(2) A subsequent holder may also transfer, sell, or assign all or part of the remaining tax credit.

(b) An owner or holder that assigns part or all of a tax credit shall:

(1) Perfect the transfer by notifying the Arkansas Historic Preservation Program and the appropriate tax collection authority in writing within thirty (30) calendar days following the effective date of the transfer; and

(2) Provide any information as may be required by the program and the appropriate tax collection authority to ensure proper tracking of the ownership of the unused Arkansas historic rehabilitation income tax credit.

**Authority.** Arkansas Code § 26-51-2207.

**26 CAR § 250-112. Fees.**

(a)(1) The fee for review of a proposed rehabilitation project (Part 2) is fifty dollars (\$50.00).

(2) This initial review fee is nonrefundable.

(b) The fee for review of a completed rehabilitation project (Part 3) for a nonincome-producing property is one hundred fifty dollars (\$150).

(c)(1) The fees for reviewing a completed rehabilitation project (Part 3) for an income-producing property are based on the dollar amount of the costs attributed solely to the qualified rehabilitation expenses on the eligible structure, in accordance with the schedule below.

<b>Fee</b>	<b>Size of rehabilitation</b>
\$150	\$25,000 to \$99,999
\$400	\$100,000 or more

(2) The initial fee of fifty dollars (\$50.00) will be deducted from these fees.

(3) The balance shall be paid by the applicant upon submission of the Part 3 application.

(4) No certificate of completion shall be issued until the balance due has been paid.

(d) The fee for perfecting the transfer of an unused tax credit, in whole or in part, is seventy-five-hundredths percent (0.75%) of the amount of tax credit to be transferred.

(e) All fees collected will be deposited into the Arkansas Historic Preservation Program's cash funds and may be used for the administration of the Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq.

**Authority.** Arkansas Code §§ 26-51-2206, 26-51-2207.

### **26 CAR § 50-113. Appeals.**

(a) Except as otherwise provided herein, a taxpayer may appeal any decision or action of the State Historic Preservation Officer.

(b)(1) An owner appealing the Arkansas Historic Preservation Program's determination of eligibility for listing on the National Register of Historic Places (Part 1 application) may appeal to the National Park Service, in accordance with the procedures set forth in 36 C.F.R. pt. 60.

(2) The State Historic Preservation Officer will consider the determination from the National Park Service to be final.

(c)(1)(A) An appeal by the owner may be made from any of the certifications or any decisions made pursuant to the Arkansas Historic Rehabilitation Income Tax Credit Act, Arkansas Code § 26-51-2201 et seq.

(B) Such appeals must be in writing and received by the State Historic Preservation Officer within thirty (30) calendar days of receipt of the decision that is the subject of the appeal.

(C) The appellant may request an opportunity for a meeting to discuss the appeal, but all information the owner wishes to be considered must be submitted in writing.

(2)(A) The State Historic Preservation Officer will convene the Rehabilitation Tax Credit Appeals Committee within thirty (30) calendar days of an owner's request for an appeal.

(B) The committee will be composed of:

- (i) The State Historic Preservation Officer or his or her designee;
- (ii) Two (2) members of the State Review Committee for Historic

Preservation;

- (iii) The Director of the Arkansas Historic Preservation Program; and
- (iv) The Arkansas Historic Preservation Program's Federal Programs

Manager.

(3)(A) The committee will consider:

- (i) The record of the decision in question;
- (ii) Any further written submissions by the owner; and
- (iii) Other available information.

(B) The committee:

- (i) Will decide by majority vote whether the application for a certificate of completion should be approved; and
- (ii) Shall provide the appellant a written decision as promptly as circumstances permit.

(4) The committee's decision constitutes an administrative review of the decision appealed and will not be conducted as an adjudicative proceeding.

**Authority.** Arkansas Code § 26-51-2207.