

## **Title 26. Taxation**

### **Chapter X. Arkansas Natural Resources Commission, Department of Agriculture**

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

#### **Part 260. Rules Governing the Tax Credit Program for the Creation, Restoration, and Conservation of Private Wetland and Riparian Zones**

##### **Subpart 1. General Provisions**

###### **26 CAR § 260-101. Purpose.**

(a) Wetlands and riparian zones provide the state with significant benefits in the areas of:

- (1) Flood control;
- (2) Water quality enhancement;
- (3) Sediment reduction;
- (4) Fish and wildlife habitat;
- (5) Recreation; and
- (6) Recharging of groundwater.

(b) The state continues to experience significant loss of wetlands.

(c) Since the majority of lands suitable for wetlands and riparian zones are held by private owners, the state has developed this program to encourage these owners to:

- (1) Restore and enhance existing wetlands and riparian zones;
- (2) Create new wetlands and riparian zones; or
- (3) Donate wetland and riparian zone-qualified real property interests.

**Authority.** Arkansas Code § 26-51-1506.

###### **26 CAR § 260-102. Legislation.**

(a) The Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq., allows a wetlands and riparian zone creation and restoration tax credit against the tax imposed by the

Income Tax Act of 1929, Arkansas Code § 26-51-101 et seq., for any taxpayer engaged in the development or restoration of wetlands and riparian zones.

(b) The same act also allows a wetland and riparian zone conservation tax credit against the tax imposed by the Income Tax Act of 1929 for any eligible donor who donates a qualified real property interest for a qualified conservation purpose to an eligible donee.

**Authority.** Arkansas Code § 26-51-1506.

### **26 CAR § 260-103. Definitions.**

As used herein, unless the context otherwise requires:

(1) "Act" means the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.;

(2) "Commission" means the Arkansas Natural Resources Commission;

(3) "Committee" means the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee;

(4) "Conservation application" means an application submitted by a taxpayer seeking tax credit for donation of a qualified real property interest;

(5) "Developing wetlands" means to establish a wetland or other aquatic resource;

(6) "Director" means the Director of the Natural Resources Division of the Department of Agriculture;

(7)(A) "Eligible donee" means a qualified organization under 26 U.S.C. § 170(h)(3), as in effect on January 1, 2009, and corresponding regulations in 26 C.F.R. § 1.170A-14(c), as in effect on January 1, 2009.

(B) A nongovernmental qualified organization must have adopted the Land Trust Alliance's Land Trust Standards and Practices, as in effect on January 1, 2009, in order to qualify as an eligible donee;

(8) "Eligible donor" means any person or entity, including without limitation an individual, corporation, trust, estate, and partnership or other pass-through legal entity, that owns a qualified real property interest;

(9) "Project" means wetlands or riparian zones created or restored by activities for which tax credits are claimed;

(10) "Project application" means a written plan for development and operation of the project, including all requirements as the commission may adopt by rule;

(11) "Project cost" means the actual expenditure for a project less any reimbursement received by the taxpayer from cost-share programs or any other funding;

(12) "Qualified appraisal" means an appraisal in accordance with:

(A) 26 C.F.R. § 1.170A-13(c)(3), as in effect on January 1, 2009; and

(B) The Uniform Standards of Professional Appraisal Practice, as in effect on January 1, 2009;

(13) "Qualified conservation purpose" means a conservation purpose as defined by:

(A) 26 U.S.C. § 170(h)(4), as in effect on January 1, 2009; and

(B) Corresponding regulations in 26 C.F.R. § 1.170A-14(d), as in effect on January 1, 2009;

(14) "Qualified real property interest" means an interest in real property located completely in this state and containing wetlands or riparian zones that also meets the definition of a qualified real property interest under:

(A) 26 U.S.C. § 170(h)(2), as in effect on January 1, 2009; and

(B) The corresponding regulations in 26 C.F.R. § 1.170A-14(b), as in effect on January 1, 2009;

(15) "Restoring wetlands" means to return wetland values and functions to a former wetland or degraded wetland where human or natural activities have diminished or destroyed such values and functions, thereby returning the land to wetland status;

(16) "Riparian zone" means:

(A) An area of land along the bank of a natural water course or contiguous to a body of water that is set aside to reduce impacts of adjoining land use on the stream or water body; or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission;

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

(A) An individual;

(B) A partnership;

(C) A limited liability company;

(D) A Subchapter S corporation; or

(E) A corporation;

(18) "Taxpayer" means the entity that is certified to earn tax credits for an approved project, whether:

(A) An individual;

(B) A partnership;

(C) A limited liability company;

(D) A Subchapter S corporation; or

(E) A corporation; and

(19) "Wetlands" means:

(A)(i) An area that has water at or near the surface of the ground at some time during the growing season (wetland hydrology).

(ii) It contains plants that are adapted to wet habitats (hydrophytic vegetation) and is made up of soil that has developed under wet conditions (hydric soils); or

(B) Any other definition promulgated by the Arkansas Natural Resources Commission.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-104. Tax credit amount allowed.**

(a)(1) The amount of wetland and riparian zone creation and restoration credit allowed shall be equal to the project cost incurred in the development, creation, or restoration of wetlands and riparian zones but shall not exceed fifty thousand dollars (\$50,000).

(2) Only the actual costs to the taxpayer will be considered for tax credit.

(b) The amount of the wetland and riparian zone conservation tax credit allowed shall:

(1) Equal fifty percent (50%) of the fair market value of the qualified real property interest donation calculated to exclude any short-term capital gain under 26 U.S.C. § 170(e)(1)(A), as in effect on January 1, 2009; and

(2) Not exceed fifty thousand dollars (\$50,000).

(c) The amount of credit that may be used by a taxpayer for a taxable year may not exceed the lesser of:

(1) The amount of individual or corporate income tax otherwise due; or

(2) Five thousand dollars (\$5,000) per taxpayer.

(d) Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the tax credit originated.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-105. Application fee.**

(a) The Arkansas Natural Resources Commission may charge a reasonable application fee for the processing of tax credit applications.

(b)(1) Applicant shall pay to the Department of Agriculture a fee in an amount equal to three percent (3%) of the total tax credit submitted for approval to the commission.

(2) The minimum fee shall be one hundred dollars (\$100).

(c) All fees shall be paid to the department when an application for tax credit approval is filed.

(d) When an application is rejected by the Director of the Natural Resources Division of the Department of Agriculture, the full application fee will be refunded.

(e) All fees collected shall be deposited in the Arkansas Water Development Fund.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-106. Delegation of authority.**

The Director of the Natural Resources Division of the Department of Agriculture is delegated all powers necessary and convenient to carry out the responsibilities contained in this part.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-107. Department of Agriculture reports to Department of Finance and Administration.**

The Department of Agriculture shall provide reports quarterly to the Department of Finance and Administration of the total number of:

- (1) Tax credit applications approved; and
- (2) Creation and restoration projects receiving final certification.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-108. Appeals.**

(a) Except as otherwise provided herein, a taxpayer may appeal, pursuant to 15 CAR § 1-501 et seq., any decision or action of the Director of the Natural Resources Division of the Department of Agriculture.

(b) All decisions related to recapture of tax credits shall be appealed in accordance with the Department of Finance and Administration's established procedures contained in the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

**Authority.** Arkansas Code § 26-51-1506.

**Subpart 2. Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee**

**26 CAR § 260-201. Membership.**

(a) This Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee shall be made up of:

(1) The directors or secretaries, or their designees, of the:

(A) Arkansas Forestry Commission;

(B) Arkansas State Game and Fish Commission;

(C) Department of Finance and Administration;

(D) Department of Parks, Heritage, and Tourism; and

(E) Department of Energy and Environment; and

(2) Two (2) public members appointed by the Director of the Natural Resources Division of the Department of Agriculture.

(b) Selection of public members shall be made on the basis of their knowledge of wetlands and riparian zones with consideration given to representation of a wide variety of interests.

(c)(1) The public members of the committee shall be appointed for five-year terms.

(2) Individuals appointed are eligible for reappointment at the expiration of this term.

(d)(1) Any vacancies arising in the appointed public membership of this committee shall be filled by the Director of the Natural Resources Division of the Department of Agriculture.

(2) The committee shall submit its recommendations for appointees within thirty (30) days of the vacancy.

(e)(1) The committee shall elect a chair and a vice chair annually from among its members.

(2) Any member may be elected to succeed himself or herself in office.

(3) The Department of Agriculture shall provide administrative assistance to the committee.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-202. Procedures.**

(a) It shall be the duty of the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee to meet regularly, when necessary, for the purpose of conducting the business of the committee.

(b)(1) Special meetings of the committee may be called at any time at the discretion of the chair or the Director of the Natural Resources Division of the Department of Agriculture.

(2) Special meetings may also be called upon the request of any two (2) members of the committee.

(c)(1) Four (4) members shall constitute a quorum at any meeting of the committee.

(2) A quorum shall be required for any action on issues before the committee.

(3) Any action that is not reached by a consensus shall be presented to the director with the multiple recommendations to be considered.

(d) The Department of Agriculture shall maintain the official records of the committee, including:

(1) Accurate minutes of each committee meeting;

(2) A log of all applications received;

(3) A summary of discussions upon which committee decisions are based; and

(4) A copy of recommendations of the committee to the Arkansas Natural Resources Commission.

(e)(1) Written notice of all meetings shall be provided to committee members by the department.

(2) However, the department may provide notice of special meetings through phone contact when necessary.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-203. Committee responsibilities.**

The Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee shall:

(1) Offer comments to the Arkansas Natural Resources Commission on proposed rules governing tax incentives relating to creation, restoration, and donation of wetlands and riparian zones;

(2) Provide recommendations to the Director of the Natural Resources Division of the Department of Agriculture for approval or disapproval of each application for tax credit;

(3) Participate in site visits and compliance inspections as deemed necessary for the evaluation and certification of projects;

(4) Provide information as required by the director for the Department of Agriculture's report to the Department of Finance and Administration; and

(5) Provide assistance in the furtherance of the program.

**Authority.** Arkansas Code § 26-51-1506.

**Subpart 3. Procedure for Obtaining Creation and Restoration Credits**

**26 CAR § 260-301. Application for creation and restoration credit.**

(a) Applicants must submit to the Department of Agriculture a completed project application on a form provided by the department along with the application fee.

(b) The application form shall require the following information:

(1) Identify taxpayer by name and type of ownership (individual, corporation, partnership, Subchapter S, etc.);

(2) List of officers, Subchapter S shareholders with percentage of ownership, partners with percentage of ownership, etc.;

- (3) Federal employer identification number or Social Security numbers for business or individuals to claim credit;
- (4) Address, telephone, and facsimile numbers of all participating taxpayers;
- (5) Contact person's name, address, telephone, and facsimile numbers;
- (6) Estimated project cost, including a breakdown of costs by activity;
- (7) List all funding sources, including all those applied for even if approval is still pending, and amount of contribution anticipated from each;
- (8) Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.);
- (9) Current and historical ownership information, including whether adjacent land is owned by taxpayer;
- (10) Description of current and historical land use of project site and of adjacent properties;
- (11) Name of water body or bodies affected by the proposed restoration project, if applicable;
- (12)(A) Site characterization information in sufficient detail necessary to describe the proposed project.
  - (B) Include the following if applicable to the project:
    - (i) Soil type;
    - (ii) Existing vegetation;
    - (iii) Information describing the condition of site (e.g., site highly eroded or scoured, banks sloughing, heavily grazed or trampled vegetation, compacted soils, riprapped banks, etc.);
    - (iv) Topography;
    - (v) Flood plain boundaries if available;
    - (vi) Pictures of the site, including aerial photographs if available; and
    - (vii) Detailed description of project, including the following, if applicable to the project:
      - (a) Project goals and objectives for restoration project, identifying the:

- (1) Problems being addressed; and
  - (2) Solutions to be implemented;
  - (b) Success criteria (i.e., measures of success);
  - (c) Target vegetative community to be established;
  - (d) Target site hydrology to be established, if applicable;
  - (e) Planting plan showing location, spacing, and planting arrangements of plant species;
  - (f) Proposed construction activities and construction drawings;
  - (g) Proposed post-construction activities;
  - (h) Proposed project construction schedule;
  - (i) Proposed monitoring plan; and
  - (j) Names, postal addresses, email addresses, telephone and facsimile numbers, and qualifications of individuals or companies providing professional services or assistance in the development of the plan on company letterhead; and
- (13) Additional relevant information may be requested by the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee and the department as deemed necessary for a complete review of the proposed project.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-302. Committee and director review.**

- (a) Upon receipt of the application, the Department of Agriculture shall make the application available to the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee for its review.
- (b) The committee shall evaluate the application for compliance with the:
  - (1) Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.; and
  - (2) Requirements of this part.
- (c) The department and the committee shall give priority to:
  - (1) Projects involving extraordinary resource streams;

(2) Projects that enhance potential habitat for threatened or endangered species; and

(3) Projects located in public water supply watersheds.

(d) The committee shall provide the department with written comments and recommendations on applications when the evaluation process is completed.

(e) After reviewing the application and the committee comments, the Director of the Natural Resources Division of the Department of Agriculture, if he or she determines that the application complies with the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act and this part, may issue a certificate of tax credit approval to the applicant.

(f) After a satisfactory final inspection of the project, the department shall issue a certificate of completion based on the taxpayer's reported costs of the project.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-303. Applicant's responsibilities.**

(a) All projects must be completed and properly functioning within three (3) years of the date of the certificate of tax credit approval, and the project must be maintained for a minimum life of ten (10) years after certified as being complete.

(b) The taxpayer shall also notify the Department of Agriculture when complications develop that may cause the project to fail to function as designed, and such notice shall include anticipated steps to be taken to ensure project goals and objectives are met.

(c) The taxpayer shall maintain records related to this tax credit for the minimum life of the project plus three (3) years.

(d) The taxpayer is responsible for ensuring project maintenance for the full term of obligation.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-304. Certificate of completion.**

(a) The taxpayer shall provide written notice to the Department of Agriculture when the project is completed and available for final inspection.

(b) At that time the taxpayer will provide a report on the actual cost of the project if that figure varies from the amount quoted in the application.

(c)(1) If any fee is based on an estimate of cost that is less than the actual final total cost of the project, the balance on the fee due the Arkansas Natural Resources Commission will be due and payable when a request for a certificate of completion is filed.

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

(d)(1) Project costs incurred after issuance of a certificate of tax credit approval may be claimed for tax credit, subject to limitations stated herein.

(2) Actual project costs will be compared to the projections that appeared on the application and any necessary adjustments will be made when the department prepares the certificate of completion.

(e) If the applicant's estimate exceeded the actual cost of the project, the department will refund the fee overcharge when the certificate of completion is issued.

(f)(1) At least one (1) member or designee of the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee shall accompany a member of the department staff on a site inspection prior to issuance of the certificate of completion.

(2) After that time, monitoring of project maintenance shall be done by a member of the department staff or a member or designee of the committee in periodic random inspections.

(g) The taxpayer must file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

(h) If the taxpayer completes the project and receives a certificate of completion in the same year the certificate of tax credit approval is issued, both documents must be filed with the tax return when tax credit is claimed.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-305. Eligible costs.**

(a) Any portion of a project that is a mitigation activity required under state or federal law shall not be eligible for tax credit under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.

(b) The costs of the following activities are eligible activities for tax credit:

(1) Professional services required in the:

(A) Characterization of the site;

(B) Preparation of the plan or project design;

(C) Implementation of the plan; and

(D) Professional monitoring required for maintenance of the project;

(2) Activities that are considered creation, restoration, or improvement of riparian zones, including:

(A) The site preparation necessary to establish permanent vegetation;

(B) Establishment of permanent vegetation cover such as approved grasses and trees;

(C) Water facilities to benefit livestock that will protect wetland and riparian zones;

(D) Construction of partial or full enclosures (e.g., fencing, vegetative screens or borders, placement of timbers or railroad ties) along stream banks, shorelines, and slopes to deter:

(i) Grazing;

(ii) Trampling of vegetation; and

(iii) Soil compaction;

(E) Bank or shoreline stabilization and erosion control including mulching, geotextile fibers (e.g., geoweb, geogrids, etc.), structural materials (e.g., timbers,

stone), riprap, tree revetments, gabions, or other approved practices when used to supplement other eligible activities;

(F) Woody debris addition for bank stabilization; and

(G) Other activities recommended by the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee and approved by the Department of Agriculture; and

(3) Activities that are considered creation, restoration, or improvement of wetlands, including:

(A) Construction of berms or other structures, plugging of dams or outlet structures, construction of diversion structures, excavation of areas, etc., to capture and store water on a site;

(B) Breaking or plugging of agricultural tiles or drains;

(C) Construction of low-maintenance water control structures (inlets and outlets);

(D) Planting of wetland vegetation, nurse or cover crops, and grasses on slopes, berms, etc.;

(E) Placement of wetland topsoil or hydric soil mulch;

(F) Site activities required for establishment of a wetland during the three-year establishment period (e.g., selective harvesting, cultivation, weed control, exotic species control);

(G) Construction of exclosures (fencing, etc.);

(H) Erosion control measures (e.g., hay bales, silt fencing, etc.); and

(I) Other activities recommended by the committee and approved by the department.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-306. Approved design standards.**

(a) Project activities shall meet or exceed those standards as established in this subpart.

(b) Projects should be developed in consultation with a professional, such as a governmental natural resources planning employee or a private consultant, who possesses experience and appropriate expertise related to the type of project proposed.

(c) Structural aspects of the project shall be reviewed by a professional engineer prior to the filing of an application.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-307. Minimum standards for projects.**

(a)(1) The purpose for the creation and restoration of wetlands and riparian zones is to provide the state with significant benefits in the areas of:

- (A) Flood control;
- (B) Water quality enhancement;
- (C) Sediment reduction;
- (D) Fish and wildlife habitat;
- (E) Recreation; and
- (F) Recharging of groundwater.

(2) All construction operations of a project shall be carried out in such a manner that soil erosion and water degradation are minimized.

(b) A project must involve an area large enough to maintain adequate protection and integrity of the water resource and associated bank or shoreline.

(c) A project area must be identified with easily visible markings.

(d) A project must comply with all applicable federal, state, and local requirements, including permits.

(e) When practicable, the proposed project must incorporate applicable best management practices.

(f) Proposed projects must include activities that will:

- (1) Contribute to the stabilization of the bank;
- (2) Reduce erosion and sediment inputs to water bodies;

(3) Unless otherwise approved by the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee or Department of Agriculture, establish a permanent vegetation covering of trees and grasses native to the area, adapted to the site based on soil and site factors; and

(4) Unless otherwise approved by the committee or department, limit use of the area by people or cattle.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-308. Specific standards for riparian zones.**

(a)(1) Generally, the minimum width desired for a zone will be fifty feet (50').

(2) However, each project will be considered on a case-by-case basis by evaluating the:

- (A) Water flow of the stream;
- (B) Slope of the ground;
- (C) Type of vegetation; and
- (D) Use of land adjacent to the proposed zone.

(b) When feasible, an applicant will be encouraged to involve both sides of the stream in the proposed project.

(c) The grade must be controlled, either by natural or artificial means, before any permanent type of bank protection can be considered feasible, unless the protection can be safely and economically constructed to a depth well below the anticipated lowest depth of bottom scour.

(d) Stream bank protection shall be started and ended at a stabilized point on the stream provided such points exist on the taxpayer's property.

(e) Structural measures must be able to withstand greater floods without serious damage and should avoid an increase in erosion.

(f) Vegetative protection shall be considered on the upper parts of eroding banks, including areas that are susceptible to infrequent inundation.

(g) The riparian zone will be an area large enough (width and length) to maintain adequate protection and integrity of the water course and associated bank or shoreline.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-309. Specific standards for wetlands.**

(a) The project shall be compatible with the Arkansas Wetland Conservation Plan.

(b) The project shall restore hydrologic conditions as close to the original condition as practical.

(c)(1) Particularly in the case of created wetlands, it is recognized that all wetlands conditions may not exist within three (3) years.

(2) However, if the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee and the Department of Agriculture are satisfied that processes are underway that will result in the establishment of the conditions, the project may be approved or judged complete.

(d) Wetlands shall be restored adjacent to existing wetlands whenever possible to:

- (1) Increase wetland system complexity;
- (2) Decrease habitat fragmentation; and
- (3) Enhance natural colonization of the wetland by plants and animals.

(e) Wetlands shall be connected to other wetlands by corridors, where feasible, to:

- (1) Facilitate movement of plants and animals between wetlands; and
- (2) Enhance other wetland functions and values.

(f) All vegetation establishment components:

(1) Shall conform to current acceptable standards and practices to ensure adequate survival rates and spacing of plantings; and

(2) Should be selected to benefit wildlife and not be detrimental to the environment.

(g) Materials used for grade stabilization or water control structures will have a minimum ten-year durability in the soil, water, and climate conditions associated with the site.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-310. Failure to complete installation.**

(a) If the Department of Agriculture determines that failure to complete the project within three (3) years of receipt of the certificate of tax credit approval is the result of conditions beyond the control of the taxpayer, the Department of Agriculture may extend the time for full compliance for a period not to exceed one (1) year.

(b)(1) Under any other circumstances, if the taxpayer does not complete the project within the period provided herein, all credits claimed must be repaid by filing an amended income tax return within thirty (30) days for each year in which tax credits were claimed.

(2) The project will no longer be considered an authorized project for tax credit purposes, and further credits will not be allowed.

(c)(1) If the Department of Agriculture, having received no written notice of termination from the taxpayer, determines that the taxpayer has terminated the project, the Department of Agriculture shall notify the Department of Finance and Administration.

(2) The Department of Finance and Administration will notify the taxpayer in writing that:

(A) Repayment is due; and

(B) No further credits are allowed.

(d)(1) Sale of the real estate involved in a project shall automatically terminate the tax credit eligibility.

(2) The taxpayer should notify the Department of Agriculture and the Department of Finance and Administration of the termination.

(3) The Department of Finance and Administration will then provide the taxpayer with information on the pro rata recapture of benefits due.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-311. Tax consequences.**

(a) Upon termination of the project, the taxpayer shall not be allowed any further tax credits provided under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq., and the Department of Finance and Administration shall recapture the pro rata share of any tax credits claimed under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act for the period of termination.

(b) The pro rata share of recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

(c)(1) If the taxpayer terminates the project after the completion period but prior to expiration of the minimum project life, the taxpayer shall provide written notification to the Department of Agriculture and the Department of Finance and Administration prior to termination.

(2) In addition, the taxpayer shall:

(A) File an amended tax return within thirty (30) days of termination; and

(B) Repay the amount of tax credit claimed that was not allowable.

(d) Any failure of the taxpayer to comply with the filing and required repayment of taxes will result in an assessment by the Department of Finance and Administration according to the Arkansas Tax Procedure Act, Arkansas Code § 26-18-101 et seq.

**Authority.** Arkansas Code § 26-51-1506.

**Subpart 4. Procedure for Obtaining Conservation Credits**

**26 CAR § 260-401. Application for conservation tax credit.**

(a) Applicants must submit a completed conservation application on a form provided by the Department of Agriculture along with the application fee.

(b) The application form shall require the following information:

(1) Identify taxpayer by name and type of ownership (individual, corporation, partnership, etc.);

(2) List of officers, Subchapter S shareholders with percentage of ownership, partners with percentage of ownership, etc.;

(3) Federal employer identification number or Social Security numbers for business or individuals to claim credit;

(4) Address, telephone, and facsimile numbers of all participating taxpayers;

(5) Contact person's name, address, telephone, and facsimile numbers;

(6) Record acceptable to the department that demonstrates that the interest conveyed meets the Arkansas Natural Resources Commission's definition of qualified real property interest;

(7) Legal description of qualified real property interest;

(8) Qualified appraisal of the property interest;

(9) Record acceptable to the department demonstrating that interest conveyed belonged to the donor prior to conveyance;

(10) Name and contact information of donee that has accepted the qualified real property interest;

(11) A copy of the executed document illustrating that a qualified donee has accepted the property interest;

(12) Location of project, including maps and description of site location (e.g., county, section, township, range, latitude, longitude, watershed, etc.);

(13) Name of water body or bodies benefited by the donated qualified real property interest, if applicable;

(14) Donee's representation that this donation would qualify as a qualified conservation contribution pursuant to 26 U.S.C. § 170(h); and

(15) Additional relevant information may be requested by the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee and the department as deemed necessary for a complete review of the proposed donation.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-402. Conditional approval of conservation tax credit.**

(a) An eligible donor may apply for conditional approval of a wetland and riparian zone conservation tax credit before a qualified real property interest donation has been recorded.

(b) If conditional approval of a wetland and riparian zone conservation tax credit is granted, the application must be resubmitted to the Department of Agriculture after the qualified real property interest donation has been recorded for the limited purpose of demonstrating conformity with the originally submitted draft documents.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-403. Committee and director review.**

(a) Upon receipt of the application, the Department of Agriculture shall make the application available to the Private Wetland and Riparian Zone Creation, Restoration, and Conservation Committee for its review.

(b) The committee shall evaluate the application for compliance with the:

(1) Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.; and

(2) Requirements of this part.

(c) The committee's review shall also include the following considerations:

(1) Whether the appraisal of the qualified real property interest appears to meet the:

(A) Minimum standards of the Uniform Standards of Professional Appraisal Practice; and

(B) Internal Revenue Service requirements for a qualified appraisal;

(2) Whether the qualified real property interest's valuation does not appear to be manifestly abusive;

(3) Whether the conservation purpose of the donation:

(A) Complies with the requirements of a qualified conservation purpose;  
and

(B) Contributes to the wetland and riparian zone benefits in Arkansas  
Code § 26-51-1502;

(4) Whether the real property interest meets the requirements for a qualified  
real property interest; and

(5) Whether the donee of the qualified real property interest meets the  
requirements of an eligible donee.

(d) The committee shall provide the department with written comments and  
recommendations on applications when the evaluation process is completed.

(e) After reviewing the application and the committee comments, the department,  
if determined that the project complies with the Arkansas Private Wetland and Riparian  
Zone Creation, Restoration, and Conservation Tax Credits Act and this part, may issue a  
certificate of tax credit approval to applicants.

(f) If the department denies approval of a wetland and riparian zone conservation  
tax credit, the department shall provide a brief written statement to the applicant of the  
reason for a decision to deny approval.

(g) When a problem identified by the Arkansas Natural Resources Commission is  
remedied, an eligible donor may resubmit the application for approval of the wetland  
and riparian zone conservation tax credit.

(h) A decision on an application for approval or conditional approval of a wetland  
and riparian zone conservation tax credit, or on a resubmission of a conditionally  
approved or previously denied application, shall be issued in the order in which the  
completed applications or resubmissions are received.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-404. Department of Finance and Administration review.**

For good cause shown, the Department of Finance and Administration may review  
and either accept or reject in whole or in part any wetland and riparian zone

conservation tax credit claimed by a taxpayer and may require information from a taxpayer regarding the:

- (1) Appraisal value of the qualified real property interest;
- (2) Amount of the wetland and riparian zone conservation tax credit;
- (3) Validity of the wetland and riparian zone conservation tax credit; and
- (4) Other relevant matters.

**Authority.** Arkansas Code § 26-51-1506.

### **26 CAR § 260-405. Limitations.**

(a) The taxpayer shall file the certificate of tax credit approval with the income tax return for the first year in which the taxpayer claims a tax credit under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.

(b)(1) Only one (1) wetland and riparian zone conservation tax credit may be earned per qualified real property interest donation.

(2) If the qualified real property interest is held in joint ownership, the wetland and riparian zone conservation tax credit shall be allocated in proportion to the Department of Agriculture's knowledge of each respective ownership share.

(c) If the qualified real property interest is held by a pass-through entity, the wetland and riparian zone tax credit shall be allocated as prescribed under:

- (1) 26 U.S.C. § 704(b), as in effect on January 1, 2009; and
- (2) Corresponding regulations in 26 C.F.R. § 1.704-1(b)(4)(ii), as in effect on January 1, 2009.

(d) An eligible donor may earn only one (1) wetland and riparian zone conservation tax credit per income year.

**Authority.** Arkansas Code § 26-51-1506.

### **26 CAR § 260-406. Recordkeeping.**

The taxpayer shall maintain records related to this tax credit for six (6) years after filing an income tax return on which credit is claimed.

**Authority.** Arkansas Code § 26-51-1506.

## **Subpart 5. Tax Credit Rules Applicable to Both Creation and Restoration Tax Credits and to Conservation Credits**

### **26 CAR § 260-501. Availability of credits.**

(a) Wetlands and riparian zone creation and restoration tax credits provided under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq., may be applied to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

(b) Wetland and riparian zone conservation tax credits may be applied to all taxable years beginning on or after January 1, 2009, and all taxable years thereafter.

(c) Taxpayers claiming a tax credit under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act may not claim a credit under the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq., or any similar act for any costs related to the same project.

(d)(1) Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations, or fiduciaries may pass through to their:

- (A) Members;
- (B) Managers;
- (C) Partners;
- (D) Shareholders; and
- (E) Beneficiaries.

(2) Tax credits are not transferable to other individuals or entities.

(e)(1) The tax credits established by the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act shall expire on December

31 of the calendar year following the calendar year in which the tax credits used pursuant to the provisions of the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act exceed five hundred thousand dollars (\$500,000) in any one (1) year.

(2) Any taxpayer having been issued a certificate of tax credit approval on or prior to this day shall be entitled to the tax credits provided under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act without regard to expiration of tax credit availability.

**Authority.** Arkansas Code § 26-51-1506.

**26 CAR § 260-502. Use of assigned credits.**

(a) Any unused tax credit under the Arkansas Private Wetland and Riparian Zone Creation, Restoration, and Conservation Tax Credits Act, Arkansas Code § 26-51-1501 et seq.:

(1) Shall survive the death of an individual taxpayer; and

(2) May be used by the individual taxpayer's estate.

(b) Tax credits may only be used by a taxpayer certified to earn a tax credit to offset the taxpayer's state income tax liability and are nontransferable.

**Authority.** Arkansas Code § 26-51-1506.