

## **Title 26. Taxation**

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

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

#### **Part 261. Rules Implementing the Water Resource Conservation and Development Incentives Act**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"(Revised 2020)"

"Section 1401.2 Enabling and pertinent legislation.

A. Ark. Code Ann. § 26-51-1001 et seq., the Water Resource Conservation and Development Incentives Act.

B. Ark. Code Ann. § 15-20-201 et seq., the Arkansas Natural Resources Commission.

C. Ark. Code Ann. § 25-15-201 et seq., the Arkansas Administrative Procedure Act."

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

##### **26 CAR § 261-101. Purpose.**

(a) The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources that, when managed conjunctively, can provide a continuous high-quality water supply to meet the foreseeable needs of the entire state.

(b) Existing water use patterns are depleting groundwater supplies at an unacceptable rate, and alternative surface water supplies are not available in sufficient quantities without developing additional water storage to alleviate this groundwater depletion problem.

(c) The tax incentives provided under this program encourage water users to invest in the:

(1) Construction of impoundments to utilize available surface water and reduce our dependence on groundwater;

(2) Conversion from groundwater use to surface water use when surface water is available;

(3) Water conservation practice of land-leveling to reduce agricultural irrigation water use; and

(4) Installation of water meters to monitor groundwater usage.

(d) It is of utmost importance to Arkansas that within critical groundwater areas, surface water be used when available.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-102. Definitions.**

Unless the context requires otherwise, the following definitions shall apply to this part:

(1) "Acre-foot" means the volumetric measure equal to forty-three thousand five hundred sixty (43,560) cubic feet or approximately three hundred twenty-five thousand nine hundred (325,900) gallons;

(2) "Act" means the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq.;

(3) "Application" means a written request for approval for tax credits describing the project, including:

(A) A water conservation plan outlining the operation of the project; and

(B) Any additional requirements as the Arkansas Natural Resources Commission may adopt by rule;

(4) "Approved applicant" means an individual, fiduciary, partnership, limited liability company, or corporation that:

(A) Submits a written request for approval of a project for tax credits in compliance with the Water Resource Conservation and Development Incentives Act; and

- (B) Receives a certificate of tax credit approval for that project;
- (5) "Chief engineer" means the Chief Engineer of the Natural Resources Division of the Department of Agriculture;
- (6) "Commission" means the Arkansas Natural Resources Commission, established pursuant to Arkansas Code § 15-20-201 et seq.;
- (7) "Critical groundwater area" means those areas that are designated by the Arkansas Natural Resources Commission pursuant to the Arkansas Groundwater Protection and Management Act, Arkansas Code § 15-22-901 et seq.;
- (8) "Department" means the Department of Finance and Administration;
- (9) "Director" means the Director of the Arkansas Natural Resources Commission, who shall be appointed by and serve at the pleasure of the Governor;
- (10) "Division" or "Natural Resources Division of the Department of Agriculture" references the Department of Agriculture employees responsible for carrying out the functions of the Arkansas Natural Resources Commission;
- (11) "Fee" means the payment made by an applicant to the Natural Resources Division for processing the application pursuant to 26 CAR § 261-202;
- (12) "Land-leveling" means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without:
- (A) Excessive erosion;
  - (B) Loss of water quality; or
  - (C) Damage to land by water logging;
- (13) "Local district" means the conservation district in which the project is located;
- (14) "Project" means:
- (A) The construction, installation, or restoration of a water impoundment or water control structure of twenty (20) acre-feet or more designed for storing water to be used for agricultural, commercial, or industrial purposes;
  - (B) The conversion from groundwater to surface water use by an agricultural, commercial, industrial, or recreational water user;

(C) Agricultural land-leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; or

(D) The purchase and installation of a water measuring or metering device to determine the quantity of water used;

(15) "Project cost" means the actual expenditure for a project less any reimbursement received by an approved applicant from cost-share programs;

(16) "Transferee" means a person or corporate entity who:

(A) Receives some or all of an approved applicant's tax credit; and

(B) Is named as the successor to the credit through a certified statement executed by the approved applicant; and

(17) "USDA-NRCS" means the United States Natural Resources Conservation Service or its successor.

**Authority.** Arkansas Code § 26-51-1010.

### **26 CAR § 261-103. Limitations.**

(a) Prior to claiming any tax credits under this program, a taxpayer must obtain a certificate of tax credit approval from the Director of the Arkansas Natural Resources Commission certifying to the Department of Finance and Administration that the taxpayer has complied with the procedure contained in 26 CAR § 261-201 et seq.

(b) An approved applicant shall not receive a tax credit for costs that are reimbursed from cost share or other programs.

(c) Any tax credit or percentage of a tax credit issued to an approved applicant that is a partnership, a limited liability company taxed as a partnership, a Subchapter S corporation, or a fiduciary shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-104. Recordkeeping.**

An approved applicant claiming a credit under the program must maintain all financial records for fifteen (15) years after the tax year in which the certificate of completion is issued.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-105. Appeals.**

(a) Except as otherwise provided herein, an applicant or an approved applicant may appeal, pursuant to 15 CAR § 1-501 et seq., any decision or action of the Director of the Arkansas Natural Resources Commission.

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

**Authority.** Arkansas Code § 26-51-1010.

**Subpart 2. Application and Approval Procedure**

**26 CAR § 261-201. Application for tax credit.**

(a) An applicant requesting a tax credit under this program must submit a written application on a form provided by the Director of the Arkansas Natural Resources Commission and pay a required fee, if applicable, to the Natural Resources Division of the Department of Agriculture.

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

(1) Name of the individual or legal entity seeking credit for construction of the project identified in the application;

(2) Social Security number or federal employer identification number;

(3) Address and telephone number of the individual or legal entity seeking credit;

(4) Name, address, and telephone number of a contact person capable of answering questions about the application;

(5) Estimated project cost, including a breakdown of costs by activity;

(6)(A) List of other programs from which cost-share or tax credit assistance will be obtained.

(B) Include all those applied for, even if approval is still pending, and the amount of contribution anticipated from each;

(7) Location of project site (e.g., county, section, township, range, watershed, etc.), including driving directions to the site;

(8) Detailed plans of project in sufficient detail as necessary; and

(9) Additional relevant information may be requested by the Director of the Arkansas Natural Resources Commission as deemed necessary for a complete review of the proposed project.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-202. Fees.**

(a)(1) With the exception of applications for credits for the installation of water measuring or metering devices, an applicant shall pay to the Natural Resources Division of the Department of Agriculture a fee in an amount equal to three percent (3%) of the total tax credit approved by the division.

(2) The minimum fee shall be one hundred dollars (\$100), and the maximum fee shall be one thousand five hundred dollars (\$1,500).

(b)(1) Any fee due shall be paid to the division when an application for tax credit approval is filed.

(2) No certificate of tax credit approval shall be issued until the applicant pays an applicable fee.

(c)(1) If the actual project cost is more than the estimated project cost contained in the application, the approved applicant must pay any difference between the original fee and the amount equivalent to three percent (3%) of actual project costs before the issuance of a certificate of completion.

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

(3) If an approved applicant fails to pay the fee balance, the:

(A) Director of the Arkansas Natural Resources Commission will cancel the certificate of tax credit approval, barring the approved applicant from claiming any more additional credit; and

(B) Department of Finance and Administration may seek to recover all tax credit previously claimed.

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

(e) Application fees are not refundable.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-203. Issuance of certificate of tax credit approval by the director.**

(a) After reviewing the application, the Director of the Arkansas Natural Resources Commission, if he or she determines that the project complies with the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq., and this part, shall issue a certificate of tax credit approval based on estimated project costs to any approved applicant whose project meets program requirements.

(b) The approved applicant must file the certificate of tax credit approval or both the certificate of tax credit approval and certificate of completion with his, her, or its income tax return for the first year in which the approved applicant claims a tax credit under the program for the project for which the certificate is issued.

(c) With respect to a project undertaken by a partnership, a Subchapter S corporation, a limited liability company taxed as a partnership, or a fiduciary, the

certificate of tax credit approval shall be issued to each individual partner, shareholder, member, or owner based upon that person's percentage of ownership or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-204. Issuance of certificate of completion by the director.**

(a)(1) Upon completion of the project, the approved applicant shall make a written request to the Director of the Arkansas Natural Resources Commission for issuance of a certificate of completion.

(2) As part of the request, the approved applicant shall submit:

(A) The amount of tax credit requested;

(B) A summary of reasonable detail stating the total cost of the project;

and

(C) Any other information requested by the director.

(b) A final inspection shall be conducted by a representative of the Natural Resources Division of the Department of Agriculture or the United States Natural Resources Conservation Service.

(c)(1) After a satisfactory review and inspection of the project, the director shall issue a certificate of completion based on the approved applicant's reported and documented cost of the project.

(2) The entire project must be completed prior to the issuance of any certificate of completion.

(d) The approved applicant must file the certificate of completion with the first tax return filed after issuance of the certificate of completion.

**Authority.** Arkansas Code § 26-51-1010.

**Subpart 3. Project Design, Construction, Maintenance, and Termination**

**26 CAR § 261-301. Project design, construction, and maintenance requirements.**

(a) Plans, designs, or specifications must be submitted to the Natural Resources Division of the Department of Agriculture for approval and must meet the following criteria:

(1) The plans, designs, and specifications shall meet or exceed minimum standards as established by the Chief Engineer of the Natural Resources Division of the Department of Agriculture;

(2) The plans, designs, and specifications shall be developed by:

(A) An agent of the United States Natural Resources Conservation Service;

or

(B) A registered professional engineer licensed in Arkansas; and

(3) For agricultural projects, the project must be certified by the local conservation district as being adopted as a part of a water conservation plan, or if the plan is prepared by someone other than an agent of the United States Natural Resources Conservation Service, then the plan must be certified by the local district as being in conformance with accepted soil and water conservation practices.

(b) The design and construction must comply with all state or local codes, rules, regulations, and laws as they may apply to:

(1) Construction;

(2) Operation; and

(3) Maintenance.

(c) The approved applicant shall allow representatives of the Arkansas Natural Resources Commission and the United States Natural Resources Conservation Service to inspect the construction, operation, or maintenance of facilities at any reasonable time.

(d) All projects must be maintained for a minimum life of ten (10) years after issuance of a certificate of completion.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-302. Project completion.**

(a) With the exception of an applicant applying for tax credit for installation of a water measuring or metering device, only project costs incurred after issuance of a certificate of tax credit approval shall be claimed for tax credit.

(b) All projects must be completed within the deadline set in Arkansas Code § 26-51-1011(c)(1).

(c) If an approved applicant does not complete a project within the deadline set in Arkansas Code § 26-51-1011(c)(1):

(1) All credits claimed must be repaid to the Department of Finance and Administration; and

(2) The project will be disallowed as a project for tax credit purposes.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-303. Project termination.**

(a)(1) If the approved applicant terminates the project prior to expiration of the minimum project life, the approved applicant shall provide written notification to the:

(A) Director of the Arkansas Natural Resources Commission; and

(B) Department of Finance and Administration.

(2) In addition, the approved applicant shall:

(A) File an amended tax return; and

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

(b) If the director determines that the approved applicant has terminated the project, he or she shall notify the department.

(c) Upon the termination of a project, the:

(1) Approved applicant shall not be allowed any further tax credits provided in the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq.; and

(2) Department shall recapture the pro rata share of any tax credits claimed under the Water Resource Conservation and Development Incentives Act for the period of termination.

(d) The pro rata share for 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.

(e) Under the Water Resource Conservation and Development Incentives Act, the department may make necessary assessments to recapture disallowed tax credits for three (3) years from the date of expiration of the minimum life of the project.

**Authority.** Arkansas Code § 26-51-1010.

#### **Subpart 4. Tax Credits**

##### **26 CAR § 261-401. Installation of a water measuring or metering device.**

(a)(1) An applicant must submit an Application for Water Meter Tax Credit to the Natural Resources Division of the Department of Agriculture.

(2) Proof of purchase price of the device and of the installation cost, if installed by a person other than the applicant, must be included with the completed application.

(b) All meters installed within the same tax year may be listed in one (1) credit application.

(c) The division shall not collect an application fee from an applicant submitting a tax credit application for the installation of a water measuring or metering device.

(d)(1) Credit for installation of meters does not require preapproval by the division or local conservation district.

(2) Upon approval of an application, a certificate of tax credit approval as well as a certificate of completion will be issued by the division.

**Authority.** Arkansas Code § 26-51-1010.

## **Subpart 5. Transferability of Tax Credits**

### **26 CAR § 261-501. Transfer of ownership.**

(a) An approved applicant may freely transfer ownership of a tax credit to a transferee who shall be entitled to an income tax credit only to the extent the income tax credit is still available and has not been previously used by the approved applicant.

(b) A transferee under this section is subject to the carry-over provisions provided in the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq., based on the taxable year in which the income tax credit originated.

(c) The approved applicant shall:

(1) Perfect the transfer of ownership by notifying the Department of Finance and Administration 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 Natural Resources Division of the Department of Agriculture and the Department of Finance and Administration to ensure proper tracking of the ownership of the unused tax credit.

**Authority.** Arkansas Code § 26-51-1010.

### **26 CAR § 261-502. Perfecting transfer of ownership.**

A transferee of income tax credits under the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq., that seeks to qualify for the income tax credits provided in the Water Resource Conservation and Development Incentives Act shall obtain and attach to the transferee's income tax return for the years the income tax credit is claimed a certified statement from the approved applicant stating the:

(1) Name and address of the approved applicant and all transferees;

- (2) Tax identification number of all persons entitled to any portion of the original income tax credit;
- (3) Original date the income tax credit was approved;
- (4) Amount of the income tax credit associated with the transfer of the income tax credit;
- (5) Original amount of the income tax credit; and
- (6) Remaining amount of the income tax credit that is available for use by the transferee.

**Authority.** Arkansas Code § 26-51-1010.

**26 CAR § 261-503. Responsibility for failure to complete or maintain project.**

(a) If a project is not completed or maintained for the total number of years required under Arkansas Code § 26-51-1011, the approved applicant is responsible for refunding the income tax credit to the Department of Finance and Administration as provided in Arkansas Code § 26-51-1011.

(b) The transferee of an income tax credit under the Water Resource Conservation and Development Incentives Act, Arkansas Code § 26-51-1001 et seq., is not liable for the repayment of the income tax credit allowed under the Water Resource Conservation and Development Incentives Act if the approved applicant fails to complete or maintain the project under Arkansas Code § 26-51-1011.

**Authority.** Arkansas Code § 26-51-1010.