

Title 26. Taxation

Chapter I. Generally, Department of Finance and Administration

Subchapter C. Income Tax Generally

Part 71. The Delta Geotourism Incentive Act of 2007 (Acts 2007, No. 518)

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

"Pursuant to the authority granted by Ark. Code Ann. §§26-18-301 and Act 518 of 2007, the Director of the Arkansas Department of Finance and Administration, in consultation with the Arkansas Department of Parks and Tourism, promulgates the following rule for the purpose of facilitating implementation, administration, and enforcement of the income tax credit for geotourism development authorized by Act 518 of 2007."

Subpart 1. Generally

26 CAR § 71-101. Introduction.

(a) Acts 2007, No. 518, The Delta Geotourism Incentive Act of 2007, creates financial incentives to promote economic development in economically distressed areas of the Lower Mississippi River Delta through geotourism.

(b) This incentive program provides a limited rural income tax credit to persons and entities that invest in geotourism-supporting businesses that:

- (1) Attract and accommodate out-of-state visitors; and
- (2) Serve to preserve, perpetuate, interpret, and present the rich culture, history, and natural resources of the Lower Mississippi River Delta community.

(c) This part has been amended to reflect the changes made by Acts 2009, No. 349, and Acts 2009, No. 1192, which allow for geotourism tax credits to be sold, transferred, or assigned to recipients both within the Lower Mississippi River Delta and outside of that community, and other changes.

Authority. Acts 2007, No. 518, § 4.

26 CAR § 71-102. Definitions.

As used in this part:

(1)(A) "Economically distressed area" means a county-wide area in Arkansas in which the percentage of families that earn income below poverty level exceeds twenty-three percent (23%), based on year 2000 income levels as compiled by the United States Bureau of the Census demographic profiles.

(B) The following Arkansas counties qualify as economically distressed areas:

- (i) Chicot;
- (ii) Desha;
- (iii) Lee;
- (iv) Phillips; and
- (v) St. Francis;

(2) "Geotourism" means tourism that sustains or enhances the geographical character of an area including without limitation:

- (A) Its environment;
- (B) Its heritage;
- (C) Its aesthetics;
- (D) Its culture;
- (E) Its natural resources; and
- (F) The well-being of its residents;

(3) "Geotourism attraction" means an environmental, aesthetic, cultural, or natural point of interest in an area of natural phenomena or scenic beauty that attracts tourists to experience and appreciate the environmental, aesthetic, cultural, or natural point of interest including without limitation a:

- (A) Geological monument;
- (B) Lake;

- (C) Mountain;
- (D) Park;
- (E) River;
- (F) Species of animal abundant or unique to a particular area;
- (G) Species of bird abundant or unique to a particular area;
- (H) Species of insect abundant or unique to a particular area;
- (I) Wetland or aquatic resources area; and
- (J) Historic site;

(4)(A) "Geotourism-supporting business" means a business necessary to support a geotourism attraction by constructing, expanding, or remodeling a retail facility including without limitation:

- (i) Cultural or education centers;
- (ii) Indoor or outdoor plays or music shows;
- (iii) Recreational or entertainment facilities;
- (iv) Sporting goods retail and rental establishments;
- (v) Guide services;
- (vi) Transient lodging facilities including RV parks;
- (vii) Arts and antique shops;
- (viii) Campgrounds;
- (ix) Bed and breakfasts;
- (x) Dining establishments; and
- (xi) Agritourism facilities including but not limited to:
 - (a) Pumpkin patches;
 - (b) Crop mazes; or
 - (c) Other agricultural attractions.

(B) "Geotourism-supporting business" does not include:

- (i) Facilities that are not open to the general public; or
- (ii) Facilities owned by the State of Arkansas or a political subdivision

of the state;

(5) "Geotourism tax credit" means a tax credit against the:

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

(B) Premium taxes under Arkansas Code §§ 26-57-603 – 26-57-605;

(6) "Geotourist" means a person who travels to an area to enjoy the area's:

(A) Natural habitats;

(B) Heritage sites;

(C) Scenic appeals; and

(D) Local culture;

(7) "Holder" means a qualified recipient of a geotourism tax credit that is:

(A) A person or entity 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 an annual premium tax on its gross premium receipts under Arkansas Code §§ 26-57-603 – 26-57-605;

(8) "Invest" means capital expenditure in real or personal property used predominantly for geotourism;

(9) "Lower Mississippi River Delta" means a county in Arkansas or portion of a county in Arkansas whose land area includes an alluvial plain created by the Mississippi River;

(10) "Person or entity" means:

(A) A sole proprietorship;

(B) A partnership;

(C) An LLC; or

(D) A corporation;

(11) "RV parks" means retail businesses engaged in the service of furnishing temporary parking spaces for mobile, motorized recreational vehicles or travel trailers to transient guests;

(12) "Tourism attraction" means the same as defined under Arkansas Code § 15-11-503;

(13) "Tourism attraction project" means the same as defined under Arkansas Code § 15-11-503;

(14) "Tourism-supporting business" means a business that is open to the general public and provides goods or services necessary to support a tourism attraction and includes without limitation:

- (A) Restaurants;
- (B) Retail establishments; and
- (C) Lodging facilities;

(15) "Transient lodging facilities" means retail businesses engaged in the business of furnishing rooms, suites, condominiums, townhouses, rental houses, or other accommodations to transient guests; and

(16) "Transient guests" means those who rent accommodations other than their regular place of abode on less than a month-to-month basis.

Authority. Acts 2007, No. 518, § 4.

Codification Notes. "LLC" means limited liability company.

"RV" means recreational vehicle.

26 CAR § 71-103. Approval into program.

(a)(1) A person or entity seeking benefits under the Delta Geotourism Incentive Act of 2007, Acts 2007, No. 518, must apply to the Revenue Division of the Department of Finance and Administration.

(2) Application must be made on the prescribed Application for Geotourism Incentives form approved by the Department of Finance and Administration and included below.

(b) The Department of Finance and Administration will forward the application to the Department of Parks, Heritage, and Tourism, which shall determine whether the investment made by the person or entity qualifies for the income tax credit based upon the following requirements:

- (1) The investment must be in a minimum amount of twenty-five thousand

dollars (\$25,000); and

(2) The funds must be invested in a geotourism-supporting business located in the Lower Mississippi River Delta that meets the following criteria:

(A) In an economically distressed area (Chicot, Desha, Lee, Phillips, or St. Francis counties) or a county that borders two (2) counties defined as economically distressed (Crittenden, Drew, Arkansas, or Monroe counties);

(B) In an unincorporated area or a city with a population of less than sixteen thousand (16,000) as determined by the United States Census Report of 2000;

(C) Within thirty (30) miles of a national scenic byway; and

(D) Within fifteen (15) miles of:

(i) Public access to a navigable river;

(ii) An Arkansas state park;

(iii) An Arkansas State Game and Fish Commission wildlife management area; or

(iv) A national wildlife refuge.

(c)(1) When the Department of Parks, Heritage, and Tourism determines that a business qualifies as a geotourism-supporting business and meets all other criteria pursuant to the act, it shall provide written certification to the Department of Finance and Administration that:

(A) The business qualifies; and

(B) Investments in the qualified business are eligible for the credit.

(2) The Department of Parks, Heritage, and Tourism shall forward to the Department of Finance and Administration copies of the application, certification, and other pertinent documentation regarding the person or entity's qualification into the program.

(d) If the entity requesting the credit is a pass-through entity such as a Subchapter S corporation or an LLC, the entity must provide the Department of Parks, Heritage, and Tourism and the Department of Finance and Administration the names and addresses of all members and their respective percentage ownership in the entity.

(e) The Department of Finance and Administration and the Department of Parks,

Heritage, and Tourism may inspect facilities and audit records of a person or an entity requesting or receiving an income tax credit under the act as necessary to determine qualification or to verify a claim.

Authority. Acts 2007, No. 518, § 4.

Codification Notes. “LLC” means limited liability company.

26 CAR § 71-104. Transfer, sale, or assignment of tax credit.

(a)(1) A holder of a geotourism tax credit that sells, transfers, or assigns all or part of a tax credit must inform the Department of Finance and Administration of the sale, transfer, or assignment within thirty (30) days using the Notice of Credit Transfer form approved by the Department of Finance and Administration and included below.

(2) A person or entity seeking benefits under the Delta Geotourism Incentive Act of 2007, Acts 2007, No. 518, for a credit that was transferred, sold, or assigned in whole or in part must apply to the Revenue Division of the Department of Finance and Administration with the same Notice of Credit Transfer required in subdivision (a)(1) of this section.

(b) The Department of Finance and Administration will forward the application to the Department of Parks, Heritage, and Tourism, which shall determine whether the investment made by the person or entity qualifies for the income tax credit based upon the following requirements:

(1) If the transferee, purchaser, or assignee is located in the Lower Mississippi River Delta as described in 26 CAR § 71-103(b)(2), whether the transferee, purchaser, or assignee has previously made an investment to construct, expand, or remodel:

(A) A geotourism-supporting business located in the Lower Mississippi River Delta as described in 26 CAR § 71-102(4) at any time prior to submitting the Notice of Credit Transfer to the Department of Finance and Administration; and

(B) The investment was of at least twenty-five thousand dollars (\$25,000); or

(2) If the transferee, purchaser, or assignee is not located in the Lower Mississippi River Delta as described in 26 CAR § 71-103(b)(2), whether the transferee, purchaser, or assignee has previously made an investment to construct, expand, or remodel:

(A) A geotourism-supporting business, a tourism attraction, or tourism-supporting business project as described in 26 CAR § 71-102 at any time prior to submitting the Notice of Credit Transfer to the Department of Finance and Administration; and

(B) The investment was of at least one hundred thousand dollars (\$100,000).

(c)(1) When the Department of Parks, Heritage, and Tourism determines that a business qualifies as a geotourism-supporting business and meets all other criteria pursuant to the act, it shall provide written certification to the Department of Finance and Administration that:

(A) The business qualifies; and

(B) Investments in the qualified business are eligible for the credit.

(2) The Department of Parks, Heritage, and Tourism shall forward to the Department of Finance and Administration copies of the application, certification, and other pertinent documentation regarding the person or entity's qualification into the program.

(d) If the entity requesting the credit is a pass-through entity such as a Subchapter S corporation or an LLC, the entity must provide the Department of Parks, Heritage, and Tourism and the Department of Finance and Administration:

(1) The names and addresses of all members; and

(2) Their respective percentage ownership in the entity.

(e) The Department of Finance and Administration will forward a copy of the completed and approved Notice of Credit Transfer to the State Insurance Department if the new holder is an insurance company paying an annual premium tax on its gross premium receipts under Arkansas Code §§ 26-57-603 – 26-57-605.

(f) The Department of Finance and Administration and the Department of Parks,

Heritage, and Tourism may inspect facilities and audit records of a person or an entity requesting or receiving an income tax credit under the act as necessary to determine qualification or to verify a claim.

Authority. Acts 2007, No. 518, § 4.

Codification Notes. “LLC” means limited liability company.

26 CAR § 71-105. Tax credits.

(a) To qualify for a tax credit under the Delta Geotourism Incentive Act of 2007, Acts 2007, No. 518, a person or entity shall invest a minimum of twenty-five thousand dollars (\$25,000) to construct, expand, or remodel a qualified geotourism-supporting business.

(b)(1) A person or entity is eligible to receive an income tax or annual premium tax credit under the act equal to twenty-five percent (25%) of the amount of a qualified investment for the year that the investment is made provided that the geotourism-supporting business is currently operating as a business.

(2) Any income tax credit resulting from a qualified investment made during a year prior to the year the geotourism-supporting business begins operation may be carried forward and used to offset income tax or annual premium tax liability to the State of Arkansas in accordance with subsection (j) of this section.

(c) For any tax year, the maximum amount of investment to be considered in determining the tax credit under the act is one hundred thousand dollars (\$100,000).

(d)(1)(A) In order to claim a credit, at the end of each tax year the approved geotourism-supporting business shall submit to the Department of Finance and Administration on prescribed forms the amount invested by the approved geotourism-supporting business.

(B)(i) The amount invested must be substantiated by adequate documentary proof.

(ii) Examples of adequate proof include but are not limited to:

- (a) Invoices;
- (b) Contracts;
- (c) Receipts;
- (d) Cancelled checks;
- (e) Bank statements;
- (f) Loan documents; and
- (g) Other documents generated in the ordinary course of

business.

(C) The Department of Finance and Administration:

(i) Shall verify that the investment is a qualified investment pursuant to the act; and

(ii) Upon verification, shall issue the taxpayer an income tax credit memorandum based on the investment.

(D) In addition to reviewing the documentary proof submitted by the taxpayer, the Department of Finance and Administration may exercise its duly authorized audit procedures in order to verify whether an investment is a qualified investment.

(2) Upon approval of a sale, assignment, or transfer of a geotourism credit as described in 26 CAR § 71-104, the Department of Finance and Administration shall issue a new income tax or premium tax memorandum detailing the new holder and remaining amount of the credit available.

(e) Separate tax credit memorandums will be issued for each tax year in which the holder has made a qualified investment.

(f)(1)(A) In order for the holder to claim the geotourism tax credit, the income tax credit or premium tax credit memorandum must be attached to the income tax return or annual premium tax return in which the credit is first claimed.

(B) The amount of credit that may be used by a taxpayer for any taxable year shall not exceed twenty-five thousand dollars (\$25,000).

(2) The Department of Finance and Administration shall provide the State Insurance Department with a copy of any premium tax credit memorandum issued

pursuant to subsection (d) of this section.

(g) If the business is a Subchapter S corporation, the pass-through provisions of Arkansas Code § 26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.

(h)(1) A partner's or member's distributive share of the credit shall be determined by the partnership or limited liability company agreement unless the agreement does not:

(A) Have substantial economic effect; or

(B) Provide for the allocation of credits.

(2) If the agreement does not have substantial economic effect or does not provide for the allocation of the credit, the credit shall be allocated according to the partner's or member's interest in the partnership, pursuant to I.R.C. § 704(b), as in effect on January 1, 1995.

(i)(1)(A) The tax credit provided under the act may be claimed for investments made in geotourism-supporting businesses that are approved into the program during taxable years beginning January 1, 2009, and continuing through tax year 2016, at which time the act expires.

(B)(i) So long as a geotourism-supporting business is qualified and approved into the program by the Department of Parks, Heritage, and Tourism prior to December 31, 2016, an investment in the business may be made after December 31, 2016, and the person making the investment may be eligible for the tax credit if all other eligibility requirements for claiming the tax credit are met.

(ii) The investment itself does not have to be made prior to December 31, 2016.

(2) Tax credits approved prior to January 1, 2009, that have not been used or expired may be assigned, transferred, or sold in whole or in part pursuant to the provisions of 26 CAR § 71-104.

(j) If the geotourism-supporting business is currently operating as a business, an unused income tax credit under the act may be carried forward on an income tax or annual premium tax return for five (5) years after the year in which the tax credit was

first earned or until exhausted, whichever event occurs first.

Authority. Acts 2007, No. 518, § 4.

Codification Notes. I.R.C. § 704(b) is codified at 26 U.S.C. § 704(b).

Appendix A. Application for Delta Geotourism Incentives

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/224/26CARpt.71Appendix.pdf>