

**RULES IMPLEMENTING THE WATER RESOURCE
CONSERVATION AND DEVELOPMENT INCENTIVES ACT.
(September 2001)**

TITLE XIV

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TITLE XIV

SUBTITLE I. GENERAL

Section 1401.1 PURPOSE.

A. The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, 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 ground water supplies at an unacceptable rate and alternative surface water supplies are not available in sufficient quantities without developing additional water storage to alleviate this ground water depletion problem.

C. The tax incentives provided under this program will encourage the water users to invest in: (1) the construction of impoundments to utilize available surface water and reduce our dependence on ground water; (2) the conversion from ground water use to surface water use when surface water is available;(3) the water conservation practice of land leveling to reduce agricultural irrigation water use.

D. It is of utmost importance to Arkansas that within critical ground water areas, surface water be used when available.

Section 1401.2 ENABLING AND PERTINENT LEGISLATION.

A. Ark. Code Ann. §26-51-1001 (1995 supp.), *et seq.*, the Water Resource Conservation and Development Incentives Act.

B. Ark. Code Ann. § 15-20-201 *et seq.*, the Soil and Water Conservation Commission.

C. Ark. Code Ann. § 25-15-501 *et seq.*, the Arkansas Administrative Procedure Act.

Section 1401.3 DEFINITIONS.

Unless the context requires otherwise, the following definitions shall apply to all parts of this title:

A. "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.

B. "Act" means the Water Resource Conservation and Development Incentives Act.

C. "Application" means a written request for approval for tax credits, describing the project including a water conservation plan outlining the operation of the project and any additional requirements as the Commission may adopt by rule.

- D. "Chief Engineer" means the Chief Engineer of the Commission.
- E. "Commission" means the Arkansas Soil and Water Conservation Commission, established pursuant to Ark. Code Ann. §§15-20-201 to 208.
- F. "Critical ground water area" means those areas that are designated by the Commission pursuant to the Arkansas Groundwater Protection and Management Act, contained in Title 15, Chapter 22, Subchapter 9 of the Arkansas Code of 1987 Annotated.
- G. "Department" means the Revenue Division of the Arkansas Department of Finance and Administration.
- H. "Executive Director" means the Executive Director of the Arkansas Soil and Water Conservation Commission.
- I. "Fee" means the payment made by the taxpayer to the Commission for processing the application pursuant to Section 1402.2 of these rules.
- J. "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 excessive erosion, loss of water quality, or damage to land by water logging.
- K. "Local district" means the conservation district in which the project is located.
- L. "Project" means:
1. The construction, installation or restoration of water impoundments or water control structures of twenty (20) acre-feet or more designed for the purpose of storing water to be used for agricultural, commercial, or industrial purposes;
 2. The conversion from ground water to surface water use by agricultural, commercial, industrial or recreational water user.
 3. Agricultural land leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed.
 4. The purchase and installation of water measuring or metering devices used to determine the quantity of water used. Installation of such devices shall be considered a conversion from ground water to surface water for tax credit purposes.
- M. "Project cost" means the actual expenditure for a project less any reimbursement received by the taxpayer from cost-share programs.
- N. "Taxpayer" means natural person, corporation or other entity making application for a tax credit under this program.
- O. "USDA-NRCS" means the United States Department of Agriculture National Resources Conservation Service or its successor.

Section 1401.4 APPLICABILITY.

A. The tax credits provided under this program shall apply to taxable years beginning on or after January 1, 1996, and all taxable years thereafter.

B. Any tax credits issued to partnerships, limited liability companies, Subchapter S corporations or fiduciaries may pass through to their members, managers, partners, shareholders and/or beneficiaries.

Section 1401.5 LIMITATIONS.

A. Prior to claiming any tax credits under this program, a taxpayer must obtain a certification from the Executive Director certifying to the Department that the taxpayer has met all the requirements and qualifications. In order to obtain certification the taxpayer must follow the procedure contained in Subtitle II of these rules.

B. Any taxpayer claiming a tax credit under this program may not claim a credit under the Water Resources Conservation and Development Incentives Act of 1985 or any similar program for any costs related to the same project.

C. A taxpayer shall not receive a tax credit for costs which are reimbursed from cost share or other programs.

Section 1401.6 RECORD KEEPING.

A taxpayer claiming a credit under the program must maintain all financial records for thirteen (13) years after the tax year in which the certificate of completion is issued.

Section 1401.7 APPEALS.

A. Except as otherwise provided herein, a taxpayer may appeal, pursuant to Title I, Subtitle V of the Commission's Rules, any decision or action of the Executive Director.

B. All decisions related to recapture of tax credits shall be appealed in accordance with the Department's established procedures as found in Arkansas Code Annotated §26-18-101 *et seq.*

SUBTITLE II. APPLICATION AND APPROVAL PROCEDURE

Section 1402.1. TAXPAYER APPLICATION FOR TAX CREDIT.

A. A taxpayer wishing to obtain a tax credit under this program must submit a written application on a form provided by the Executive Director and pay the required fee to the Commission.

B. The application form shall require the following information:

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

2. List of officers, Subchapter S shareholders with percentage of ownership, partners with percentage of ownership, etc.
 3. FEIN and/or Social Security Numbers for business of[r] individuals to claim credit.
 4. Address; telephone and fax numbers of all participating taxpayers
 5. A central contact person's name, address, telephone and fax numbers.
 6. Estimated Project Cost including a breakdown of costs by activity.
 7. List other programs from which cost-share or tax credit assistance will be obtained. Include all those applied for even if approval is still pending; amount of contribution anticipated from each.
 8. Location of project site location (e.g., county, section, township, range, watershed, etc.) including driving directions to the site.
 9. Detailed plans of project in sufficient detail as necessary.
 10. Additional relevant information may be requested by the Executive Director as deemed necessary for a complete review of the proposed project.
- C. With respect to projects involving multiple landowners, each individual landowner shall make a separate application.

Section 1402.2. FEES.

- A. The taxpayer shall pay to the Commission a fee in an amount equal to three percent (3%) of the total tax credit approved by the Commission. The minimum fee shall be one hundred dollars (\$100.00) and the maximum fee shall be one thousand five hundred dollars (\$1,500.00).
- B. The fee shall be paid to the Commission when an application for tax credit approval is filed. No certificate of tax credit approval shall be issued until the fee is paid.
- C. Should the actual tax credit be less than the estimated credit contained in the application, the fee collected over the actual fee will be returned when the certificate of completion for tax credit is issued.
- D. Should the actual tax credit be more than the estimated credit contained in the application, the additional fee must be paid before the issuance of the certificate of completion for tax credit. No completion certificate shall be issued until the balance due has been paid. Failure to pay the balance of the fee will result in the Executive Director canceling the certificate of tax credit approval, no additional credit may be claimed and the Department may

seek to recover any and all tax credit previously claimed

E. In the case of a project involving multiple landowners, the fee shall be paid separately with each application.

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

Section 1402.3. ISSUANCE OF CERTIFICATE OF TAX CREDIT APPROVAL BY THE EXECUTIVE DIRECTOR.

A. After reviewing the application, the Executive Director, if he determines that the project complies with the Act and this title of the Commission's regulations, may issue a Tax Credit Approval Certificate to taxpayers whose projects meet the requirements based on estimated project costs.

B. The taxpayer must file the certificate of tax credit approval with his income tax return for the first year in which the taxpayer claims a tax credit under the program for the project for which the certificate is issued.

C. With respect to projects undertaken by partnerships, Subchapter 'S' Corporations, and Limited Liability Companies, the Tax Credit Approval Certificate will be issued to each individual partner or shareholder based upon that person's ownership of the partnership or the corporation, unless the partnership agreement or articles of incorporation specify an alternate method of distribution and the alternate method of distribution distributes these credits in the same manner earnings or losses generated by the partnership or corporation are distributed.

D. For projects with multiple landowners, applications for the entire project must be approved prior to the issuance of any Tax Credit Approval Certificates.

Section 1402.4. ISSUANCE OF CERTIFICATE OF COMPLETION BY THE EXECUTIVE DIRECTOR.

A. Upon completion of the project, the taxpayer shall make a written request to the Executive Director for issuance of the Certificate of Completion. As part of the request, the taxpayer shall submit the amount of tax credit requested, a summary of reasonable detail stating the total cost of the project, and any other information requested by the Executive Director.

B. After a satisfactory review and inspection of the project the Executive Director shall issue a certificate of completion based on the taxpayer's reported costs of the project. In the case of multiple ownership of a project, the entire project must be

completed prior to the issuance of any certificate of completion.

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

SUBTITLE III. PROJECT DESIGN, CONSTRUCTION, MAINTENANCE AND TERMINATION

Section 1403.1. PROJECT DESIGN AND CONSTRUCTION REQUIREMENTS.

A. All projects must meet the following technical criteria. Plans, designs or specifications must be submitted to the Commission for approval and:

1. Shall meet or exceed minimum standards as established by the Chief Engineer; and
2. Shall have been developed by an agent of the USDA-NRCS or by a registered professional engineer, licensed in Arkansas; and
3. For agricultural projects, the project must be certified by the local 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 USDA-NRCS, 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 construction, operation and maintenance.

C. A final inspection shall be conducted by a representative of the Commission or the USDA-NRCS. The USDA-NRCS will inform the Commission in writing of the results of its inspection. The taxpayer shall allow representatives of the Commission and the USDA-NRCS 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 certificate of completion.

Section 1403.2. TAX CREDITS AND PROJECT CONSTRUCTION, COMPLETION AND MAINTENANCE.

A. Only project costs incurred after issuance of a tax credit approval certificate may be claimed for tax credit.

B. All projects must be completed within three (3) years of the date of the certificate of tax credit approval.

C. If the taxpayer does not complete the project within the three year period, all credits claimed must

be repaid to the Department, and the project will be disallowed as a project for tax credit purposes.

Section 1403.3. PROJECT TERMINATION.

A. If taxpayer terminates the project prior to expiration of the minimum project life, taxpayer shall provide written notification to the Executive Director and the Department. In addition, the taxpayer shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

B. If the Executive Director determines that the taxpayer has terminated the project, it shall notify the Department.

C. Upon the termination of a project, the taxpayer shall not be allowed any further tax credits provided in this act and the Department shall recapture the pro-rata share of any tax credits claimed under this 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 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.

Section 1403.4. INSTALLATION OF WATER MEASURING OR METERING DEVICES.

The installation of water measuring or metering devices entitles a well owner to an income tax credit for conversion from ground to surface water use. Well owners must submit an "Application for Water Meter Tax Credit" to the Commission. Proof of purchase price of the device and of the installation cost if installed by a person other than the taxpayer must be included with the information required by these Rules. All meters installed within the same tax year may be listed in one credit application. Credit for installation of meters does not require pre-approval by the Commission or local Conservation District. Upon approval of an application, a Certificate of Tax Credit Approval will be issued by the Commission.

SUBTITLE IV. TAX CREDITS

Section 1404.1. WATER IMPOUNDMENTS OUTSIDE CRITICAL AREAS.

A. For projects of twenty (20) acre-feet or more designed for the purpose of storing water to be used primarily for agricultural, commercial or industrial purposes located outside critical ground water areas,

an income tax credit in an amount equal to fifty percent (50%) of the project cost incurred in the construction and installation or restoration of water impoundments or water control structures shall be allowed.

B. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000). Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.2. WATER IMPOUNDMENTS WITHIN CRITICAL AREAS.

A. For projects of twenty (20) acre-feet or more designed for the purpose of storing water to be used primarily for agricultural, commercial or industrial purposes located within critical ground water areas, an income tax credit in an amount equal to fifty percent (50%) of the project cost incurred in the construction and installation or restoration of water impoundments or water control structures shall be allowed.

B. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000). Any unused credit may be carried over for a maximum of nine (9) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.3. SURFACE WATER CONVERSION OUTSIDE CRITICAL AREAS.

A. For projects reducing ground water use by substitution of surface water used for industrial, commercial, agricultural or recreational purposes located outside critical ground water areas, an income tax credit in an amount equal to ten percent (10%) of the project cost incurred shall be allowed.

B. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000) and any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.4. SURFACE WATER CONVERSION WITHIN CRITICAL AREAS.

A. For projects reducing ground water use by substitution of surface water used for industrial,

commercial, agricultural or recreational purposes located within critical ground water areas, an income tax credit in an amount equal to fifty percent (50%) of the project cost incurred shall be allowed.

B. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000) for projects using water for agricultural or recreational purposes and between August 1, 1997 and January 1, 1999, thirty thousand dollars (\$30,000), and beginning January 1, 1999, two hundred thousand dollars (\$200,000) for projects using water for industrial or commercial purposes.

C. Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years for projects using water for agricultural or recreational purposes and, after August 1, 1997, a maximum of four (4) consecutive taxable years for projects using water for industrial or commercial purposes following the taxable year in which the credit originated.

Section 1404.5. LAND LEVELING FOR WATER CONSERVATION.

A. For agricultural land leveling projects that conserve irrigation water, an income tax credit in an amount equal to ten percent (10%) of the project cost incurred shall be allowed.

B. The amount of the credit that may be used by a taxpayer for a taxable year may not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000) and any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.6. DEDUCTION FOR PROJECT COSTS ABOVE TAX CREDIT.

A. A taxpayer qualifying for the tax credits provided under this program is entitled to a deduction in an amount equal to the project cost less the total amount of credits to which the taxpayer is entitled.

B. The deduction must be taken during the year in which the project costs were incurred.