

Agency # 006.05

RULE 2007-9. THE DELTA GEOTOURISM INCENTIVE ACT OF 2007 (ACT 518 of 2007)

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.

Act 518 of 2007, “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. This incentive program provides a limited rural income tax credit to persons and entities that invest in geotourism-supporting businesses that attract and accommodate out of state visitors and that serve to preserve, perpetuate, interpret, and present the rich culture, history, and natural resources of the Lower Mississippi River Delta community.

These rules have 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.

A. DEFINITIONS

1. “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 Bureau of the Census, United States Department of Commerce demographic profiles; The following Arkansas counties qualify as “economically distressed areas:”

- a. Chicot
- b. Desha
- c. Lee
- d. Phillips
- e. St. Francis

2. “Geotourism” means tourism that sustains or enhances the geographical character of an area including without limitation, its environment, heritage, aesthetics, culture, natural resources, and 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. A lake;
 - c. A mountain;
 - d. A park;
 - e. A river;
 - f. A species of animal abundant or unique to a particular area;
 - g. A species of bird abundant or unique to a particular area;
 - h. A species of insect abundant or unique to a particular area;
 - i. A wetland or aquatic resources area; and
 - j. An 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, cultural or education centers, indoor or outdoor plays or music shows, recreational or entertainment facilities, sporting goods retail and rental establishments, guide services, transient lodging facilities including RV parks, arts and antique shops, campgrounds, bed and breakfasts, dining establishments and agri-tourism facilities including but not limited to pumpkin patches, crop mazes or 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 income tax imposed by the Income Tax Act of 1929, § 26-51-101 et seq., or a credit against the premium taxes under §§ 26-57-306 through -605.
6. “Geotourist” means a person who travels to an area to enjoy the area’s natural habitats, heritage sites, scenic appeals, and 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, § 26-51-101 et seq.; or
 - b. An insurance company paying an annual premium tax on its gross premium receipts under §§ 26-57-603 through -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 sole proprietorship, partnership, LLC, or 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 § 15-11-503;
13. "Tourism attraction project" means the same as defined under § 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, restaurants, retail establishments, and 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.
16. "Transient guests" means those who rent accommodations other than their regular place of abode on less than a month-to-month basis.

B. APPROVAL INTO PROGRAM

1. A person or entity seeking benefits under this Act must apply to the Arkansas Department of Finance and Administration, Revenue Division. ("DFA") Application must be made on the prescribed *Application For Geotourism Incentives* form approved by DFA and included below.
2. DFA will forward the application to the Arkansas Department of Parks and Tourism who shall determine whether the investment made by the person or entity qualifies for the income tax credit based upon the following requirements:
 - a. The investment must be in a minimum amount of twenty-five thousand dollars (\$25,000).
 - b. The funds must be invested in a "geotourism-supporting business" located in the Lower Mississippi River Delta that meets the following criteria:
 - i. 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);
 - ii. In an unincorporated area or a city with a population of less than sixteen-thousand (16,000) as determined by the U.S. Census Report of 2000;
 - iii. Within thirty (30) miles of a National Scenic Byway; and

iv. Within fifteen (15) miles of:

- A. Public access to a navigable river; or
- B. An Arkansas State Park; or
- C. An Arkansas State Game and Fish Commission Wildlife Management Area; or
- D. A National Wildlife Refuge.

3. When Parks 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 DFA that the business qualifies and that investments in the qualified business are eligible for the credit. Parks and Tourism shall forward to DFA copies of the application, certification and other pertinent documentation regarding the person or entity's qualification into the program.

4. If the entity requesting the credit is a "pass through entity" such as a Subchapter S corporation or an LLC, the entity must provide Parks and Tourism and DFA the names and addresses of all members and their respective percentage ownership in the entity.

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

C. TRANSFER, SALE, OR ASSIGNMENT OF TAX CREDIT

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

B. A person or entity seeking benefits under this Act for a credit that was transferred, sold, or assigned in whole or in part must apply to the Arkansas Department of Finance and Administration, Revenue Division with the same *Notice of Credit Transfer* required in Section C.1.A

2. DFA will forward the application to the Arkansas Department of Parks and Tourism who shall determine whether the investment made by the person or entity qualifies for the income tax credit based upon the following requirements:

A. If the transferee, purchaser, or assignee is located in the Lower Mississippi River Delta as described in Section B.2.b of these rules, whether the transferee, purchaser, or assignee has previously made an investment to construct, expand, or remodel:

i. a geotourism supporting business located in the Lower Mississippi River Delta as described in Section A.4 of these rules at any time prior to submitting the Notice of Credit Transfer to DFA; and

ii. the investment was of at least twenty-five thousand dollars (\$25,000.00),

B. If the transferee, purchaser, or assignee is not located in the Lower Mississippi River Delta as described in Section B.2.b of these rules, whether the transferee, purchaser, or assignee has previously made an investment to construct, expand, or remodel:

- i. a geotourism-supporting business, a tourism attraction, or tourism-supporting business project as described in Section A of these rules at any time prior to submitting the Notice of Credit Transfer to DFA; and
- ii. the investment was of at least one hundred thousand dollars (\$100,000.00)

3. When Parks 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 DFA that the business qualifies and that investments in the qualified business are eligible for the credit. Parks and Tourism shall forward to DFA copies of the application, certification and other pertinent documentation regarding the person or entity's qualification into the program.

4. If the entity requesting the credit is a "pass through entity" such as a Subchapter S corporation or an LLC, the entity must provide Parks and Tourism and DFA the names and addresses of all members and their respective percentage ownership in the entity.

5. DFA will forward a copy of the completed and approved *Notice of Credit Transfer* to the Arkansas Insurance Department if the new holder is an insurance company paying an annual premium tax on its gross premium receipts under §§ 26-57-603 through -605.

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

D. TAX CREDITS

1. To qualify for a tax credit under this act, 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.

2. A person or entity is eligible to receive an income tax or annual premium tax credit under this 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. 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 paragraph D.10 of this rule.

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

4. A. In order to claim a credit, at the end of each tax year, the approved geotourism supporting business shall submit to DFA on prescribed forms the amount invested by the approved geotourism-supporting business. The amount invested must be substantiated by adequate documentary proof. Examples of adequate proof include, but are not limited to invoices, contracts, receipts, cancelled checks, bank statements, loan documents and other documents generated in the ordinary course of business. DFA shall verify that the investment is a “qualified” investment pursuant to the Act and upon verification, shall issue the taxpayer an Income Tax Credit Memorandum based on the investment. In addition to reviewing the documentary proof submitted by taxpayer, DFA may exercise its duly authorized audit procedures, in order to verify whether an investment is a qualified investment.

B. Upon approval of a sale, assignment, or transfer of a geotourism credit as described in Section C of these Rules, DFA shall issue a new Income Tax or Premium Tax Memorandum detailing the new holder and remaining amount of the credit available.

5. Separate Tax Credit Memorandums will be issued for each tax year in which the holder has made a qualified investment.

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

B. DFA shall provide the Arkansas Insurance Department with a copy of any Premium Tax Credit Memorandum issued pursuant to D.4 of these rules.

7. If the business is a subchapter S corporation, the pass-through provisions of Ark. Code Ann. §26-51-409, as in effect for the taxable year the credit is earned, shall be applicable.

8. 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 have substantial economic effect or does not provide for the allocation of credits. 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 Federal Internal Revenue Code section IRC 704(b), as in effect on January 1, 1995.

9. A. The tax credit provided under this 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. So long as a geotourism-supporting business is qualified and approved into the program by Parks 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. The investment itself does not have to be made prior to December 31, 2016.

B. Tax credits approved prior to January 1, 2009 which have not been used or expired may be assigned, transferred, or sold in whole or in part pursuant to the provisions of Section C of these Rules.

10. If the geotourism-supporting business is currently operating as a business, an unused income tax credit under this 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.

Executed this _____ day of _____, 2011.

Richard A. Weiss
Director
Arkansas Department of
Finance and Administration

Tim Leathers, Deputy Director/
Commissioner of Revenue
Arkansas Department of
Finance and Administration