

Railroad Modernization Act of 2021 Rule

I. Overview

Acts 2021, No. 967 created the Railroad Modernization Act of 2021. Acts 2021, No. 967 authorizes eligible taxpayers to claim an income tax credit in the amount of fifty percent (50%) of railroad track maintenance expenditures up to the limits set forth in Acts 2021, No. 967.

In accordance with Arkansas Code Section 26-51-2804(b), the Department of Commerce is adopting this rule to:

- i. Permit verification of an eligible taxpayer's railroad track maintenance expenditures for purposes of claiming the income tax credit allowed under Acts 2021, No. 967;
- ii. Provide for the approval of railroad track maintenance expenditures before a project commences; and
- iii. Provide for a certificate of verification upon the completion of a project that uses railroad track maintenance expenditures.

II. Definitions

- a. "Eligible taxpayer" means a railroad that is classified as a Class II or Class III railroad by the United States Surface Transportation Board.
- b. "Railroad track maintenance expenditures" means gross expenditures for maintenance, reconstruction, or replacement of railroad track, including without limitation roadbed, bridges, industrial leads and side track, and related track structures, to the extent the expenditures are on a railroad track that:
 - i. Is located in Arkansas;
 - ii. Is owned or leased by an eligible taxpayer; and
 - iii. Existed as of July 28, 2021

III. Pre-Approval of Railroad Track Maintenance Expenditures

- a. An eligible taxpayer seeking pre-approval of railroad track maintenance expenditures prior to incurring the expense may submit a preapproval application to the Department of Commerce on a form provided by the Department for that purpose. The application shall include:
 - i. An estimated amount of qualified railroad track maintenance

- expenditures for the year;
 - ii. A description of the qualified railroad track maintenance expenditures expected for the year;
 - iii. The miles of railroad track owned or leased in Arkansas; and
 - iv. Any other information that the Department may request.
- b. Following receipt and review of the application, the Department of Commerce will notify the eligible taxpayer in writing as to whether the proposed railroad track maintenance expenditures set forth on the application constitute railroad track maintenance expenditures under Acts 2021, No. 967.
- c. An eligible taxpayer is not required to apply for pre-approval of railroad track maintenance expenditures under this Section III in order to claim a tax credit for the expenditures under Acts 2021, No. 967.

IV. Certificate of Verification of Railroad Track Maintenance Expenditures

- a. The eligible taxpayer shall submit to the Department of Commerce a verification of railroad track maintenance expenditures on a form provided for that purpose by the Department. The verification shall include a statement certifying:
 - i. The status of the railroad as an eligible taxpayer;
 - ii. The project work has been completed;
 - iii. A description and amount of the qualified railroad track maintenance expenditures incurred
 - iv. The miles of railroad track owned or leased in Arkansas; and
 - v. Any other information that the Department may request.
- b. The verification shall be submitted to the Department no later than ninety (90) days following the end of the tax year in which the railroad track maintenance expenditures were incurred.
- c. Following receipt and review of the verification, the Department shall issue a certificate setting forth the amount of railroad track maintenance expenditures verified by the Department as being eligible to be claimed for a tax credit under Arkansas Code Section 26-51-2803 of Acts 2021, No. 967.
- d. The certificate of verification of railroad track maintenance expenditures issued by the Department under this rule shall satisfy all requirements of the Department of Finance and Administration with respect to determining:

- i. The eligibility of the taxpayer to claim the tax credit under Acts 2021, No. 967; and
 - ii. The amount of railroad track maintenance expenditures which may be claimed as a tax credit.
- e. The certificate of verification shall be submitted by the eligible taxpayer to the Department of Finance and Administration for issuance of the tax credit in accordance with its rules.

V. Rulemaking Authority

The Department of Commerce has authority under Arkansas Code Section 26-51-2804(b) of Acts 2021, No. 967 to promulgate this rule.