

APA-1

### Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-137-.02

Rule Title: Historic Rehabilitation Tax Credit of 2017 - Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit.

New;  Amended;  Repealed;  Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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Does the proposed rule have any economic impact? Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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#### Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.



Signature of certifying officer  
Date 02/20/2018

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10/96

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-137.02

Rule Title: Historic Rehabilitation Tax Credit of 2017 - Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit

New  Amend  Repeal  Adopt by Reference

- NO  
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**  
This rule sets forth guidelines, definitions, and procedures for the administration of the Historic Rehabilitation Tax Credit of 2017 enacted under Act 2017-380
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**  
To implement the provisions of Act 2017-380
3. **EFFECT OF THIS RULE ON COMPETITION:**  
N/A
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
N/A
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**  
N/A
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**  
General Fund, Education Trust Fund, Historic Preservation Income Tax Credit Account within the Education Trust Fund, Department of Revenue, Budget
7. **THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:**

To implement the provisions of Act 2017-380

8. **UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:**  
To implement the provisions of Act 2017-380
9. **THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:**  
N/A
10. **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:**  
N/A
11. **OTHER COMMENTS:**  
N/A

**ALABAMA DEPARTMENT OF REVENUE  
Economic Development**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-137-.02

Historic Rehabilitation Tax Credit of 2017 - Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit.

**INTENDED ACTION**

New

**SUBSTANCE OF  
PROPOSED ACTION:**

The department proposes to issue the above rule to provide guidance regarding the statutory requirements of the Historic Rehabilitation Tax Credit of 2017 to be used by the department in the administration of the Historic Rehabilitation Tax Credit of 2017.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **02:15 PM on Tuesday, April 10, 2018, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Tuesday, April 10, 2018

**CONTACT PERSON AT AGENCY:**

Meagan Barrett

Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue

**810-3-137-.02      Historic Rehabilitation Tax Credit of 2017 - Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit. (New Rule)**

(1) This rule sets forth guidelines and procedures to be used by the department in the administration of the Historic Rehabilitation Tax Credit of 2017, as codified in Article 2 of Chapter 9F of Title 40, Code of Ala. 1975, which provides for a tax credit under Chapter 18 of Title 40 to Alabama taxpayers for the rehabilitation of certain historic and certain non-historic buildings in Alabama.

(2) The owner of a project that has been issued a Tax Credit Certificate shall forward a copy of the Tax Credit Certificate to the department within 30 days from the date of issuance.

(3) Credits may only be claimed by taxpayers holding a Tax Credit Certificate or a Transfer Tax Credit Certificate. Tax credits granted or transferred to a pass-through entity shall be claimed at the entity level. Tax credits granted or transferred to a single member limited liability company or a Q-sub that is disregarded for Federal Income Tax purposes shall be claimed by the owner of the disregarded entity. Any non-profit entity allowed a tax credit shall file an Alabama Income Tax Return for the tax year the project is placed in service to claim the credit.

(4) A taxpayer must apply the entire tax credit against the Income Tax imposed by Chapter 18 for the taxable year in which the certified rehabilitation is placed in service. Where the taxes owed by the taxpayer are less than the tax credit, the taxpayer shall be entitled to claim a refund for the difference. The tax credit cannot be carried forward to any subsequent tax year.

(5) On or after the date the Tax Credit Certificate is issued to the project, the owner of the project may transfer all or part of their credit. Once a credit is transferred, only the Transferee may utilize such credit and the credit cannot be transferred again.

(6) Any tax credit transferred shall be at the value of at least eighty-five percent (85%) of the present value of the tax credits. The present value shall be determined by discounting the face value of the tax credit to account for the time value of money considering the time between the date the tax credit is transferred and the due date of the Transferee's Alabama Income Tax Return for the tax year the credit must be claimed using a discount rate equal to the federal short-term rate plus three (3) percentage points in effect as of the first of the month the tax credit is transferred.

**Example:**

Project Z is placed in service June 15, 2019. The project owner transfers the credit to Transferee with a face value of \$1,000 on September 30, 2019, when the discount rate of interest equals four percent (4%). The Transferee is a calendar year end filer with an Alabama Income Tax Return due date of March 15, 2020. For purposes of applying the statutory 85% of present value limitation, the present value of the tax

credit is calculated by multiplying the tax credit's face value by 1 divided by  $(1 + 6/12 \times 4\%)$  or  $\$1,000 \times [1/1 + (6/12 \times 4\%)]$  or  $\$1,000 \times 1/1.02$  or  $\$1,000 \times 98\%$  which equals a present value of \$980. The \$980 present value is then multiplied by 85% to establish a minimum sale price for the tax credit of \$833.33.

(7) Prior to the effectiveness of a transfer, the Transferor shall file a Transfer Statement with the department along with a copy of the draft or final Transfer Agreement(s), a copy of the Tax Credit Certificate and a \$1,000 fee for each Transferee listed on the Transfer Statement. Unless previously filed, the Transferor shall also file a copy of the executed Transfer Agreement with the department no later than 30 days after the agreement has been executed. The department shall issue a Transfer Tax Credit Certificate to each Transferee for the amount listed on the Transfer Statement within 30 days after receipt of the executed Transfer Agreement. If the amount of the Transferee's tax credit listed in the agreement is different from the Transfer Statement originally filed with the department, the Transferor shall submit an amended Transfer Statement with the executed agreement.

(8) The aggregate amount of the tax credit taken or utilized by the owner or Transferees cannot exceed the amount of credit awarded on the related Tax Credit Certificate or Transfer Tax Credit Certificate, as applicable.

Author: Kelly Graham.  
Authority: § 40-2A-7(a)(5) and Title 40, Chapter 9F, Article 2, Code of Ala. 1975.  
History: New rule: