

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-43-01

Rule Title: Railroad Modernization Act of 2019 - Availability, Claiming, And Transferability Of The Rail 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New; Amended; Repealed; Adopt by Reference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

Does the proposed rule relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have any economic impact? No

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.

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 11/18/2020



**ALABAMA DEPARTMENT OF REVENUE
Economic Development**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-43-.01

Railroad Modernization Act of 2019 - Availability, Claiming, And Transferability Of The Rail Credit

INTENDED ACTION

New

**SUBSTANCE OF
PROPOSED ACTION:**

Pursuant to the passage of the Railroad Modernization Act of 2019, Act 2019-459, this rule is being promulgated to provide guidelines for claiming, applying, and transferring the rail credit.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be conducted at **01:30 PM on Tuesday, January 05, 2021** via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. 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 may present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, January 05, 2021

CONTACT PERSON AT AGENCY:

Meagan Barrett

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



Kelley Askew Gillikin, Secretary
Alabama Department of Revenue

ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE CODE

CHAPTER 810-3-43 RAILROAD MODERNIZATION ACT OF 2019

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810-3-43-.01 Availability, Claiming, And Transferability Of The Rail Credit.

810-3-43-.01 Railroad Modernization Act Of 2019 – Availability, Claiming, And Transferability Of The Rail Credit. (New Rule)

(1) **Purpose.** This rule sets forth guidelines and procedures for claiming, applying, and transferring the rail credit provided under the Railroad Modernization Act of 2019, as codified in Chapter 11C of Title 37 of the Code of Ala. 1975.

(2) **Definitions.** For purposes of this rule, these terms shall be defined as follows:

(a) **DEPARTMENT** - The Alabama Department of Revenue.

(b) **COMMERCE** - The Alabama Department of Commerce.

(c) **ELIGIBLE TAXPAYER** – Any class II or III railroad that is awarded a rail credit certificate by Commerce.

(d) **ELIGIBLE TRANSFEREE** – A taxpayer to which any or all portion of a rail credit is transferred.

(e) **TAX CREDIT CERTIFICATE** - A form or letter issued by Commerce to the eligible taxpayer, that includes information about the qualified railroad rehabilitation project and the total amount of credit issued to the eligible taxpayer.

(f) **TRANSFER TAX CREDIT CERTIFICATE** - A certificate issued by the Department to an eligible transferee, which includes information about the qualified railroad project for which a tax credit certificate has been issued, and the amount of credit transferred to the transferee.

(g) **TRANSFEROR** - Any eligible taxpayer who transfers any or all of their portion of the credit to the transferee.

(h) **TRANSFER STATEMENT** - A statement filed with the Department by the transferor that identifies the transferor and each eligible transferee, the amount of tax credit transferred to each eligible transferee, and the effective date of the credit.

(i) **TRANSFER AGREEMENT** - A contract, either in writing or in an electronic format, between the transferor and the eligible transferee that includes the following:

1. Description and the address of the rail carrier that has been issued a tax credit certificate.
2. The date the project was completed and placed in service.
3. The amount of credit being transferred to each transferee.
4. The purchase amount of the credit.
5. A statement by the eligible taxpayer agreeing to sell, transfer, convey, assign, and deliver the credit to the buyer along with an acknowledgement from the buyer agreeing to purchase, acquire, and accept the credit from the owner.

(3) **Qualified Claimants**. The credit may only be claimed by an eligible taxpayer holding a tax credit certificate or an eligible transferee that has been issued a transfer tax credit certificate. Tax credits granted or transferred to a pass-through entity must 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, must be claimed by the owner of the disregarded entity.

(4) **Application of the Credit**. The eligible taxpayer and eligible transferee may apply the entire tax credit against the income tax liability imposed by Chapter 18 of Title 40 of the Code of Ala.1975, for the taxable year in which the qualified railroad rehabilitation project is completed and placed in service. If the placed in-service date is later than the completion date, then the placed in-service date must be used in determining the taxable year in which the tax credit can be utilized. If the tax owed by the eligible taxpayer is less than the tax credit, the eligible taxpayer is entitled to claim a refund for the difference. The tax credit cannot be carried forward to any subsequent tax year.

(5) **Transferability**. The eligible taxpayer may transfer any or all the credit on or after the issuance date listed on the tax credit certificate. Once the credit is transferred, only the eligible transferee may utilize the transferred credit and the credit cannot be transferred again. The transferred credit cannot be refunded or carried forward by the eligible transferee.

(6) Value of the Transferred Credit. Any tax credit transferred shall be at the value of at least (85%) eighty-five percent 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 eligible 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 (3%) three percentage points in effect as of the first of the month the tax credit is transferred.

Example:

A qualified railroad rehabilitation project is placed in service June 15, 2020. The eligible taxpayer transfers the credit to the eligible transferee with a face value of \$1,000 on October 30, 2020, when the discount rate of interest equals four percent (4%). The eligible transferee is a calendar year end filer with an Alabama income tax return due date of April 15, 2021. 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 of 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) Reporting Requirements. The transferor must file a transfer statement with the Department along with a copy of the executed transfer agreement(s), a copy of the tax credit certificate, and a \$1,000 fee for each eligible transferee listed on the transfer statement no later than 30 days after the transfer agreement has been executed. The Department will issue a transfer tax credit certificate to each eligible transferee for the amount listed on the transfer statement within 30 days after receipt of the executed transfer agreement, along with the supporting documents.

(8) The Department may examine records, books, or other relevant information maintained by the taxpayer for the purpose of computing and determining the correct amount of the credit.

Author: Kelly Graham and Preeti Gratz
Authority: §40-2A-7(a)(5), Chapter 11C of Title 37, and Chapter 18 of Title 40, Code of Ala 1975.
History: New Rule: Filed November 18, 2020; effective