

Transmittal Sheet For Notice Of Intended Action

Control: 810 Department or Agency: Revenue
Rule Nos: 810-3-61-.02
Rule Title: Credits for Contributions to Scholarship Granting Organizations (SGOs).

New; Amended; Repealed; Adopt by Reference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 purposed 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 10/19/2021



REC'D & FILED
OCT 20 2021
LEGISLATIVE SVC AGENCY

**ALABAMA DEPARTMENT OF REVENUE
Individual and Corporate Tax**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-61-.02

Credits for Contributions to Scholarship Granting Organizations (SGOs).

INTENDED ACTION

Amended

**SUBSTANCE OF
PROPOSED ACTION:**

In compliance with the Red Tape Reduction Act 2013-88, this rule was reviewed and is being updated to clarify that a current year credit arising from an Scholarship Granting Organization donation must be applied before any carryforwards.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be conducted at **01:30 PM on Tuesday, December 07, 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, December 07, 2021

CONTACT PERSON AT AGENCY:

Meagan Barrett

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



Mary Martin Mitchell, Secretary
Alabama Department of Revenue

810-3-61-.02 Credits for Contributions to Scholarship Granting Organizations (SGOs)

(1) Scope: ~~Act 2013-64, as amended by Acts 2013-265 and 2015-434,~~ **The Alabama Accountability Act of 2013** provides for income tax credits to individuals and corporations making scholarship donations to SGOs. This rule prescribes procedures for making scholarship donations and claiming income tax credits.

(2) Credits will be limited to scholarship donations which are bona fide gifts.

(a) The donor may not receive anything of value from the SGO in return for the gift nor place any restrictions on the use of the donated funds. A donation that is restricted or conditioned in any way by a donor is not eligible for an income tax credit under the ~~Act 2013-64, as amended~~ **Alabama Accountability Act of 2013**.

(b) No relative of the donor may receive a scholarship from the SGO to which the donation was made.

(c) A child, grandchild, ~~or sibling, will be is considered a relative, as will a~~ child or grandchild of a sibling, parent or ~~grand-parent~~ **grandparent is considered a relative.**

(3) Allowable scholarship donations must be in cash. ~~They~~ **Donations** cannot be services, forgiveness of debt, barter or non-cash assets.

(4) A donor must enter the donation into the Department's system for tracking scholarship donations and credits. The credits will be reserved on a first-come, first-served basis, subject to verification by the SGOs. A donor failing to enter the donation into the Department's system to reserve the amount of the credit may lose the right to claim the tax credit if the \$30 million of maximum available credits has been reached.

(5) A donor may not claim an income tax deduction on the Alabama tax return for the same contribution for which a credit is allowed on the current year's tax return nor for which ~~a~~ **the** credit is carried forward to a future tax year.

(6) The allowable credit for a corporation is limited to 100% of the amount of its donation. The maximum allowable credit for an individual taxpayer is \$50,000.00 or 100% of his/her donation, whichever is less. The maximum allowable credit for an individual taxpayer who is claiming the credit as the result of a donation to an SGO by an Alabama S corporation or a Subchapter K entity is limited to 100% of the individual's pro rata or distributive share of the donation by the Alabama S corporation or Subchapter K entity, or \$50,000 whichever is less.

(7) The actual credit used to offset a taxpayer's tax liability for a given tax year is limited to 50% of the tax liability of the taxpayer or the amount of the allowable credit, whichever is less.

(8) The allowable credit may be claimed only once. If the allowable credit

exceeds 50% of the tax liability in the tax year the donation is made, the unused portion may be carried over for up to three years. Any unused allowable credit carried over from a prior year may be claimed after added to the allowable credit for the current year, ~~and may be claimed for the current year~~, subject to the overall limitation of 50% of the tax liability of the donor, and in the case of individual taxpayers, \$50,000.00.

(9) Other than the credits claimed by individual taxpayers who are shareholders of Alabama S corporations or partners or members of Subchapter K entities, credits may only be claimed by the donating individual or corporate entity and may not be assigned or transferred to any other taxpayer.

Author: Curtis Stewart and Neal Hearn.

Authority: Sections 40-2A-7(a)(5) ~~and~~, 16-6D-1 and 16-6D-9, Code of Ala. 1975.

History: New rule: Filed August 23, 2013, effective September 27, 2013.
Amended: Filed November 30, 2015, effective January 4, 2016.
Amended: Filed October 20, 2020; effective