

APA-1

### Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-3-136-.03

Rule Title: Improperly Obtained Tax Credits and Recapture of Tax Credits.

New;  Amended;  Repealed;  Adopt by Reference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? 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.

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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 Reference Service.



Signature of certifying officer

Date 09/20/2017

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:

11. OTHER COMMENTS:

APA-2

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

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-26-.03

Reporting Requirements of Payment Settlement Entities (PSE).

**INTENDED ACTION**

New

**SUBSTANCE OF  
PROPOSED ACTION:**

The department proposes to create the above mentioned rule to reflect the provisions established in Act 2017-294. Payment settlement entities who are required to file 1099-K information returns with the IRS must also file with the Department within 30 days of the IRS due date.

**RULE NO. & TITLE**

810-3-136-.01

Historic Rehabilitation Tax Credit

810-3-136-.02

Availability, Claiming and Transferability.

810-3-136-.03

Improperly Obtained Tax Credits and Recapture of Tax Credits.

**INTENDED ACTION**

Amend

**SUBSTANCE OF  
PROPOSED ACTION:**

The department proposes to amend the above mentioned rules to reflect the appropriate Historic Rehabilitation Tax Credit year of passage due to the enactment of 2017-380.

**RULE NO. & TITLE**

810-3-137-.01

Historic Rehabilitation Tax Credit of 2017 - General Guidelines.

810-3-137-.02

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

810-3-137-.03

Historic Rehabilitation Tax Credit of 2017- Improperly Obtained Historic Rehabilitation Tax Credits.

**INTENDED ACTION**

New

**SUBSTANCE OF  
PROPOSED ACTION:**

The department proposes to create the above mentioned rules to provide guidance regarding the statutory requirements of the Historic Rehabilitation Tax Credit of 2017 to be used by the Department of Revenue in the administration of the Historic Rehabilitation Tax Credit of 2017.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **01:45 PM** on **Tuesday, November 14, 2017, 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, November 14, 2017

**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

810-3-136-.03 Historic Rehabilitation Tax Credit of 2013 - Improperly Obtained ~~Historic Rehabilitation~~ Tax Credits And Recapture Of ~~Historic Rehabilitation~~ Tax Credits.

(1) This rule sets forth guidelines and procedures to be used by the Department of Revenue in the administration of the Historic Rehabilitation Tax Credit of 2013, as codified in Article 1 of Chapter 9F of Title 40, Code of Alabama 1975, which provides for a tax credit under Chapters 16 and 18 of Title 40 to Alabama taxpayers for the rehabilitation of certain historic and certain non-historic buildings in Alabama.

(~~1~~ 2) The Department shall have the right to audit and assess 100% of any credit improperly obtained by the Owner. Any liability resulting therefrom shall apply against the Owner initially awarded the Tax Credit Certificate and not any subsequent Transferee of the tax credit or person to whom tax credits have been passed through pursuant to Section 40-9F-4(d).

(~~2~~ 3) Recapture of the credit shall apply against the taxpayer who utilizes the credit. The Owner shall report any recapture event to the Department, the Commission and the taxpayer. In the case of a Project which meets the requirements of, and a taxpayer in fact claims, the rehabilitation credit associated with the Project under Title 26, Section 47 of the Internal Revenue Code (the "Federal Historic Credit"), recapture and any related adjustments of basis due to recapture shall occur when and if recapture occurs with respect to the Federal Historic Credit and the amount of the recapture of the credit, and any required basis adjustments shall be proportionate to the recapture of the Federal Historic Credit. In all other cases, recapture occurs when the Project fails to meet the definitions of a Certified Historic Structure or a Certified Historic Residential Structure pursuant to Section 40-9F-2, and recapture and any related adjustments of basis due to recapture shall be governed by principles which correspond to those applicable to the Federal Historic Credit under Title 26 Section 50 of the Internal Revenue Code.

Authors: Kelly Graham, Neal Hearn, and Cameran Clark

Authority: ~~Code of Ala. 1975, §§ Section~~ 40-2A-7(a)(5); and Title 40, Chapter 9F, Article 1, Code of Alabama 1975.

History: New Rule: Filed March 25, 2015; effective April 29, 2015.