

# ACT #2022 - 341

1 HB297  
2 219393-3  
3 By Representative Scott  
4 RFD: Ways and Means Education  
5 First Read: 08-FEB-22



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ENROLLED, An Act,

Relating to the Railroad Modernization Act of 2019; to amend Sections 37-11C-2, 37-11C-3, 37-11C-5 and 37-11C-6, Code of Alabama 1975, and Section 37-11C-4, as last amended by Act 2021-177, 2021 Regular Session, Code of Alabama 1795, to change the administering agency for the tax credit program from the Department of Commerce to the Department of Revenue; to increase the annual cap on income tax credits; and to extend the sunset date for five years through tax year 2027.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 37-11C-2, 37-11C-3, 37-11C-5 and 37-11C-6, Code of Alabama 1975, and Section 37-11C-4 as last amended by Act 2021-177, 2021 Regular Session, Code of Alabama 1795, are amended to read as follows:

"§37-11C-2.

"As used in this chapter, the following words shall have the following meanings:

"(1) CLASS II RAILROAD. A carrier classified as a Class II railroad pursuant to 49 CFR § 1201, or other rule adopted by the United States Surface Transportation Board.

"(2) CLASS III RAILROAD. A carrier classified as a Class III railroad pursuant to 49 CFR § 1201, or other rule adopted by the United States Surface Transportation Board.

1                   "(3) DEPARTMENT. The Alabama Department of ~~Commerce~~  
2                   Revenue.

3                   "(4) ELIGIBLE TAXPAYER. A railroad that owns or  
4                   leases railroad infrastructure in Alabama and is classified by  
5                   the United States Surface Transportation Board as a Class II  
6                   or Class III railroad.

7                   "(5) ELIGIBLE TRANSFEREE. A taxpayer who is  
8                   transferred a tax credit allowed by this chapter by an  
9                   eligible taxpayer.

10                  "(6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.  
11                  Expenditures within the taxable year for maintenance,  
12                  deductible maintenance of way expenses, reconstruction, or  
13                  replacement of railroad infrastructure within the state that  
14                  is owned or leased by an eligible taxpayer. The term includes  
15                  new construction of industrial leads, switches, spurs,  
16                  sidings, and extensions of existing sidings by an eligible  
17                  taxpayer. The term does not include expenditures for which an  
18                  income tax deduction has been claimed.

19                  "(7) RAILROAD INFRASTRUCTURE. Includes, but is not  
20                  limited to, the track, roadbed, bridges, signaling systems and  
21                  train control, industrial leads, and track-related structures  
22                  owned or leased by an eligible taxpayer.

23                  "(8) REHABILITATION PLAN. Detailed construction  
24                  plans and specifications for the proposed rehabilitation of  
25                  railroad infrastructure under this chapter.

1           "§37-11C-3.

2           "(a) By December 1, 2019, the Department of Commerce  
3 shall develop standards for the approval of qualified railroad  
4 rehabilitation expenditures for which a tax credit is being  
5 sought. The standards shall consider the availability of  
6 additional public or private funding for the project, the  
7 expected completion time of the project, and the anticipated  
8 impact of the project on usage of the railroad infrastructure.

9           "(b) By December 1, 2022, the department shall  
10 develop standards for the approval of qualified railroad  
11 rehabilitation expenditures for which a tax credit is being  
12 sought. The standards shall consider the availability of  
13 additional public or private funding for the project, the  
14 expected completion time of the project, and the anticipated  
15 impact of the project on usage of the railroad infrastructure.

16           "~~(b)~~ (c) Prior to beginning any qualified railroad  
17 rehabilitation work, the eligible taxpayer shall submit an  
18 application and rehabilitation plan to the department and an  
19 estimate of the qualified railroad rehabilitation expenditures  
20 under the rehabilitation plan; provided, however, the eligible  
21 taxpayer, at its own risk, may incur qualified railroad  
22 rehabilitation expenditures no earlier than six months prior  
23 to the submission of the application and rehabilitation plan.

24           "~~(c)~~ (d) The department shall review the application  
25 and rehabilitation plan to determine if the information

1 contained therein is complete. If the department determines  
2 that the application and rehabilitation plan are complete, the  
3 department shall reserve, for the benefit of the eligible  
4 taxpayer, an allocation for a tax credit as provided in this  
5 chapter and shall notify the eligible taxpayer in writing of  
6 the amount of the reservation. The reservation of tax credits  
7 does not entitle the taxpayer to an issuance of tax credits  
8 until the owner complies with all other requirements of this  
9 chapter for the issuance of the tax credits. Reservations of  
10 tax credits shall be issued by the department within a  
11 reasonable time from the filing of a completed application and  
12 rehabilitation plan. Any application disapproved by the  
13 department shall be removed from the review process, and the  
14 department shall notify the taxpayer in writing of the  
15 decision to remove the application. A disapproved application  
16 may be resubmitted, but shall be deemed to be a new submission  
17 and may be charged a new application fee. In the event the  
18 reservations of tax credits equal the total amount available  
19 for reservations during the tax year, all eligible taxpayers  
20 with applications then awaiting approval or thereafter  
21 submitted shall be notified by the department that no  
22 additional tax credits shall be granted during that tax year.  
23 The applications shall remain in active status from the date  
24 of the original application and shall be considered for  
25 recommendations of tax credits in the event that additional

1 credits become available due to rescission by the department  
2 or when a new tax year's allocation of tax credits becomes  
3 available.

4 "~~(d)~~ (e) Following the completion of a qualified  
5 railroad rehabilitation project, the eligible taxpayer shall  
6 notify the department that the rehabilitation has been  
7 completed and shall certify the qualified railroad  
8 rehabilitation expenditures incurred with respect to the  
9 rehabilitation plan. Within 90 days after receipt and approval  
10 of the foregoing documentation from the eligible taxpayer, the  
11 department shall issue a tax credit certificate in an amount  
12 equivalent to the amount of the qualified railroad  
13 rehabilitation expenditures incurred with respect to the  
14 rehabilitation plan as certified by the taxpayer, not to  
15 exceed the amount of the tax credit reservation issued for the  
16 project.

17 "~~(e)~~ (f) ~~In order to obtain a credit against any~~  
18 ~~state income tax due that is specified in this chapter, an~~  
19 ~~eligible taxpayer shall file the tax credit certificate with~~  
20 An eligible taxpayer that has been awarded the tax credit  
21 certificate may claim the credit against any state income tax  
22 due that is specified in this chapter against the taxpayer's  
23 Alabama state tax return. ~~The tax credit certificate shall~~  
24 ~~satisfy all requirements of the Department of Revenue~~  
25 ~~pertaining to the eligibility of the person claiming the~~

1 ~~credit.~~ All information submitted to the Department of Revenue  
2 by taxpayers claiming or seeking certification of a credit  
3 shall be subject to the confidentiality provisions of Section  
4 40-2A-10.

5 "~~(f)~~ (g) For processing the taxpayer's application  
6 for a tax credit, the department may impose an application fee  
7 equal to one percent of the qualified rehabilitation  
8 expenditures, not to exceed a fee equal to ten thousand  
9 dollars (\$10,000). Any fees collected by the department under  
10 this subsection shall be deposited in the State Treasury to  
11 the credit of the department and all such funds are to be  
12 appropriated to the department to defray the expenses incurred  
13 in carrying out this chapter.

14 "~~(g)~~ (h) The department shall report to the  
15 Legislature in the third year following passage of this  
16 chapter, and annually thereafter, on the overall economic  
17 activity, usage, and impact to the state from the  
18 rehabilitation of railroad infrastructure for which tax  
19 credits have been allowed. The information in the reports  
20 shall be consistent with the information required by the  
21 Legislature pursuant to, and shall be provided by the  
22 department to the Legislature in accordance with Section  
23 40-1-50, and rules adopted thereunder. Information provided  
24 pursuant to this section is exempt from the confidentiality  
25 provisions of Section 40-2A-10.

1           "§37-11C-4.

2           "(a) For tax years beginning after December 31,  
 3           2019, through December 31, 2022, there is a credit allowed  
 4           against the state income tax levied by Section 40-18-2 equal  
 5           to 50 percent of an eligible taxpayer's qualified railroad  
 6           rehabilitation expenditures. The tax credit allowed under this  
 7           section may not exceed three thousand five hundred dollars  
 8           (\$3,500) multiplied by the number of miles of railroad track  
 9           owned or leased within the state by the eligible taxpayer at  
 10          the close of the taxable year.

11          "(b) For tax years beginning after December 31,  
 12          2022, through December 31, 2027, there is a credit allowed  
 13          against the state income tax levied by Section 40-18-2 equal  
 14          to 50 percent of an eligible taxpayer's qualified railroad  
 15          rehabilitation expenditures. The tax credit allowed under this  
 16          section may not exceed four thousand one dollars (\$4,100)  
 17          multiplied by the number of miles of railroad track owned or  
 18          leased within the state by the eligible taxpayer at the close  
 19          of the taxable year.

20          "~~(b)~~ (c) There is created within the Education Trust  
 21          Fund a separate account named the Railroad Rehabilitation  
 22          Income Tax Credit Account. The Commissioner of Revenue shall  
 23          certify to the state Comptroller the amount of income tax  
 24          credits under this section and the state Comptroller shall  
 25          transfer into the Railroad Rehabilitation Income Tax Credit



1 Account only the amount from sales tax revenues within the  
2 Education Trust Fund that is sufficient for the Department of  
3 Revenue to use to cover the income tax credits for the  
4 applicable tax year. The Commissioner of Revenue shall  
5 distribute the funds in the Railroad Rehabilitation Income Tax  
6 Credit Account pursuant to this section.

7 ~~"(c)~~ (d) The entire tax credit may be claimed by the  
8 taxpayer in the taxable year in which the qualified railroad  
9 rehabilitation expenditures are completed and placed into  
10 service. Where the taxes owed by the eligible taxpayer are  
11 less than the tax credit, the eligible taxpayer may be  
12 entitled to claim a refund for the difference.

13 ~~"(d)~~ (e) For the calendar years 2020, 2021, and  
14 2022, the aggregate amount of all tax credits that may be  
15 reserved in any one of such years by the department upon  
16 certification of rehabilitation plans shall not exceed three  
17 million seven hundred thousand dollars (\$3,700,000) plus any  
18 amount of previous reservations of tax credits that were  
19 rescinded during the tax year. However, if all of the  
20 allowable tax credit amount for any tax year is not requested  
21 and reserved, any unreserved tax credits may be utilized by  
22 the department in awarding tax credits in subsequent years;  
23 provided, however, that in no event shall a total of more than  
24 eleven million one hundred thousand dollars (\$11,100,000) be  
25 reserved by the department during the period of August 1, 2019

1 through August 1, 2022. For purposes of this chapter, "tax  
 2 year" shall mean the calendar year.

3 "(f) For the calendar years 2023 through 2027, the  
 4 aggregate amount of all tax credits that may be reserved in  
 5 any one of such years by the department upon certification of  
 6 rehabilitation plans shall not exceed four million five  
 7 hundred thousand dollars (\$4,500,000) plus any amount of  
 8 previous reservations of tax credits that were rescinded  
 9 during the tax year. However, if all of the allowable tax  
 10 credit amount for any tax year is not requested and reserved,  
 11 any unreserved tax credits may be utilized by the department  
 12 in awarding tax credits in subsequent years; provided,  
 13 however, that in no event shall a total of more than  
 14 twenty-two million five hundred thousand dollars (\$22,500,000)  
 15 be reserved by the department during the period of August 1,  
 16 2022, through August 1, 2027. For the purposes of this chapter  
 17 "tax year" shall mean the calendar year.

18 ~~"(e)~~ (g) Tax credits granted to a partnership, a  
 19 limited liability company, S Corporations, trusts, or estates  
 20 shall be claimed at the entity level and shall not pass  
 21 through to the partners, members, or owners.

22 ~~"(f)~~ (h) All or any portion of the income tax credit  
 23 authorized under this section may be transferable and  
 24 assignable by written transfer agreement and subject to any  
 25 notice and verification requirements to be determined by the

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1 Department of Revenue. Any tax credits transferred shall be at  
2 a value of at least eighty-five percent (85%) of the present  
3 value of the credits. However, once a credit is transferred,  
4 only the transferee may utilize the credit and the credit may  
5 not be transferred again. An eligible transferee of the credit  
6 may use the amount of credits transferred to offset any income  
7 tax due under Chapter 18 of Title 40. The ~~Department of~~  
8 ~~Revenue~~ department, by rule, shall adopt a written transfer  
9 agreement form. The transfer statement form shall include the  
10 name and federal taxpayer identification number of the  
11 transferor and each transferee listed therein along with the  
12 amount of the tax credit to be transferred to each transferee  
13 listed on the form. The transfer statement form shall also  
14 contain such other information as the ~~Department of Revenue~~  
15 department may from time to time reasonably require. For each  
16 transfer, the transferor shall file with the department: (1) a  
17 completed transfer statement form; ~~(2) a copy of the tax~~  
18 ~~credit certificate issued by the Department of Commerce~~  
19 ~~documenting the amount of tax credits which the transferor~~  
20 ~~intends to transfer;~~ (2) a copy of the proposed executed  
21 written transfer agreement; and ~~(4)~~ (3) a transfer fee payable  
22 to the department in the amount of one thousand dollars  
23 (\$1,000) per transferee listed on the transfer statement form.  
24 ~~The transferor shall file with the Department of Revenue a~~  
25 ~~fully executed copy of the written transfer agreement with~~

1 ~~each transferee within 30 days after the completed transfer.~~  
 2 ~~Filing of the written transfer agreement with the Department~~  
 3 ~~of Revenue shall perfect such transfer with respect to such~~  
 4 ~~transferee.~~ Within 30 days after the ~~Department of Revenue's~~  
 5 department's receipt of the fully executed written transfer  
 6 agreement, the ~~Department of Revenue~~ department shall issue a  
 7 tax credit certificate to each transferee listed in the  
 8 agreement in the amount of the tax credit so transferred. Such  
 9 certificate shall be used by the transferee in claiming the  
 10 tax credit. The ~~Department of Revenue~~ department may adopt  
 11 such additional rules as are necessary to permit verification  
 12 of the ownership of the tax credits but shall not adopt any  
 13 rules which unduly restrict or hinder the transfer of the tax  
 14 credits.

15 "§37-11C-5.

16 "(a) By October 1, 2019, the Department of Commerce  
 17 shall adopt any and all rules necessary to implement this  
 18 chapter. Applications for the reservation of tax credits shall  
 19 be accepted beginning November 1, 2019.

20 "(b) By October 1, 2022, the Department of Revenue  
 21 shall adopt any and all rules necessary to implement this  
 22 chapter. Applications for the reservation of tax credits shall  
 23 be accepted beginning November 1, 2022.

24 "§37-11C-6.

1           The tax credit allowed under this chapter shall be  
2 effective for the 2020 tax year and shall continue through the  
3 ~~2022~~ 2027 tax year, unless extended by act of the Legislature.

4           Section 2. This act shall become effective on the  
5 first day of the third month following its passage and  
6 approval by the Governor, or its otherwise becoming law.

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*Mac McClatchey*

Speaker of the House of Representatives

*[Signature]*

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 01-MAR-22.

Jeff Woodard  
Clerk

Senate	31-MAR-22	Amended and Passed
House	05-APR-22	Concurred in Senate Amendment

APPROVED 4.13.2022

TIME 2:00 pm

Kay Ivey  
GOVERNOR

Alabama Secretary Of State

Act Num....: 2022-341  
Bill Num...: H-297

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