

810-17-1-.01 Economic Tax Incentives Reporting.

(1) Scope. This rule sets forth guidelines and procedures to be used by State Agencies that are required to file annual Economic Tax Incentive reports to the Legislature as required by Act 2016-389.

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

(a) Department. The Alabama Department of Revenue.

(b) Economic Tax Incentive or Tax Incentive. Any tax credits, deductions, exemptions, abatelements, preferential rates, rebates, or other benefits where the government promises to forgo tax revenues, and in exchange the taxpayer agrees to take some action that contributes to economic development.

(c) State Agency. Any office, department, board, commission, institution, or division within the executive branch of state government, excluding the Alabama Department of Revenue, which administers an Economic Tax Incentive by a legal requirement or authorization to undertake any of the following actions:

1. Promulgation of rules or regulations related to the Economic Tax Incentive;
2. Determines, reviews, or confirms eligibility or qualification of the Economic Tax Incentive;
3. Enters into contracts with an entity or individual related to a Tax Incentive;
4. Facilitates Economic Tax Incentives by distributing funds to non-state agencies; and
5. Conducts oversight or substantial administrative functions for an Economic Tax Incentive when the public purpose associated with the Economic Tax Incentive is within the core mission of the agency.

(3) Reporting Requirements. Each Economic Tax Incentive shall be reported separately. If more than one State Agency is required to file a report on the same Economic Tax Incentive, the report shall be prepared collaboratively, by such State Agencies. If such State Agency does not know or cannot determine the answer to any of the information requested, the State Agency should state that the answer is unknown and further state whether it is unknown because the underlying source data does not exist or because the State Agency lacks the expertise to provide the data. Each State Agency that administers a Tax Incentive shall prepare and submit an annual report to the Legislature regarding the Tax Incentive based on the following format and criteria:

(a) Section One shall encompass the purpose of the Economic Tax Incentive and shall report whether or not each Economic Tax Incentive has been successful in meeting the purpose for which it was enacted, in particular, whether each Economic Tax Incentive benefits those originally intended to be benefited, and if not, those who have benefited. This shall include, but is not limited to:

1. A description of the Tax Incentive. The description shall include the initial statement of purpose of the Tax Incentive as provided for in the enabling legislation, the name(s) of the agency administering the Tax Incentive, a description of the Tax Incentive and how it is calculated or awarded, the history of the Tax Incentive which shall include when and under what authority the Tax Incentive was created, including any amendments to the statute and any departmental rules associated with the Tax Incentive;

2. The goals of the Tax Incentive and whether or not the Tax Incentive has been successful in meeting these goals. For example, if a job creation incentive includes wage thresholds for a business to qualify, a goal for the tax incentive program would be to create high-paying jobs;

3. A description of the intended beneficiaries of the Tax Incentive, including any tax types to which the Tax Incentive applies to or is designated. This description shall include the activities the Tax Incentive is intended to promote and the effectiveness of the Tax Incentive in promoting those activities. Describe how and why such recipients benefit from such Tax Incentive.

(b) Section Two shall encompass the impact of the Economic Tax Incentive and shall report whether or not the state receives a positive return on investment, specifically the direct and indirect impact on state and local tax revenues, from the business or industry for which the Economic Tax Incentive is intended to benefit and any other economic benefits produced by such Tax Incentive. If applicable, this shall include, but is not limited to:

1. The number of taxpayers applying for, qualifying for and claiming the Tax Incentive, and the Tax Incentive amounts (in dollars) claimed by taxpayers in the reporting year;

2. The number of taxpayers applying for, qualifying for and claiming the Tax Incentive, and the Tax Incentive amounts (in dollars) claimed by taxpayers since the creation of the Tax Incentive, if available;

3. The amount of Tax Incentives that could be carried forward and the length of time the Tax Incentive can be carried forward;

4. The amount of Tax Incentives that have been transferred, if applicable, and the amount that the credit(s) were discounted when they were transferred;

5. The amount of fees and/or other transaction costs associated with the Tax Incentive, including but not limited to application fees and transferability fees;
6. The estimated cost of administering the Tax Incentive;
7. The number of direct jobs created by the Tax Incentive;
8. The timing between awarding the Tax Incentive and creation of jobs and/or investment, and the maintenance of any job creation requirement;
9. Describe any caps associated with the Tax Incentive (identify if fiscal year or calendar year) and whether or not the cap was met for each year the Tax Incentive was in existence. Include the number of taxpayers who were denied a Tax Incentive due to the cap being in place;
10. Describe any penalties, including clawback provisions, associated with noncompliance of the Tax Incentive;
11. Provide an estimate of the indirect economic activity stimulated by the Tax Incentive. This shall include an estimate of any tax benefits that have been sourced outside of Alabama; and
12. Any other information necessary for the State Agency to comply with the requirements of the Act.

(c) Section Three shall encompass the economic results of each Economic Tax Incentive, taking into account the extent to which the Tax Incentive successfully changes business behavior, and the unintended or inadvertent effects, benefits, or harm caused by the Economic Tax Incentive, including whether the Economic Tax Incentive conflicts with other state laws or regulations. This shall include, but is not limited to:

1. Any results the Tax Incentive has on Alabama's economy. Indicate whether or not the Tax Incentive is successfully influencing business decisions and describe how this is being determined;
2. Any evidence that the Tax Incentive is or has changed business behavior, as opposed to rewarding businesses for what they would have done anyway;
3. How the Tax Incentive is effecting businesses beyond those that benefit directly from the Tax Incentive;
4. Any potential changes to the design or administration of the Tax Incentive that could lead to better results. If possible, indicate if the Tax Incentive could be made more effective through legislative changes;

5. State whether or not the State Agency could accomplish the same purpose or goal of the existing Tax Incentive through a non-tax incentive or subsidy, such as a normal budgetary expenditure, and do it more effectively or efficiently. Explain your reasoning; and

6. The methodology and assumptions of the review, analysis, and evaluation of the Tax Incentive.

(4) The Department shall, when available and upon written request, provide State Agencies, the total amount of Tax Incentives claimed, number of taxpayers claiming the Tax Incentives, calendar year for which the Tax Incentives are claimed and any other information needed in preparing the report. State Agencies must submit the request by November 1 of each year, beginning in 2017. The Department shall notify the State Agency in a timely manner if such Tax Incentive information is not available. The tax information shall be provided to the State Agency in the aggregate to protect the confidentiality of the taxpayers provided for under Section 40-2A-10, Code of Alabama 1975.

(5) Economic Tax Incentive Reports shall be submitted no later than the second Legislative day of each Regular Session beginning in the 2018 Regular Session of the Legislature and each year thereafter. Such reports shall be provided to the Clerk of the House of Representatives and Secretary of the Senate with a copy to the Legislative Fiscal Office and the Alabama Department of Revenue.

(6) The Department shall prepare, beginning with the 2018 Regular Session of the Legislature, a four-year schedule of all the Economic Tax Incentives to be reported. Each State Agency must provide the Department with a list of Tax Incentives it administers, the name of the administering agency(ies), the statutory authority authorizing the Tax Incentive, the effective date and expiration date, if applicable of each Tax Incentive. The list shall be provided to the Department prior to January 1, 2018, and every fourth year thereafter.

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Authority: Section 40-2A-7(a)(5), Code of Alabama 1975, and Act 2016-389.

History: New Rule: Filed, February 24, 2017, effective April 10, 2017.