

## ADMINISTRATIVE CODE

## CHAPTER 810-3-137

**HISTORICAL REHABILITATION TAX CREDIT  
OF 2017**

**TABLE OF CONTENTS**

810-3-137-.01	<b>Historic Rehabilitation Tax Credit Of 2017 - General Guidelines</b>
810-3-137-.02	<b>Historic Rehabilitation Tax Credit Of 2017 - Availability, Claiming And Transferability</b>
810-3-137-.03	<b>Historic Rehabilitation Tax Credit Of 2017 - Improperly Obtained Tax Credits And Recapture Of Tax Credits</b>

(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 2017, as codified in Article 2 of Chapter 9F of Title 40 of the Code of Alabama 1975, which provides for a tax credit under Chapter 18 of Title 40 to Alabama taxpayers for the rehabilitation of certain certified historic buildings and residential historic structures in Alabama.

(2) Definitions. In addition to the following definitions, for purposes of this rule, all terms shall have the same meanings as provided by Alabama Historical Commission Rule 460-X-25-.02 or as defined in the Act.

- (a) Department. The Alabama Department of Revenue.
- (b) Commission. The Alabama Historical Commission.
- (c) Tax Credit Certificate. A written form or letter issued by the Commission to the Owner of the Project awarded a historic rehabilitation credit providing information about the Project and the total amount of credit issued to the Project.
- (d) Transfer Tax Credit Certificate. A certificate issued by the Department to a Transferee providing information about the Project for which a Historic Rehabilitation Tax Credit Certificate has been issued and the amount of credit transferred to the Transferee.
- (e) Transferor. Any Owner of a Project for which a Historic Rehabilitation Tax Credit Certificate was issued, which transfers all or part of their portion of the credit.
- (f) Transferee. Any taxpayer that is transferred all or a portion of a historic rehabilitation tax credit.
- (g) Transfer Statement. A statement to be filed with the Department by the Transferor prior to the effectiveness of the transfer that identifies the Transferor and each Transferee, the amount of tax credit to be transferred to each Transferee, and the date the Project was placed in service.
- (h) Transfer Agreement. A written contract between the Transferor and the Transferee that provides the following information, but may also contain such other information as the Department may from time to time require:

1. Description and address of the Project that has been issued a Historic Rehabilitation Tax Credit Certificate;
2. The project number assigned to the Project by the Commission;
3. The date the Project was placed in service;
4. The amount of credit being transferred to Transferee;
5. The purchase amount of the credit;
6. Statement that the transfer of the credit has been made and the transaction is closed;
7. The Transferee acknowledges that the recapture of a credit other than a credit that is improperly obtained by the Owner, shall apply against the Transferee who utilizes the tax credit pursuant to Rule 810-3-137-.03(2), and
8. The Transferor is required to notify the Transferee of any recapture or related adjustments of the credit within 30 days after the Transferor is notified that the credit has been recaptured or adjusted.

Author: Kelly Graham

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

History: New Rule: Filed January 5, 2018; effective February 19, 2018.

810-3-137-.02

**Historic Rehabilitation Tax Credit Of 2017 -  
Availability, Claiming And Transferability Of  
The Historic Rehabilitation Tax Credit.**

(1) This rule sets forth guidelines and procedures to be used by the department in the administration of the Historic Rehabilitation Tax Credit of 2017, as codified in Article 2 of Chapter 9F of Title 40, Code of Ala. 1975, which provides for a tax credit under Chapter 18 of Title 40 to Alabama taxpayers for the rehabilitation of certain historic and certain non-historic buildings in Alabama.

(2) The owner of a project that has been issued a Tax Credit Certificate shall forward a copy of the Tax Credit Certificate to the department within 30 days from the date of issuance.

(3) Credits may only be claimed by taxpayers holding a Tax Credit Certificate or a Transfer Tax Credit Certificate. Tax credits granted or transferred to a pass-through entity shall 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 shall be claimed by the owner of the disregarded entity. Any non-profit entity allowed a tax credit shall file an Alabama Income Tax Return for the tax year in which the reservation is allocated to a project, or the certified rehabilitation is placed in service to claim the credit. The tax credit shall not be claimed prior to the taxable year in which the certified rehabilitation is placed in service.

(4) A taxpayer must apply the entire tax credit against the Income Tax imposed by Chapter 18 for the taxable year in which the reservation is allocated to a project or the certified rehabilitation is placed in service. Where the taxes owed by the taxpayer are less than the tax credit, the taxpayer shall be entitled to claim a refund for the difference. The tax credit cannot be carried forward to any subsequent tax year. The tax credit shall not be claimed prior to the taxable year in which the certified rehabilitation is placed in service. In the event that any additional credit is allocated to the taxpayer for a given project, the additional credit must be claimed in the taxable year the additional credit is allocated to the taxpayer.

(5) On or after the date the Tax Credit Certificate is issued to the project, the owner of the project may transfer all or part of their credit. Once a credit is transferred, only the Transferee may utilize such credit and the credit cannot be transferred. If the tax owned by the transferee is less than the tax credit, the transferee is entitled to claim a refund for the difference.

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

Example: Project Z is placed in service June 15, 2019. The project owner transfers the credit to Transferee with a face value of \$1,000 on September 30, 2019, when the discount rate of interest equals four percent (4%). The Transferee is a calendar year end filer with an Alabama Income Tax Return due date of March 15, 2020. 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) Prior to the effectiveness of a transfer, the Transferor shall file a Transfer Statement with the department along with a copy of the draft or final Transfer Agreement(s), a copy of the Tax Credit Certificate and a \$1,000 fee for each Transferee listed on the Transfer Statement. Unless previously filed, the Transferor shall also file a copy of the executed Transfer Agreement with the department no later than 30 days after the agreement has been executed. The department shall issue a Transfer Tax Credit Certificate to each Transferee for the amount listed on the Transfer Statement within 30 days after receipt of the executed Transfer Agreement. If the amount of the Transferee's tax credit listed in the agreement is different from the Transfer Statement originally filed with the department, the Transferor shall submit an amended Transfer Statement with the executed agreement.

The aggregate amount of the tax credit taken or utilized by the owner or Transferees cannot exceed the amount of credit awarded on the related Tax Credit Certificate or Transfer Tax Credit Certificate, as applicable.

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**Statutory Authority:** §§ 40-2A-7(a) (5) and Title 40, Chapter 9F, Article 2, Code of Ala. 1975.

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**810-3-137-.03      Historic Rehabilitation Tax Credit of  
2017 - 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 2017, as codified in Article 2 of Chapter 9F of Title 40, Code of Alabama 1975, which provides for a tax credit under Chapter 18 of Title 40 to Alabama taxpayers for the rehabilitation of certain historic and certain non-historic buildings in Alabama.

(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 pursuant to Section 40-9F-33.

(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-31, 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.

Author: Kelly Graham

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

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