

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-3-136
HISTORICAL REHABILITATION TAX CREDIT

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810-3-136-.01	<u>Historic Rehabilitation Tax Credit Of 2013 - General Guidelines.</u>
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(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 of the Code of Ala. 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.

(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-23-.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 allocated to the Transferee.

(e) Allocation Schedule. A list identifying the Owners, or if the Owner is a pass through entity, its members or partners, and the amount of credit allocated to each partner, member or owner. If there is more than one Owner or if the Owner is a pass-through entity, the Allocation Schedule is required to be filed with the Department as part of the Tax Credit Certificate or the Transfer Statement.

(f) Recipient Tax Credit Certificate. A form, promulgated by the Department that is issued to an Owner, partner or member identifying the amount of credit allocated to the taxpayer. This form shall be issued by the Owner if there is more than one Owner of the Project or if the Owner is a pass-through entity (or issued by a pass-through entity that is a partner or member of the Owner), and is required to be filed with the taxpayer's tax return.

(g) Transferor. Any Owner, partner, or member of a Project for which a Historic Rehabilitation Tax Credit Certificate was issued, which transfers all or part of their portion of the credit.

(h) Transferee. Any taxpayer that is transferred all or a portion of a historic rehabilitation tax credit.

(i) 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.

(j) 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 date the Project was placed in service;

3. The amount of credit being transferred to Transferee;

4. 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 or any person to whom the tax credits have been passed through and utilized pursuant to Rule 810-3-136-.03(2), and

5. 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, Neal Hearn, Cameran Clark

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

History: New Rule: Filed March 25, 2015; effective April 29, 2015. **Amended:** Filed January 5, 2018; effective February 19, 2018.

810-3-136-.02**Historic Rehabilitation Tax Credit Of 2013 -
Availability, Claiming And Transferability.**

(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 Ala. 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.

(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. If there is more than one Owner of the Project, or if the Owner is a pass-through entity, an Allocation Schedule must be filed with the Tax Credit Certificate. Projects that have been issued more than one Tax Credit Certificate will combine the credits awarded and file only one Allocation Schedule with the Department. In keeping with taxpayer confidentiality, the Allocation Schedule shall only be filed with the Department and should not be filed with any taxpayer's tax return.

(3) Credits may only be claimed by taxpayers holding a Tax Credit Certificate, a Transfer Tax Credit Certificate, or a Recipient Tax Credit Certificate and by filing a copy of such certificate with the taxpayer's tax return. If the tax credit is passed through by a pass-through entity holding a Tax Credit Certificate or Transfer Tax Credit Certificate, the pass-through entity must issue a Recipient Tax Credit Certificate to each member or partner receiving a tax credit in accordance with the Allocation Schedule and such certificate shall also be filed with the taxpayer's tax return.

(4) A taxpayer may apply the entire tax credit against the state portion of any tax imposed by Chapters 16 or 18 for the taxable year in which the certified rehabilitation is placed in service. Since the tax imposed by Chapter 16 includes taxes that are distributed to the municipalities and counties within Alabama, in addition to the tax that is retained by the state; the credit is only available to offset that portion that is retained by the state. The state portion of any tax imposed with regard to Chapter 16 means, for purposes of this rule, the portion of the tax to be distributed to the state's general fund. Forms and instructions

will be made available to taxpayers to provide guidance on how to compute this credit for those taxpayers subject to tax under Chapter 16.

(5) Any unused portion of the taxpayer's credit cannot be refunded, but may be carried forward for up to 10 additional years from the year in which the certified rehabilitation Project is placed in service.

(6) On or after the date the Tax Credit Certificate is issued to the Project, any partner, member, or Owner of the Project may transfer all or part of their credit. Once a credit is transferred, only the Transferee or Transferees, or their partners or members, may utilize such credit and the credit cannot be transferred again.

(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. If the Transferee is a pass-through entity, the Transferee must provide an Allocation Schedule with 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.

(8) The aggregate amount of the tax credit taken or utilized by all of the Owners, partners, members of a Project or Transferees cannot exceed the amount of credit awarded on the related Tax Credit Certificate or Transfer Tax Credit Certificate, as applicable.

Author: Kelly Graham, Neal Hearn

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

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810-3-136-.03

Historic Rehabilitation Tax Credit Of 2013 - Improperly Obtained Tax Credits And Recapture Of 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 Ala. 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.

(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).

(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.

Author: Kelly Graham, Neal Hearn, Cameran Clark

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

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