

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-136-.03

Rule Title: Improperly Obtained Historic Rehabilitation Tax Credits and Recapture of Historic Rehabilitation Tax Credits

XX New; \_\_\_ Amend; \_\_\_ Repeal; \_\_\_ 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 might result from the absence of the proposed rule? N/A


Are all 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

\*\*\*\*\*  
Does the proposed rule have any economic impact? Yes

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.

\*\*\*\*\*  
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 1/22/15

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-136-.03

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

New  Amend  Repeal  Adopt by Reference

- NO  
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**  
This Rule sets forth guidelines, definitions, and procedures for the administration of the Historic Tax Rehabilitation Tax Credit enacted under original Act 2013-241 and amended by Act 2014-452.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**  
To implement the provisions of Act 2013-241 and Act 2014-452.
3. **EFFECT OF THIS RULE ON COMPETITION:**  
N/A
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
N/A
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**  
N/A
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**  
General Fund, Education Trust Fund, Department of Revenue Budget
7. **THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL**

BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:  
To implement the provisions of Act 2013-241 and Act 2014-452.

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:  
To implement the provisions of Act 2013-241 and Act 2014-452.
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:  
N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:  
N/A
11. OTHER COMMENTS:  
N/A

APA-2  
11/96

**ALABAMA DEPARTMENT OF REVENUE**  
Individual & Corporate Tax Division

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-3-136-.01	Historic Rehabilitation Tax Credit
810-3-136-.02	Availability, Claiming and Transferability of the Historic Rehabilitation Tax Credit
810-3-136-.03	Improperly Obtained Historic Rehabilitation Tax Credits and Recapture of Historic Rehabilitation Tax Credits

**INTENDED ACTION:** Adopt new rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to adopt the above rules to provide guidance regarding the statutory requirements of Act 2013-241 and as amended by Act 2014-452 to be used by the Department of Revenue in the administration of the Historic Rehabilitation Tax Credit.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **2:30 p.m. on Wednesday, March 11, 2015, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at [www.revenue.alabama.gov/rulehear.html](http://www.revenue.alabama.gov/rulehear.html).

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 during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**  
Wednesday, March 11, 2015

**CONTACT PERSON AT AGENCY:**

Patricia Toles  
Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue

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810-3-136-.03 Improperly Obtained Historic Rehabilitation Tax Credits and Recapture of Historic Rehabilitation Tax Credits. **(NEW RULE)**

(1) 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) 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

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

History: