

810-3-43-.01 Railroad Modernization Act Of 2019 – Availability, Claiming, And Transferability Of The Rail Credit.

(1) Purpose. This rule sets forth guidelines and procedures for claiming, applying, and transferring the rail credit provided under the Railroad Modernization Act of 2019, as codified in Chapter 11C of Title 37 of the Code of Ala. 1975.

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

(a) DEPARTMENT - The Alabama Department of Revenue.

(b) COMMERCE - The Alabama Department of Commerce.

(c) ELIGIBLE TAXPAYER – Any class II or III railroad that is awarded a rail credit certificate by Commerce.

(d) ELIGIBLE TRANSFEREE – A taxpayer to which any or all portion of a rail credit is transferred.

(e) TAX CREDIT CERTIFICATE - A form or letter issued by Commerce to the eligible taxpayer, that includes information about the qualified railroad rehabilitation project and the total amount of credit issued to the eligible taxpayer.

(f) TRANSFER TAX CREDIT CERTIFICATE - A certificate issued by the Department to an eligible transferee, which includes information about the qualified railroad project for which a tax credit certificate has been issued, and the amount of credit transferred to the transferee.

(g) TRANSFEROR- Any eligible taxpayer who transfers any or all of their portion of the credit to the transferee.

(h) TRANSFER STATEMENT - A statement filed with the Department by the transferor that identifies the transferor and each eligible transferee, the amount of tax credit transferred to each eligible transferee, and the effective date of the credit.

(i) **TRANSFER AGREEMENT** - A contract, either in writing or in an electronic format, between the transferor and the eligible transferee that includes the following:

1. Description and the address of the rail carrier that has been issued a tax credit certificate.
2. The date the project was completed and placed in service.
3. The amount of credit being transferred to each transferee.
4. The purchase amount of the credit.
5. A statement by the eligible taxpayer agreeing to sell, transfer, convey, assign, and deliver the credit to the buyer along with an acknowledgement from the buyer agreeing to purchase, acquire, and accept the credit from the owner.

(3) Qualified Claimants. The credit may only be claimed by an eligible taxpayer holding a tax credit certificate or an eligible transferee that has been issued a transfer tax credit certificate. Tax credits granted or transferred to a pass-through entity must 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, must be claimed by the owner of the disregarded entity.

(4) Application of the Credit. The eligible taxpayer and eligible transferee may apply the entire tax credit against the income tax liability imposed by Chapter 18 of Title 40 of the Code of Ala.1975, for the taxable year in which the qualified railroad rehabilitation project is completed and placed in service. If the placed in-service date is later than the completion date, then the placed in-service date must be used in determining the taxable year in which the tax credit can be utilized. If the tax owed by the eligible taxpayer is less than the tax credit, the eligible taxpayer is entitled to claim a refund for the difference. The tax credit cannot be carried forward to any subsequent tax year.

(5) Transferability. The eligible taxpayer may transfer any or all the credit on or after the issuance date listed on the tax credit certificate. Once the credit is transferred, only the eligible transferee may utilize the transferred credit and the credit cannot be transferred again. The transferred credit cannot be refunded or carried forward by the eligible transferee.

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

Example:

A qualified railroad rehabilitation project is placed in service June 15, 2020. The eligible taxpayer transfers the credit to the eligible transferee with a face value of \$1,000 on October 30, 2020, when the discount rate of interest equals four percent (4%). The eligible transferee is a calendar year end filer with an Alabama income tax return due date of April 15, 2021. 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 $(1 + 6/12 \text{ of } 4\%)$ 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) Reporting Requirements. The transferor must file a transfer statement with the Department along with a copy of the executed transfer agreement(s), a copy of the tax credit certificate, and a \$1,000 fee for each eligible transferee listed on the transfer statement no later than 30 days after the transfer agreement has been executed. The Department will issue a transfer tax credit certificate to each eligible transferee for the amount listed on the transfer statement within 30 days after receipt of the executed transfer agreement, along with the supporting documents.

(8) The Department may examine records, books, or other relevant information maintained by the taxpayer for the purpose of computing and determining the correct amount of the credit.

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Authority: §40-2A-7(a)(5), Chapter 11C of Title 37, and Chapter 18 of Title 40, Code of Ala 1975.

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