

ACT #2019- 459

1 HB457
2 200105-6
3 By Representatives Scott and Garrett
4 RFD: Ways and Means Education
5 First Read: 16-APR-19



1
2 ENROLLED, An Act,

3 Relating to tax credits; to create The Railroad
4 Modernization Act of 2019; to authorize a tax credit against
5 the income tax liability of an eligible taxpayer for qualified
6 railroad rehabilitation expenditures; to authorize the
7 transfer of the credit; and to sunset the credit after three
8 years.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as The Railroad Modernization Act of 2019.

12 Section 2. As used in this act, the following words
13 shall have the following meanings:

14 (1) CLASS II RAILROAD. A carrier classified as a
15 Class II railroad pursuant to 49 CFR § 1201, or other rule
16 adopted by the United States Surface Transportation Board.

17 (2) CLASS III RAILROAD. A carrier classified as a
18 Class III railroad pursuant to 49 CFR § 1201, or other rule
19 adopted by the United States Surface Transportation Board.

20 (3) DEPARTMENT. The Alabama Department of Commerce.

21 (4) ELIGIBLE TAXPAYER. A railroad ~~subject to the~~
22 ~~state income tax~~ that owns or leases railroad infrastructure
23 in Alabama and is classified by the United States Surface
24 Transportation Board as a Class II or Class III railroad.

1 (5) ELIGIBLE TRANSFEREE. A taxpayer ~~subject to the~~
2 ~~state income tax~~ who is transferred a tax credit allowed by
3 this act by an eligible taxpayer.

4 (6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.
5 Expenditures within the taxable year for the maintenance,
6 deductible maintenance of way expenses, reconstruction, or
7 replacement of railroad infrastructure within the state that
8 is owned or leased by an eligible taxpayer. The term includes
9 new construction of industrial leads, switches, spurs,
10 sidings, and extensions of existing sidings by an eligible
11 taxpayer. The term does not include expenditures for which an
12 income tax deduction has been claimed.

13 (7) RAILROAD INFRASTRUCTURE. Includes, but is not
14 limited to, the track, roadbed, bridges, signaling systems and
15 train control, industrial leads, and track-related structures
16 owned or leased by an eligible taxpayer.

17 (8) REHABILITATION PLAN. Detailed construction plans
18 and specifications for the proposed rehabilitation of railroad
19 infrastructure under this article.

20 Section 3. (a) Within three months following the
21 effective date of this act, the Department of Commerce shall
22 develop standards for the approval of qualified railroad
23 rehabilitation expenditures for which a tax credit is being
24 sought. The standards shall consider the availability of
25 additional public or private funding for the project, the

1 expected completion time of the project, and the anticipated
2 impact of the project on usage of the railroad infrastructure.

3 (b) Prior to beginning any qualified railroad
4 rehabilitation work the eligible taxpayer shall submit an
5 application and rehabilitation plan to the Department and an
6 estimate of the qualified railroad rehabilitation expenditures
7 under the rehabilitation plan; provided, however, the eligible
8 taxpayer, at its own risk, may incur qualified railroad
9 rehabilitation expenditures no earlier than six months prior
10 to the submission of the application and rehabilitation plan.

11 (c) The Department shall review the application and
12 rehabilitation plan to determine if the information contained
13 therein is complete. If the Department determines that the
14 application and rehabilitation plan are complete, the
15 Department shall reserve, for the benefit of the eligible
16 taxpayer, an allocation for a tax credit as provided in this
17 act and shall notify the eligible taxpayer in writing of the
18 amount of the reservation. The reservation of tax credits does
19 not entitle the taxpayer to an issuance of tax credits until
20 the owner complies with all other requirements of this act for
21 the issuance of the tax credits. Reservations of tax credits
22 shall be issued by the Department within a reasonable time
23 from the filing of a completed application and rehabilitation
24 plan. Any application disapproved by the Department shall be
25 removed from the review process, and the Department shall

1 notify the taxpayer in writing of the decision to remove the
2 application. A disapproved application may be resubmitted, but
3 shall be deemed to be a new submission and may be charged a
4 new application fee. In the event the reservations of tax
5 credits equal the total amount available for reservations
6 during the tax year, all eligible taxpayers with applications
7 then awaiting approval or thereafter submitted shall be
8 notified by the Department that no additional tax credits
9 shall be granted during that tax year. The applications shall
10 remain in active status from the date of the original
11 application and shall be considered for recommendations of tax
12 credits in the event that additional credits become available
13 due to rescission by the Department or when a new tax year's
14 allocation of tax credits becomes available.

15 (d) Following the completion of a qualified railroad
16 rehabilitation project, the eligible taxpayer shall notify the
17 Department that the rehabilitation has been completed and
18 shall certify the qualified railroad rehabilitation
19 expenditures incurred with respect to the rehabilitation plan.
20 Within 90 days after receipt and approval of the foregoing
21 documentation from the eligible taxpayer, the Department shall
22 issue a tax credit certificate in an amount equivalent to the
23 amount of the qualified railroad rehabilitation expenditures
24 incurred with respect to the rehabilitation plan as certified

1 by the taxpayer, not to exceed the amount of the tax credit
2 reservation issued for the project.

3 (e) In order to obtain a credit against any state
4 income tax due that is specified in this article, an eligible
5 taxpayer shall file the tax credit certificate with the
6 taxpayer's Alabama state tax return. The tax credit
7 certificate shall satisfy all requirements of the Department
8 of Revenue pertaining to the eligibility of the person
9 claiming the credit. All information submitted to the
10 Department of Revenue by taxpayers claiming or seeking
11 certification of a credit shall be subject to the
12 confidentiality provisions of Section 40-2A-10, Code of
13 Alabama 1975.

14 (f) For processing the taxpayer's application for a
15 tax credit, the Department may impose an application fee equal
16 to one percent (1%) of the qualified rehabilitation
17 expenditures, not to exceed a fee equal to ten thousand
18 dollars (\$10,000). Any fees collected by the Department under
19 this subsection shall be deposited in the State Treasury to
20 the credit of the Department and all such funds are to be
21 appropriated to the Department to defray the expenses incurred
22 in carrying out this article.

23 (g) The Department shall report to the Legislature
24 in the third year following passage of this act, and annually
25 thereafter, on the overall economic activity, usage, and

1 impact to the state from the rehabilitation of railroad
2 infrastructure for which tax credits have been allowed. The
3 information in the reports shall be consistent with the
4 information required by the Legislature pursuant to, and shall
5 be provided by the Department to the Legislature in accordance
6 with, Section 40-1-50, and rules adopted thereunder.
7 Information provided pursuant to this section is exempt from
8 the confidentiality provisions of Section 40-2A-10.

9 Section 4. (a) For tax years beginning after
10 December 31, 2019, there is a credit allowed against the state
11 income tax levied by Section 40-18-2 Code of Alabama, 1975,
12 equal to 50 percent of an eligible taxpayer's qualified
13 railroad rehabilitation expenditures. The tax credit allowed
14 under this section may not exceed three thousand five hundred
15 dollars (\$3,500) multiplied by the number of miles of railroad
16 track owned or leased within the state by the eligible
17 taxpayer at the close of the taxable year.

18 (b) There is created within the Education Trust Fund
19 a separate account named the Railroad Rehabilitation Income
20 Tax Credit Account. The Commissioner of Revenue shall certify
21 to the Comptroller the amount of income tax credits under this
22 section and the Comptroller shall transfer into the Railroad
23 Rehabilitation Income Tax Credit Account only the amount from
24 sales tax revenues within the Education Trust Fund that is
25 sufficient for the Department of Revenue to use to cover the

1 income tax credits for the applicable tax year. The
2 Commissioner of Revenue shall distribute the funds in the
3 Railroad Rehabilitation Income Tax Credit Account pursuant to
4 this section.

5 (c) The entire tax credit may be claimed by the
6 taxpayer in the taxable year in which the qualified railroad
7 rehabilitation expenditures are completed and placed into
8 service. Where the taxes owed by the eligible taxpayer are
9 less than the tax credit, the eligible taxpayer may be
10 entitled to claim a refund for the difference.

11 (d) For the calendar years 2020, 2021, and 2022, the
12 aggregate amount of all tax credits that may be reserved in
13 any one of such years by the Department upon certification of
14 rehabilitation plans shall not exceed ~~five million three~~
15 million seven hundred thousand dollars ~~(\$5,000,000)~~
16 (3,700,000) plus any amount of previous reservations of tax
17 credits that were rescinded during the tax year. However, if
18 all of the allowable tax credit amount for any tax year is not
19 requested and reserved, any unreserved tax credits may be
20 utilized by the Department in awarding tax credits in
21 subsequent years; provided, however, that in no event shall a
22 ~~total of more than fifteen million dollars (\$15,000,000) be~~
23 total of more than eleven million one hundred thousand dollars
24 (\$11,100,000) be reserved by the Department during the period

1 of August 1, 2019 through August 1, 2022. For purposes of this
2 article, "tax year" shall mean the calendar year.

3 (e) Tax credits granted to a partnership, a limited
4 liability company, S Corporations, trusts, or estates, shall
5 be claimed at the entity level and shall not pass through to
6 the partners, members, or owners.

7 (f) All or any portion of the income tax credit
8 authorized under this section may be transferable and
9 assignable by written transfer agreement and subject to any
10 notice and verification requirements to be determined by the
11 Department of Revenue. Any tax credits transferred shall be at
12 a value of at least eighty-five percent (85%) of the present
13 value of the credits. However, once a credit is transferred,
14 only the transferee may utilize the credit and the credit may
15 not be transferred again. An eligible transferee of the credit
16 may use the amount of credits transferred to offset any income
17 tax due under Chapter 18. The Department of Revenue, by rule,
18 shall adopt a written transfer agreement form. The transfer
19 statement form shall include the name and federal taxpayer
20 identification number of the transferor and each transferee
21 listed therein along with the amount of the tax credit to be
22 transferred to each transferee listed on the form. The
23 transfer statement form shall also contain such other
24 information as the Department of Revenue may from time to time
25 reasonably require. For each transfer, the transferor shall

1 file: (1) a completed transfer statement form; (2) a copy of
2 the tax credit certificate issued by the commission
3 documenting the amount of tax credits which the transferor
4 intends to transfer; (3) a copy of the proposed written
5 transfer agreement; and (4) a transfer fee payable to the
6 department in the amount of one thousand dollars (\$1,000) per
7 transferee listed on the transfer statement form. The
8 transferor shall file with the Department of Revenue a fully
9 executed copy of the written transfer agreement with each
10 transferee within 30 days after the completed transfer. Filing
11 of the written transfer agreement with the Department of
12 Revenue shall perfect such transfer with respect to such
13 transferee. Within 30 days after the department's receipt of
14 the fully executed written transfer agreement, the department
15 shall issue a tax credit certificate to each transferee listed
16 in such agreement in the amount of the tax credit so
17 transferred. Such certificate shall be used by the transferee
18 in claiming the tax credit. The Department of Revenue may
19 promulgate such additional rules as are necessary to permit
20 verification of the ownership of the tax credits but shall not
21 promulgate any rules which unduly restrict or hinder the
22 transfer of the tax credits.

23 Section 5. The Department of Commerce shall
24 promulgate by October 1, 2019, any and all rules and
25 regulations necessary to implement this act. Applications for

1 the reservation of tax credits shall be accepted beginning
2 November 1, 2019.

3 Section 6. The tax credit allowed under this section
4 shall be effective for the 2020 tax year and shall continue
5 through the 2022 tax year, unless extended by act of the
6 Legislature.

7 Section 7. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.

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Mac McClatchey

Speaker of the House of Representatives

[Signature]

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 14-MAY-19, as amended.

Jeff Woodard
Clerk

Senate	<u>28-MAY-19</u>	Amended and Passed
House	<u>28-MAY-19</u>	Concurred in Senate Amendment

APPROVED 6-7-19

TIME 4:47 pm

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2019-459
Bill Num....: H-457

Recv'd 06/10/19 10:35am

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PONSORS
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DATE: 5-13 2011
RD 1 RFD

This Bill was referred to the Standing Committee of the Senate on FILE and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) 1 w/sub by a vote of 11 yeas 0 nays 0 abstain 0 this 23rd day of May 2011, Chairperson

DATE: 20__
RF RD 2 CAL

DATE: 20__
RE-REFERRED RE-COMMITTED
Committee

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB
YEAS NAYS
PATRICK HARRIS,
Secretary

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 457
YEAS 98 NAYS 0
JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.
JEFF WOODARD, Clerk

CONFERENCE COMMITTEE
House Conferees