

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-61-07

Rule Title: Continuing Eligibility of Scholarship Granting Organization (SGO) to Participate in the Tax Credit Scholarship Program

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? No

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 *Michael D. Smith*

Date 2/20/14

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10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-61-.07

Rule Title: Continuing Eligibility of Scholarship Granting Organization (SGO) to Participate in the Tax Credit Scholarship Program

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:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
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:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

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11/96

**ALABAMA DEPARTMENT OF REVENUE
Tax Policy & Research Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-61-.07 Continuing Eligibility of Scholarship Granting Organization (SGO) to Participate in the Tax Credit Scholarship Program
810-3-61-.08 Percentage of Low-Income Eligible Students in a County

INTENDED ACTION: Adopt the above rules

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rules to provide guidance regarding the statutory requirements of the Alabama Accountability Act of 2013.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 2:00 p.m. on Monday, April 7, 2014, 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.

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:
Monday, April 7, 2014

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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810-3-61-.07 Continuing Eligibility of Scholarship Granting Organization (SGO) to Participate in the Tax Credit Scholarship Program (NEW RULE)

(1) Scope: Act 2013-64, as amended by Act 2013-265, establishes certain requirements for the operation of Scholarship Granting Organizations (SGOs) and requires SGOs to report certain information to the Department of Revenue. The Acts also authorize the department to bar an SGO from participating in the Tax Credit Scholarship Program (program) if the department establishes that the SGO has intentionally and substantially failed to comply with the requirements of the program. This rule prescribes the process of notifying an SGO of its non-compliance with a requirement, the effect of such notice on the operation of the SGO, and the steps required of the SGO to be reinstated to the program.

(2) Each SGO shall file a report with the department containing the information explained in Rule 810-3-61-.05, no later than the first day of June for the previous calendar year.

(3) The required report shall be on a form prescribed by the department.

(4) If the required report for an SGO has not been received by the Department by June 30th, the SGO will be deemed to have intentionally and substantially failed to comply with the requirements of the program. An SGO filing a delinquent annual report may attach an explanation of any circumstances preventing the timely filing of the report. Upon review of any explanations provided, the department may excuse the delinquency if warranted.

(5) The SGO shall complete the Summary of Compliance section of the report, based on the numbers, dollars and percentages reported elsewhere in the report. If the SGO answers "NO" to any compliance question, it may attach to the report documentation explaining any extraordinary circumstances preventing the requirement from being met.

(6) The review of the initial annual report, timely filed by an SGO, will not result in a determination of intentional and substantial failure to comply with the requirements of the program, solely because of "NO" answers shown in the Summary of Compliance section of the SGO's report. Such "NO" answers will indicate failure to comply with the requirements, but shall not be deemed to be intentional and substantial.

(7) Annual reports for years after the initial year of operation of an SGO will be reviewed for any answers that should be listed as "NO" in the Summary of Compliance section. Any such "NO" answers will indicate failure to comply with the requirements of the program. Any documentation of extraordinary circumstances attached to the report may be considered by the department in determining whether the failure to comply will be deemed intentional and substantial.

(8) If an SGO's answer to any particular compliance question is, or should be, reported as "NO" for two consecutive annual reports, the SGO will automatically be

deemed to have intentionally and substantially failed to comply with the requirements of the program.

(9) Upon a determination that an SGO has intentionally and substantially failed to comply with the requirements of the program, or after June 30th in the case of a missing annual report, the department will notify an SGO of its determination and of its intention to suspend the eligibility of the SGO to participate in the Tax Credit Scholarship Program. Unless appealed, as provided in (10) below, the suspension shall become effective 30 days from the date the notice is mailed to the SGO.

(10) The determination to suspend an SGO from participating in the Tax Credit Scholarship Program may be appealed by the SGO, in the same manner as the denial or revocation of licenses, permits, and certificates of title administered by the department, as provided in Code of Alabama 1975, Section 40-2A-8; within 30 days of the date notice of the department's determination is mailed to the SGO.

(11) An SGO whose participation in the Tax Credit Scholarship Program has been suspended will be removed from the department's website through which donors reserve tax credits for contributions under the program. No tax credits will be allowed for donations made to an SGO during a period of suspension.

(12) An SGO whose participation in the program has been suspended, and whose name has been removed from the department's website through which donors reserve tax credits for contributions must, nevertheless, account for funds and award scholarships in accordance with the requirements of the program. All annual reports due, regardless of any suspension, must be timely filed.

(13) Upon receipt and review of a timely filed annual report for a year ending during a period of suspension, the department may reinstate the SGO to participation in the program, if the answers to all questions in the Summary of Compliance section of the report are properly reportable as "YES". Tax credits may be allowed for donations made after reinstatement of the SGO.

(14) If the department concludes that any "YES" answer reported in the Summary of Compliance section of an annual report should have been reported as "NO" or if the department concludes that the SGO has failed to comply with the requirements of the program for another reason, the department will allow the SGO an opportunity to contest the department's conclusion, and to provide documentation explaining any extraordinary circumstances causing the failure to comply, before determining that the failure to comply with the requirements of the program will be considered intentional and substantial.

Author: Curtis Stewart
Authority: Sections 40-2A-7(a)(5) and 16-6D-1, Code of Alabama 1975
History: