

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-60-03

Rule Title: Eligibility for Parent Tax Credit for Students Transferring to a Failing Public School

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. Powell*

Date 11/20/13

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: **810-3-60-.03**

Rule Title: **Eligibility for Parent Tax Credit for Students Transferring to a Failing Public School**

New Amend Repeal Adopt by Reference

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 WHERE 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:

APA-2
11/96

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

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-60-.02	Eligibility for Parent Tax Credit for Students Attending a Nonpublic School
810-3-60-.03	Eligibility for Parent Tax Credit for Students Transferring to a Failing Public School

INTENDED ACTION: Amend above rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rules to correct a statutory reference.

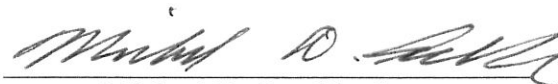
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **10:30 a.m. on Thursday, January 9, 2014, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

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:
Thursday, January 9, 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

0921APC.INT

810-3-60-.03 Eligibility for Parent Tax Credit for Students Transferring to a Failing Public School.

(1) Scope. This rule is issued pursuant to Section ~~16-16D-1~~ 16-6D-1, Code of Alabama 1975, to provide guidance to parents with students who transfer to a new school and are notified that the new school is a failing public school for purposes of the Alabama Accountability Act (Act 2013-64). These parents may be eligible for a refundable income tax credit to offset the costs of subsequently transferring a student to a non-failing public school or nonpublic school of the parent's choice if certain conditions are met.

(2) General rule. When determining whether a student's parents are eligible to claim the parent's tax credit, the Department will consider substance over form when determining whether a bona fide transfer away from a failing school to a non-public school occurred so that the parent is eligible for the tax credit addressed within this rule.

(a) If a student currently attends a non-failing public school or nonpublic school and subsequently transfers to a failing public school, the student's transfer to the failing public school must meet the requirements for a bona fide transfer before the student's parents may transfer the student to a non-failing school of the parent's choice and be eligible to apply for the parent tax credit.

(b) For purposes of this rule, a bona fide transfer requires a student to remain in the school in which he or she transfers to, for a minimum of one semester, or 90 school days. A student who first transfers away from a non-failing public school or nonpublic school to a failing public school and subsequently transfers away from the failing public school after having attended for any period of time less than one school semester or 90 school days, whichever is shorter, shall not be considered as having been part of a bona fide transfer and the student's parents shall not be eligible for the credit.

(3) Exceptions. There are certain instances where a student assigned to attend a failing public school may not need to enroll and attend the failing public school before the parent(s) are eligible to apply for the parent tax credit upon enrolling the student in a different non-failing public school or nonpublic school.

(a) A parent whose student is rising to kindergarten and has been notified by the local school system that the student is assigned to a failing public school may choose to enroll the rising kindergartener in a non-failing public school or nonpublic school and still be eligible to claim the parent tax credit even if the student never attends the failing school to which he or she is assigned.

(b) A parent whose student has completed the highest grade level offered at the student's current non-failing public school is notified by the local school system that the student is assigned to attend a failing public school for the next school year, then

the parent may choose to enroll the student in a non-failing public school or nonpublic school of the parent's choice and still be eligible for the parent's tax credit.

(c) A parent whose student is transferring from his or her current non-failing public school due to the bona fide move of the family to a new physical residence may enroll the student in a different non-failing public school or nonpublic school of the parent's choice if the parent has been notified that the student is assigned to a failing public school based on the family's new physical residence. When determining whether the family has made a bona fide move, the family must have moved its household furniture into the new physical residence and all principal members of the family must reside at the new residence. Further, the original residence should be closed, rented or disposed of and not used by the family.

Author: Brandee Tickle
Authority: Sections 40-2A-7(a)(5) and ~~16-16D-1~~ **16-6D-1**, Code of Alabama 1975
History: New rule: Filed August 23, 2013, effective September 27, 2013.