



ALABAMA DEPARTMENT OF COMMERCE

# THE NEW MARKET TAX CREDIT CY 2019

Alabama Department of Commerce

Pursuant to ALABAMA DEPARTMENT OF REVENUE  
ADMINISTRATIVE CODE CHAPTER 810-17-1  
ECONOMIC TAX INCENTIVES

## Section I- Overview of the Economic Tax Incentive

*Section One- The purpose of the Economic Tax Incentive and shall report whether or not each Economic Tax Incentive has been successful in meeting the purpose for which it was enacted, in particular, whether each Economic Tax Incentive benefits those originally intended to be benefited, and if not, those who have benefited.*

**A description of the Tax Incentive.** The description shall include the initial statement of purpose of the Tax Incentive as provided for in the enabling legislation, the name(s) of the agency administering the Tax Incentive, a description of the Tax Incentive and how it is calculated or awarded, the history of the Tax Incentive which shall include when and under what authority the Tax Incentive was created, including any amendments to the statute and any departmental rules associated with the Tax Incentive;

The **New Market Tax Credit** (the "Tax Incentive") was created with the passage of the Alabama New Markets Development Act (Act 2012-483). The enabling legislation for the Tax Incentive, administered by the Department of Commerce (the "State Agency"), provided the following statement of purpose:

- Establish state income, financial institution excise, and premium tax credits for investments in businesses in impoverished and low-income communities.

The Tax Incentive program was patterned after the Federal New Market Tax Credit program. In order to be eligible for a state allocation, the qualified community development entity must be certified under the federal program. Once the allocation is made by the state, investors (the "Taxpayer") must make a qualified equity investment in the qualified community development entity, which the qualified community development entity must then invest in a qualified active low-income community business. The Tax Incentive then becomes available to the Taxpayer in an amount equal to 50% of the Taxpayer's investment and can be applied against state income, insurance premiums or financial institution excise tax. No credit may be claimed in the first year; for years 2-7, 8.33% may be claimed. The maximum amount of the Tax Incentive is \$120,000,000 and is limited to \$20,000,000 per year, without regard for Taxpayers to carry forward tax credits to later years.

The Tax Incentive is authorized under Code of Alabama § 41-9-216 through 219.4 and became effective June 1, 2012. Administrative Rule is 281-5-1.

Although the Alabama New Markets Development Act has not been repealed, all credits were allocated in 2012 and early 2013 so the application/approval/allocation process is no longer available. Taxpayers will continue to take the credits until they are fully utilized.

**The goals of the Tax Incentive** and whether or not the Tax Incentive has been successful in meeting these goals. For example, if a job creation incentive includes wage thresholds for a business to qualify, a goal for the tax incentive program would be to create high-paying jobs;

The purpose of the Tax Incentive is to encourage investments in qualifying businesses in impoverished and low-income communities. This Tax Incentive was successful in that regard; however, there is no requirement to maintain any new jobs created by the Tax Incentive and many businesses benefiting from the Tax Incentive are no longer in business.

**A description of the intended beneficiaries of the Tax Incentive**, including any tax types to which the Tax Incentive applies to or is designated. This description shall include the activities the Tax Incentive is intended to promote and the effectiveness of the Tax Incentive in promoting those Revenue activities.

The intended beneficiaries of the Tax Incentive are the investors (the "Taxpayers") who make qualified investments in the qualified community development entity. The Tax Incentive can be applied against the Taxpayer's state income, financial institution excise, or insurance premium tax liability.

The Tax Incentive is intended to promote investment in qualifying businesses in low income communities, which will in turn create new jobs. Although the Tax Incentive successfully promoted investment, the job creation was minimal. The projected new job creation by the qualifying businesses was 997. For the 2018 reporting period, 495 new jobs were reported, a decrease of 158 jobs from the prior period. Several of the businesses are no longer in operation. Reports have not been received for 2019.

**Describe how and why such recipients benefit from such Tax Incentive.**

The recipients of the Tax Incentive benefit by receiving a tax credit of 50% of its investment over a 7-year period. If the credit exceeds the Taxpayer's tax liability in a year, the credit may be carried forward to any of the Taxpayer's subsequent taxable years.

## Section II- Impact and Benefits

*Section Two shall encompass the impact of the Economic Tax Incentive and shall report whether or not the state receives a positive return on investment, specifically the direct and indirect impact on state and local tax revenues, from the business or industry for which the Economic Tax Incentive is intended to benefit and any other economic benefits produced by such Tax Incentive. If applicable, this shall include, but is not limited to:*

The number of taxpayers applying for, qualifying for and claiming the Tax Incentive, and the Tax Incentive amounts (in dollars) claimed by taxpayers in the reporting year:

No taxpayers applied for the Tax Incentive in the reporting year because the allocation period ended in 2013. Twenty-two (22) taxpayers claimed the Tax Incentive during the reporting year in the aggregate amount of \$15,718,529.

The number of taxpayers applying for, qualifying for and claiming the Tax Incentive, and the Tax Incentive amounts (in dollars) claimed by taxpayers since the creation of the Tax Incentive, if available:

Twenty-eight (28) taxpayers have claimed the Tax Incentive against their Alabama tax liability since the creation of the Tax Incentive in the aggregate amount of \$81,743,533.

The amount of Tax Incentives that could be carried forward and the length of time the Tax Incentive can be carried forward;

The Tax Incentive may be carried forward to subsequent tax years, with no limitation of time.

The amount of Tax Incentives that have been transferred, if applicable, and the amount that the credit(s) were discounted when they were transferred;

Tax Incentive is not transferable.

The amount of fees and/or other transaction costs associated with the Tax Incentive, including but not limited to application fees and transferability fees;

Nonrefundable application fee of \$5,000. All applications were received and allocations made by December 31, 2013. No fees paid to the State Agency during 2019.

The estimated cost of administering the Tax Incentive;

The estimated cost of administering the Tax Incentive is \$9,247.

The number of direct jobs created by the Tax Incentive;

Based on information received from the certified community entities, 495 jobs were reported for 2018. No reporting has been received for 2019.

The timing between awarding the Tax Incentive and creation of jobs and/or investment, and the maintenance of any job creation requirement;

Investment must be made by the qualified community development entity in a qualified active low-income community business within 90 days after receiving notice of certification from the State Agency. There is no job creation or maintenance required.

Describe any caps associated with the Tax Incentive (identify if fiscal year or calendar year) and whether or not the cap was met for each year the Tax Incentive was in existence. Include the number of taxpayers who were denied a Tax Incentive due to the cap being in place:

Annual Cap is limited to \$20,000,000 of tax credits in any tax year based on the scheduled utilization of tax credits without regard to the potential for Taxpayers to carry forward tax credits to later tax years.

Describe any penalties, including clawback provisions, associated with noncompliance of the Tax Incentive;

The following events cause recapture:



- 1) The federal new market tax credits associated with a QEI are recaptured
- 2) The qualified community development entity fails to issue the qualified equity investment in the amount of the certified amount within 90 days after receiving notice of certification (recapture amount equal to all credits claimed); 180 days reinvestment period permitted after which the certification shall lapse
- 3) The qualified community development entity fails to invest at least 85% of the purchase price in qualified low-income community investments within 12 months after the issuance of a qualified investment
- 4) The qualified community development entity redeems or makes a principal payment with respect to a QEI prior to the 7<sup>th</sup> anniversary of a QEI (recapture amount proportionate to the amount of redemption or repayment)
- 5) The qualified community development entity fails to provide the State Agency with information, reports, or documentation required by the law
- 6) The State Agency determines that a Taxpayer received tax credits to which the Taxpayer was not entitled; or
- 7) The qualified community development entity fails to maintain 85% of the purchase price in qualified low-income community investments until the last credit allowance date for a qualified investment.

Provide an estimate of the indirect economic activity stimulated by the Tax Incentive. This shall include an estimate of any tax benefits that have been sourced outside of Alabama; and

Information not available.

Any other information necessary for the State Agency to comply with the requirements of the Act.

None

## Section III- Economic Results

*Section Three shall encompass the economic results of each Economic Tax Incentive, taking into account the extent to which the Tax Incentive successfully changes business behavior, and the unintended or inadvertent effects, benefits, or harm caused by the Economic Tax Incentive, including whether the Economic Tax Incentive conflicts with other state laws or regulations. This shall include, but is not limited to:*

Any results the Tax Incentive has on Alabama's economy. Indicate whether or not the Tax Incentive is successfully influencing business decisions and describe how this is being determined;

A minimal number of jobs have been created relative to the amount of the Tax Incentive.

Any evidence that the Tax Incentive is or has changed business behavior, as opposed to rewarding businesses for what they would have done anyway;

Information not available.

How the Tax Incentive is effecting businesses beyond those that benefit directly from the Tax Incentive;

The answer is unknown because the State Agency lacks the expertise to provide the data.

Any potential changes to the design or administration of the Tax Incentive that could lead to better results. If possible, indicate if the Tax Incentive could be made more effective through legislative changes;

No.

State whether or not the State Agency could accomplish the same purpose or goal of the existing Tax Incentive through a non-tax incentive or subsidy, such as a normal budgetary expenditure, and do it more effectively or efficiently. Explain your reasoning.

Unknown.

Explain the methodology and assumptions of the review, analysis, and evaluation of the Tax Incentive.

Data is obtained from reports submitted to Commerce as required in the Act.