

1 SB126
2 125814-1
3 By Senator Whatley
4 RFD: Finance and Taxation General Fund
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, there are no tax credits
9 extended to businesses and financial institutions
10 for qualified research expenses incurred within the
11 state.

12 This bill would provide a tax credit against
13 state income taxes or financial institution excise
14 taxes for qualified research expenses incurred by
15 businesses, including owners of pass-through
16 businesses, and financial institutions within the
17 state parallel to the federal research and
18 development tax credit.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To amend Section 40-16-8 of the Code of Alabama
25 1975, and to add a new Article 11 to Chapter 18 of Title 40
26 beginning with Section 40-18-280, Code of Alabama 1975, to
27 provide for research and development tax credits for financial

1 institutions and businesses, including the owners of
2 pass-through businesses, subject to excise or income taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-16-8 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§40-16-8.

7 "(a) All moneyed capital employed in the business
8 the privilege of engaging in which is hereby taxed and the
9 shares of all financial institutions, as in this chapter
10 defined, shall be exempted from assessment and payment of ad
11 valorem taxes, except the moneyed capital and shares of any
12 business hereby taxed which fails to make and file the returns
13 required by this chapter and to pay the tax levied by this
14 chapter as and when in this chapter provided. The real estate
15 owned by every such financial institution shall not be
16 exempted. If any other tax other than the privilege tax levied
17 by Article 2 of Chapter 14A, whether on property (other than
18 ad valorem taxes on real estate), income, business or any
19 element thereof, except license taxes not in excess of those
20 heretofore legally levied and in effect, at any time after
21 July 10, 1935, has been, or is at any time hereafter levied by
22 this state or by any political subdivision of this state on
23 any financial institution as in this chapter defined, the
24 amount of such other tax due by such institution shall be
25 credited on account of the tax payable pursuant to the
26 provisions of this chapter.

1 "(b) (1) For purposes of this subdivision, the
2 following words and terms have the following meanings:

3 "a. CODE. The Internal Revenue Service Code of 1986
4 as in effect from time to time, as well as applicable United
5 States Treasury Department regulations.

6 "b. QUALIFIED RESEARCH EXPENSES (QRE). Qualified
7 research expenses or basic research payments as defined in
8 Section 41 of the Code where the research activities are
9 performed within the boundaries of the State of Alabama and
10 the qualified research expenses or basic research payments are
11 incurred within the State of Alabama. QRE does not include
12 research performed in another state or foreign country.

13 "c. UNIVERSITY RESEARCH CONTRACT. Research and
14 development activities performed and QRE incurred within the
15 state pursuant to sponsored research contracts conducted in
16 conjunction with and through a chartered university within the
17 State of Alabama, public or nonpublic, which conducts graduate
18 programs at the professional or doctoral level. An agreement
19 executed by parties that include at least the university and
20 the taxpayer is required. Funding for sponsored research
21 contracts may be provided from public or private sources.
22 University Research Contract QRE does not include research
23 activities performed in another state or foreign county.

24 "(2) In addition to any other tax credit provided in
25 this chapter, QRE that are incurred in the state are allowed
26 as a credit against the financial institution excise tax
27 liability in an amount equal to six and one-half percent of

1 the QRE incurred. If the QRE was incurred in the state as a
2 part of a university research contract, the credit against
3 state financial institution excise tax liability shall be 15
4 percent of the QRE. Any tax credit provided by this subsection
5 shall be taken for the taxable year in which the taxpayer
6 qualifies for the credit and the credit shall not be
7 refundable. All other state income tax credits shall be
8 applied prior to the application of the tax credit provided in
9 this subsection. Any unused credit in a tax year may be
10 carried over into subsequent tax years for not more than 10
11 years."

12 Section 2. Article 11 is added to Chapter 18 of
13 Title 40, Code of Alabama 1975, to read as follows:

14 Article 11.

15 Research and Development Tax Credits.

16 §40-18-280.

17 (a) For purposes of this section, the following
18 words and terms have the following meanings:

19 (1) CODE. The Internal Revenue Service Code of 1986
20 as in effect from time to time, as well as applicable United
21 States Treasury Department regulations.

22 (2) QUALIFIED RESEARCH EXPENSES (QRE). Defined as
23 qualified research expenses or basic research payments as
24 defined in Section 41 of the Code where the research
25 activities are performed within the boundaries of the State of
26 Alabama and the qualified research expenses or basic research
27 payments are incurred within the State of Alabama. QRE does

1 not include research performed in another state or foreign
2 country.

3 (3) UNIVERSITY RESEARCH CONTRACT. Research and
4 development activities performed and QRE incurred within the
5 state pursuant to sponsored research contracts conducted in
6 conjunction with and through a chartered university within the
7 State of Alabama, public or nonpublic, which conducts graduate
8 programs at the professional or doctoral level. An agreement
9 executed by parties that include at least the university and
10 the taxpayer is required. Funding for sponsored research
11 contracts may be provided from public or private sources.
12 University QRE does not include research activities performed
13 in another state or foreign country.

14 (b) In addition to any other tax credit provided in
15 this chapter, QRE that are incurred in the state are allowed
16 as a credit against state income tax liability in an amount
17 equal to six and one-half percent of the QRE incurred. If the
18 QRE was incurred in the state as a part of a university
19 research contract the credit against state income tax
20 liability shall be 15 percent of the QRE incurred.

21 (c) Any tax credit provided by this section shall be
22 taken for the taxable year in which the taxpayer qualifies for
23 the credit and the credit shall not be refundable. All other
24 state income tax credit shall be applied prior to the
25 application of the tax credit provided in this section.

26 (d) Any unused credit in a tax year may be carried
27 over into subsequent tax years for not more than 10 years.

1 §40-18-281.

2 (a) The Legislature recognizes that a substantial
3 number of businesses are organized as limited liability
4 companies, partnerships, and other types of business entities
5 and that certain business entities, organized as corporations,
6 elect to be treated as "S" corporations under federal and
7 state tax laws, and that it is essential that the QRE tax
8 credit provided for in Section 40-18-280 shall be available on
9 a pass-through basis in the manner hereinafter provided.

10 (b) The shareholders, partners, members, owners, or
11 beneficiaries shall be entitled to the QRE tax credit for each
12 tax year with respect to which a credit is provided pursuant
13 to this article. The credit shall be allowed as follows:

14 (1) The owner of a company which is a proprietorship
15 shall receive a credit against the individual income tax
16 levied by Section 40-18-5 that otherwise would be owed to the
17 state in any year by the owner with respect to the QRE.

18 (2) A company which is an Alabama S corporation and
19 which is subject to taxation under Section 40-18-174 or
20 Section 40-18-175, shall receive a credit against the
21 corporate income tax levied by Section 40-18-31 or by Section
22 40-18-174 or Section 40-18-175, that otherwise would be owed
23 to the state in any year by the company with respect to the
24 QRE.

25 (3) The shareholders of a company which is an
26 Alabama S corporation as defined in Section 40-18-160, and
27 whose taxable income is subject to determination under Section

1 40-18-161, each shall receive a credit against the individual
2 income tax levied by Section 40-18-5 that otherwise would be
3 owed to the state in any year by each shareholder of the
4 company with respect to the QRE.

5 (4) The partners, members, or owners of a company,
6 the income of which is subject to taxation under Section
7 40-18-24, each shall receive a credit against the corporate
8 income tax levied by Section 40-18-31, or against the
9 individual income tax levied by Section 40-18-5, whichever is
10 applicable to each such partner, member, or owner that
11 otherwise would be owed to the state in any year by each
12 partner, member, or owner of the company, with respect to the
13 QRE.

14 (5) A company which is a trust or estate having
15 income subject to taxation under subsection (c) of Section
16 40-18-25, shall receive a credit against the income tax levied
17 by Section 40-18-5 that otherwise would be owed to the state
18 in any year by the company, with respect to the QRE.

19 (6) The beneficiaries of a company which is a trust
20 or estate the income of which is subject to taxation under
21 subsection (d) of Section 40-18-25, each shall receive a
22 credit against the corporate income tax levied by Section
23 40-18-31, or against the individual income tax levied by
24 Section 40-18-5, whichever is applicable to such a
25 beneficiary, that otherwise would be owed to the state in any
26 year by each beneficiary of the company, with respect to the
27 QRE.

1 (7) The QRE tax credit allowed under this article
2 for any tax year of a company shall not exceed the aggregate
3 amount which otherwise would be due from the company, its
4 shareholders, partners, members, owners, or beneficiaries. Any
5 unused tax credit may be carried over for up to 10 years.

6 (8) Any shareholder, partner, member, owner, or
7 beneficiary of a company may elect annually to use his or her
8 allowable portion of the income tax credit created by this
9 article as a nonrefundable estimated tax payment against his
10 or her individual income tax liability. If a taxpayer makes an
11 annual election to use the aforementioned credit as a
12 nonrefundable estimated payment, the taxpayer shall compute
13 the amount of the credit as though it were a credit, subject
14 to all the requirements and limitations provided by law for
15 the credit, but shall use the amount computed as a
16 nonrefundable estimated payment and shall not use the same
17 amount as a credit. In no event shall a credit used as
18 nonrefundable estimated payment exceed the amount that would
19 be available if the credit were not used as a nonrefundable
20 estimate payment.

21 Section 3. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.