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SENATE FINANCE AND TAXATION EDUCATION COMMITTEE SUBSTITUTE FOR HB588

SYNOPSIS: This bill entitles an owner, member, partner, or shareholder to a credit in an amount equal to its pro rata or distributive share of the Alabama income tax paid by the electing pass-through entity with respect to the corresponding tax year.

This bill would make non-substantive technical changes to the amendments to the Alabama Jobs Act enacted by Act 2021-2 of the 2021 Regular Session and to the Growing Alabama Credit, as reestablished by Act 2021-2, to clarify the effect of the Jobs Act tax credits on fund distributions and to clarify the entities that are eligible to claim the Growing Alabama tax credit.

A BILL

TO BE ENTITLED

AN ACT

Relating to income taxation; to provide a credit to an owner, member, partner, or shareholder of an electing pass-through entity in an amount equal to its pro rata or distributive share; relating to the Alabama Jobs Act and the Growing Alabama Act; to amend Section 40-18-376, Code of Alabama 1975, as amended by Act 2021-2 of the 2021 Regular Session; to amend Sections 3 and 6 of Act 2021-2 of the 2021 Regular Session; to make non-substantive technical language changes; to clarify the effect of the tax credit on distributions; and to clarify the entities that are eligible to claim the Growing Alabama tax credit.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) Notwithstanding any other provision of Chapters 16 and 18 of Title 40 to the contrary, for tax years beginning on or after January 1, 2021, any owner, member, partner, or shareholder of an electing pass-through entity shall report its pro rata or distributive share of the income of the entity in accordance with the provisions of Sections 40-16-4, 40-18-24, 40-18-26, 40-18-27, 40-18-28,40-18-29, and 40-18-39, as applicable.

(b) The owner, member, partner, or shareholder of an electing pass-through entity reporting income in accordance with subsection (a) shall be entitled to a credit in an amount equal to its pro rata or distributive share of the Alabama income tax paid by the electing pass-through entity with respect to the corresponding tax year.

(c) Any provision of Chapters 16 or 18 of Title 40 regarding the liability of an owner, member, partner, or shareholder of electing pass-through entity for tax imposed by Chapters 16 or 18 of this title on their pro rata or distributive share of an electing pass-through entity’s income that is in conflict with this act is hereby superseded.

(d) The Department of Revenue may adopt rules for the implementation and administration of this act.

Section 2. Section 40-18-376, Code of Alabama 1975, as amended by Act 2021-2 of the 2021 Regular Session, is amended to read as follows:

"§40-18-376.

"(a) If provided for in the project agreement, the incentivized company is allowed an investment credit in an annual amount equal to 1.5 percent of the capital investment incurred as of the beginning of the incentive period, to be used as follows:

"(1) To offset the income taxes found in this chapter, or as an estimated tax payment of income taxes;

"(2) To offset the financial institution excise tax found in Chapter 16;

"(3) To offset the insurance premium tax levied by Section 27-4A-3(a), or as an estimated payment of insurance premium tax;

"(4) To offset utility taxes; or

"(5) To offset state license taxes levied by Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

"(6) To offset some combination of the foregoing, so long as the same credit is used only once.

"The incentive period shall begin no earlier than the placed-in-service date. The incentive period shall be 10 years. Should only some portion of a tax year be included in the incentive period, the amount of the investment credit shall be prorated on a daily basis.

"(b) A project agreement may specify any one or more of the following methods by which the investment credit shall be realized by the incentivized company, so long as a credit is not utilized more than once:

"(1)a. The investment credit may be claimed as a credit against the taxes in subsection (a) that are actually paid. In any one year, if the credit exceeds the amount of taxes that are allowed to be offset by the project agreement and that are owed by the incentivized company, the incentivized company may carry the credit forward, to the extent allowed in the project agreement. No carryforward shall be allowed for more than five years. Rules similar to those used for Section 40-18-15.2 shall be applied.

"b. Prior to claiming the investment credit as provided in this subdivision, the incentivized company shall submit to the Department of Commerce a certification as to its capital investment as of the dates specified in the project agreement. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue. Thereafter, the Department of Revenue shall allow the investment credit.

"(2) The project agreement may authorize an incentivized company that is taxed as a flow-through entity to allocate the credit among some or all of the owners in any manner specified, regardless of whether the allocation follows rules similar to 26 U.S.C. § 704(b) and the regulations thereunder. The owners may then use their allocated share of the investment credit to offset any of the taxes listed in subsection (a), as provided in subdivision (1). This subdivision shall be liberally construed to apply to multiple levels of companies, to allow the investment credits to be used by those persons bearing the tax burdens of the qualifying project, and such companies shall include but shall in no way be limited to flow-through entities, employee stock ownership plans, mutual funds, real estate investment trusts, and it shall also apply to offset the income tax liability of employee/owners of a flow-through entity owned by an employee stock ownership plan trust.

"(3) All or part of the first three years of the investment credit may be transferred by the incentivized company and applied by another person or company as follows:

"a. A transfer of the credit shall be made by written, notarized contract.

"b. No such transfer shall occur before the contract is approved by the Secretary of Commerce. In determining whether to approve any transfer, the Secretary shall make all of the following findings:

"(i) That any year's investment credit will not be purchased by more than three transferees, unless such limitation is found by the Secretary of Commerce unnecessarily to limit the class of potential transferees;

"(ii) That the proposed transfer will enhance the economic benefits of the qualifying project; and

"(iii) That the transfer is at a value of at least 85 percent of the present value of the credits.

"Upon making affirmative findings on the criteria set forth above, the Secretary of Commerce shall recommend to the Governor that the transfer should be approved. Information about the proposed transfer shall be forwarded to the Governor, and the Governor may include provisions about the transfer in the project agreement, or in an amendment thereto executed by the Governor and the incentivized company.

"c. If a transfer is approved, the incentivized company shall submit to the Department of Commerce the following:

"(i) Certifications as to its capital investment as of the dates specified in the project agreement. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue.

"(ii) Certified information about the transfers, including identifying information about the transferees and the amount of credit each transferee should claim. Following such examination as it deems necessary, the Department of Commerce may certify the information and deliver the same to the Department of Revenue.

"d. Upon receipt of the certifications from the Department of Commerce as required by paragraph c., the Department of Revenue shall thereafter allow the appropriate amount of the investment credit to offset the tax liability of the transferee for any of the taxes listed in subsection (a) and, for any project agreements entered into after January 1, 2021 only, state license taxes levied by Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975. In any one year, if the investment credit exceeds the amount of taxes that are allowed to be offset and that are owed by the transferee, the transferee may carry the credit forward for five years. A transferee may not make a subsequent transfer of the credit.

"e. If a credit is transferred, an incentivized company that is later determined by the Secretary of Commerce to have defaulted under the project agreement shall be liable for the underpayment of tax attributable to the credit and for penalties and interest thereon. Unless the purchase of the credits is determined to have been made in a fraudulent manner, or is a transfer in anticipation of bankruptcy, insolvency, or closure, a transferee shall not be liable for the unpaid tax attributable to the credit, or for penalties or interest thereon.

"(c) The realization methods in subsection (b) shall not create debts of the state within the meaning of Section 213 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

"(d)(1) To the extent the investment credit is used to offset a financial institution excise tax liability, in making the report required by Section 40-16-6(d), the financial institution receiving the investment credit shall not take into account the qualifying project, and the Department of Finance shall adopt rules to ensure that the credit in no case would reduce the distribution for municipalities and counties.

"(2) To the extent the investment credit is used to offset an insurance premium tax liability, the Department of Finance shall adopt rules to ensure that the credit would ~~reduce the distribution for the Education Trust Fund, but~~ in no case ~~would the investment credit~~ reduce the distributions ~~for the State General Fund or~~ to the Alabama Special Mental Health Trust Fund.

"(3) To the extent the investment credit is used to offset liability for the tax imposed by Section 40-21-82 or Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975, the Department of Finance shall adopt rules to ensure that the credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund."

Section 3. Section 3 of Act 2021-2 of the 2021 Regular Session, is amended to read as follows:

"For the purposes of this act, the following words and phrases shall have the following meanings:

"(1) ACCELERATOR. A company which, for a fixed term, educates and mentors early-stage technology companies recruited to a location in Alabama, with the goal of accelerating the companies' development and growth.

"(2) CAPITAL IMPROVEMENTS. Construction and rehabilitation expenses of a capital nature at an inland port or intermodal facility, the dredging of waterways in the immediate vicinity of an inland port, and the expansion of onsite storage facilities at an inland port or intermodal facility.

"(3) ECONOMIC DEVELOPMENT ACTIVITIES. Activities and initiatives which enhance the use of, and flow of goods through, an inland port or intermodal facility.

"(4) ECONOMIC DEVELOPMENT ORGANIZATION. A local economic development organization or a state economic development organization.

"(5) GROWING ALABAMA CREDIT. The credit provided for in subsection (a) of Section 6.

"(6) INDUSTRY OR BUSINESS. An entity which would conduct at a site an activity that is primarily described in Section 40-18-372(1), Code of Alabama 1975.

"(7) INLAND PORT. Any port on a navigable river away from traditional land, air, and coastal borders.

"(8) INTERMODAL FACILITY. Any facility which interconnects two or more different modes of air, rail, or road traffic serving multiple customers, and which involves storage facilities.

"(9) LOCAL ECONOMIC DEVELOPMENT ORGANIZATION. Organizations which are determined by the Department of Commerce to meet both of the following criteria: a. The organization is an Alabama entity not operating for a profit, including, but not limited to, a municipality or county, an industrial board or authority, a chamber of commerce, or some other foundation or Alabama nonprofit corporation charged with improving a community or region of the state. b. The organization has a record of supporting or otherwise participating in economic development ~~activities~~ in some part of Alabama.

"(10) RENEWAL OF ALABAMA COMMISSION. The Renewal of Alabama Commission created by Section 40-18-402, Code of Alabama 1975.

"(11) SITE. Real property owned by a local economic development organization and intended for use by an industry or business.

"(12) STATE ECONOMIC DEVELOPMENT ORGANIZATION. Organizations which are determined by the Department of Commerce to be an Alabama entity not operating for a profit which is charged with improving the state or a region of the state and has a record of supporting or otherwise participating in economic development ~~activities~~ in the state."

Section 4. Section 6 of Act 2021-2 of the 2021 Regular Session, is amended to read as follows:

"(a) A taxpayer is allowed a Growing Alabama Credit to be applied against all of the following:

"(1) To offset the income taxes levied in this chapter, or as an estimated tax payment of income taxes.

"(2) To offset the state portion of the financial institution excise tax levied in Chapter 16 of Title 40 of the Code of Alabama 1975.

"(3) To offset the insurance premium tax levied by subsection (a) of Section 27-4A-3, Code of Alabama 1975.

"(4) To offset state license taxes levied by Article 2 of Chapter 21 of Title 40 of the Code of Alabama 1975.

"(b) In no event shall the Growing Alabama Credit cause a taxpayer's tax liability to be reduced by more than 50 percent. Unused credits may be carried forward for no more than five years.

"(c) Growing Alabama Credits shall be granted to taxpayers using an online system administered by the Department of Revenue. The online system shall allow taxpayers to agree to make a cash contribution to an economic development organization which was approved by the Renewal of Alabama Commission, as provided in Section 5. The online system shall ensure that credits are not granted for contributions to an economic development organization in excess of the amounts approved by the Renewal of Alabama Commission, as provided in Section 5.

"(d) The cumulative amount of funding approved pursuant to this section shall not exceed twenty million dollars ($20,000,000) in a calendar year. Of that amount, no more than four million dollars ($4,000,000) of funding in the aggregate may be approved for accelerator programs as described in Section 40-18-376.3 (c)(2), Code of Alabama 1975.

"(e) The Renewal of Alabama Commission shall reserve at least 25 percent of the amounts specified in subsection ~~(c)~~ (d) for projects located in targeted or jumpstart counties as defined in Section 40-18-376.1, Code of Alabama 1975. In the event applications are not received and credits are not allocated for projects in these areas by the close of the second quarter of the program year, the funds may revert for allocations of other project applications.

"(f) To the extent that a Growing Alabama Credit is used by a taxpayer, the taxpayer shall not be allowed any deduction which would have otherwise been allowed for the taxpayer's contribution. Credits may only be claimed by the donating ~~individual or corporate entity~~ taxpayer and may not be assigned or transferred to any other taxpayer. For purposes of this section, ~~an individual~~ a donating taxpayer includes ~~an individual~~ a taxpayer who is a shareholder of an Alabama S corporation or a partner or member of a Subchapter K entity that made a contribution to an economic development organization which was approved by the Renewal of Alabama Commission.

"(g) The Department of Finance shall adopt rules to ensure that the Growing Alabama Credit in no case would reduce the distribution for the Alabama Special Mental Health Trust Fund by using any unencumbered funds."

Section 5. Section 1 of this act shall become effective for tax years beginning on or after January 1, 2021 following its passage and approval by the Governor or its otherwise becoming law. All other sections shall become effective immediately upon its passage and approval by the Governor, or its otherwise becoming law.