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3 SENATE FINANCE AND TAXATION EDUCATION COMMITTEE SUBSTITUTE FOR
4 HB297

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9 SYNOPSIS: This bill would amend the Railroad
10 Modernization Act of 2019 to change the
11 administering agency for the tax credit program
12 from the Department of Commerce to the Department
13 of Revenue.

14 This bill will also increase the annual cap
15 on income tax credits and extend the sunset date
16 for five years through tax year 2027.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to the Railroad Modernization Act of 2019;
23 to amend Sections 37-11C-2, 37-11C-3, 37-11C-5 and 37-11C-6,
24 Code of Alabama 1975, and Section 37-11C-4, as last amended by
25 Act 2021-177, 2021 Regular Session, Code of Alabama 1795, to
26 change the administering agency for the tax credit program
27 from the Department of Commerce to the Department of Revenue;

1 to increase the annual cap on income tax credits; and to
2 extend the sunset date for five years through tax year 2027.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 37-11C-2, 37-11C-3, 37-11C-5 and
5 37-11C-6, Code of Alabama 1975, and Section 37-11C-4 as last
6 amended by Act 2021-177, 2021 Regular Session, Code of Alabama
7 1795, are amended to read as follows:

8 "§37-11C-2.

9 "As used in this chapter, the following words shall
10 have the following meanings:

11 "(1) CLASS II RAILROAD. A carrier classified as a
12 Class II railroad pursuant to 49 CFR § 1201, or other rule
13 adopted by the United States Surface Transportation Board.

14 "(2) CLASS III RAILROAD. A carrier classified as a
15 Class III railroad pursuant to 49 CFR § 1201, or other rule
16 adopted by the United States Surface Transportation Board.

17 "(3) DEPARTMENT. The Alabama Department of ~~Commerce~~
18 Revenue.

19 "(4) ELIGIBLE TAXPAYER. A railroad that owns or
20 leases railroad infrastructure in Alabama and is classified by
21 the United States Surface Transportation Board as a Class II
22 or Class III railroad.

23 "(5) ELIGIBLE TRANSFEREE. A taxpayer who is
24 transferred a tax credit allowed by this chapter by an
25 eligible taxpayer.

26 "(6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.
27 Expenditures within the taxable year for maintenance,

1 deductible maintenance of way expenses, reconstruction, or
2 replacement of railroad infrastructure within the state that
3 is owned or leased by an eligible taxpayer. The term includes
4 new construction of industrial leads, switches, spurs,
5 sidings, and extensions of existing sidings by an eligible
6 taxpayer. The term does not include expenditures for which an
7 income tax deduction has been claimed.

8 "(7) RAILROAD INFRASTRUCTURE. Includes, but is not
9 limited to, the track, roadbed, bridges, signaling systems and
10 train control, industrial leads, and track-related structures
11 owned or leased by an eligible taxpayer.

12 "(8) REHABILITATION PLAN. Detailed construction
13 plans and specifications for the proposed rehabilitation of
14 railroad infrastructure under this chapter.

15 "§37-11C-3.

16 "(a) By December 1, 2019, the Department of Commerce
17 shall develop standards for the approval of qualified railroad
18 rehabilitation expenditures for which a tax credit is being
19 sought. The standards shall consider the availability of
20 additional public or private funding for the project, the
21 expected completion time of the project, and the anticipated
22 impact of the project on usage of the railroad infrastructure.

23 "(b) By December 1, 2022, the department shall
24 develop standards for the approval of qualified railroad
25 rehabilitation expenditures for which a tax credit is being
26 sought. The standards shall consider the availability of
27 additional public or private funding for the project, the

1 expected completion time of the project, and the anticipated
2 impact of the project on usage of the railroad infrastructure.

3 "~~(b)~~ (c) Prior to beginning any qualified railroad
4 rehabilitation work, the eligible taxpayer shall submit an
5 application and rehabilitation plan to the department and an
6 estimate of the qualified railroad rehabilitation expenditures
7 under the rehabilitation plan; provided, however, the eligible
8 taxpayer, at its own risk, may incur qualified railroad
9 rehabilitation expenditures no earlier than six months prior
10 to the submission of the application and rehabilitation plan.

11 "~~(c)~~ (d) The department shall review the application
12 and rehabilitation plan to determine if the information
13 contained therein is complete. If the department determines
14 that the application and rehabilitation plan are complete, the
15 department shall reserve, for the benefit of the eligible
16 taxpayer, an allocation for a tax credit as provided in this
17 chapter and shall notify the eligible taxpayer in writing of
18 the amount of the reservation. The reservation of tax credits
19 does not entitle the taxpayer to an issuance of tax credits
20 until the owner complies with all other requirements of this
21 chapter for the issuance of the tax credits. Reservations of
22 tax credits shall be issued by the department within a
23 reasonable time from the filing of a completed application and
24 rehabilitation plan. Any application disapproved by the
25 department shall be removed from the review process, and the
26 department shall notify the taxpayer in writing of the
27 decision to remove the application. A disapproved application

1 may be resubmitted, but shall be deemed to be a new submission
2 and may be charged a new application fee. In the event the
3 reservations of tax credits equal the total amount available
4 for reservations during the tax year, all eligible taxpayers
5 with applications then awaiting approval or thereafter
6 submitted shall be notified by the department that no
7 additional tax credits shall be granted during that tax year.
8 The applications shall remain in active status from the date
9 of the original application and shall be considered for
10 recommendations of tax credits in the event that additional
11 credits become available due to rescission by the department
12 or when a new tax year's allocation of tax credits becomes
13 available.

14 ~~"(d)~~ (e) Following the completion of a qualified
15 railroad rehabilitation project, the eligible taxpayer shall
16 notify the department that the rehabilitation has been
17 completed and shall certify the qualified railroad
18 rehabilitation expenditures incurred with respect to the
19 rehabilitation plan. Within 90 days after receipt and approval
20 of the foregoing documentation from the eligible taxpayer, the
21 department shall issue a tax credit certificate in an amount
22 equivalent to the amount of the qualified railroad
23 rehabilitation expenditures incurred with respect to the
24 rehabilitation plan as certified by the taxpayer, not to
25 exceed the amount of the tax credit reservation issued for the
26 project.

1 ~~"(e) (f)~~ (f) ~~In order to obtain a credit against any~~
2 ~~state income tax due that is specified in this chapter, an~~
3 ~~eligible taxpayer shall file the tax credit certificate with~~
4 An eligible taxpayer that has been awarded the tax credit
5 certificate may claim the credit against any state income tax
6 due that is specified in this chapter against the taxpayer's
7 ~~Alabama state tax return. The tax credit certificate shall~~
8 ~~satisfy all requirements of the Department of Revenue~~
9 ~~pertaining to the eligibility of the person claiming the~~
10 ~~credit.~~ All information submitted to the Department of Revenue
11 by taxpayers claiming or seeking certification of a credit
12 shall be subject to the confidentiality provisions of Section
13 40-2A-10.

14 ~~"(f) (g)~~ (g) For processing the taxpayer's application
15 for a tax credit, the department may impose an application fee
16 equal to one percent of the qualified rehabilitation
17 expenditures, not to exceed a fee equal to ten thousand
18 dollars (\$10,000). Any fees collected by the department under
19 this subsection shall be deposited in the State Treasury to
20 the credit of the department and all such funds are to be
21 appropriated to the department to defray the expenses incurred
22 in carrying out this chapter.

23 ~~"(g) (h)~~ (h) The department shall report to the
24 Legislature in the third year following passage of this
25 chapter, and annually thereafter, on the overall economic
26 activity, usage, and impact to the state from the
27 rehabilitation of railroad infrastructure for which tax

1 credits have been allowed. The information in the reports
2 shall be consistent with the information required by the
3 Legislature pursuant to, and shall be provided by the
4 department to the Legislature in accordance with Section
5 40-1-50, and rules adopted thereunder. Information provided
6 pursuant to this section is exempt from the confidentiality
7 provisions of Section 40-2A-10.

8 "§37-11C-4.

9 "(a) For tax years beginning after December 31,
10 2019, through December 31, 2022, there is a credit allowed
11 against the state income tax levied by Section 40-18-2 equal
12 to 50 percent of an eligible taxpayer's qualified railroad
13 rehabilitation expenditures. The tax credit allowed under this
14 section may not exceed three thousand five hundred dollars
15 (\$3,500) multiplied by the number of miles of railroad track
16 owned or leased within the state by the eligible taxpayer at
17 the close of the taxable year.

18 "(b) For tax years beginning after December 31,
19 2022, through December 31, 2027, there is a credit allowed
20 against the state income tax levied by Section 40-18-2 equal
21 to 50 percent of an eligible taxpayer's qualified railroad
22 rehabilitation expenditures. The tax credit allowed under this
23 section may not exceed four thousand one dollars (\$4,100)
24 multiplied by the number of miles of railroad track owned or
25 leased within the state by the eligible taxpayer at the close
26 of the taxable year.

1 "~~(b)~~ (c) There is created within the Education Trust
2 Fund a separate account named the Railroad Rehabilitation
3 Income Tax Credit Account. The Commissioner of Revenue shall
4 certify to the state Comptroller the amount of income tax
5 credits under this section and the state Comptroller shall
6 transfer into the Railroad Rehabilitation Income Tax Credit
7 Account only the amount from sales tax revenues within the
8 Education Trust Fund that is sufficient for the Department of
9 Revenue to use to cover the income tax credits for the
10 applicable tax year. The Commissioner of Revenue shall
11 distribute the funds in the Railroad Rehabilitation Income Tax
12 Credit Account pursuant to this section.

13 "~~(c)~~ (d) The entire tax credit may be claimed by the
14 taxpayer in the taxable year in which the qualified railroad
15 rehabilitation expenditures are completed and placed into
16 service. Where the taxes owed by the eligible taxpayer are
17 less than the tax credit, the eligible taxpayer may be
18 entitled to claim a refund for the difference.

19 "~~(d)~~ (e) For the calendar years 2020, 2021, and
20 2022, the aggregate amount of all tax credits that may be
21 reserved in any one of such years by the department upon
22 certification of rehabilitation plans shall not exceed three
23 million seven hundred thousand dollars (\$3,700,000) plus any
24 amount of previous reservations of tax credits that were
25 rescinded during the tax year. However, if all of the
26 allowable tax credit amount for any tax year is not requested
27 and reserved, any unreserved tax credits may be utilized by

1 the department in awarding tax credits in subsequent years;
2 provided, however, that in no event shall a total of more than
3 eleven million one hundred thousand dollars (\$11,100,000) be
4 reserved by the department during the period of August 1, 2019
5 through August 1, 2022. For purposes of this chapter, "tax
6 year" shall mean the calendar year.

7 "(f) For the calendar years 2023 through 2027, the
8 aggregate amount of all tax credits that may be reserved in
9 any one of such years by the department upon certification of
10 rehabilitation plans shall not exceed four million five
11 hundred thousand dollars (\$4,500,000) plus any amount of
12 previous reservations of tax credits that were rescinded
13 during the tax year. However, if all of the allowable tax
14 credit amount for any tax year is not requested and reserved,
15 any unreserved tax credits may be utilized by the department
16 in awarding tax credits in subsequent years; provided,
17 however, that in no event shall a total of more than
18 twenty-two million five hundred thousand dollars (\$22,500,000)
19 be reserved by the department during the period of August 1,
20 2022, through August 1, 2027. For the purposes of this chapter
21 "tax year" shall mean the calendar year.

22 ~~"(e)~~ (g) Tax credits granted to a partnership, a
23 limited liability company, S Corporations, trusts, or estates
24 shall be claimed at the entity level and shall not pass
25 through to the partners, members, or owners.

26 ~~"(f)~~ (h) All or any portion of the income tax credit
27 authorized under this section may be transferable and

1 assignable by written transfer agreement and subject to any
2 notice and verification requirements to be determined by the
3 Department of Revenue. Any tax credits transferred shall be at
4 a value of at least eighty-five percent (85%) of the present
5 value of the credits. However, once a credit is transferred,
6 only the transferee may utilize the credit and the credit may
7 not be transferred again. An eligible transferee of the credit
8 may use the amount of credits transferred to offset any income
9 tax due under Chapter 18 of Title 40. The ~~Department of~~
10 ~~Revenue~~ department, by rule, shall adopt a written transfer
11 agreement form. The transfer statement form shall include the
12 name and federal taxpayer identification number of the
13 transferor and each transferee listed therein along with the
14 amount of the tax credit to be transferred to each transferee
15 listed on the form. The transfer statement form shall also
16 contain such other information as the ~~Department of Revenue~~
17 department may from time to time reasonably require. For each
18 transfer, the transferor shall file with the department: (1) a
19 completed transfer statement form; ~~(2) a copy of the tax~~
20 ~~credit certificate issued by the Department of Commerce~~
21 ~~documenting the amount of tax credits which the transferor~~
22 ~~intends to transfer;~~ ~~(3)~~ (2) a copy of the proposed executed
23 written transfer agreement; and ~~(4)~~ (3) a transfer fee payable
24 to the department in the amount of one thousand dollars
25 (\$1,000) per transferee listed on the transfer statement form.
26 ~~The transferor shall file with the Department of Revenue a~~
27 ~~fully executed copy of the written transfer agreement with~~

1 ~~each transferee within 30 days after the completed transfer.~~
2 ~~Filing of the written transfer agreement with the Department~~
3 ~~of Revenue shall perfect such transfer with respect to such~~
4 ~~transferee.~~ Within 30 days after the ~~Department of Revenue's~~
5 department's receipt of the fully executed written transfer
6 agreement, the ~~Department of Revenue~~ department shall issue a
7 tax credit certificate to each transferee listed in the
8 agreement in the amount of the tax credit so transferred. Such
9 certificate shall be used by the transferee in claiming the
10 tax credit. The ~~Department of Revenue~~ department may adopt
11 such additional rules as are necessary to permit verification
12 of the ownership of the tax credits but shall not adopt any
13 rules which unduly restrict or hinder the transfer of the tax
14 credits.

15 "§37-11C-5.

16 "(a) By October 1, 2019, the Department of Commerce
17 shall adopt any and all rules necessary to implement this
18 chapter. Applications for the reservation of tax credits shall
19 be accepted beginning November 1, 2019.

20 "(b) By October 1, 2022, the Department of Revenue
21 shall adopt any and all rules necessary to implement this
22 chapter. Applications for the reservation of tax credits shall
23 be accepted beginning November 1, 2022.

24 "§37-11C-6.

25 The tax credit allowed under this chapter shall be
26 effective for the 2020 tax year and shall continue through the
27 ~~2022~~ 2027 tax year, unless extended by act of the Legislature.

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.