

State and Local Tax Bulletin

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Alabama Legislature Proposes New Incentives for Businesses and Workers

By Christopher R. Grissom and William T. Thistle

Upcoming Seminars Involving Members Of Our SALT Practice Group

April 26 - 30, 2009

Council On State Taxation (COST) 2009 Intermediate State Income Tax School, Georgia Tech Hotel & Conference Center, Atlanta, Georgia. Chris Grissom will be a co-panelist in a presentation on the State Taxation of Pass-Through Entities and Their Corporate Owners. For more information, please visit the COST website: www.cost.org.

May 6, 2009

COST 2009 Southeastern Regional Meeting, Grandview Conference Center, Birmingham, Alabama. The conference will feature an update on critical state and local tax issues and legislation throughout the Southeast. Presenters will include representatives of COST, Bradley Arant Boult Cummings LLP, PricewaterhouseCoopers LLP, HealthSouth, Vulcan Materials, and the Commissioner of Revenue of the State of Alabama and his staff. For more information, please visit the COST website: www.cost.org.

May 18 - 21, 2009

COST 2009 Spring Audit Session/Income Tax Conference, Hyatt Regency Cambridge, Boston, Massachusetts. Bruce Ely will be a co-presenter in an update on the state taxation of LLCs and LLPs and their members/partners. For more information, please visit the COST website: www.cost.org.

May 20, 2009

Tax Executives Institute (TEI) State & Local Taxes Seminar, Lakewood Country Club, Lakewood, Colorado. Chris Grissom will be speaking on the State Taxation of LLPs/LLCs. For more information, please visit TEI's website: www.tei.org.

This legislative session, in the face of historically adverse economic conditions, key members of the Alabama Legislature have proposed several new income tax incentives for businesses and their employees, in an effort to stimulate Alabama's economy. Notably, HB 568, the centerpiece of Governor Bob Riley's "Alabama Economic Recovery Plan," features many incentives for white collar service industries and "green" employers. Other parts of the Governor's Economic Recovery Plan offer incentives for producers of alternative and renewable energy, and create tax credits for companies hiring workers now on the state's unemployment rolls or in counties with the highest jobless rates.

Believing that now is the time to retool economic development incentives, so that they are in place when the current economic downturn ends and companies are ready to expand, Governor Riley has stated, in a recent video, that by landing corporate headquarters projects, research and development facilities and data centers, Alabama will emerge from the economic downturn "stronger than ever before." He believes that extending incentives to such businesses is vital to the state's economic success. Other bills have been introduced to provide tax incentives to the film industry and to exempt investment partnerships from the current income tax withholding requirements. In addition to the Governor, the Economic Development Association of Alabama, a membership-based organization focused on promoting economic growth in Alabama, supports many of these incentive bills, including HB 69, HB 482, HB 483, and HB 568.

Below is a discussion of bills that have been introduced this session that seek to encourage investment and job growth through income tax credits or other incentives.

HB 69: Known as the Qualified Investment Partnership / Film Incentives Bill, this bill is designed to promote in-state film/entertainment productions as well as companies that operate investment funds by granting favorable tax treatment to both. The bill would exempt "qualified investment partnerships" ("QIPs") from the current income tax withholding regime and their non-resident investors from Alabama income tax. Other partnerships or LLCs would be required to file an annual composite tax return and remit Alabama income tax on the taxable income of their non-resident owners. In addition, the bill's

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film incentive provisions, which include an income tax rebate of 25% of preproduction, production, and postproduction expenditures (other than for marketing) if such expenditures exceed \$500,000, were amended in committee to take effect January 1, 2010—one year later than the original proposal. Other film incentives include sales, use, and lodgings tax exemptions for qualified projects that report expenditures in excess of \$150,000. The joining of the QIP bill and film incentives bill into one was designed to make the bill revenue neutral by offsetting the revenue loss that the film incentives are expected to generate in the short-run. Having unanimously passed the House, the bill also passed out of the Senate on March 10, and now awaits the Governor's signature.

HB 287: This bill would provide a research and development tax credit for tax years beginning after December 31, 2009. The credit would phase-in annually, increasing to a maximum of 20% of the amount allowed in IRC section 41, if certain conditions are met.

HB 568: As mentioned above, this bill would extend Alabama's 20-year credit period existing under the quite popular corporate income tax Capital Credit program to 30 years. However, the total capital credit utilized over the 30-year credit period may not exceed 100% of the capital costs of the qualifying project. Furthermore, as an incentive to the growth of the "white collar" service economy in Alabama, this bill would also make the full range of incentives offered to new and expanding businesses available on an equal basis to new and expanding corporate headquarters, data processing centers (including those related to financial institutions and insurance companies), and research and development facilities. In addition, this bill would make the full range of incentives offered to new and expanding businesses available to producers of electricity or natural gas from biomass and biofuel producers.

HB 406: This bill would incentivize workers and employers to increase worker skill levels beyond those developed in high school by proposing a nonrefundable income tax credit, known as the "Back to School Tax Credit," which would be available to both employees and employers. The credit would be an amount up to 50% of the qualifying costs associated with the additional education and training incurred by a qualifying individual. However, the definitions of "qualifying individual" and "qualified employer" are to be defined by Alabama's Office of Workforce Development.

HB 468: For tax years beginning after December 31, 2009, this bill proposes to phase in, in equal installments over two years, 20% of the amount of credit allowed by IRC sections 51 and 52 (the "Work Opportunity Tax Credit"). By allowing employers who hire employees from a "targeted group" to claim a credit against their income taxes, this bill is designed to encourage employers to hire and employ individuals who are in a higher risk category (*e.g.*, veterans, ex-felons, "designated community" residents, food stamp recipients, long-term family assistance recipients, SSI recipients, etc.). In order for the credit to be available, the Alabama Department of Finance must certify at least a 3% estimated growth in revenues earmarked for the Education Trust Fund.

HB 482: This bill proposes a nonrefundable income tax credit for businesses that create jobs in a county or counties identified by the Department of Industrial Relations as being within the 25 Alabama counties with the highest annual unemployment rate for the year the job is created. For each new job created, there would be a credit of \$500 per year beginning in the tax year in which the new job is created, and continuing for two subsequent years provided that the new job is still in place at the end of each tax year for which the employer claims the credit. To qualify, an employer must have a net increase in the total number of full-time employees in Alabama each year in which the credit is claimed.

HB 483: This bill proposes an income tax credit, the "Back to Work Tax Credit," to encourage employers to hire individuals who are currently receiving unemployment compensation from the State. The amount of the credit would be \$500 for each newly-hired full-time employee, who remains an employee for at least six months. To receive the income tax credit, an employer must apply to the Department of Industrial Relations for certification that the newly hired employee meets the eligibility requirements.

HB 581 / SB 217: These two bills would require an employer to certify in writing that it does not employ illegal immigrants, in order to qualify for any economic development incentive awarded by the Alabama Development Office. Moreover, the bills would prohibit any noncompliant employer from obtaining a future award of incentives for at least three years after repayment of previously-granted incentives. The bills would provide, however, for the issuance of a notice of noncompliance to the employer and a hearing before the Alabama Development Office to establish compliance.

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