



## Tax Incentives and Economic Development Update

By: Christopher R. Grissom and William T. Thistle

The following is a summary of recent updates affecting tax incentives and related economic development matters in Alabama. The Alabama bills discussed in this newsletter are posted on our firm's [website](#), along with other tax-related bills that were introduced this past regular session.

### 2010 Regular Session: What Passed

**Reemployment Act of 2010:** provides an income tax deduction for Alabama employers that create jobs for unemployed persons. The income tax deduction is an amount *up to* an additional 50% of the gross wages paid to each person hired – the 50% deduction is permitted for wage rates of \$14 per hour and above; a 40% deduction is granted for wage rates between \$12 and \$14 per hour; and a 35% deduction is granted for wage rates between \$10 and \$12 per hour. No deduction is available if the job pays less than \$10 per hour or if the employee works less than 37.5 hours per week, regardless of the employee's wage rate.

To qualify for the deduction, when the new employee is hired, he must have been drawing state unemployment compensation benefits or his unemployment benefits must have expired. In addition, the employer must *retain* the new employee for at least one year to receive the income tax deduction. Although it appears that the one year testing period starts immediately, the income tax deduction is only effective for tax year 2011 or 2012. We expect guidance from the Alabama Department of Revenue soon, first on its website, and then through a regulation.

Related to the Reemployment Act of 2010 is the federal "Hiring Incentives to Restore Employment Act" (the "**HIRE Act**," Public Law 111-147). This Act provides tax incentives for businesses that hire unemployed workers by exempting certain wages from Social Security taxes (a payroll tax exemption), and, for tax years ending after March 18, 2010, by providing employers with an income tax credit up to \$1,000 per "qualified individual" hired, if the new hire is retained for at least 52 consecutive weeks. The HIRE Act also provides additional economic incentives for small businesses by extending maximum expensing amounts under I.R.C. § 179 for tangible personal property placed in service during 2010. The IRS recently posted on its [website](#) the newly-revised payroll tax form that most eligible employers can use to claim the special payroll tax exemption. Additional guidance should be forthcoming soon.

**Act 2010-254:** provides a six-month transition period, delaying the recently increased base wage threshold in order to qualify for Alabama's capital income tax credit, otherwise known as the Capital Credit. An investing company that filed its statement of intent with the Alabama Department of Revenue on or before

June 3, 2010

### UPCOMING EVENTS

Please mark your calendars for the following upcoming conferences:

Economic Development Association of Alabama 2010 Summer Conference will be held July 11-14, 2010 at The Grand Hotel in Point Clear, Alabama. For more information, please visit the EDAA website: [www.edaa.org](http://www.edaa.org).

North Alabama Industrial Development Association Annual Conference to be held August 24-25, 2010 at The Westin Huntsville, Huntsville, Alabama. For more information, please contact Cindy Burns at 256.353.9450.

North Alabama Industrial Development Association and the Cherokee County Industrial Development Authority/Gadsden State will be sponsoring the Sixth Annual North Alabama Women in Economic Development Conference June 15 and 16. Bradley Arant Boult Cummings partner Dottie Pak will be the conference dinner speaker addressing current issues in economic development for women today. For more information, please visit the NAIDA website: [www.naida.com](http://www.naida.com).

*continued on page 2*

November 21, 2009 is only required to satisfy the base wage requirements in effect prior to May 21, 2009 (the effective date of Act 2009-722), *i.e.*, \$8 per hour (or \$10 per hour, including benefits).

**Act 2010-36:** extends the sunset date by five years for capital credits allowed in connection with a qualifying project related to the Alabama State Port Authority infrastructure. Thus, capital credits will be available for new projects that qualify on or prior to December 31, 2015, rather than December 31, 2010.

**SB 121 – The Road Bill:** On its second attempt of the session, Senator Lowell Barron’s “Road Bill” passed both houses and will be a ballot issue for voters this November. The Road Bill proposes a constitutional amendment to provide for a ten year, \$1 billion road and bridge construction program funded by the Alabama Trust Fund, the interest from which is generally reserved for the General Fund.

**Act 2010-184 – Enhanced Use Lease Area Act of 2010:** effective March 9, 2010, this Act provides for financing improvements to certain real and personal property located within a military installation through the creation of tax increment districts. The Act amends current tax increment financing rules so that those provisions apply to projects in an enhanced use lease area, which is any area of a military installation that contains under-utilized real or personal property, or both, that is leased by a secretary of a military department to a lessee under 10 U.S.C. § 2667. (*e.g.*, Redstone Arsenal or Fort McClellan).

Among other notable provisions, the Act defines “project costs” incurred in any tax increment district where not less than 50%, by area, of the real property is an enhanced use lease area to include all allowable costs that are expended by a public entity or a developer within three years immediately preceding the date the tax increment district was created. Furthermore, if 50% or more, by area, of the real property located within a tax increment district is an enhanced use lease area, the local governing body can establish the tax increment district for a period up to 35 years.

Under this Act, real property located in a tax increment district in which 50% or more, by area, of the real property within the district is an enhanced use lease area (qualified property) is entitled to an abatement of state property taxes when certain statutory requirements are met. Instead of paying

state property tax increments on qualified property, a property owner that is not exempt from ad valorem taxation must pay the state property tax increment on the qualified property to the public entity that created the tax increment district in which the property is located. Such payments, which must be used to pay for project costs and to repay tax increment obligations issued to fund project costs, continue until the tax increment district is terminated.

**Act 2010-715:** provides the Alabama Incentives Financing Authority with additional funding flexibility by increasing the cap on the Authority’s bonds to \$315 million and creating a reserve and maintenance fund to pay certain costs of acquiring, operating, and maintaining the Authority’s economic development projects.

**Act 2010-219:** reinstates a tax exemption for the renowned Hudson-Alpha Institute for Biotechnology in Huntsville by reenacting Ala. Code § 40-9-34, retroactively effective to October 1, 2008, to clarify that the section was not affected by Section 12 of Acts of Alabama 2009-144, the Entertainment Industry Incentive Act of 2009.

## **Recent Cases and Pronouncements of Interest**

**AH1 Linden Lumber Real Estate, LLC v. State Dep’t of Revenue**, Admin. L. Div. Dkt. No. ADV.09-1002 (Op. & Prelim. Order Jan. 21, 2010): Chief Department of Revenue Administrative Law Judge Bill Thompson determined that letters sent by the Department of Revenue (the “Department”) advising a city to rescind and a county to disregard real and personal property tax abatements granted under the Tax Incentive Reform Act of 1992 constituted acts by the Department from which a taxpayer may appeal to the Administrative Law Division (“ALD”).

After reviewing an abatement of real and personal property taxes, the Department, in separate letters, advised both the Linden City Council and the Marengo County Revenue Commissioner that the abatement was not valid and that they should rescind it and assess the taxpayer at the full millage rate. The taxpayer deemed the letters to constitute a substantive denial of the abatement by the Department. Although the Alabama Taxpayers’ Bill of Rights does not apply to the assessment of ad valorem taxes on real or personal property, Judge Thompson correctly pointed out that the taxpayer

was not appealing from an assessment, but rather was appealing from the fact that the Department wrote letters advising the City and the County to rescind and otherwise disregard the abatement.

Interestingly, Judge Thompson concluded his opinion by noting that while the Department did not have the authority to deny the abatement, it remains unclear what relief the ALD can grant the taxpayer, assuming of course that the City and the County followed the Department's advice. The ALD does not have jurisdiction to reinstate the abatement, nor can it cause the Marengo County Revenue Commissioner to recognize the abatement. Accordingly, to the extent that the Department advises cities and counties to rescind or otherwise disregard an abatement of real and personal property taxes in the future, taxpayers wishing to challenge that action should consider pursuing their cause of action in circuit court, rather than before the ALD.

A hearing on the substantive issue was held on April 22, 2010, but a ruling has not yet been issued.

**Therapeutic Discovery Project Program:** On May 21, 2010, the IRS released Notice 2010-45, which provides the guidelines that small companies can use to apply to have their research projects certified as eligible to participate in the government's Therapeutic Discovery Project Program, under I.R.C. § 48D. The program is designed to spur medical research by providing an income tax credit to companies that are selected to participate in the program.

The tax credit, which will be available for investments made in 2009 and 2010, will cover up to 50% of the cost of qualifying biomedical research, up to a maximum credit of \$5 million per business. The credit is only available to companies with fewer than 250 employees and has an overall cap of \$1 billion. Selection will be targeted toward projects that show significant potential to produce new therapies, address unmet medical needs, reduce the long-term growth of health care costs, and advance the goal of curing cancer within the next 30 years.

Companies interested in participating in the program must act quickly. They may begin submitting applications for certification beginning on June 21, 2010, but all applications must be received by July 21, 2010. As part of the review process, the Health and Human Services Department will evaluate each

project for its potential to produce new therapies or reduce health care costs. The allocation decisions will also consider which projects show the greatest potential to create and sustain high quality, high-paying jobs in the United States. Only projects that show a reasonable potential to meet these goals will be certified as eligible for the tax credit. Decisions on qualifying projects will be issued by October 29, 2010.

**Government Grants May Be Excluded From Gross Income as Capital Contributions:** Generally, federal taxable gross income includes all income from whatever source derived. Thus, taxpayers, other than nonprofit or governmental entities must include governmental grants in gross income, absent a specific exemption. However, the IRS recently concluded, in a March 4, 2010 letter to the General Counsel of the U.S. Department of Commerce, that payments awarded by the U.S. Department of Commerce's National Telecommunications and Information Administration under the Broadband Technology Opportunities Program ("BTOP") should be excluded from a corporate taxpayer's income under I.R.C. § 118 as a capital contribution by a nonshareholder. Conversely, a similar grant to an LLC taxed as a partnership may *not* be exempt because I.R.C. § 118 does not apply to partnerships. The BTOP payment at issue was restricted solely to the acquisition of capital assets to be used to expand the corporate grant recipient's trade or business. However, the ruling also provides that a BTOP grant payment made to a corporation that may be used for operating expenses will not qualify as an I.R.C. § 118(a) contribution of capital and so must be included in the corporation's gross income.

Please contact Chris Grissom or Will Thistle of our Economic Development Practice Group to discuss any questions that you may have regarding these or any other matters that may impact your business.

**Christopher R. Grissom**  
205.521.8514  
cgrissom@babccom

**William T. Thistle, II**  
205.521.8985  
wthistle@babccom

**Practice Group Members**

Bruce P. Ely  
205.521.8366  
bely@babbc.com

Rod Kanter  
205.521.8517  
rkanter@babbc.com

David A. Rutter  
615.252.2346  
drutter@babbc.com

Joseph W. Gibbs  
615.252.2317  
jgibbs@babbc.com

James E. Long, Jr.  
205.521.8626  
jelong@babbc.com

Christian-Andreas Schütz  
615.252.2358  
cschuetz@babbc.com

W. Stanley Gregory  
334.956.7604  
sgregory@babbc.com

Jim Murphy  
615.252.2303  
jmurphy@babbc.com

Brian S. Shelton  
615.252.2313  
bshelton@babbc.com

Christopher R. Grissom  
205.521.8514  
cgrissom@babbc.com

Michael B. Noble  
615.252.2391  
mnoble@babbc.com

J. David Stewart  
205.521.8368  
dstewart@babbc.com

John R. Haynes  
615.252.2343  
jhaynes@babbc.com

Dorothy Daigle Pak  
205.521.8279  
dpak@babbc.com

William T. Thistle, II  
205.521.8985  
wthistle@babbc.com

K. Wood Herren  
205.521.8505  
wherren@babbc.com

J. Thomas Trent, Jr., Chair  
615.252.2327  
ttrent@babbc.com

**Bradley Arant Boult Cummings LLP Office Locations:****ALABAMA**

One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203  
205.521.8000

200 Clinton Avenue West, Suite 900  
Huntsville, AL 35801  
256.517.5100

The Alabama Center for Commerce  
401 Adams Avenue, Suite 780  
Montgomery, AL 36104  
334.956.7700

**MISSISSIPPI**

188 E. Capitol Street, Suite 400  
Jackson, MS 39201  
601.948.8000

**NORTH CAROLINA**

100 North Tryon Street, Suite 2690  
Charlotte, NC 28202  
704.332.8842

**TENNESSEE**

1600 Division Street, Suite 700  
Nashville, TN 37203  
615.244.2582

**WASHINGTON, DC**

1133 Connecticut Avenue NW,  
12th Floor  
Washington, DC 20036  
202.393.7150

To unsubscribe from this newsletter, email Meg Oglesby, [moglesby@babbc.com](mailto:moglesby@babbc.com)

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

©2010 Bradley Arant Boult Cummings LLP

ALABAMA | DISTRICT OF COLUMBIA | MISSISSIPPI | NORTH CAROLINA | TENNESSEE

