

## **Alabama: 2012 Session Is Very Productive for Incentives Legislation**

*ALABAMA*

*Author: CHRISTOPHER R. GRISSOM AND JAMES E. LONG, JR.*

*Bradley Arant Boult Cummings LLP*

*Birmingham, Alabama*

*Some of the authors' colleagues were involved with some of the legislative efforts discussed herein.*

*Copyright © 2012. Christopher R. Grissom/James E. Long, Jr./Bradley Arant Boult Cummings LLP. All rights reserved.* This article appears in and is reproduced with the permission of the Journal of Multistate Taxation and Incentives, Vol. 22, No. 5, August 2012. Published by Warren, Gorham & Lamont, an imprint of Thomson Reuters.

The following discussion summarizes the incentives-related legislation enacted by the Alabama Legislature during the 2012 Regular Session, which was certainly focused on proposals to create jobs and spur investment in Alabama's economy. The House and Senate leadership successfully passed many of the proposals that were supported by Governor Bentley, many of which expand the scope and improve the operation of Alabama's existing statutory incentives. The cornerstone of the governor's incentive package, however—H.B. 160, introduced 2/7/12, the Alabama Job Creation and Retention Act of 2012—encountered opposition in the Senate and failed to pass this session.

### **Alabama Data Processing Center Economic Incentive**

**Enhancement Act of 2012.** (H.B. 154, 4/19/12; Act No. 2012-210, amending Ala. Code §§40-9B-3, 40-9B-4, 40-18-190, and 40-18-193.) In order to encourage large data center projects to locate in Alabama, this Act enhances the current statutory sales, use, and property tax abatements (under the Alabama Tax Incentive Reform Act of 1992 ("TIRA")) available to these qualifying projects. The Enhancement Act extends the existing abatement periods as follows: (1) if the aggregate capital investment in a data center is more than \$200 million during the ten years after the center is completed, the abatement period is extended from ten to 20 years; and (2) if the aggregate capital investment in the data center is more than \$400 million during the 20 years after it is completed, the abatement period is extended to 30 years.

By extending the abatement period, the Act provides for an abatement of all state sales and use taxes and local noneducational sales and use taxes, as well as the noneducational property taxes, on computers, software, and other property acquired after a data center is completed but before the end of the applicable 10-, 20-, or 30-year exemption period. For purposes of both the "capital income tax credit" (discussed below) and TIRA abatements, the Act also reduces, from 50 to 20, the number of new jobs needed in order to qualify as a data processing center, but the average annual total compensation (including benefits) for these new jobs must be at least \$40,000.

The Enhancement Act also makes certain warehousing and storage facilities (classified under North American Industry Classification System (NAICS) subsector 493) eligible for Alabama's primary tax incentives (capital income tax credits and TIRA abatements), provided the project also furnishes logistics services related to the distribution of goods. The capital income tax credit program provides an annual corporate or individual income tax credit equal to 5% of the total capital costs of certain qualifying projects, for up to 20 years. In effect, the qualifying project owner is entitled to receive an income tax credit for 100% of its capital costs, claimed over a 20-year period, but only if the project meets certain criteria. In order to qualify for the capital tax credit and TIRA incentives under NAICS subsector 493, the project must have capital costs of at least \$5 million (or \$1 million if the facility is located in a favored geographic area) and create at least 50 new jobs within two years after the project is placed in service.

**Airplane parts sales tax exemption.** (H.B. 39, 4/10/12; Act No. 2012-185, amending Ala. Code §40-23-4(a)(37) and adding new §40-23-4(a)(46).) This legislation provides a sales tax exemption for any of the parts, components, or systems that become a part of a fixed- or rotary-wing military aircraft or certified transport category aircraft that undergoes conversion, reconfiguration, or general maintenance, provided the address of the aircraft for FAA registration purposes is not in Alabama.

The legislation limits the exemption, however, so that it will not apply to the county and municipal sales tax unless the local exemption is expressly provided by the locality or approved by a resolution of the local governing body. That provision could limit the benefit of this exemption since the combined municipal/county tax rate often exceeds the 4%

general rate imposed by the state. Oddly, the legislation does not provide a corresponding exemption from use tax.

**Increased incentives for film production.** (H.B. 243, 4/19/12; Act No. 2012-212, amending Ala. Code §§41-7A-43, 41-7A-45, and 41-7A-48.) This legislation amends the Entertainment Industry Incentives Act of 2009 to increase the aggregate yearly cap for film incentives for all qualified production companies from \$10 million to (1) \$15 million for the fiscal years ended 9/30/13 and 9/30/14; and (2) \$20 million for subsequent fiscal years.

The Act also increases from \$10 million to \$20 million the amount of qualifying expenses incurred by a production company that are eligible (1) for exemption from the state (but not local) portion of sales, use, and lodging taxes, and (2) for rebates from the Alabama Film Office. These rebates are for 25% of the state-certified production's production expenditures other than payroll, plus 35% of all payroll paid to Alabama residents for the state-certified production, provided that total production expenditures for a project are at least \$500,000.

To highlight the importance of the available film incentives, the Film Office stated that it has already committed an estimated \$6 million in incentives funding for projects in the first quarter of 2012 alone.

**Amendments to tornado recovery incentives.** (H.B. 505, 5/22/12; Act No. 2012-524, amending Ala. Code §40-9B-13.) The Tornado Recovery Tax Incentive Protection Act of 2011 (S.B. 493, 6/14/11, Act No. 2011-709) provided that any tax abatement cannot be subject to disqualification solely because the underlying property or transaction relates to the repair or replacement of property damaged in the April 2011 tornado outbreaks, rather than to new construction. That 2011 expansion of the abatement law applied to transactions entered into or property acquired before 12/31/12.

This new legislation further expands the scope of the law to apply to any property damaged as a result of any natural disaster, for transactions entered into or property acquired after the April 2011 tornadoes. In addition, the amendments provide that tax abatements granted with respect to certain replaced property could continue even if the project was forced to locate to another site as result of the disaster.

### **Expansion of statutory incentives to coal mining industry.**

(H.B. 144, 3/1/12; Act No. 2012-54, amending Ala. Code §§40-9B-3 and 40-18-190.) This legislation extends Alabama's primary tax incentives (capital income tax credits and TIRA abatements) to projects engaged primarily in the coal mining industry (NAICS industry group code 2121). These incentives, however, are subject to special limitations under this Act. The state portion of the tax abatements for a coal mining project is limited to 50% of the state taxes eligible for abatement (this limit does not apply to local taxes eligible for abatement). The maximum aggregate capital credit that can be used by a coal mining project over the 20-year period is limited to 50% of the project's capital costs, which, under the Act, cannot include certain land acquisition, architectural, and engineering costs. These incentives for coal mining projects will sunset on 3/1/14 (two years from the effective date of the Act), unless the legislature passes a joint resolution extending the incentives.

**Alabama New Markets Development Act.** (H.B. 257, 5/16/12; Act No. 2012-483.) This Act provides state income, financial institution excise, and insurance premium tax credits to investors in community development entities that provide funding to businesses that locate in qualified low-income or impoverished communities, especially central business districts, in Alabama. The Act parallels, in many ways, the provisions of the federal New Markets Tax Credit (IRC Section 45D). The total tax credits the Alabama Department of Commerce can grant to all applicants for any one tax year is capped at \$20 million, and the maximum investment that can qualify for a credit for a particular project is \$10 million. While the credit is nonrefundable, excess credits may be carried forward to subsequent tax years until used up. Initially, the version of the bill that passed the House would have allowed for a transferable credit; however, the Senate struck that provision and the version ultimately enacted prohibits transferring the credit.

(Act No. 2012-483 is discussed in greater detail in Ely and Long, "Alabama: New Markets Development Act Designed to Spur Investment in Low-Income Communities," in this issue of The Journal.)

**Carryforward of capital credits for certain large projects.** (H.B. 140, 5/14/12; Act No. 2012-385, amending Ala. Code §40-18-194(b)(10)a and adding §40-18-194(b)(10)b.) This legislation allows certain large projects (minimum capital investment

of \$100 million; create at least 100 new jobs) to carry forward any unused capital credits for up to four years after the normal 20-year carryover period expires. The additional carryover period depends on the level of capital investment (e.g., four years for a \$400 million investment; three years for \$300 million, etc.). In addition, these qualifying projects can also delay their initial use of the credit for a period of up to three years after the date the project is placed in service. The Act is generally effective for all qualifying projects placed in service after 2011.

**Agricultural irrigation systems tax credit.** (H.B. 328, 5/14/12; Act No. 2012-391.) This legislation allows any agricultural business (NAICS sector 11) to elect to expense qualified irrigation equipment under the provisions of IRC Section 179, as in effect on 1/1/11. These businesses are also eligible for a state income tax credit of 20% of the cost of purchasing and installing any qualified irrigation equipment or qualified reservoirs, with a maximum credit of \$10,000. The credit is effective for all tax years beginning after 2011, but is limited to one project per taxpayer and must be taken in the year in which the qualifying property is placed in service.

**Alabama Tourism Destination Attraction Incentive Act.** (H.B. 599, 5/15/12; Act No. 2012-436, adding Ala. Code §§40-9B-3(a)(10)j and -3(a)(24) and amending -3(b), adding §§40-18-190(a)(13)i and new -190(a)(19), and adding new §40-18-193(a)(2).) This Act expands Alabama's primary tax incentives (capital income tax credits and TIRA abatements) to include a "tourism destination attraction," which is a commercial enterprise designed to attract visitors from inside or outside Alabama, "typically for its inherent cultural value, historical significance, natural or man-made beauty, or entertainment or amusement opportunities," including, e.g., "a cultural or historical site; a botanical garden; a museum; a wildlife park or aquarium open to the public that cares for and displays a collection of animals or fish; an amusement park; a convention hotel and conference center; a water park; or a spectator venue or arena," provided, however, that the facility is not primarily devoted to the retail sale of goods.

In order to qualify, the project would have to create at least 50 new jobs within the first year and involve a capital investment of at least \$20 million, unless the project is located in a "favored geographic area," in which case the minimums would be 20 new jobs and \$5

million capital investment. In addition, the new jobs have to satisfy certain minimum wage requirements. A "favored geographic area" is either: (1) any area designated or created as an enterprise zone or that is governed by the Alabama Enterprise Zone Act; or (2) any Alabama county that is deemed to be less developed, based on per capita income, employment percentages, and percentage changes in population (Ala. Code §40-18-190(a)(6)).

**Heroes for Hire Tax Credit Act of 2012.** (H.B. 152, 4/2/12; Act No. 2012-168.) In an effort to assist recently deployed, and now discharged, unemployed veterans in finding jobs and starting their own businesses, this Act provides a nonrefundable \$1,000 income tax credit to employers for each qualified veteran hired. Veterans who were residents of Alabama at the time of entry into military service, received an honorable or general discharge within two years prior to the hiring date, and receive the proper certification as collecting or being eligible to collect unemployment benefits or having exhausted such benefits, are eligible under the Act. There is no limit on the number of hires, and thus tax credits an employer may claim, but employers may not hire veterans they have previously employed or veterans who are related to the employer. The credit is limited to the current year's taxable income, and any unused credits may be carried back one year and forward 20 years.

In addition, the act provides for a \$2,000 nonrefundable income tax credit to the same qualified veterans who start their own businesses. The credit is limited to the start-up expenses of the business, including expenses incurred developing a business plan, legal and accounting fees, advertising expenses, etc. The veteran is required to be at least a 50% owner of the entity, and the business must show a net profit of at least \$3,000 to qualify.

(For more on incentives for hiring veterans generally, see Yellin, "The Uniformly Positive Effects of Hiring America's Military Veterans," 22 J. Multistate Tax'n 14 (June 2012).) []