# State and Local Tax Alert

Alabama Edition


Published by Bradley Arant Boult Cummings LLP

March 6, 2012

# Alabama Legislature Working to Pass Various Job Creation and Economic Incentives Bills

By Bruce P. Ely, Christopher R. Grissom, James E. Long, Jr., and J. Sims Rhyne, III

With the intense focus on creating jobs and economic development, the Alabama Legislature is considering a number of incentives bills aimed at attracting businesses to the state and also retaining jobs already in Alabama. Governor Robert Bentley, House Speaker Mike Hubbard (R-Auburn) and Senate President Pro Tem Del Marsh (R-Anniston) have made job creation and economic development their top priority this legislative session. This SALT Alert summarizes some of the incentive bills currently being debated, which range from research and development tax credits to withholding incentives designed to attract or retain jobs in Alabama.

## Income Tax Withholding Incentives

On February 14, two landmark incentive bills passed the House of Representatives. HB 159 (enabling bill) and HB 160 (constitutional amendment) authorize an incentive program that the state may use for the purpose of creating or retaining jobs and promoting economic and industrial development in Alabama. Under this proposal, the Governor would have the discretion to offer income tax withholding incentives to qualifying industries in an amount up to the capital costs of the project. Under the proposed legislation, companies that build a new or expanded facility would be able to retain up to 90 percent of the state income taxes withheld from their eligible employees' wages. For job "retention projects," the Governor could allow a company to retain up to 75 percent of the state income taxes withheld from its eligible employees. To qualify as a retention project, the company must generally spend at least $2 million to renovate or expand an existing facility in most areas of the state and agree to retain no less than 80 percent of its eligible employees employed by the company in Alabama as of the date the qualifying project agreement is executed.

The Senate Finance and Taxation-Education Committee held a public hearing on HB 159 last week; a vote on both proposals by the Committee is expected on March 7. Meanwhile, the Alabama Education Association teachers union is conducting a media campaign in opposition to the package, calling it "Cash for Cronies" and arguing that the program will take essential revenue out of the state's Education Trust Fund ("ETF"). The state income tax is earmarked for the ETF, which funds teacher and support staff salaries and benefits.

## Enhanced Film Incentives

HB 243 would increase the amount of incentives available for film productions conducted in Alabama. Under current law, the Alabama Film Office can grant up to $10 million in assistance to projects that range from big budget feature films to television and internet-


**Authors**

**Bruce P. Ely**
205.521.8366
bely@babc.com

**Christopher R. Grissom**
205.521.8514
cgrissom@babc.com

**James E. Long, Jr.**
205.521.8626
jelong@babc.com

**J. Sims Rhyne, III**
205.521.8436
srhyne@babc.com

based productions. HB 243, and companion bill SB 290, would double the amount of qualified production expenditures eligible for film incentives from $10 million to $20 million. The bill would also increase the amount of incentives which the Film Office can grant by $5 million for the fiscal years 2012, 2013, and 2014, increasing the maximum grant to $25 million. To highlight the importance of the film incentives bills, the Film Office stated that it has committed an estimated $6 million in incentives funding for projects in the first quarter of 2012 alone. The Film Office expects to reach the $10 million cap this year. HB 243 passed the House last week on a 101-0 vote and has been assigned to the Senate Finance and Taxation-Education Committee. The sponsors point to a statement often made by the Louisiana Film Office that their state has received more than $1 billion in economic growth since their film incentives were enacted in 2002.

## R&D Tax Credits

SB 368 would provide a nonrefundable research and development ("R&D") income or financial institution excise tax credit to businesses that incur qualified research expenses within Alabama. SB 368 parallels the federal income tax credit provided by Internal Revenue Code § 41, which most states have adopted in whole or in part. Currently, Alabama is in the distinct minority of states levying an income tax that doesn't offer some form of incentive for conducting qualified R&D in their state. Generally, the credit would be equal to 6.5 percent of qualified research expenses. However, if the qualified research expenses are paid to a chartered university in the state, such as a member of the University of Alabama system or Auburn University, or if the HudsonAlpha Institute for Biotechnology in Huntsville or Southern Research Institute in Birmingham conducts the research the R&D credit increases to 15 percent of the qualified research expenses. For each taxable year, however, the R&D tax credit would be capped at $100,000 per taxpayer or flow-through entity, but unused credits may be carried forward for up to 10 years.

## Historic Structures Tax Credit

Another incentives bill drawing attention especially from the Birmingham and Mobile communities is HB 271. The purpose of the bill is to stimulate private investment in renovation of older buildings and historic structures by providing income tax credits for renovation. HB 271 provides a 10 percent tax credit for renovation of buildings built before 1939 and a 25 percent tax credit for renovation of owner-occupied homes and businesses in historic districts or designated historic structures. Supporters of HB 271 claim that the bill would encourage private investment in renovation, resulting in stronger business districts and neighborhoods, significant increases in property values, and additional tax revenues for the state and local governments. 31 states, including neighboring Georgia, Tennessee, and Mississippi, offer tax credits similar to the proposed credits in HB 271.

## Alabama Data Processing Center Economic Incentive Enhancement Act of 2012

HB 154, which passed the House on the third day of the session and awaits a Senate floor vote, would extend the time period for abatements of certain non-educational sales, use, and property taxes from the current 10-year maximum to as long as 30 years, depending on the total capital investment. The bill would also allow tax abatements for recurring capital investment in a data center project during the abatement period and would reduce the employment threshold to a minimum of 20 new jobs. The original version of the bill would have also allowed projects primarily engaged in warehousing and storage (NAICS 493) to qualify for Tax Incentive Reform Act (TIRA) abatements and the capital (income tax) credit; however, an amendment was adopted by the Senate Finance and Taxation-Education Committee that removed this provision from the bill. The Committee amendment also limited the bill's available incentives as follows:

- Makes software acquired after the data center is placed in service ineligible for sales or property tax abatements;
- Increases the capital investment thresholds from $100 million and $300 million to $300 million and $600 million in order to receive the extended tax abatements;
- Sunsets the enhanced incentives after December 31, 2018; and
- Disallows the enhanced incentives in any year in which the federal unemployment rate is less than 6 percent.

## Coal Mining Incentives

The first incentive proposal to become law this session is HB 144, which expands Alabama's primary tax incentives (capital income tax credits and TIRA abatements) to projects primarily engaged in the coal mining industry. Both houses approved the House-Senate Conference Committee substitute on March 1 which:

- Limits the state portion of property and sales tax abatements to 50 percent;
- Limits the maximum aggregate capital credit that could be utilized by an investing company over the 20 year period to 50 percent of the project's capital costs; and
- Sunsets both the abatements and capital credit for new coal mining projects applying for the incentives on or after March 2, 2014, unless extended by the Legislature.

HB 144 was signed into law by Governor Bentley last Friday, March 2.

***Note:*** *Members of the firm's SALT Practice Group and its Economic Development Practice Group are involved in drafting or advocating the passage of several of the above legislative proposals. If you have any questions regarding the contents of this Bulletin please contact any of our Alabama members listed on page 1.*

 Sims Rhyne is a third-year law student at Cumberland School of Law at Samford University and is expected to join the firm this Fall as an associate.

**BRADLEY ARANT BOULT CUMMINGS LLP OFFICE LOCATIONS:**

**ALABAMA**
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
205.521.8000

200 Clinton Avenue West, Suite 900
Huntsville, AL 35801-4900
256.517.5100

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**
1615 L Street, N.W.
Suite 1350
Washington, DC 20036
202.393.7150