

1 HB297
2 219393-3
3 By Representative Scott
4 RFD: Ways and Means Education
5 First Read: 08-FEB-22

1
2 ENROLLED, An Act,

3 Relating to the Railroad Modernization Act of 2019;
4 to amend Sections 37-11C-2, 37-11C-3, 37-11C-5 and 37-11C-6,
5 Code of Alabama 1975, and Section 37-11C-4, as last amended by
6 Act 2021-177, 2021 Regular Session, Code of Alabama 1795, to
7 change the administering agency for the tax credit program
8 from the Department of Commerce to the Department of Revenue;
9 to increase the annual cap on income tax credits; and to
10 extend the sunset date for five years through tax year 2027.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 37-11C-2, 37-11C-3, 37-11C-5 and
13 37-11C-6, Code of Alabama 1975, and Section 37-11C-4 as last
14 amended by Act 2021-177, 2021 Regular Session, Code of Alabama
15 1795, are amended to read as follows:

16 "§37-11C-2.

17 "As used in this chapter, the following words shall
18 have the following meanings:

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

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

1 "(3) DEPARTMENT. The Alabama Department of ~~Commerce~~
2 Revenue.

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

7 "(5) ELIGIBLE TRANSFEREE. A taxpayer who is
8 transferred a tax credit allowed by this chapter by an
9 eligible taxpayer.

10 "(6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES.
11 Expenditures within the taxable year for maintenance,
12 deductible maintenance of way expenses, reconstruction, or
13 replacement of railroad infrastructure within the state that
14 is owned or leased by an eligible taxpayer. The term includes
15 new construction of industrial leads, switches, spurs,
16 sidings, and extensions of existing sidings by an eligible
17 taxpayer. The term does not include expenditures for which an
18 income tax deduction has been claimed.

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

23 "(8) REHABILITATION PLAN. Detailed construction
24 plans and specifications for the proposed rehabilitation of
25 railroad infrastructure under this chapter.

1 "§37-11C-3.

2 "(a) By December 1, 2019, the Department of Commerce
3 shall develop standards for the approval of qualified railroad
4 rehabilitation expenditures for which a tax credit is being
5 sought. The standards shall consider the availability of
6 additional public or private funding for the project, the
7 expected completion time of the project, and the anticipated
8 impact of the project on usage of the railroad infrastructure.

9 "(b) By December 1, 2022, the department shall
10 develop standards for the approval of qualified railroad
11 rehabilitation expenditures for which a tax credit is being
12 sought. The standards shall consider the availability of
13 additional public or private funding for the project, the
14 expected completion time of the project, and the anticipated
15 impact of the project on usage of the railroad infrastructure.

16 "~~(b)~~ (c) Prior to beginning any qualified railroad
17 rehabilitation work, the eligible taxpayer shall submit an
18 application and rehabilitation plan to the department and an
19 estimate of the qualified railroad rehabilitation expenditures
20 under the rehabilitation plan; provided, however, the eligible
21 taxpayer, at its own risk, may incur qualified railroad
22 rehabilitation expenditures no earlier than six months prior
23 to the submission of the application and rehabilitation plan.

24 "~~(c)~~ (d) The department shall review the application
25 and rehabilitation plan to determine if the information

1 contained therein is complete. If the department determines
2 that the application and rehabilitation plan are complete, the
3 department shall reserve, for the benefit of the eligible
4 taxpayer, an allocation for a tax credit as provided in this
5 chapter and shall notify the eligible taxpayer in writing of
6 the amount of the reservation. The reservation of tax credits
7 does not entitle the taxpayer to an issuance of tax credits
8 until the owner complies with all other requirements of this
9 chapter for the issuance of the tax credits. Reservations of
10 tax credits shall be issued by the department within a
11 reasonable time from the filing of a completed application and
12 rehabilitation plan. Any application disapproved by the
13 department shall be removed from the review process, and the
14 department shall notify the taxpayer in writing of the
15 decision to remove the application. A disapproved application
16 may be resubmitted, but shall be deemed to be a new submission
17 and may be charged a new application fee. In the event the
18 reservations of tax credits equal the total amount available
19 for reservations during the tax year, all eligible taxpayers
20 with applications then awaiting approval or thereafter
21 submitted shall be notified by the department that no
22 additional tax credits shall be granted during that tax year.
23 The applications shall remain in active status from the date
24 of the original application and shall be considered for
25 recommendations of tax credits in the event that additional

1 credits become available due to rescission by the department
2 or when a new tax year's allocation of tax credits becomes
3 available.

4 ~~"(d)~~ (e) Following the completion of a qualified
5 railroad rehabilitation project, the eligible taxpayer shall
6 notify the department that the rehabilitation has been
7 completed and shall certify the qualified railroad
8 rehabilitation expenditures incurred with respect to the
9 rehabilitation plan. Within 90 days after receipt and approval
10 of the foregoing documentation from the eligible taxpayer, the
11 department shall issue a tax credit certificate in an amount
12 equivalent to the amount of the qualified railroad
13 rehabilitation expenditures incurred with respect to the
14 rehabilitation plan as certified by the taxpayer, not to
15 exceed the amount of the tax credit reservation issued for the
16 project.

17 ~~"(e)~~ (f) ~~In order to obtain a credit against any~~
18 ~~state income tax due that is specified in this chapter, an~~
19 ~~eligible taxpayer shall file the tax credit certificate with~~
20 An eligible taxpayer that has been awarded the tax credit
21 certificate may claim the credit against any state income tax
22 due that is specified in this chapter against the taxpayer's
23 Alabama state tax return. The tax credit certificate shall
24 satisfy all requirements of the Department of Revenue
25 pertaining to the eligibility of the person claiming the

1 ~~credit.~~ All information submitted to the Department of Revenue
2 by taxpayers claiming or seeking certification of a credit
3 shall be subject to the confidentiality provisions of Section
4 40-2A-10.

5 ~~"(f)~~ (g) For processing the taxpayer's application
6 for a tax credit, the department may impose an application fee
7 equal to one percent of the qualified rehabilitation
8 expenditures, not to exceed a fee equal to ten thousand
9 dollars (\$10,000). Any fees collected by the department under
10 this subsection shall be deposited in the State Treasury to
11 the credit of the department and all such funds are to be
12 appropriated to the department to defray the expenses incurred
13 in carrying out this chapter.

14 ~~"(g)~~ (h) The department shall report to the
15 Legislature in the third year following passage of this
16 chapter, and annually thereafter, on the overall economic
17 activity, usage, and impact to the state from the
18 rehabilitation of railroad infrastructure for which tax
19 credits have been allowed. The information in the reports
20 shall be consistent with the information required by the
21 Legislature pursuant to, and shall be provided by the
22 department to the Legislature in accordance with Section
23 40-1-50, and rules adopted thereunder. Information provided
24 pursuant to this section is exempt from the confidentiality
25 provisions of Section 40-2A-10.

1 "§37-11C-4.

2 "(a) For tax years beginning after December 31,
3 2019, through December 31, 2022, there is a credit allowed
4 against the state income tax levied by Section 40-18-2 equal
5 to 50 percent of an eligible taxpayer's qualified railroad
6 rehabilitation expenditures. The tax credit allowed under this
7 section may not exceed three thousand five hundred dollars
8 (\$3,500) multiplied by the number of miles of railroad track
9 owned or leased within the state by the eligible taxpayer at
10 the close of the taxable year.

11 "(b) For tax years beginning after December 31,
12 2022, through December 31, 2027, there is a credit allowed
13 against the state income tax levied by Section 40-18-2 equal
14 to 50 percent of an eligible taxpayer's qualified railroad
15 rehabilitation expenditures. The tax credit allowed under this
16 section may not exceed four thousand one dollars (\$4,100)
17 multiplied by the number of miles of railroad track owned or
18 leased within the state by the eligible taxpayer at the close
19 of the taxable year.

20 "~~(b)~~ (c) There is created within the Education Trust
21 Fund a separate account named the Railroad Rehabilitation
22 Income Tax Credit Account. The Commissioner of Revenue shall
23 certify to the state Comptroller the amount of income tax
24 credits under this section and the state Comptroller shall
25 transfer into the Railroad Rehabilitation Income Tax Credit

1 Account only the amount from sales tax revenues within the
2 Education Trust Fund that is sufficient for the Department of
3 Revenue to use to cover the income tax credits for the
4 applicable tax year. The Commissioner of Revenue shall
5 distribute the funds in the Railroad Rehabilitation Income Tax
6 Credit Account pursuant to this section.

7 ~~"(c)~~ (d) The entire tax credit may be claimed by the
8 taxpayer in the taxable year in which the qualified railroad
9 rehabilitation expenditures are completed and placed into
10 service. Where the taxes owed by the eligible taxpayer are
11 less than the tax credit, the eligible taxpayer may be
12 entitled to claim a refund for the difference.

13 ~~"(d)~~ (e) For the calendar years 2020, 2021, and
14 2022, the aggregate amount of all tax credits that may be
15 reserved in any one of such years by the department upon
16 certification of rehabilitation plans shall not exceed three
17 million seven hundred thousand dollars (\$3,700,000) plus any
18 amount of previous reservations of tax credits that were
19 rescinded during the tax year. However, if all of the
20 allowable tax credit amount for any tax year is not requested
21 and reserved, any unreserved tax credits may be utilized by
22 the department in awarding tax credits in subsequent years;
23 provided, however, that in no event shall a total of more than
24 eleven million one hundred thousand dollars (\$11,100,000) be
25 reserved by the department during the period of August 1, 2019

1 through August 1, 2022. For purposes of this chapter, "tax
2 year" shall mean the calendar year.

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

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

22 ~~"(f)~~ (h) All or any portion of the income tax credit
23 authorized under this section may be transferable and
24 assignable by written transfer agreement and subject to any
25 notice and verification requirements to be determined by the

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

1 The tax credit allowed under this chapter shall be
2 effective for the 2020 tax year and shall continue through the
3 ~~2022~~ 2027 tax year, unless extended by act of the Legislature.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 01-MAR-22.

Jeff Woodard
Clerk

Senate	31-MAR-22	Amended and Passed
House	05-APR-22	Concurred in Senate Amendment