

1 SB247
2 136046-1
3 By Senators Blackwell, Reed and Waggoner
4 RFD: Finance and Taxation Education
5 First Read: 08-FEB-12

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8 SYNOPSIS: Under existing law, there are no tax
9 credits extended to businesses and financial
10 institutions for qualified research expenses
11 incurred within the state.

12 This bill would provide a tax credit against
13 state income taxes or financial institution excise
14 taxes for qualified research expenses incurred by
15 businesses, including owners of pass-through
16 businesses, and financial institutions within the
17 state parallel to the federal research and
18 development tax credit.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Section 40-16-8 of the Code of Alabama
25 1975, and to add a new Article 11 to Chapter 18 of Title 40
26 beginning with Section 40-18-280, Code of Alabama 1975, to

1 provide for research and development tax credits for financial
2 institutions and businesses, including the owners of
3 pass-through businesses, subject to excise or income taxes.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 40-16-8 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§40-16-8.

8 "(a) All moneyed capital employed in the business
9 the privilege of engaging in which is hereby taxed and the
10 shares of all financial institutions, as in this chapter
11 defined, shall be exempted from assessment and payment of ad
12 valorem taxes, except the moneyed capital and shares of any
13 business hereby taxed which fails to make and file the returns
14 required by this chapter and to pay the tax levied by this
15 chapter as and when in this chapter provided. The real estate
16 owned by every such financial institution shall not be
17 exempted. If any other tax other than the privilege tax levied
18 by Article 2 of Chapter 14A, whether on property (other than
19 ad valorem taxes on real estate), income, business or any
20 element thereof, except license taxes not in excess of those
21 heretofore legally levied and in effect, at any time after
22 July 10, 1935, has been, or is at any time hereafter levied by
23 this state or by any political subdivision of this state on
24 any financial institution as in this chapter defined, the
25 amount of such other tax due by such institution shall be

1 credited on account of the tax payable pursuant to the
2 provisions of this chapter.

3 "(b) (1) For purposes of this subdivision, the
4 following words and terms have the following meanings:

5 "a. CODE. The Internal Revenue Service Code of 1986
6 as in effect from time to time, as well as applicable United
7 States Treasury Department regulations.

8 "b. QUALIFIED RESEARCH EXPENSES (QRE). Qualified
9 research expenses or basic research payments as defined in
10 Section 41 of the Code where the research activities are
11 performed within the boundaries of the State of Alabama and
12 the qualified research expenses or basic research payments are
13 incurred within the State of Alabama. QRE does not include
14 research performed in another state or foreign country.

15 "c. UNIVERSITY RESEARCH CONTRACT. Research and
16 development activities performed and QRE incurred within the
17 state pursuant to sponsored research contracts conducted in
18 conjunction with and through a chartered university within the
19 State of Alabama, public or nonpublic, which conducts graduate
20 programs at the professional or doctoral level. An agreement
21 executed by parties that include at least the university and
22 the taxpayer is required. Funding for sponsored research
23 contracts may be provided from public or private sources.
24 University Research Contract QRE does not include research
25 activities performed in another state or foreign county.

1 "(2) In addition to any other tax credit provided in
2 this chapter, QRE that are incurred in the state are allowed
3 as a credit against the financial institution excise tax
4 liability in an amount equal to six and one-half percent of
5 the QRE incurred. If the QRE was incurred in the state as a
6 part of a university research contract, the credit against
7 state financial institution excise tax liability shall be 15
8 percent of the QRE. Any tax credit provided by this subsection
9 shall be taken for the taxable year in which the taxpayer
10 qualifies for the credit and the credit shall not be
11 refundable. All other state income tax credits shall be
12 applied prior to the application of the tax credit provided in
13 this subsection. Any unused credit in a tax year may be
14 carried over into subsequent tax years for not more than 10
15 years."

16 Section 2. Article 11 is added to Chapter 18 of
17 Title 40, Code of Alabama 1975, to read as follows:

18 Article 11.

19 Research and Development Tax Credits.

20 §40-18-280.

21 (a) For purposes of this section, the following
22 words and terms have the following meanings:

23 (1) CODE. The Internal Revenue Service Code of 1986
24 as in effect from time to time, as well as applicable United
25 States Treasury Department regulations.

1 (2) QUALIFIED RESEARCH EXPENSES (QRE). Defined as
2 qualified research expenses or basic research payments as
3 defined in Section 41 of the Code where the research
4 activities are performed within the boundaries of the State of
5 Alabama and the qualified research expenses or basic research
6 payments are incurred within the State of Alabama. QRE does
7 not include research performed in another state or foreign
8 country.

9 (3) UNIVERSITY RESEARCH CONTRACT. Research and
10 development activities performed and QRE incurred within the
11 state pursuant to sponsored research contracts conducted in
12 conjunction with and through a chartered university within the
13 State of Alabama, public or nonpublic, which conducts graduate
14 programs at the professional or doctoral level. An agreement
15 executed by parties that include at least the university and
16 the taxpayer is required. Funding for sponsored research
17 contracts may be provided from public or private sources.
18 University QRE does not include research activities performed
19 in another state or foreign country.

20 (b) In addition to any other tax credit provided in
21 this chapter, QRE that are incurred in the state are allowed
22 as a credit against state income tax liability in an amount
23 equal to six and one-half percent of the QRE incurred. If the
24 QRE was incurred in the state as a part of a university
25 research contract the credit against state income tax
26 liability shall be 15 percent of the QRE incurred.

1 (c) Any tax credit provided by this section shall be
2 taken for the taxable year in which the taxpayer qualifies for
3 the credit and the credit shall not be refundable. All other
4 state income tax credit shall be applied prior to the
5 application of the tax credit provided in this section.

6 (d) Any unused credit in a tax year may be carried
7 over into subsequent tax years for not more than 10 years.

8 §40-18-281.

9 (a) The Legislature recognizes that a substantial
10 number of businesses are organized as limited liability
11 companies, partnerships, and other types of business entities
12 and that certain business entities, organized as corporations,
13 elect to be treated as "S" corporations under federal and
14 state tax laws, and that it is essential that the QRE tax
15 credit provided for in Section 40-18-280 shall be available on
16 a pass-through basis in the manner hereinafter provided.

17 (b) The shareholders, partners, members, owners, or
18 beneficiaries shall be entitled to the QRE tax credit for each
19 tax year with respect to which a credit is provided pursuant
20 to this article. The credit shall be allowed as follows:

21 (1) The owner of a company which is a proprietorship
22 shall receive a credit against the individual income tax
23 levied by Section 40-18-5 that otherwise would be owed to the
24 state in any year by the owner with respect to the QRE.

25 (2) A company which is an Alabama S corporation and
26 which is subject to taxation under Section 40-18-174 or

1 Section 40-18-175, shall receive a credit against the
2 corporate income tax levied by Section 40-18-31 or by Section
3 40-18-174 or Section 40-18-175, that otherwise would be owed
4 to the state in any year by the company with respect to the
5 QRE.

6 (3) The shareholders of a company which is an
7 Alabama S corporation as defined in Section 40-18-160, and
8 whose taxable income is subject to determination under Section
9 40-18-161, each shall receive a credit against the individual
10 income tax levied by Section 40-18-5 that otherwise would be
11 owed to the state in any year by each shareholder of the
12 company with respect to the QRE.

13 (4) The partners, members, or owners of a company,
14 the income of which is subject to taxation under Section
15 40-18-24, each shall receive a credit against the corporate
16 income tax levied by Section 40-18-31, or against the
17 individual income tax levied by Section 40-18-5, whichever is
18 applicable to each such partner, member, or owner that
19 otherwise would be owed to the state in any year by each
20 partner, member, or owner of the company, with respect to the
21 QRE.

22 (5) A company which is a trust or estate having
23 income subject to taxation under subsection (c) of Section
24 40-18-25, shall receive a credit against the income tax levied
25 by Section 40-18-5 that otherwise would be owed to the state
26 in any year by the company, with respect to the QRE.

1 (6) The beneficiaries of a company which is a trust
2 or estate the income of which is subject to taxation under
3 subsection (d) of Section 40-18-25, each shall receive a
4 credit against the corporate income tax levied by Section
5 40-18-31, or against the individual income tax levied by
6 Section 40-18-5, whichever is applicable to such a
7 beneficiary, that otherwise would be owed to the state in any
8 year by each beneficiary of the company, with respect to the
9 QRE.

10 (7) The QRE tax credit allowed under this article
11 for any tax year of a company shall not exceed the aggregate
12 amount which otherwise would be due from the company, its
13 shareholders, partners, members, owners, or beneficiaries. Any
14 unused tax credit may be carried over for up to 10 years.

15 (8) Any shareholder, partner, member, owner, or
16 beneficiary of a company may elect annually to use his or her
17 allowable portion of the income tax credit created by this
18 article as a nonrefundable estimated tax payment against his
19 or her individual income tax liability. If a taxpayer makes an
20 annual election to use the aforementioned credit as a
21 nonrefundable estimated payment, the taxpayer shall compute
22 the amount of the credit as though it were a credit, subject
23 to all the requirements and limitations provided by law for
24 the credit, but shall use the amount computed as a
25 nonrefundable estimated payment and shall not use the same
26 amount as a credit. In no event shall a credit used as

1 nonrefundable estimated payment exceed the amount that would
2 be available if the credit were not used as a nonrefundable
3 estimate payment.

4 Section 3. 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.