TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 1843 – SB 2426

February 3, 2024

SUMMARY OF BILL: Enacts the *Allied Investments in Tennessee Act* (Act). Authorizes taxpayers subject to the franchise and excise tax to immediately deduct as an expense the cost of certain depreciable assets in the year the qualified property or qualified improvement property are placed in service or the year research and development experimental expenditures are incurred.

Prohibits the application of tax credits, or other economic or financial benefits, for employers who are domiciled within, owned by a company domiciled within, contract with employers or subcontractors domiciled within, or owned by a government of a country of concern. Requires any contracting state or local government department or agency to execute a separate agreement with a contracting party that reserves the right of the department or agency to recover credits, grants, funds, and other incentives if this Act is violated.

Requires the Department of Economic and Community Development (ECD) to investigate and initiate legal proceedings with employers in violation of this act. Effective upon becoming law for purposes of promulgating rules. For all other purposes, effective January 1, 2025 and applies to tax years beginning on or after that date.

FISCAL IMPACT:

Increase State Revenue – $68,328,800/FY35-36
$164,812,800/FY36-37
$132,480,000/FY37-38
$105,984,000/FY38-39
$84,784,000/FY39-40
$67,824,000/FY40-41
$53,740,000/FY41-42
$40,640,000/FY42-43
$27,532,000/FY43-44
$14,420,000/FY44-45
$3,936,000/FY45-46

Decrease State Revenue – $43,200,000/FY24-25
$113,760,000/FY25-26
$127,008,000/FY26-27
$123,206,400/FY27-28

$98,563,200/FY28-29
$78,848,000/FY29-30
$62,765,600/FY30-31
$48,696,800/FY31-32
$35,395,200/FY32-33
$22,286,400/FY33-34
$10,752,000/FY34-35

Increase State Expenditures – $3,040,200/FY24-25
$2,446,200/FY25-26 and Subsequent Years

Other Fiscal Impact – The extent to which this Act may limit the entities that a state or local government may contract with and any resulting increase in state or local government expenditures cannot be reasonably determined.

Any secondary impacts including increased business investment resulting from the initial decrease in business expenditures, decreased business investment resulting from the removal of incentives for certain businesses, and what impact, if any, those may have on state and local tax revenue is dependent upon multiple unknown variables and cannot be reasonably determined.

Assumptions:

- Public Chapter 377 of 2023 conformed excise tax law regarding depreciation of certain assets with federal *Tax Cuts and Jobs Act of 2017* (TCJA) for assets purchased on or after January 1, 2023 allowing taxpayers to accelerate depreciation on certain assets.
- Pursuant to 26 U.S.C. § 168(e)(6), qualified improvement property includes any improvement made by the taxpayer to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service. Expenditures attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building is not considered a qualified improvement.
- Pursuant to 26 U.S.C. § 168(k)(2), qualified property includes property that has a maximum recovery period of 20 years, computer software, water utility property, a qualified film or television production, transportation property, or certain aircrafts.
- Pursuant to Public Chapter 743 (2022) and 26 U.S.C. § 174, taxpayers are authorized to fully expense research and development (R&D) expenditures.
- The TCJA allowed businesses to immediately write off 100 percent of the cost of eligible property acquired and placed in service after September 27, 2017, and before January 1, 2023; therefore, the 100 percent write-off of eligible property expired December 31, 2022.
- The proposed legislation allows for 100 percent bonus depreciation of certain assets purchased on or after January 1, 2025.
- Accelerating the depreciation of assets will shift depreciation to early tax years, thus reducing a taxpayer’s liability in earlier years and increasing it in later years. While the

precise impact is based on multiple unknown variables, based on information provided by the Department of Revenue (DOR), the estimated fiscal impact on state revenue is as follows:

Estimated Decrease State Revenue		Estimated Increase State Revenue	
FY	Fiscal Impact	FY	Fiscal Impact
2025	($43,200,000)	2036	$68,328,800
2026	($113,760,000)	2037	$164,812,800
2027	($127,008,000)	2038	$132,480,000
2028	($123,206,400)	2039	$105,984,000
2029	($98,563,200)	2040	$84,784,000
2030	($78,848,000)	2041	$67,824,000
2031	($62,765,600)	2042	$53,740,000
2032	($48,696,800)	2043	$40,640,000
2033	($35,395,200)	2044	$27,532,000
2034	($22,286,400)	2045	$14,420,000
2035	($10,752,000)	2046	$3,936,000
		Fully Phased in Cost	**$0**

- According to DOR, prohibition of tax credits and other economic and financial incentives for companies who are domiciled within, contract with employers or subcontractors, or are owned by a government or company domiciled within a "country of concern" will not have a significant fiscal impact on state revenue collections.
- Upon receiving reports of a suspected violation, according to the legislation, ECD will request a written statement from the accused company, investigate the report, and initiate legal proceedings to recover the amount of tax credits and financial incentives the company received plus a 50 percent penalty. ECD does not currently perform investigations of this nature as outlined in the legislation.
- Therefore, based on information provided by ECD, ECD will require 20 additional positions (10 Attorney positions, 5 Data and Research Specialist positions, 5 Auditors positions), beginning in FY24-25.
- The total recurring increase in state expenditures is as follows:

Title	Salary	Benefits	Operations	# Positions	Total
Attorney	$111,336	$26,079	$1,999	10	$1,394,140
Data and Research Specialist	$74,604	$19,985	$1,999	5	$482,940
Auditor	$66,225	$18,595	$1,999	5	$434,095
				Total:	$2,311,175

- There are 27 existing projects between ECD and the countries of concern identified in the legislation.
- Litigation costs are approximately $27,000 per case; therefore, the one-time state expenditure is estimated to be $729,000 (27 projects x $27,000 cost) in FY24-25.
- According to ECD, the legislation would require them to attach clawbacks to all non-contractual economic development incentives in addition to project contracts. A single

project subject to the legislation could result in numerous incentive clawbacks; one clawback can result in more than one legal case.

- Clawbacks from ECD FastTrack Grant incentives go back into the FastTrack Grant Fund where they can be used for alternative project incentives. It is reasonably assumed that any other grants or incentives recovered by the state or local government will be offered in equal amounts to alternative recipients.
- For purposes of this analysis, it is assumed there will be approximately five litigation cases annually in subsequent years; therefore, the recurring state expenditure is estimated to be $135,000 (5 cases x $27,000 cost) in FY25-26 and subsequent years.
- The total increase in state expenditures will be $3,040,175 ($2,311,175 + $729,000) in FY24-25 and $2,446,175 ($2,311,175 + $135,000) in FY25-26 and subsequent years.
- Any secondary impacts related to the initial decrease in business expenditures, such as increased investment in the state and increased state and local tax revenue are dependent on multiple unknown variables and cannot be reasonably determined.
- Removal of economic incentives for certain companies may lead to a decrease in business investment in this state, resulting in decreases to state and local tax revenues. The precise amount and timing of a decrease in state and local tax revenue, if any, is dependent upon multiple unknown variables and cannot be reasonably determined.
- Contracting state and local departments and agencies will be able to execute the required agreement within existing resources without a significant increase in state or local expenditures; however, the extent to which this Act may limit the entities that a state or local government may contract with and any resulting increase in state or local government expenditures cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

/eb