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## **ALABAMA DEPARTMENT OF REVENUE**

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### **Summary of Alabama Taxes and Tax Incentives**

#### **Secretary of State Qualification**

The Department of Revenue administers a variety of taxes that affect companies based inside and outside of Alabama. Before transacting business in Alabama, a foreign corporation (corporation incorporated outside of Alabama) must qualify with the Alabama Secretary of State. Foreign corporations must file an application for certificate of authority (form CD-2) with the Alabama Secretary of State along with a certified copy of the articles of incorporation and must pay a \$175 qualification fee.

In order to form a domestic corporation (a corporation incorporated inside of Alabama), the corporate name must first be reserved with the Alabama Secretary of State. Then, articles of incorporation must be filed with the probate judge of the county in which the corporation has its initial registered office. The fees for filing articles of incorporation are \$50 for the Alabama Secretary of State and \$35 for the probate judge.

#### **Alabama Business Privilege Tax**

The Business Privilege Tax applies to all corporations and limited liability entities, including disregarded entities, which do business in Alabama or are organized under the laws of Alabama. The tax accrues as of January 1 of every taxable year and is due March 15. In the case of a taxpayer organized during the year, qualifying during the year, or doing business in Alabama for the first time, the tax accrues as of the date of organization, qualification, or beginning to do business and is due 45 days thereafter.

The tax base is the taxpayer's net worth apportioned to Alabama. The rate ranges from \$.25 to \$1.75 for each \$1,000 of net worth in Alabama. The minimum privilege tax is \$100; the maximum privilege tax is \$15,000, except for financial institutions, financial institution groups and insurance companies, which have a maximum privilege tax liability of \$3 million. An electing family limited liability entity is capped at \$500.

Under certain conditions, an enterprise zone credit (Section 5) or exemption (Section 11) for business privilege tax is available for qualified participants. Although this program applies to business privilege tax, the program is administered by the Alabama Department of Economic and Community Affairs (ADECA). Therefore, ADECA will determine whether the project meets the requirements for the program and must certify that to the Alabama Department of Revenue.

#### **Sales and Use Tax**

Alabama sales tax is a privilege tax imposed on the retail sale (a sale made to the end-user) of all tangible personal property sold in Alabama by businesses located in Alabama. The use tax is complementary to the sales tax. Businesses or individuals that purchase tangible personal property outside of Alabama upon

which no tax is paid to the seller and bring the property back to Alabama for storage, use, or consumption should remit consumer's use tax on the purchase, provided that the property purchased is not for resale.

There are four state rate differentials, which include:

- a 1.5 percent rate for manufacturing and farm machinery,
- a 2 percent rate for automotive vehicles,
- a 3 percent rate for food sold through vending machines, and
- a 4 percent general rate for all other items.

Local governments may also impose a sales and/or use tax. The average combined state and local general tax rate is approximately 8 percent; the average combined state and local manufacturing machinery tax rate is approximately 2.75 percent. The applicable sales and use tax rate for each jurisdiction is provided on the Department's website at [www.revenue.alabama.gov](http://www.revenue.alabama.gov). Currently, the department administers the sales and use taxes for over 150 localities, but numerous localities have chosen to administer their own local sales and use taxes or contract with a third party administrator. For localities not administered by the Department of Revenue, the administrator for the specific locality should be contacted to obtain filing requirements.

### **Statutory Sales and Use Tax Abatements and Exemptions**

Alabama's sales and use tax statutes contain many items that give Alabama a definite advantage over other states. These statutes allow exemptions for specific organizations and commodities (see § 40-23-et al, Code of Alabama 1975). Some of the more common items that are exempt include: gasoline, lubricating oil, fertilizer and insecticides, feed for livestock, wholesale sales, and sales to governmental entities.

Sales and use tax abatements and several exemptions are statutorily available. Please see the following paragraphs regarding these abatements and exemptions.

*Section 40-9B Abatements.* Section 40-9B-1, et seq Code of Alabama 1975 provides that qualifying industries may abate all state (with the exception of coal mining) and the local non-educational portion of construction related transaction (sales and use) taxes associated with constructing and equipping a project. For coal mining projects, half of the state sales and use tax may be abated. For state purposes, the general state sales tax rate of four percent and the state manufacturing machinery and equipment tax rate of 1 and 1/2 percent can be abated to qualifying industries.

*Statutory requirement(s):*

- Any trade or business in the 2007 North American Industrial Classification System (NAICS), promulgated by the Executive Office of the President of the United States, Office of Management and Budget as:
  - Sectors 31 (except National Industry 311811), 32, and 33 (manufacturing),
  - 55 (Management of companies (if not for the production of electricity)), (NEW)
  - Subsector 423 and 424 (merchant wholesalers, goods),
  - 482 (rail transportation), (NEW)
  - 493 (warehousing and storage),
  - 511 (publishing industries),
  - 517 (telecommunications),
  - 518 (data processing, hosting, and related services),
  - 927 (space research and technology),
  - Industry Group 1133 (logging),
  - 2121 (coal mining),

- 4862 (pipeline transportation of natural gas), (NEW)
- 4882 (rail transport support activities), (NEW)
- 4883 (Port authority water transportation support activities (other than 48833)), (NEW)
- 5121 (motion picture and video industries (other than 51213)), (NEW)
- 5415 (computer systems design and related services),
- 5417 (scientific research and development services,
- Industry 22111 (electric power generation), (NEW)
- 48691 (pipeline transportation of refined petroleum products),
- 48699 (all other pipeline transportation), (NEW)
- 48819 (air transportation support activities), (NEW)
- 51221 (record productions), (NEW)
- 51913 (internet publishing, broadcasting, web search portals), (NEW)
- 52232 (financial transactions processing, reserve and clearinghouse activities), (NEW)
- 54133 (engineering services), (NEW)
- 54134 (drafting services), (NEW)
- 54138 (testing laboratories),
- 56291 (remediation services), (NEW)
- 56292 (materials recovery facilities), (NEW)
- 92811 (national security), (NEW)
- National Industry 115111 (cotton ginning),
- 221330 (steam and air conditioning supply), (NEW)
- 541614 (process, physical distribution, logistics consulting services), (NEW)
- 561422 (in bound call centers only),
- 562213 (solid waste combustors and incinerators), (NEW)
- 611512 (flight training facilities), (NEW) or
- Headquarters facilities as defined in NAICS 551114 (where at least 50 new jobs are created);
- Data processing centers (where at least 20 new jobs are created);
- Renewable energy facilities;
- Research & development facilities;
- Tourist destination attractions;
- Projects owned by utilities that produce electricity from alternative energy resources;
- Projects owned by utilities that produce electricity from hydropower production;
- Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when such trade or business is conducted on premises in which the Alabama State Port Authority has an ownership and are used as part of the operations of the Alabama State Port Authority; and
- A target of the state's economic development efforts pursuant to either of the following: (NEW)
  - The accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor on July 18, 2011, which identifies 11 targeted business sectors:
    - Advanced Manufacturing in Aerospace/Defense, Automotive, Agricultural Products/Food Production, Steel/Metal, Forestry Products
    - Technology in Biosciences, Information Technology, Enabling Technologies
    - Distribution/Logistics
    - Corporate Operations; or
  - A type listed in a regulation adopted by the Department of Commerce.

### *Job Creation Requirement*

There are no minimum employment and/or wage requirements for a new or major addition project with the exception of headquarters facilities and data processing centers:

- Headquarters facilities must create at least 50 new jobs;

- Data processing centers must create at least 20 jobs with the average annual total compensation of these jobs, including benefits, not less than \$40,000;

*Capital Investment Requirement*

*New Project:*

There is no threshold or limiting investment amount for a new abatement project with the exception of projects owned by utilities producing electricity.

- Projects owned by utilities which produce electricity from alternative energy resources must have capital costs of at least \$100,000,000;
- Projects which produce electricity from hydropower production must have capital costs of at least \$5,000,000.

*Major Addition:*

The additional capital investment by an industry that is **expanding their current facilities in Alabama** must equal the **lesser** of:

- 30% of the original cost of the currently existing industrial property (sum total of the original facilities and equipment or any expansions or additions prior to the current addition), **or**
- \$2,000,000

Please note that the local granting authority must grant the abatement for the qualifying project before the abatement is effective. Therefore, any purchases made prior to the granting of the abatement are ineligible for the sales and use tax abatement. The abatements for the state and local non-educational sales and use taxes end once the project is placed in service, with the exception of data processing centers.

Data processing center projects are eligible for abatement of all state and the local non-educational portion of sales and use taxes associated with constructing and equipping a project for an extended time period contingent on the total capital investment in the project as stated below:

- The maximum abatement period is 10 years for projects that invest up to \$200M within 10 years from the commencement of the project.
- The maximum abatement period is 20 years for projects that invest over \$200M but less than \$400M within 10 years from the commencement of the project.
- The maximum abatement period is 30 years for projects that invest over \$200M within 10 years from the commencement of the project and exceed \$400M within 20 years from the commencement of the project.

*Section 40-9G Abatements.* Effective June 23, 2015, § 40-9G-1, et seq Code of Alabama 1975 allows certain reinvestment projects to qualify for sales and use abatements. Section 9G abatements are subject to and shall follow the same procedures, provisions, limitations, and definitions under § 40-9B to include the same granting authority authorized to grant abatements under § 40-9B-5(b)(1), except that capitalized repairs, rebuilds, maintenance, and replacement equipment shall qualify for abatements if the property is acquired as part of an expansion to an existing facility that qualifies as a “qualifying project” under § 40-9G-1(4). A “qualifying project” is any project that

- Spends at least \$2M in capital expenditures as part of any addition, expansion, improvement, renovation, re-opening, or rehabilitation of a facility, or replacement of any existing equipment or tangible personal property;
- Predominately involves an approved activity defined in § 40-9G-1(1); and
- For which no project agreement has been entered into with the Governor for the provision of other incentives.

Section 40-9G business activities mirror the § 40-9B activities with the exception of data processing centers and certain facility projects.

*Enterprise Zone Exemption.* Under certain conditions, an enterprise zone exemption for sales and use tax is available for qualified participants. Although this program does apply to sales and use tax, the program is administered by the Alabama Department of Economic and Community Affairs (ADECA). Therefore, ADECA will determine whether the project meets the requirements for the program and must certify that to the Alabama Department of Revenue.

*Raw Materials Exemption.* Raw materials used by manufacturers or compounders used as an ingredient or component part of their manufactured or compounded product are specifically exempt from sales and use taxation. Alabama Department of Revenue Regulations 810-6-1-.137 and 810-6-1-.80 address the raw materials exemption.

*Exemption of Certain Aircraft Maintenance Parts.* All parts, components and systems that become a part of a fixed or rotary wing military aircraft or certified transport category aircraft which undergoes conversion, reconfiguration, or general maintenance (as long as the aircraft FAA registration is out of state) is exempt from state sales and use taxes. The local sales and use taxes cannot be exempted unless specifically exempted by local law or by joint resolution of the local governing body.

*Pollution Control Equipment Exemption.* All equipment or materials purchased primarily for the control, reduction or elimination of air or water pollution are exempt from state sales and use tax. Section 40-23-4(a)(16) and §40-23-62(18), Code of Alabama 1975 addresses the pollution control exemptions.

*Utility Gross Receipts Tax Exemptions.* There are several exemptions from the utility gross receipts tax. Sewer costs are not taxed. Water used in industrial manufacturing in which 50 percent or more is used in industrial processing is also exempt from the utility gross receipts tax. Additionally, Alabama law allows exclusions from the utility gross receipts tax and the utility service use tax for utility services used in certain types of manufacturing and compounding processes. The law (§ 40-21-83 & 40-21-103, Code of Alabama 1975) allows exemptions for:

- The furnishing of electricity to a manufacturer or compounder for use in an electrolytic or electrothermal manufacturing or compounding process,
- Natural gas which becomes a component of tangible personal property manufactured or compounded (but not used as fuel or energy), and
- Natural gas used by a manufacturer or compounder to chemically convert raw materials prior to the use of such converted raw materials in an electrolytic or electrothermal manufacturing or compounding process.

## **Property Tax**

All real and personal property is subject to property tax unless specifically exempted by law. The Constitution contains various property tax provisions that may be considered as industrial incentives. For example, § 214 of the Constitution limits the state millage rate on both real and personal property to 6.5 mills. This rate is equivalent to a tax of \$6.50 for every \$1,000 of assessed value. However, both counties and cities may levy millage rates in addition to the state's 6.5 mills. These local rates vary, but the average state millage rate for any one locality is 43 mills, including the state's 6.5 mills. The average tax on property with a market value of \$1,000,000 would be \$8,600 ( $\$1,000,000 * 20\% * .043$ ).

Property tax is levied on the owner of real and personal property located within Alabama. All non-exempt property must be reported each year between October 1 and December 31 with the county tax assessor of the county in which the property is located. The initial appraisal is based on a fair and reasonable market value.

- The property is assessed in one of the following four classes and assessment ratios:
  - Class I - property of utilities used in the business of such utilities, 30 percent;

- Class II - property not otherwise classified (this includes business property), 20 percent;
- Class III - agricultural, forest, and residential property and historic buildings and sites, 10 percent; and
- Class IV - private passenger automobiles and motor trucks commonly known as "pickups" owned and operated by an individual for personal or private use and not for hire, rent, or compensation, 15 percent.

Although the Department of Revenue oversees the administration of property taxes, the county tax assessors and collectors are responsible for assessing property and collecting the property tax. Property taxes are paid annually to county tax collectors between October 1 and December 31, following assessment.

### **Statutory Property Tax Abatements and Exemptions**

*Inventory Exemptions.* Unlike many other states, Alabama does not levy a property tax on inventory of goods, wares, and merchandise that is offered for sale. However, inventory that is used for lease or rental purposes is subject to the property tax. Materials that are to be compounded or manufactured and are stocked at plants or furnaces for manufacturing purposes are also exempt from property tax.

*Pollution Control Equipment Exemption.* All equipment, facilities or materials constructed or acquired primarily for the control, reduction or elimination of air or water pollution are exempt from property tax. Section 40-9-1(20), Code of Alabama 1975 addresses the pollution control exemption.

*Section 40-9B Abatements.* Section 40-9B-1, et seq. Code of Alabama provides for the abatement of certain property taxes to qualifying industries. All of the non-educational state and local portion of property tax can be abated for projects if the proper procedures are followed. For coal mining projects, only half of the state's non-educational portion can be abated. Abatements granted under § 40-9B are valid for a maximum period of 10 years and must be granted by the local granting authority prior to placing the project in service. No additional property (real or personal) may be eligible for abatement once the project is placed in service, except for data processing centers or if a "major addition" is made. See extended abatement periods for data processing centers.

Effective June 23, 2015, all of the non-educational state and local portion of property tax can be abated for a maximum of 20 years. Projects which are granted property tax abatements for a period longer than 10 years shall be granted by the granting authority dictated in § 40-9B-5(b)(1) for years up to 10 and by the appropriate granting authority in § 40-9B-5(b)(2) for years 11-20, which is as follows: county noneducational property taxes may be abated only with the consent by resolution of the governing body of the county; municipal noneducational property taxes may be abated only with the consent by resolution of the governing body of the municipality; and State noneducational property taxes may be abated only with the consent of the Governor. The governing body of a county or a municipality may separately authorize one or more public industrial authorities to provide by resolution for such consent on its behalf. The abatements granted can be incorporated under one agreement.

*Statutory requirement(s):*

- Any trade or business in the 2007 North American Industrial Classification System (NAICS), promulgated by the Executive Office of the President of the United States, Office of Management and Budget as:
  - Sectors 31 (except National Industry 311811), 32, and 33 (manufacturing),
  - 55 (Management of companies (if not for the production of electricity)), (NEW)
  - Subsector 423 and 424 (merchant wholesalers, goods),
  - 482 (rail transportation), (NEW)
  - 493 (warehousing and storage),

- 511 (publishing industries),
- 517 (telecommunications),
- 518 (data processing, hosting, and related services),
- 927 (space research and technology),
- Industry Group 1133 (logging),
- 2121 (coal mining),
- 4862 (pipeline transportation of natural gas), (NEW)
- 4882 (rail transport support activities), (NEW)
- 4883 (Port authority water transportation support activities (other than 48833)), (NEW)
- 5121 (motion picture and video industries (other than 51213)), (NEW)
- 5415 (computer systems design and related services),
- 5417 (scientific research and development services),
- Industry 22111 (electric power generation), (NEW)
- 48691 (pipeline transportation of refined petroleum products),
- 48699 (all other pipeline transportation), (NEW)
- 48819 (air transportation support activities), (NEW)
- 51221 (record productions), (NEW)
- 51913 (internet publishing, broadcasting, web search portals), (NEW)
- 52232 (financial transactions processing, reserve and clearinghouse activities), (NEW)
- 54133 (engineering services), (NEW)
- 54134 (drafting services), (NEW)
- 54138 (testing laboratories),
- 56291 (remediation services), (NEW)
- 56292 (materials recovery facilities), (NEW)
- 92811 (national security), (NEW)
- National Industry 115111 (cotton ginning),
- 221330 (steam and air conditioning supply), (NEW)
- 541614 (process, physical distribution, logistics consulting services), (NEW)
- 561422 (in bound call centers only),
- 562213 (solid waste combustors and incinerators), (NEW)
- 611512 (flight training facilities), (NEW) or
- Headquarters facilities as defined in NAICS 551114 (where at least 50 new jobs are created);
- Data processing centers (where at least 20 new jobs are created);
- Renewable energy facilities;
- Research & development facilities;
- Tourist destination attractions;
- Projects owned by utilities that produce electricity from alternative energy resources;
- Projects owned by utilities that produce electricity from hydropower production;
- Subsector 493 (Warehousing and Storage), Industry Number 488310 (Port and Harbor Operations), or Industry Number 488320 (Marine Cargo Handling), when such trade or business is conducted on premises in which the Alabama State Port Authority has an ownership and are used as part of the operations of the Alabama State Port Authority; and
- A target of the state's economic development efforts pursuant to either of the following: (NEW)
  - The accelerate Alabama Strategic Economic Development Plan adopted in January 2012 by the Alabama Economic Development Alliance, created by Executive Order Number 21 of the Governor on July 18, 2011, which identifies 11 targeted business sectors:
    - Advanced Manufacturing in Aerospace/Defense, Automotive, Agricultural Products/Food Production, Steel/Metal, Forestry Products
    - Technology in Biosciences, Information Technology, Enabling Technologies
    - Distribution/Logistics

- Corporate Operations; or
- A type listed in a regulation adopted by the Department of Commerce.

Except for data processing centers, property tax abatements are available for a maximum period of 20 years and must be granted by the respective granting authority prior to placing the project in service. The abatement period for data processing centers can be extended contingent on the total capital investment in the project:

- The maximum abatement period is 10 years from and after the date the private use property becomes owned for federal income tax purposes for projects that invest at least \$200M within 10 years from the commencement of the project.
- The maximum abatement period is 20 years from and after the date the private use property becomes owned for federal income tax purposes for projects that invest over \$200M but less than \$400M within 10 years from the commencement of the project.
- The maximum abatement period is 30 years from and after the date the private use property becomes owned for federal income tax purposes for projects that invest over \$200M within 10 years from the commencement of the project and exceed \$400M within 20 years from the commencement of the project.

#### *Job Creation Requirement*

There are no minimum employment and/or wage requirements for a new or major addition project with the exception of headquarters facilities, data processing centers and warehousing activity projects.

- Headquarters facilities must create at least 50 new jobs;
- Data processing centers must create at least 20 jobs with the average annual total compensation of these jobs, including benefits, not less than \$40,000;

#### *Capital Investment Requirement*

##### *New Project*

There is no threshold or limiting investment amount for a new abatement project with the exception of warehousing activity projects and projects owned by utilities producing electricity.

- Projects owned by utilities which produce electricity from alternative energy resources must have capital costs of at least \$100,000,000;
- Projects which produce electricity from hydropower production must have capital costs of at least \$5,000,000.

##### *Major Addition*

The additional capital investment by an industry that is **expanding their current facilities in Alabama** must equal the **lesser** of:

- 30% of the original cost of the currently existing industrial property (sum total of the original facilities and equipment or any expansions or additions prior to the current addition), **or**
- \$2,000,000

*Section 40-9G Abatements.* Effective June 23, 2015, § 40-9G-1, et seq Code of Alabama 1975 allows certain reinvestment projects to qualify for property abatements on replacement equipment and property purchased for capitalized repairs, rebuilds, renovations, and maintenance if the property is acquired as part of an expansion to an existing facility that qualifies as a “qualifying project” under § 40-9G-1(4). A “qualifying project” is any project that

- Spends at least \$2M in capital expenditures as part of any addition, expansion, improvement, renovation, re-opening, or rehabilitation of a facility, or replacement of any existing equipment or tangible personal property;
- Predominately involves an approved activity defined in § 40-9G-1(1); and
- For which no project agreement has been entered into with the Governor for the provision of other incentives.



Section 40-9G business activities mirror the § 40-9B activities with the exception of data processing centers and certain facility projects. All of the state and local portion of the property tax not earmarked for education on the real and personal property incorporated into a qualifying capitalized reinvestment project can be abated up to 20 years. The § 40-9G property tax abatements are subject to and shall follow the same procedures, provisions, limitations, and definitions under § 40-9B WITH THE EXCEPTIONS BELOW:

- The amount of the property tax abatement will be equal to the excess amount of property taxes owed for the applicable tax year that is greater than the amount of property taxes owed for the tax year immediately before the qualifying project was placed in service, and
- Regardless of the length of the abatement, the abatement may be granted as follows: county noneducational property taxes may be abated only with the consent by resolution of the governing body of the county; municipal noneducational property taxes may be abated only with the consent by resolution of the governing body of the municipality; and State noneducational property taxes may be abated only with the consent of the Governor. The governing body of a county or a municipality may separately authorize one or more public industrial authorities to provide by resolution for such consent on its behalf.

### **Corporate Income Tax**

Corporations pay Alabama income tax based on their net taxable income derived from business conducted within the state. The amount of net income apportioned to Alabama is determined by applying a four factor formula of property, payroll, and double weighted sales to total net income. The rate of corporate income taxation is 6.5% (Individuals are taxed at a rate of 5%). Corporations that anticipate having a tax liability of \$500 or more must file and pay estimated tax on a quarterly basis.

There are several credits and deductions that are statutorily available for Alabama corporate taxpayers. The taxpayer may participate in any or all of the statutory tax credits for which requirements are met. Please see the following paragraphs regarding these deductions and credits.

### **Income Tax Credits and Deductions**

*Federal Income Tax Deduction.* There are constitutional restrictions that add to the stability of the Alabama corporate (and individual) tax environment. Amendment 212 of the Constitution allows the corporate (and individual) taxpayer to deduct from its gross apportioned and allocated income, the apportioned (to Alabama) amount of federal income tax paid or accrued, creating a lower net effective income tax rate.

*Net Operating Loss Carryforward.* For Alabama corporate income tax, a net operating loss is applied to the first taxable year to which it may be carried and can be carried forward 15 consecutive years. However, corporations may not carry back a net operating loss to offset Alabama income in prior years.

*Full Employment Act of 2011.* For tax years beginning January 1, 2012, employers who had no more than 50 employees as of January 1, 2011, are eligible for a \$1,000 nonrefundable income tax or financial institution excise tax credit for each full-time qualifying job created. The job created must be a net increase in employment and the employee hired must be paid more than \$10 per hour and the credit is available in the tax year during which the employee has completed 12 months of consecutive employment.

*Heroes For Hire Income Tax Credit.* For tax years beginning January 1, 2012, employers meeting the requirements for the Full Employment Act of 2011 are eligible for an additional \$1,000 nonrefundable income tax or financial institution excise (state-portion) tax credit for each job created if the employee is a recently deployed, unemployed veteran. Additionally, any recently deployed, unemployed veteran who

holds at least 50% ownership interest in a start-up business is eligible for up to a one-time \$2,000 nonrefundable tax credit for expenses related with the start-up.

*Capital Credit.* A capital credit is available to projects that file a Form INT on or before January 2, 2016. The capital credit can be applied to the income tax liability generated by income from a project approved by the Alabama Department of Revenue. The capital credit is available each year, for 20 years. The annual capital credit is calculated at five percent (5%) of the total capital costs of the qualifying project and the credit begins in the year the qualifying project is 'placed in service'. For all projects except coal mining, the capital credit cannot exceed 100% of the total capital costs over the 20 year period. For coal mining projects, the capital credit cannot exceed 50% of the total capital costs over the 20 year period. There are several types of projects under the capital credit, all of which statutory requirements must be met in order to qualify for the credit.

- *Business Activity Requirement*

- Industrial, Warehousing or Research Activity - Any trade or business in the 2007 North American Industrial Classification System (NAICS), promulgated by the Executive Office of the President of the United States, Office of Management and Budget as:
  - Sectors 31 (except National Industry 311811), 32, and 33 (manufacturing),
  - Subsector 423 and 424 (merchant wholesalers, goods),
  - 511 (publishing industries (except internet)),
  - 927 (space research and technology),
  - Industry Group 2121 (coal mining),
  - 5417 (scientific research and development services),
  - 5415 (computer systems design and related services),
  - 5182 (data processing, hosting, and related services),
  - Industry 11331 (logging),
  - 48691 (pipeline transportation of refined petroleum products),
  - National Industry 115111 (cotton ginning),
  - 517110 (wired telecommunications carriers),
  - 541380 (testing laboratories), or
  - 561422 (in bound call centers only);
- Any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product;
- Headquarters facilities as defined in NAICS 551114;
- Warehousing activity projects (NAICS Subsector 493 which provide logistics services related to the distribution of goods);
- Data processing centers;
- Renewable energy facilities;
- Research & development facilities;
- Projects owned by utilities that produce electricity from alternative energy resources;
- Projects owned by utilities that produce electricity from hydropower production; or
- Tourism destination attractions

- *Minimum Investment*

- \$500,000 for projects located in favored geographic areas, except headquarters facilities, warehousing activity projects and utility owned projects;
- \$1,000,000 for small business addition projects and warehousing activity projects located in favored geographic areas;
- \$2,000,000 for industrial, warehousing or research activity projects, data processing centers, research & development facilities, renewable energy facilities and headquarters facilities;

- \$5,000,000 for warehousing activity projects, tourism destination attraction projects located in favored geographic areas and utility owned projects producing electricity from hydropower production;
  - \$20,000,000 for tourism destination attraction projects; or
  - \$100,000,000 for utility owned projects producing electricity from alternative energy resources.
- *Employment Requirement*
    - At least 50 new employees at headquarters facilities, data processing centers, warehousing activity projects and tourism destination attraction projects (not located in a favored geographic area);
    - At least 20 new employees at industrial, warehousing or research activity projects, research & development facilities, renewable energy facilities, utility owned projects and tourism destination projects (located in a favored geographic area);
    - At least 15 new employees at small business addition projects;
    - At least 5 new employees at projects located in favored geographic areas, except headquarters facilities, warehousing activity projects, and tourism destination projects;
    - New employees must meet the statutory definition of new employees, found in § 40-18-190, Code of Alabama 1975. “New employees” cannot have worked at the site before, and cannot have worked for the project entity in Alabama before. Required jobs and average base wages must be provided by the date that is not later than one (1) year after the project is placed in service, except for warehousing projects, and continuing each year thereafter. Required jobs and average base wages for warehousing projects must be provided by the date that is not later than two (2) years after the project is placed in service and continuing each year thereafter.
- *Base Wage Requirement*
    - For projects filing a “written statement of intent” (Form INT) in calendar year 2015 and located in favored geographic areas, the average wage of all new employees at the project must meet the lesser of:
      - \$13.07 per hour, indexed annually as provided in § 25-5-68, Code of Alabama 1975, or
      - Average hourly wage of the county where qualifying project is located
    - For all other projects filing a Form INT in calendar year 2015, the average wage of all new employees at the project must meet the lesser of:
      - \$16.33 per hour, indexed annually as provided in § 25-5-68, Code of Alabama 1975, or
      - Average hourly wage of the county where qualifying project is located
    - There is an exception for direct processors of agriculture food products. These wages shall be determined by the local labor market rate. Contact the Commissioner’s Office for more information.
- *Capital Credit Extension And Carry Forward Provisions For Certain Qualifying Projects*
    - Projects with at least \$100,000,000 and 100 jobs can delay the start of the capital credit up to three years after the project is placed in service;
    - Projects with at least 100 jobs and at least \$100,000,000 investment but less than \$200,000,000 can carry forward the capital credit one year;
    - Projects with at least 100 jobs and at least \$200,000,000 investment but less than \$300,000,000 can carry forward the capital credit two years;
    - Projects with at least 100 jobs and at least \$300,000,000 investment but less than \$400,000,000 can carry forward the capital credit three years;
    - Projects with at least 100 jobs and more than \$400,000,000 investment can carry forward the capital credit four years.
- *Filing Requirements*
    - Qualifying projects can be set up as either a ‘one step’ project or as a ‘phased’ project.

- A company seeking the capital credit must file a Form INT with the Department of Revenue prior to the date the project is placed in service. If the Form INT is not received by the department before the project is placed in service, the project will not qualify for the capital credit. However, for phased projects, the Form INT must be submitted before the first phase is placed in service and the capital credit cannot be utilized until the last phase is placed in service.
- A company must file a “report of investment in project” (Form INT-2) when the project is placed in service.
- A company must file an “Accounting Practices Agreement” with the Department before the capital credit can be utilized. This agreement denotes how the income from the project will be determined and is not necessarily the same method used in determining Alabama income.
- *Noncompliance Provisions*
  - Minimum statutory requirements must be met by the first year the project is placed in service and maintained annually thereafter to receive the credit. Each qualifying project must meet minimum statutory requirements by the first year the project is placed in service or the project becomes ineligible for the credit. After the first year, minimum requirements must be met to be eligible to receive the annual credit. However, after the first year, the law allows a project to fall below minimum employee and wage requirements for up to three of the twenty years of the life of the credit. No credit is available in a noncompliance year. After the third noncompliance year, the project is disqualified from the capital credit program.
  - If the qualifying project meets the minimum requirements by the first year but fails to meet such requirements in a subsequent year, the investing company shall forfeit a percentage of the capital credits claimed in the prior five years as follows:
    - 100% of the capital credit claimed in the year immediately preceding the year in which the investing company fails to maintain the employment and wage requirements (noncompliance year); and
    - 20% of the credits claimed in the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> years preceding the noncompliance year.

*Enterprise Zone Credit/Exemption.* Under certain conditions, an enterprise zone credit (Section 5) or exemption (Section 11) for income tax is available for qualified participants. Although this program does apply to income tax, the program is administered by the Alabama Department of Economic and Community Affairs (ADECA). Therefore, ADECA will determine whether the project meets the requirements for the program and must certify that to the Alabama Department of Revenue.

*Alabama New Markets Tax Credit:* A tax credit against state income, financial institution excise, and insurance premium tax is available to investors in community development entities which provide funding to businesses that located in qualified low-income or impoverished communities, especially central business districts, in Alabama. This credit parallels the provisions of the federal New Markets Tax Credit (I.R.C. § 45D) in many ways. The total amount of tax credits the Department of Commerce can grant to all applicants for any given tax year is capped at \$20 million and the maximum qualifying credit for a particular project is \$10 million.

### **Miscellaneous Licenses and Taxes**

It is important to note that the state and most localities require businesses to obtain a privilege license. The type of license required and the fee for the license are determined at the local level. Additionally, the state does not administer any local occupational taxes; such taxes are administered at the local level. To ensure compliance with local registration and filing requirements, the taxpayer should contact the appropriate local jurisdictions.

*Municipal Business License Abatement:* Section 11-51-189 Code of Alabama 1975 allows the governing body of a municipality to abate all or a portion of the business license tax for up to three license years if the taxpayer complies with the criteria for abatement of sales or use taxes according to § 40-9B-1, et seq.

### **Conclusion**

The above exemptions, credits, and abatements are all statutory. If a project meets the legal qualifications for a tax incentive, the qualifying business will be eligible to receive the incentive. However, please understand that some incentives, as noted, do require prior approval. If you have any questions or need additional information, please contact the Alabama Department of Revenue Office of Economic Development at (334) 242-1175.