

1 SB368
2 137820-1
3 By Senators Blackwell, Whatley, Ward, Marsh, Orr, Sanford and
4 Holtzclaw
5 RFD: Finance and Taxation Education
6 First Read: 23-FEB-12

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

12 This bill would provide a limited tax credit
13 against state income taxes or financial institution
14 excise taxes for qualified research expenses
15 incurred by businesses, including pass-through
16 entities, and financial institutions within the
17 state parallel to the federal research and
18 development tax credit, with an increased incentive
19 if certain universities or research institutions
20 participate.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

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26 To amend Section 40-16-8 of the Code of Alabama
27 1975, and to add a new Article 11 to Chapter 18 of Title 40

1 beginning with Section 40-18-280, Code of Alabama 1975, to
2 provide for a limited research and development tax credit for
3 financial institutions and businesses, including pass-through
4 entities, subject to excise or income taxes.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 40-16-8 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§40-16-8.

9 "(a) All moneyed capital employed in the business
10 the privilege of engaging in which is hereby taxed and the
11 shares of all financial institutions, as in this chapter
12 defined, shall be exempted from assessment and payment of ad
13 valorem taxes, except the moneyed capital and shares of any
14 business hereby taxed which fails to make and file the returns
15 required by this chapter and to pay the tax levied by this
16 chapter as and when in this chapter provided. The real estate
17 owned by every such financial institution shall not be
18 exempted. If any other tax other than the privilege tax levied
19 by Article 2 of Chapter 14A, whether on property (other than
20 ad valorem taxes on real estate), income, business or any
21 element thereof, except license taxes not in excess of those
22 heretofore legally levied and in effect, at any time after
23 July 10, 1935, has been, or is at any time hereafter levied by
24 this state or by any political subdivision of this state on
25 any financial institution as in this chapter defined, the
26 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 a 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, or
21 Hudson-Alpha Institute for Biotechnology (HAIB), an Alabama
22 nonprofit corporation, or Southern Research Institute (SRI),
23 an Alabama nonprofit corporation. An agreement executed by
24 parties that includes at least the university, HAIB, or SRI,
25 and the taxpayer is required. Funding for sponsored research
26 contracts may be provided from public or private sources.

1 University Research Contract QRE does not include research
2 activities performed in another state or a foreign country.

3 "(2) In addition to any other tax credit provided in
4 this chapter, QRE that are incurred in the state are allowed
5 as a credit against the financial institution excise tax
6 liability in an amount equal to six and one-half percent of
7 the QRE incurred. If the QRE was incurred in the state as a
8 part of a university research contract; however, the credit
9 against state financial institution excise tax liability shall
10 be 15 percent of the QRE. Any tax credit provided by this
11 subsection shall be taken for the taxable year in which the
12 taxpayer qualifies for the credit and the credit shall not be
13 refundable. All other state income tax credits shall be
14 applied prior to the application of the tax credit provided in
15 this subsection. Any unused credit in a tax year may be
16 carried over into subsequent tax years for not more than 10
17 years. Notwithstanding the foregoing, the otherwise available
18 credit shall be limited to one hundred thousand dollars
19 (\$100,000) per taxable year for each taxpayer or pass-through
20 entity claiming the credit."

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

23 Article 11.

24 Research and Development Tax Credits.

25 §40-18-280.

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

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

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

12 (3) UNIVERSITY RESEARCH CONTRACT. Research and
13 development activities performed and QRE incurred within the
14 state pursuant to sponsored research contracts conducted in
15 conjunction with and through a chartered university within the
16 State of Alabama, public or nonpublic, which conducts graduate
17 programs at the professional or doctoral level, or
18 Hudson-Alpha Institute for Biotechnology (HAIB), an Alabama
19 nonprofit corporation, or Southern Research Institute (SRI),
20 an Alabama nonprofit corporation. An agreement executed by
21 parties that includes at least the university, HAIB, or SRI,
22 and the taxpayer is required. Funding for sponsored research
23 contracts may be provided from public or private sources.
24 University QRE does not include research activities performed
25 in another state or a foreign country.

26 (b) In addition to any other tax credit provided in
27 this chapter, QRE that are incurred in the state are allowed

1 as a credit against state income tax liability in an amount
2 equal to six and one-half percent of the QRE incurred. If the
3 QRE was incurred in the state as a part of a university
4 research contract; however, the credit against state income
5 tax liability shall be 15 percent of the QRE incurred.

6 (c) Any tax credit provided by this section shall be
7 taken for the taxable year in which the taxpayer qualifies for
8 the credit and the credit shall not be refundable. All other
9 state income tax credits shall be applied prior to the
10 application of the tax credit provided in this section.

11 Notwithstanding the foregoing, the otherwise available credit
12 shall be limited to one hundred thousand dollars (\$100,000)
13 per taxable year for each taxpayer or pass-through entity
14 claiming the credit.

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

17 §40-18-281.

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

26 (b) The shareholders, partners, members, owners, or
27 beneficiaries shall be entitled to the QRE tax credit for each

1 tax year with respect to which a credit is provided pursuant
2 to this article. The credit shall be allowed as follows:

3 (1) The owner of a company which is a proprietorship
4 shall receive a credit against the individual income tax
5 levied by Section 40-18-2 that otherwise would be owed to the
6 state in any year by the owner with respect to the QRE.

7 (2) A company which is an Alabama S corporation and
8 which is subject to taxation under Section 40-18-174 or
9 Section 40-18-175, shall receive a credit against the
10 corporate income tax levied by Section 40-18-174 or Section
11 40-18-175, that otherwise would be owed to the state in any
12 year by the company with respect to the QRE.

13 (3) The shareholders of a company which is an
14 Alabama S corporation as defined in Section 40-18-160, and
15 whose taxable income is subject to determination under Section
16 40-18-161, each shall receive a credit against the individual
17 income tax levied by Section 40-18-2 that otherwise would be
18 owed to the state in any year by each shareholder of the
19 company with respect to the QRE.

20 (4) The partners, members, or owners of a company,
21 the income of which is subject to taxation under Section
22 40-18-24, each shall receive a credit against the corporate
23 income tax levied by Section 40-18-31, or against the
24 individual income tax levied by Section 40-18-2, whichever is
25 applicable to each such partner, member, or owner that
26 otherwise would be owed to the state in any year by each

1 partner, member, or owner of the company, with respect to the
2 QRE.

3 (5) A company which is a trust or estate having
4 income subject to taxation under subsection (c) of Section
5 40-18-25, shall receive a credit against the income tax levied
6 by Section 40-18-2 that otherwise would be owed to the state
7 in any year by the company, with respect to the QRE.

8 (6) The beneficiaries of a company which is a trust
9 or estate, the income of which is subject to taxation under
10 subsection (d) of Section 40-18-25, each shall receive a
11 credit against the corporate income tax levied by Section
12 40-18-31, or against the individual income tax levied by
13 Section 40-18-2, whichever is applicable to such a
14 beneficiary, that otherwise would be owed to the state in any
15 year by each beneficiary of the company, with respect to the
16 QRE.

17 (7) The QRE tax credit allowed under this article
18 for any tax year of a company shall not exceed the aggregate
19 amount of tax which otherwise would be due from the company,
20 its shareholders, partners, members, owners, or beneficiaries.
21 Notwithstanding the foregoing, the otherwise available credit
22 shall be limited to one hundred thousand dollars (\$100,000)
23 per taxable year for each taxpayer or pass-through entity
24 claiming the credit. Any unused tax credit may be carried over
25 for up to 10 years.

26 (8) Any shareholder, partner, member, owner, or
27 beneficiary of a company may elect annually to use his or her

1 allowable portion of the income tax credit created by this
2 article as a nonrefundable estimated tax payment against his
3 or her individual income tax liability. If a taxpayer makes an
4 annual election to use the aforementioned credit as a
5 nonrefundable estimated tax payment, the taxpayer shall
6 compute the amount of the credit as though it were a credit,
7 subject to all the requirements and limitations provided by
8 law for the credit, but shall use the amount computed as a
9 nonrefundable estimated tax payment and shall not use the same
10 amount as a credit. In no event shall a credit used as
11 nonrefundable estimated tax payment exceed the amount that
12 would be available if the credit were not used as a
13 nonrefundable estimated tax payment.

14 Section 3. This act shall become effective for the
15 taxable years beginning after December 31, 2012, following its
16 passage and approval by the Governor, or its otherwise
17 becoming law.