

PUBLICATION

Spotlight on Alabama: Legislative Update on Investment Incentives in Alabama

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In its 2009 Legislative Session, the State of Alabama adopted three significant business incentive and tax acts:

1. An expansion and modification of the Alabama Capital Credit;
2. A package of incentives for the filmmaking industry; and
3. A modification of the Alabama tax treatment of nonresident partners and a related exemption for "qualified investment partnerships."

Expansion and Modification of the Alabama Capital Credit

Alabama's primary business tax incentive, the Alabama Capital Credit, has been updated and modified. The Capital Credit is a credit of five percent of the capital costs of a qualifying industrial, warehousing or research project each year for twenty years applicable against the Alabama income tax associated with the qualifying project. Alabama Act 2009-722, effective May 22, 2009, expanded the categories of industries qualifying for the credit to include several new industries as follows:

- Space research and technology;
- Wired telecommunications carriers;
- Headquarters facilities (at least 50 new jobs);
- Data Processing centers (at least 50 new jobs);
- Renewable energy facilities; and
- Research and development facilities.

The expanded categories for data processing, headquarters and call centers are specifically made applicable for businesses paying either the Alabama corporate income tax or the Alabama financial institutions excise tax.

The Act also increased the base wage requirement for new employees at all projects filing for the credit after May 22, 2009 to the lesser of \$15 per hour, excluding benefits, or the average hourly wage in the county in which the project is located. Certain favored geographic areas have only a \$12 per hour or average wage requirement.

The Act also provides for the first time a provision penalizing projects which fail to maintain the requisite number of new jobs. The penalty is 100% of the credit claimed in the prior year and 20% of the credits for each of the previous four years.

Entertainment Industry Incentives Act of 2009

The Entertainment Industry Incentives Act provides qualified production companies a rebate of 25% of qualifying production expenditures and 35% of qualifying payroll paid to Alabama residents. Production expenditures must equal at least \$500,000 and must not exceed \$10,000,000. Sound track production expenditures qualify if they exceed \$50,000. Certification of a production is done through the Alabama Film Office. In addition, qualified production companies intending to spend at least \$150,000 on qualified

productions in Alabama within a 12-month period qualify for an exemption from state sales, use, and lodging taxes.

Taxation of Nonresident Partners/Exemption for Investors in Qualified Investment Partnerships

Provisions attached to the Entertainment Industry Incentives Act change Alabama taxation of nonresident partners by requiring composite returns for all partnerships having nonresident partners and doing business in Alabama. The Act is effective for calendar year 2009. Prior law allowed either composite returns or the submission of an agreement by the nonresident partners to the taxing jurisdiction of Alabama.

An important exemption from the composite return requirement was adopted for qualified investment partnerships, defined as a partnership having at least 90% of its assets being qualified investment securities and at least 90% of its gross income consisting of dividends, interest, distributions, management fees and gains or losses from qualified investment securities. The new provisions essentially codify the nontaxable status of a passive nonresident partner in such an investment partnership.

If you have questions about these incentives would like to discuss options, please contact any attorney in our Tax Department.