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SYNOPSIS:

This bill would allow the coal production tax credit to be claimed against income and utility services taxes and would allow all persons that increase their production of coal mined in Alabama from the prior year to claim the credit, with any unused credits to be carried forward for no more than five years.

This bill would establish sunset provisions and reporting guidelines for economic tax incentives.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Coal Production Tax Credit; to amend Section 40-18-220, Code of Alabama 1975, to allow the credit to be claimed against both income and utility services taxes; to allow the credits to be earned by all persons that increase their production of coal mined in Alabama from the prior year; to allow any unused credits to be carried forward for no more than five years; to establish sunset dates for tax incentive programs; to establish future sunset dates for extended tax incentive programs; and to provide required guidelines for all new incentive legislation.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



29 Section 1. Section 40-18-220, Code of Alabama 1975, is
30 amended to read as follows:

31 "§40-18-220

32 (a) For the tax years beginning on and after January 1,
33 1995, every person~~corporation, whether a "subchapter S"~~
34 ~~corporation, as defined by the 1995 Internal Revenue Code, or~~
35 ~~not, foreign or domestic,~~ that is doing business in Alabama,
36 as a producer of coal mined in Alabama, shall be allowed a
37 coal production credit to be used as provided in subsection
38 (b)~~against the tax imposed by Section 40-18-2,~~ in the amount
39 of one dollar (\$1) per ton of increased production of coal
40 over the previous year's production of coal as set out herein
41 below. Such tax credit shall be based on coal produced after
42 January 1, 1995, provided the coal was mined in Alabama as
43 certified by the producer of the coal. The amount of the total
44 of credit in any one year shall be based on the number of tons
45 of Alabama coal produced by the person~~corporation~~ in the year
46 which exceeds the number of tons of Alabama coal produced by
47 the person~~corporation~~ in calendar year 1994. In the event a
48 person~~corporation~~ did not produce Alabama coal during calendar
49 year 1994, such person~~corporation~~ must establish a base year
50 by producing Alabama coal for 12 consecutive months.
51 Thereafter, such person~~corporation~~ shall be eligible for the
52 tax credit as specified hereinabove over the base year
53 production.

54 (b) The coal production credit described in subsection

55 (a) shall be used as follows:



56 (1) To offset the income taxes found in this chapter, or
57 as an estimated tax payment of income taxes;

58 (2) To offset the taxes imposed by Sections 40-21-82 and
59 40-21-102; or

60 (3) To offset some combination of the foregoing, so long
61 as the same credit is used only once.

62 (c) (1) The coal production credit may be claimed as a
63 credit against the taxes in subsection (b) that are actually
64 paid. In any one year, if the credit exceeds the amount of
65 taxes that are owed by the person, the person may carry the
66 credit forward. No carryforward shall be allowed for more than
67 five years. Rules similar to those used for Section 40-18-15.2
68 shall be applied.

69 (2) A person that is taxed as a flow-through entity may
70 allocate the coal production credit among some or all of the
71 owners in any manner specified, regardless of whether the
72 allocation follows rules similar to 26 U.S.C. § 704(b) and the
73 regulations thereunder. The owners may then use their
74 allocated share of the coal production credit to offset any of
75 the taxes listed in subsection (b), as provided in subdivision
76 (1). This subdivision shall be liberally construed to apply to
77 multiple levels of companies, to allow the coal production
78 credit to be used by those persons bearing the tax burdens of
79 the production of coal in Alabama, and such companies shall



80 include, but shall in no way be limited to, flow-through
81 entities, employee stock ownership plans, mutual funds, real
82 estate investment trusts, and it shall also apply to offset
83 the income tax liability of employee/owners of a flow-through
84 entity owned by an employee stock ownership plan trust.

85 (3) Prior to claiming the coal production credit as
86 provided in subdivision (c)(1), the person producing Alabama
87 coal shall submit to the Department of Revenue a certification
88 as to the amount of increased production of coal for the
89 calendar year over the previous year's production of coal.
90 Following such examination as it deems necessary, the
91 Department of Revenue shall allow the coal production credit.

92 (d) The coal production tax credit shall be subject to
93 the reporting requirements of Section 40-1-50.

94 Section 2. The Brownfield Development Tax Abatement
95 Act, Chapter 9C, of Title 40, commencing with Section 40-9C-1,
96 Code of Alabama 1975, is repealed effective December 31, 2028,
97 unless extended by an act of the Legislature prior to that
98 date for no more than five additional years.

99 Section 3. The Rural Physician Tax Credit, Article 4A,
100 commencing with Section 40-18-130, Chapter 18, of Title 40,
101 Code of Alabama 1975, is repealed effective December 31, 2028,
102 unless extended by an act of the Legislature prior to that
103 date for no more than five additional years.

104 Section 4. The Coal Production Tax Credit, Article 8,
105 commencing with Section 40-18-220, Chapter 18, of Title 40,



106 Code of Alabama 1975, is repealed effective December 31, 2028,
107 unless extended by an act of the Legislature prior to that
108 date for no more than five additional years.

109 Section 5. The Reemployment Act of 2010, Article 10,
110 commencing with Section 40-18-270, Chapter 18, of Title 40,
111 Code of Alabama 1975, is repealed effective December 31, 2028,
112 unless extended by an act of the Legislature prior to that
113 date for no more than five additional years.

114 Section 6. The Full Employment Act of 2011, Article 11,
115 commencing with Section 40-18-290, Chapter 18, of Title 40,
116 Code of Alabama 1975, is repealed effective December 31, 2028,
117 unless extended by an act of the Legislature prior to that
118 date for no more than five additional years.

119 Section 7. The Veterans Employment Act, Article 13,
120 commencing with Section 40-18-320, Chapter 18, of Title 40,
121 Code of Alabama 1975, is repealed effective December 31, 2028,
122 unless extended by an act of the Legislature prior to that
123 date for no more than five additional years.

124 Section 8. The Irrigation Equipment Tax Credit, Article
125 14, commencing with Section 40-18-340, Chapter 18, of Title
126 40, Code of Alabama 1975, is repealed effective December 31,
127 2028, unless extended by an act of the Legislature prior to
128 that date for no more than five additional years.

129 Section 9. The Entertainment Industry Incentive Act of
130 2009, Article 3, commencing with Section 41-7A-40, Chapters
131 7A, of Title 41, Code of Alabama 1975, is repealed effective
132 December 31, 2028, unless extended by an act of the
133 Legislature. Prior to the repeal of the incentive, the



134 Department of Commerce shall report to the Legislature
135 beginning in 2023 and annually thereafter, regarding the
136 entertainment industry incentives, in accordance with Section
137 40-1-50.

138 Section 10. The Alabama Enterprise Zone Act, Article 2,
139 commencing with Section 41-23-20, Chapter 23, of Title 41,
140 Code of Alabama 1975, is repealed effective December 31, 2028,
141 unless extended by an act of the Legislature prior to that
142 date for no more than five additional years.

143 Section 11. The repealing of the incentives listed in
144 Sections 2 through 10 shall only affect the availability of
145 the tax credits after December 31, 2028, and shall not cause a
146 reduction or suspension of any credits awarded on or prior to
147 December 31, 2028.

148 Section 12. (a) Beginning in the 2024 Regular Session
149 of the Legislature, all new tax credit legislation shall
150 include the following:

151 (1) For every bill enacting a new tax credit, a tax
152 credit performance statement which must state the legislative
153 purpose for the new tax credit. The tax credit performance
154 statement must indicate one or more of the following as the
155 legislative purpose of the new tax credit:

156 a. Tax credits intended to induce certain designated
157 behavior by taxpayers.

158 b. Tax credits intended to improve industry
159 competitiveness.

160 c. Tax credits intended to create or retain jobs.

161 d. Tax credits intended to reduce structural



162 inefficiencies in the tax structure.

163 e. Tax credits intended to provide tax relief for
164 certain businesses or individuals.

165 (2) A statement providing that new tax credits shall
166 expire on the first day of the calendar year following the
167 calendar year that is five years from the effective date of
168 the tax credit. With respect to any new property tax
169 exemption, the exemption does not apply to taxes levied for
170 collection beginning in the calendar year following the
171 calendar year that is five years from the effective date of
172 the tax credit.

173 (3) A statement establishing the limit on the amount of
174 tax credits that may be provided during any applicable period
175 of the tax credit.

176 (4) A statement limiting the number of years for
177 carryforward of unused credits to no more than five years.

178 (5) A statement limiting the transfer or sale of tax
179 credits.

180 (b) For tax years beginning after December 31, 2024,
181 taxpayers claiming a new tax credit must report the amount of
182 the tax credit claimed by the taxpayer in accordance with the
183 taxpayer's regular tax reporting duties to the Department of
184 Revenue. The amount of the tax credit claimed shall be
185 considered as confidential taxpayer information, and the
186 Department of Revenue shall not be required under this section
187 to disclose confidential information.

188 (c) The term tax credit as used in this section shall
189 mean a credit allowed against the amount of tax imposed by



190 Chapter 16 or Chapter 18 of Title 40.

191 Section 13. The provisions of this act are severable.
192 If any part of this act is declared invalid or
193 unconstitutional, the declaration shall not affect the part
194 which remains.

195 Section 14. This act shall become effective on the
196 first day of the third month following its passage and
197 approval by the Governor, or its otherwise becoming law,
198 except that Section 1 shall become effective for tax years
199 beginning on or after January 1, 2023, immediately following
200 its passage and approval by the Governor, or its otherwise
201 becoming law.