

**SB299 ENGROSSED**



1 RUOCMN-2  
2 By Senator Orr  
3 RFD: Finance and Taxation Education  
4 First Read: 09-May-23  
5 2023 Regular Session



**SB299 Engrossed**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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:

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

"§40-18-220

(a) For the tax years beginning on and after January 1, 1995, every person~~corporation, whether a "subchapter S" corporation, as defined by the 1995 Internal Revenue Code, or not, foreign or domestic,~~ that is doing business in Alabama,



**SB299 Engrossed**

29 as a producer of coal mined in Alabama, shall be allowed a  
30 coal production credit to be used as provided in subsection  
31 (b) against the tax imposed by Section 40-18-2, in the amount  
32 of one dollar (\$1) per ton of increased production of coal  
33 over the previous year's production of coal as set out herein  
34 below. Such tax credit shall be based on coal produced after  
35 January 1, 1995, provided the coal was mined in Alabama as  
36 certified by the producer of the coal. The amount of the total  
37 of credit in any one year shall be based on the number of tons  
38 of Alabama coal produced by the personcorporation in the year  
39 which exceeds the number of tons of Alabama coal produced by  
40 the personcorporation in calendar year 1994. In the event a  
41 personcorporation did not produce Alabama coal during calendar  
42 year 1994, such personcorporation must establish a base year  
43 by producing Alabama coal for 12 consecutive months.  
44 Thereafter, such personcorporation shall be eligible for the  
45 tax credit as specified hereinabove over the base year  
46 production.

47 (b) The coal production credit described in subsection

48 (a) shall be used as follows:

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

51 (2) To offset the taxes imposed by Sections 40-21-82 and  
52 40-21-102; or

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



## SB299 Engrossed

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

62        (2) A person that is taxed as a flow-through entity may  
63 allocate the coal production credit among some or all of the  
64 owners in any manner specified, regardless of whether the  
65 allocation follows rules similar to 26 U.S.C. § 704(b) and the  
66 regulations thereunder. The owners may then use their  
67 allocated share of the coal production credit to offset any of  
68 the taxes listed in subsection (b), as provided in subdivision  
69 (1). This subdivision shall be liberally construed to apply to  
70 multiple levels of companies, to allow the coal production  
71 credit to be used by those persons bearing the tax burdens of  
72 the production of coal in Alabama, and such companies shall  
73 include, but shall in no way be limited to, flow-through  
74 entities, employee stock ownership plans, mutual funds, real  
75 estate investment trusts, and it shall also apply to offset  
76 the income tax liability of employee/owners of a flow-through  
77 entity owned by an employee stock ownership plan trust.



## SB299 Engrossed

78           (3) Prior to claiming the coal production credit as  
79 provided in subdivision (c)(1), the person producing Alabama  
80 coal shall submit to the Department of Revenue a certification  
81 as to the amount of increased production of coal for the  
82 calendar year over the previous year's production of coal.  
83 Following such examination as it deems necessary, the  
84 Department of Revenue shall allow the coal production credit.

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

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

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

97           Section 4. The Coal Production Tax Credit, Article 8,  
98 commencing with Section 40-18-220, Chapter 18, of Title 40,  
99 Code of Alabama 1975, is repealed effective December 31, 2028,  
100 unless extended by an act of the Legislature prior to that  
101 date for no more than five additional years.

102           Section 5. The Reemployment Act of 2010, Article 10,  
103 commencing with Section 40-18-270, Chapter 18, of Title 40,  
104 Code of Alabama 1975, is repealed effective December 31, 2028,



## SB299 Engrossed

105 unless extended by an act of the Legislature prior to that  
106 date for no more than five additional years.

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

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

117 Section 8. The Irrigation Equipment Tax Credit, Article  
118 14, commencing with Section 40-18-340, Chapter 18, of Title  
119 40, Code of Alabama 1975, is repealed effective December 31,  
120 2028, unless extended by an act of the Legislature prior to  
121 that date for no more than five additional years.

122 Section 9. The Entertainment Industry Incentive Act of  
123 2009, Article 3, commencing with Section 41-7A-40, Chapters  
124 7A, of Title 41, Code of Alabama 1975, is repealed effective  
125 December 31, 2028, unless extended by an act of the  
126 Legislature. Prior to the repeal of the incentive, the  
127 Department of Commerce shall report to the Legislature  
128 beginning in 2023 and annually thereafter, regarding the  
129 entertainment industry incentives, in accordance with Section  
130 40-1-50.

131 Section 10. The Alabama Enterprise Zone Act, Article 2,  
132 commencing with Section 41-23-20, Chapter 23, of Title 41,



## SB299 Engrossed

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

136 Section 11. The repealing of the incentives listed in  
137 Sections 2 through 10 shall only affect the availability of  
138 the tax credits after December 31, 2028, and shall not cause a  
139 reduction or suspension of any credits awarded on or prior to  
140 December 31, 2028.

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

144 (1) For every bill enacting a new tax credit, a tax  
145 credit performance statement which must state the legislative  
146 purpose for the new tax credit. The tax credit performance  
147 statement must indicate one or more of the following as the  
148 legislative purpose of the new tax credit:

149 a. Tax credits intended to induce certain designated  
150 behavior by taxpayers.

151 b. Tax credits intended to improve industry  
152 competitiveness.

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

154 d. Tax credits intended to reduce structural  
155 inefficiencies in the tax structure.

156 e. Tax credits intended to provide tax relief for  
157 certain businesses or individuals.

158 (2) A statement providing that new tax credits shall  
159 expire on the first day of the calendar year following the  
160 calendar year that is five years from the effective date of



## SB299 Engrossed

161 the tax credit. With respect to any new property tax  
162 exemption, the exemption does not apply to taxes levied for  
163 collection beginning in the calendar year following the  
164 calendar year that is five years from the effective date of  
165 the tax credit.

166 (3) A statement establishing the limit on the amount of  
167 tax credits that may be provided during any applicable period  
168 of the tax credit.

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

171 (5) A statement limiting the transfer or sale of tax  
172 credits.

173 (b) For tax years beginning after December 31, 2024,  
174 taxpayers claiming a new tax credit must report the amount of  
175 the tax credit claimed by the taxpayer in accordance with the  
176 taxpayer's regular tax reporting duties to the Department of  
177 Revenue. The amount of the tax credit claimed shall be  
178 considered as confidential taxpayer information, and the  
179 Department of Revenue shall not be required under this section  
180 to disclose confidential information.

181 (c) The term tax credit as used in this section shall  
182 mean a credit allowed against the amount of tax imposed by  
183 Chapter 16 or Chapter 18 of Title 40.

184 Section 13. The provisions of this act are severable.  
185 If any part of this act is declared invalid or  
186 unconstitutional, the declaration shall not affect the part  
187 which remains.

188 Section 14. This act shall become effective on the





## SB299 Engrossed

189 first day of the third month following its passage and  
190 approval by the Governor, or its otherwise becoming law,  
191 except that Section 1 shall become effective for tax years  
192 beginning on or after January 1, 2023, immediately following  
193 its passage and approval by the Governor, or its otherwise  
194 becoming law.

SB299 Engrossed



195  
196  
197 Senate

198 Read for the first time and referred .....09-May-23  
199 to the Senate committee on Finance  
200 and Taxation Education  
201  
202 Read for the second time and placed .....10-May-23  
203 on the calendar:  
204 1 amendment  
205  
206 Read for the third time and passed .....18-May-23  
207 as amended  
208 Yeas 31  
209 Nays 0  
210 Abstains 0  
211  
212

Patrick Harris,  
Secretary.

213  
214  
215