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Changes to the Tax Abatements Effective June 24, 2015

Act 2015-24, Ala. Acts 2015, known as the “Alabama Reinvestment and Abatement Act” (the “Act”) provides enhancements to the tax abatements that can be granted to qualifying projects. The Act expands existing incentives offered to new and expanding businesses under the Tax Incentive Reform Act of 1992 (codified at Chapter 9B, Title 40, Code of Alabama 1975) by extending the property tax abatement period up to 20 years and expanding the types of business activities that can qualify. Further, the Act provides for certain qualifying projects to receive an abatement on certain reinvestment projects under a new section of the abatement law (Chapter 9G, Title 40, Code of Alabama). The Act also provides for a utility tax refund for certain projects approved by the Governor.

ENHANCEMENT OF SECTION 40-9B PROPERTY TAX ABATEMENTS

The Act extends the maximum exemption period for noneducational property tax abatements from 10 to 20 years (certain data processing center projects may still receive a 30 year abatement). For projects for which an abatement of property taxes is granted for a period longer than 10 years, the abatement may be granted by:

- The governing body of a municipality, with respect to private use industrial property located within the limits of the municipality but only as to the municipal noneducational property taxes
- The governing body of a county, with respect to private use industrial property located in the county but only as to the county noneducational property taxes
- The Governor, with respect to private use industrial property located in the state but only as to the state noneducational property taxes.

The governing body of a county and a municipality may separately authorize one or more public industrial authorities to provide by resolution for such consent on their behalf. 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 (noted above) in § 40-9B-5(b)(2) for years 11-20. The abatements granted can be included under one agreement.

EXPANDED QUALIFYING ACTIVITIES FOR SALES, USE & PROPERTY TAX ABATEMENTS

The Act expands the qualifying activities that qualify for abatements. Currently, the business activities that qualify for tax abatements are as follows:

- 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.

NEW SECTION 40-9G ABATEMENTS FOR SALES, USE AND PROPERTY TAXES

The Act allows for certain reinvestment projects to qualify for sales, use and property tax 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 SALES AND USE TAX ABATEMENTS

All state and the local portion of the construction related transaction taxes (sales and use) not earmarked for education can be abated on the capitalized purchases of the tangible personal property that is incorporated into a qualifying capitalized reinvestment project. Section 40-9G 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.

SECTION 40-9G PROPERTY TAX ABATEMENTS

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.

QUALIFYING ACTIVITIES UNDER SECTION 40-9G ABATEMENTS

Approved activities for the § 40-9G abatements are defined as follows:

- 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
- The production of biofuel as such term is defined in § 2-2-90(c)(2);
- Research & Development Facilities;
- The national or regional headquarters for a company that conducts significant business operations outside the state and that will serve as the principal office of the company's principal operating officer with chief responsibility for the daily business operations of the company; or
- A target of the state's economic development efforts pursuant to either of the following:
 - 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, or
 - A type listed in a regulation adopted by the Department of Commerce.

ADDITIONAL TAX INCENTIVES AUTHORIZED UNDER SECTION 40-9G

For qualifying projects defined in § 40-9G and recommended by the Department of Commerce and approved by the Governor, a refund of utility taxes may be allowed for up to a 10 year period. The amount of the refund would be equal to the utility taxes paid, minus the utility taxes paid on average during the three tax years immediately before the qualifying project.