

810-3-135-.03 Corporate Income Tax Credit for Alabama Coal Producer.

(1) SCOPE. The department promulgates these rules to implement Act 95-239 and clarify the procedures used by a corporation to establish:

- (a) the definitions of terms and procedures used to calculate the credit; and,
- (b) the determination of when the credit is available; and,
- (c) the calculation of the annual credit available; and,
- (d) the information required to be reported to the department in order to utilize the credit.

(2) DEFINITIONS. The following terms have the meaning ascribed to them for purposes of the regulations to implement Act 95-239, unless the context clearly indicates otherwise.

- (a) Alabama Coal. Coal produced from a location within Alabama.
- (b) Base Year. The calendar year 1994, or if the corporation did not produce coal in Alabama during 1994, a twelve-month consecutive period, subsequent to 1994, during which a corporation produces Alabama coal in each of the twelve consecutive months.
- (c) Base Year Production. The number of tons of Alabama coal produced during the base year.
- (d) Calendar Year. A period of twelve-months ending on December 31.
- (e) Corporation. Includes, but is not limited to, an association or joint stock company as defined in § 40-18-1(2), or an Alabama S corporation as defined in § 40-18-160(a).
- (f) Producer of Coal. A corporation that ultimately owns the right to extract coal which is subject to the Coal Severance Tax imposed by § 40-13-2, Code of Alabama 1975.

(3) PURPOSE. The purpose of this regulation is to provide the guidelines necessary to determine when a corporation is qualified for the coal credit and to calculate the credit available.

(4) PROCEDURE.

(a) Credit allowed. For tax periods beginning on or after January 1, 1995, every corporation that is doing business as a producer of coal in Alabama will be allowed a credit against the income tax imposed by § 40-18-2, Code of Alabama 1975.

(b) Amount of credit. The credit allowed shall be an amount equal to one dollar (\$1) per ton of coal produced during the tax period in excess of the coal produced during the base year of production.

(c) Carry back or carry forward of credit. There is no provision in Act 95-239 for the carry forward or carry back of any unutilized coal credit. Any credit in excess of the current year tax liability cannot be applied to a prior or subsequent year corporate income tax liability.

1. Example: Corporation ABC produced 75,000 tons of coal during calendar year 1994. In calendar year 1995 ABC produced 100,000 tons of coal. ABC is entitled to a income tax credit of one dollar (\$1) for every ton of coal produced in excess of the base year production or \$25,000. ABC's calendar year 1995 Alabama income tax liability after application of all other credits is \$15,000. The amount of credit in excess of the current year liability cannot be applied to a prior or subsequent tax year liability.

(d) Establishment of base year. The credit will not be allowed unless a base year has been established prior to the beginning of the current tax year.

1. Example: Corporation PLM, a calendar year taxpayer, began doing business in Alabama on January 1, 1996. PLM began producing Alabama coal on September 1, 1996, and produced 5,000 tons of coal per month during the next consecutive twelve-month period. PLM's base year is the twelve-month consecutive period from September 1, 1996, to August 31, 1997. The base year production is 60,000 tons. During calendar year 1997 PLM produced 75,000 tons of Alabama coal. PLM is not entitled to the coal credit for the 1997 tax year since the tax year is comprised of a portion of the base year. PLM will be entitled to the coal credit for the 1998 tax year for each ton of coal produced in excess of the base year production.

(e) Tax period of less than twelve-months. There is no provision in Act 95-239 for the proration of the income tax coal credit. The credit is based on the number of tons of coal produced during the short tax period in excess of the base year production.

1. Example: JKL Corporation base year production is 120,000 tons. JKL files a short tax year return for the period beginning January 1, 1996, and ending June 30, 1996. JKL produced 120,000 tons of Alabama coal during this six month period. JKL is not entitled to the coal credit since the number of tons of coal produced during the tax period did not exceed the base year production of 120,000 tons.

2. Example: Assume the same facts as in the preceding example except Corporation JKL produced 150,000 tons of Alabama coal during the short tax period. JKL is entitled to a credit of \$30,000.

(f) Statement required to be attached to return. At the time of filing any tax return with the Department in which the coal credit is claimed, the person signing the tax return shall file with the Department a statement certifying the:

1. base year; and,
2. number of tons of coal produced in Alabama during the base year; and,
3. number of tons of coal produced in Alabama during the current tax period.

(g) In the event two or more corporations are merged.

1. The following procedures will determine the base year and amount of credit available. In the event of a merger/acquisition between corporations with and without established base years, the surviving corporation or new corporation shall have as its base year the sum of the previous base years of participants. Upon filing the first tax return of the new or surviving corporation, the amount of credit available shall be the excess of coal produced during the first tax period over the base year.

2. In the event of a merger/acquisition between corporations having no established base years, the surviving or new corporation must establish a base year as provided within this regulation.

3. In the event that one or more of the corporations have filed a short period return and computed a credit as provided in subsection (4)(e) of this regulation, the surviving or new corporation may only compute the credit based only on Alabama coal produced which was not included in a short year return in which such production was used to calculate a coal credit. The excess of Alabama coal (as adjusted) produced over the base year will be allowed as a credit.

4. Example: Corporation BNM and Corporation GHJ are producers of coal as defined in subsection (2)(f) of this regulation and file calendar year returns. BNM and GHJ base year production amounts are 500,000 and 100,000 tons of Alabama coal respectively. On July 17, 1996, BNM and GHJ are consolidated into a new corporation, ZAZ Corporation. BNM and GHJ each file corporate income tax returns for the short tax period ending July 17, 1996. BNM and GHJ produced 600,000 and 125,000 tons of Alabama coal, respectively, during the short tax period ending July 17, 1996. Corporation BNM is entitled to a maximum credit of \$100,000 and corporation GHJ is entitled to a maximum credit of \$25,000 for the short period ending July 17, 1996. For the period beginning July 18, 1996, and ending December 31, 1996, ZAZ Corporation produced 1,000,000 tons of Alabama coal. ZAZ Corporation is entitled to a maximum credit of \$400,000.

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Authority: Sections 40-2A-7(a)(5) and 40-18-57, Code of Alabama 1975

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