

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 2017-001

This document may not be used or cited as precedent. Ala. Code, §40-2A-5(a).

TO: Taxpayer Company

FROM: Vernon Barnett
Commissioner of Revenue

DATE: June 1, 2017

RE: Whether the Taxpayer is authorized and permitted to carry forward any amount of the Investment Credit purchased from a Transferor under the Alabama Jobs Act that it cannot offset against its current year taxes for the same period of time the Transferor is authorized to carry forward the Investment Credit under the Transferor's project agreement.

FACTS

The Alabama Legislature passed the Alabama Jobs Act, Act 2015-27, codified at Ala. Code, § 40-18-370 *et seq.*, (the "Act"). The incentives created by the Act are available to any "incentivized company" whose project is approved in advance by the Department of Commerce and subsequently enters into a project agreement with the Governor.¹ One of the incentives included in the Act is the investment credit (the "Investment Credit").² The Investment Credit may be claimed over a ten-year period as a credit against certain Alabama taxes actually paid by the incentivized company.³ If in any year during the ten-year investment period the Investment Credit exceeds the amount of taxes that are allowed to be offset by the project agreement, the incentivized company may carry the Investment Credit forward, to the extent allowed in the project agreement.⁴ No carryforward by the incentivized company is permitted for more than five years.⁵

If the incentivized company does not want to claim the Investment Credit for itself, the Act permits the incentivized company to transfer the Investment Credit. The proposed transfer must be approved in advance by the Secretary of the Department of Commerce (the "Secretary"), and the incentivized company may only transfer the first three years of the Investment Credit.⁶

The Secretary, prior to approving any transfer, must find all of the following:

(1) that any year's Investment Credit will not be purchased by more than three transferees, unless such limitation is found unnecessarily to limit the class of potential transferees;

¹ Ala. Code §§ 40-18-372, 40-18-373.

² Ala. Code §§ 40-18-370(c)(8), 40-18-37.

³ Ala. Code § 40-18-376(b)(1)a.

⁴ *Id.*

⁵ *Id.*

⁶ Ala. Code §40-18-376(b)(3).

- (2) that the proposed transfer will enhance the economic benefits of the qualifying project;
- (3) that the transfer is at a value of at least 85% of the present value of the credits; and
- (4) that the incentivized company and the transferee are both subject to the income tax, the financial institution excise taxes, or the insurance premium tax.

Upon making these findings, the Secretary must recommend to the Governor that the transfer be approved, and the Governor may include provisions about the transfer in the project agreement or in an amended project. A transferee may not make a subsequent transfer of the credit.

If the transfer is approved, the incentivized company must submit the following to the Department of Commerce:

- (1) certifications as to its capital investment as of the dates specified in the project agreement;
- (2) certified information about the transfers, including identifying information about the transferees and the amount of credit each transferee may claim.

The Department of Commerce must certify the information and deliver it to the Department of Revenue. Upon receipt of the certifications from the Department of Commerce, the Department of Revenue “shall thereafter allow the appropriate amount of the investment credit to offset the tax liability of the transferee.”

As permitted under the Act, the Taxpayer desires to be the future transferee of certain Investment Credits from various incentivized companies. To date, the Taxpayer has entered into two contracts to buy Investment Credits from two incentivized companies that have been offered Investment Credits pursuant to a project agreement with the State of Alabama. The Taxpayer is also interested in purchasing transferable Investment Credits from other incentivized companies in the future as well.

The Taxpayer has entered into an agreement to purchase tax credits from Company A relating to new operations in Alabama. Company A has entered into a project agreement with the State pursuant to which transferability of Investment Credits is permitted. The purchase agreement provides for a five-year carryforward for Company A for unused Investment Credits. This purchase agreement is contingent upon the conditions of the project agreement and the Act being satisfied.

The Taxpayer has also entered into an agreement to purchase tax credits from Company B relating to new operations in Alabama. Company B has entered into a project agreement with the State pursuant to which transferability of Investment Credits is permitted. The purchase agreement provides for a five-year carryforward for Company B for unused Investment Credits. This purchase agreement is contingent upon the conditions of the project agreement and the Act being satisfied.

Upon information and belief, the Secretary and the Governor have not, as of the date of the petition, made the appropriate findings and approvals of the transfers of Investment Credits pursuant to the Company A and Company B purchase agreements, as required by the Act.⁷ No transfer of credits pursuant to these agreements can occur until these approvals occur. Moreover, these incentivized companies have not submitted to the Department of Commerce the required certifications of capital investment and transferee information, and the Department of Commerce has therefore not made the required certifications of the same to the Department of Revenue, as required by the Act.⁸ The Department of Revenue cannot allow the Investment Credits to be utilized until it receives this information.⁹

These two purchase arrangements are contingent upon the conditions of the project agreement and the Act being satisfied, and these contingencies have not been satisfied. Therefore, Taxpayer respectfully submits that no taxes have accrued or will accrue prior to the issuance of the requested ruling with respect to these two transactions or any other future purchase transactions.

ISSUE

Whether the Taxpayer is authorized and permitted to carry forward any amount of the Investment Credit purchased from a Transferor under the Alabama Jobs Act that it cannot offset against its current year taxes for the same period of time the Transferor is authorized to carry forward the Investment Credit under the Transferor's project agreement.

ANALYSIS

Ala. Code §40-18-376(b)(1)a. allows businesses which earn investment credits under the Act to carry forward, to the extent provided in the project agreement, any unused amount of those credits each year to be utilized in future tax periods for up to five years (the "Carryforward Provision"). Section 40-18-376(b)(3) also allows the businesses ("Transferor") which earn an investment credit to transfer the credit to another party ("Transferee") and monetize its value.

The specific question posed by Taxpayer is whether it, as a proposed Transferee of an Investment Credit, is also entitled to make use of the Carryforward Provision. While the Act does not explicitly address this issue, it is evident that the carryforward is an attribute of the Investment Credit being sold. Accordingly, a Transferee steps into the shoes of the Transferor and obtains the full use of, and same rights to, the Investment Credit as the Transferor, including the rights fully to utilize the Carryforward Provision. If a project agreement allows for an Investment Credit that may be carried forward by the incentivized company for a defined period, then any allowed subsequent transfer of those Investment Credits to a Transferee includes the carryforward provided for by the agreement.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

CONCLUSION

Taxpayer is authorized and permitted to carry forward any amount of the Investment Credit purchased from a Transferor under the Act, including purchases from Company A, Company B, and any other incentivized company, that it cannot offset against its current year taxes for the same period of time the Transferor is authorized to carry forward the Investment Credit under the Transferor's project agreement with the State of Alabama.

VERNON BARNETT, Commissioner
Alabama Department of Revenue