HB457

200105-5

By Representatives Scott and Garrett

RFD: Ways and Means Education

First Read: 16-APR-19
ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to tax credits; to create The Railroad Modernization Act of 2019; to authorize a tax credit against the income tax liability of an eligible taxpayer for qualified railroad rehabilitation expenditures; to authorize the transfer of the credit; and to sunset the credit after three years.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as The Railroad Modernization Act of 2019.

Section 2. As used in this act, the following words shall have the following meanings:

(1) CLASS II RAILROAD. A carrier classified as a Class II railroad pursuant to 49 CFR § 1201, or other rule adopted by the United States Surface Transportation Board.

(2) CLASS III RAILROAD. A carrier classified as a Class III railroad pursuant to 49 CFR § 1201, or other rule adopted by the United States Surface Transportation Board.

(3) DEPARTMENT. The Alabama Department of Commerce.

(4) ELIGIBLE TAXPAYER. A railroad subject to the state income tax that owns or leases railroad infrastructure
in Alabama and is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(5) ELIGIBLE TRANSFEREE. A taxpayer subject to the state income tax who is transferred a tax credit allowed by this act by an eligible taxpayer.

(6) QUALIFIED RAILROAD REHABILITATION EXPENDITURES. Expenditures within the taxable year for the maintenance, reconstruction, or replacement of railroad infrastructure within the state that is owned or leased by an eligible taxpayer. The term includes new construction of industrial leads, switches, spurs, sidings, and extensions of existing sidings by an eligible taxpayer. The term does not include expenditures for which an income tax deduction has been claimed.

(7) RAILROAD INFRASTRUCTURE. Includes, but is not limited to, the track, roadbed, bridges, signaling systems and train control, industrial leads, and track-related structures owned or leased by an eligible taxpayer.

(8) REHABILITATION PLAN. Detailed construction plans and specifications for the proposed rehabilitation of railroad infrastructure under this article.

Section 3. (a) Within three months following the effective date of this act, the Department of Commerce shall develop standards for the approval of qualified railroad rehabilitation expenditures for which a tax credit is being sought. The standards shall consider the availability of additional public or private funding for the project, the
expected completion time of the project, and the anticipated impact of the project on usage of the railroad infrastructure.

(b) Prior to beginning any qualified railroad rehabilitation work the eligible taxpayer shall submit an application and rehabilitation plan to the Department and an estimate of the qualified railroad rehabilitation expenditures under the rehabilitation plan; provided, however, the eligible taxpayer, at its own risk, may incur qualified railroad rehabilitation expenditures no earlier than six months prior to the submission of the application and rehabilitation plan.

(c) The Department shall review the application and rehabilitation plan to determine if the information contained therein is complete. If the Department determines that the application and rehabilitation plan are complete, the Department shall reserve, for the benefit of the eligible taxpayer, an allocation for a tax credit as provided in this act and shall notify the eligible taxpayer in writing of the amount of the reservation. The reservation of tax credits does not entitle the taxpayer to an issuance of tax credits until the owner complies with all other requirements of this act for the issuance of the tax credits. Reservations of tax credits shall be issued by the Department within a reasonable time from the filing of a completed application and rehabilitation plan. Any application disapproved by the Department shall be removed from the review process, and the Department shall notify the taxpayer in writing of the decision to remove the application. A disapproved application may be resubmitted, but
shall be deemed to be a new submission and may be charged a
new application fee. In the event the reservations of tax
credits equal the total amount available for reservations
during the tax year, all eligible taxpayers with applications
then awaiting approval or thereafter submitted shall be
notified by the Department that no additional tax credits
shall be granted during that tax year. The applications shall
remain in active status from the date of the original
application and shall be considered for recommendations of tax
credits in the event that additional credits become available
due to rescission by the Department or when a new tax year's
allocation of tax credits becomes available.

(d) Following the completion of a qualified railroad
rehabilitation project, the eligible taxpayer shall notify the
Department that the rehabilitation has been completed and
shall certify the qualified railroad rehabilitation
expenditures incurred with respect to the rehabilitation plan.
Within 90 days after receipt and approval of the foregoing
documentation from the eligible taxpayer, the Department shall
issue a tax credit certificate in an amount equivalent to the
amount of the qualified railroad rehabilitation expenditures
incurred with respect to the rehabilitation plan as certified
by the taxpayer, not to exceed the amount of the tax credit
reservation issued for the project.

(e) In order to obtain a credit against any state
income tax due that is specified in this article, an eligible
taxpayer shall file the tax credit certificate with the
taxpayer's Alabama state tax return. The tax credit certificate shall satisfy all requirements of the Department of Revenue pertaining to the eligibility of the person claiming the credit. All information submitted to the Department of Revenue by taxpayers claiming or seeking certification of a credit shall be subject to the confidentiality provisions of Section 40-2A-10, Code of Alabama 1975.

(f) For processing the taxpayer's application for a tax credit, the Department may impose an application fee equal to one percent (1%) of the qualified rehabilitation expenditures, not to exceed a fee equal to ten thousand dollars ($10,000). Any fees collected by the Department under this subsection shall be deposited in the State Treasury to the credit of the Department and all such funds are to be appropriated to the Department to defray the expenses incurred in carrying out this article.

(g) The Department shall report to the Legislature in the third year following passage of this act, and annually thereafter, on the overall economic activity, usage, and impact to the state from the rehabilitation of railroad infrastructure for which tax credits have been allowed. The information in the reports shall be consistent with the information required by the Legislature pursuant to, and shall be provided by the Department to the Legislature in accordance with, Section 40-1-50, and rules adopted thereunder.
Section 4. (a) For tax years beginning after December 31, 2019, there is a credit allowed against the state income tax \textit{levied by Section 40-18-2 Code of Alabama, 1975}, equal to 50 percent of an eligible taxpayer's qualified railroad rehabilitation expenditures. The tax credit allowed under this section may not exceed three thousand five hundred dollars ($3,500) multiplied by the number of miles of railroad track owned or leased within the state by the eligible taxpayer at the close of the taxable year.

(b) There is created within the Education Trust Fund a separate account named the Railroad Rehabilitation Income Tax Credit Account. The Commissioner of Revenue shall certify to the Comptroller the amount of income tax credits under this section and the Comptroller shall transfer into the Railroad Rehabilitation Income Tax Credit Account only the amount from sales tax revenues within the Education Trust Fund that is sufficient for the Department of Revenue to use to cover the income tax credits for the applicable tax year. The Commissioner of Revenue shall distribute the funds in the Railroad Rehabilitation Income Tax Credit Account pursuant to this section.

(c) The entire tax credit may be claimed by the taxpayer in the taxable year in which the qualified railroad rehabilitation expenditures are completed and placed into service. Where the taxes owed by the eligible taxpayer are
less than the tax credit, the eligible taxpayer may be entitled to claim a refund for the difference.

(d) For the calendar years 2020, 2021, and 2022, the aggregate amount of all tax credits that may be reserved in any one of such years by the Department upon certification of rehabilitation plans shall not exceed five million dollars ($5,000,000) plus any amount of previous reservations of tax credits that were rescinded during the tax year. However, if all of the allowable tax credit amount for any tax year is not requested and reserved, any unreserved tax credits may be utilized by the Department in awarding tax credits in subsequent years; provided, however, that in no event shall a total of more than fifteen million dollars ($15,000,000) be reserved by the Department during the period of August 1, 2019 through August 1, 2022. For purposes of this article, “tax year” shall mean the calendar year.

(e) Tax credits granted to a partnership, a limited liability company, S Corporations, trusts, or estates, shall be claimed at the entity level and shall not pass through to the partners, members, or owners.

(f) All or any portion of the income tax credit authorized under this section may be transferable and assignable by written transfer agreement and subject to any notice and verification requirements to be determined by the Department of Revenue. Any tax credits transferred shall be at a value of at least eighty-five percent (85%) of the present value of the credits. However, once a credit is transferred,
only the transferee may utilize the credit and the credit may not be transferred again. An eligible transferee of the credit may use the amount of credits transferred to offset any income tax due under Chapter 18. The Department of Revenue, by rule, shall adopt a written transfer agreement form. The transfer statement form shall include the name and federal taxpayer identification number of the transferor and each transferee listed therein along with the amount of the tax credit to be transferred to each transferee listed on the form. The transfer statement form shall also contain such other information as the Department of Revenue may from time to time reasonably require. For each transfer, the transferor shall file: (1) a completed transfer statement form; (2) a copy of the tax credit certificate issued by the commission documenting the amount of tax credits which the transferor intends to transfer; (3) a copy of the proposed written transfer agreement; and (4) a transfer fee payable to the department in the amount of one thousand dollars ($1,000) per transferee listed on the transfer statement form. The transferor shall file with the Department of Revenue a fully executed copy of the written transfer agreement with each transferee within 30 days after the completed transfer. Filing of the written transfer agreement with the Department of Revenue shall perfect such transfer with respect to such transferee. Within 30 days after the department’s receipt of the fully executed written transfer agreement, the department shall issue a tax credit certificate to each transferee listed
in such agreement in the amount of the tax credit so transferred. Such certificate shall be used by the transferee in claiming the tax credit. The Department of Revenue may promulgate such additional rules as are necessary to permit verification of the ownership of the tax credits but shall not promulgate any rules which unduly restrict or hinder the transfer of the tax credits.

Section 5. The Department of Commerce shall promulgate by October 1, 2019, any and all rules and regulations necessary to implement this act. Applications for the reservation of tax credits shall be accepted beginning November 1, 2019.

Section 6. The tax credit allowed under this section shall be effective for the 2020 tax year and shall continue through the 2022 tax year, unless extended by act of the Legislature.

Section 7. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
House of Representatives

Read for the first time and referred to the House of Representatives committee on Ways and Means
Education........................................ 16-APR-19

Read for the second time and placed on the calendar with 1 substitute and 1 amendment........ 02-MAY-19

Read for the third time and passed as amended.......................... 14-MAY-19
Yeas 88, Nays 6, Abstains 4

Jeff Woodard
Clerk