HB109

203639-5

By Representatives Garrett, Sanderford, McMillan and Scott

RFD: Ways and Means Education

First Read: 04-FEB-20
SYNOPSIS: This bill would establish the Alabama Research and Development Act that would provide for a research and development tax credit to certain Alabama companies. The credit would be based on in-house research, contracted research expenses conducted in Alabama, and consortium research expenses for qualified research conducted in Alabama.

This bill would limit the Alabama Research and Development tax credits to no more than $25 million of credits for research and development expenses in any calendar year; and no eligible company or business could claim more than 20 percent in a single tax year.

A BILL
TO BE ENTITLED
AN ACT
To enact the Alabama Research and Development Act; to allow a research and development tax credit for qualified research expenses in Alabama; to provide that no more than $20 million of tax credits for major research and development expenses and $5 million of tax credits for minor research and development in any calendar year; and no one taxpayer would be allowed more than 20 percent in a single tax year; to allow the credits to offset the taxes in Chapters 16 and 18 of Title 40, Code of Alabama 1975, and estimated payments thereof; to provide that the income tax credits shall not affect estimated income tax payments before January 1, 2021; to provide for the promulgation of rules; to provide for the coordination between the availability of the federal research credit and the credit herein; and to provide for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the Alabama Research and Development Act of 2020.

Section 2. For the purpose of this article, the following words and phrases shall have the following meanings:

(a) ALABAMA RESEARCH ENTITY. One or more of the following:

(1) A public or private university in the state;

(2) A university research foundation affiliated with a public or private university in the state;

(3) A public two-year college in the state;

(4) A publicly-owned hospital in the state;
An entity duly formed, domiciled or qualified to do business in the state that meets each of the following criteria:


b. Is predominantly engaged in research and non-commercial development activities undertaken for the purpose of discovering information that is technological or biotechnological in nature, involves a process of experimentation, and the application of which is intended to be used in the development of a new or improved product, service or treatment;

c. Has its principal place of business in the state; and

d. Has, or is anticipated to have, at least 75 percent of its property and payroll in Alabama, using the property and payroll factor calculations found in Title 40, Chapters 16 or 18, as appropriate.

(b) APPROVED ACTIVITY. The conduct of an activity that is predominantly any one or more of the following:

(1) The taxpayer's sector or sectors according to the 2017 edition of the North American Industry Classification System (NAICS) as published by the United States Census Bureau.

(2) The production of biofuel as such term is defined in Section 2-2-90(c)(2).
A target of the state’s economic development efforts pursuant to either of the following:

a. 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, or any amended version or successor document thereto or

b. A type listed in a rule issued by the Department of Commerce pursuant to the Alabama Administrative Procedure Act. Notwithstanding the foregoing, an approved activity shall not include a headquarters facility otherwise allowed as an approved activity.

(c) CONSORTIUM RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any Alabama research entity for qualified research, but not including any expenses for research activities performed outside Alabama.

(d) CONTRACT RESEARCH EXPENSES. Any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research, but not including any of the following:

   (1) Consortium research expenses; or
   
   (2) Expenses for research activities performed outside Alabama.

(e) DEPARTMENT. The Alabama Department of Revenue.

(f) IN-HOUSE RESEARCH EXPENSES. The meaning given in 26 U.S.C. § 41(b)(2), but not including wages paid or incurred
to employees working outside Alabama and not subject to the Alabama individual income tax.

(i) MAJOR RESEARCH AND DEVELOPMENT EXPENSES.

(1) A taxpayer with Alabama qualified research and development expenses for the taxable year in excess of $5 million.

(j) MINOR RESEARCH AND DEVELOPMENT EXPENSES.

(1) A taxpayer with Alabama qualified research and development expenses for the taxable year less than $5 million.

(g) NAICS CODE. Any sector, subsector, industry group, industry or national industry of the 2017 North American Industry Classification System, or any similar classification system developed in conjunction with the United States Department of Commerce or Office of Management and Budget.

(h) QUALIFIED RESEARCH. The meaning given in 26 U.S.C. § 41(d), if conducted in Alabama in pursuit of an approved activity. In applying any terms in 26 U.S.C. § 41, “qualified research” shall have the meaning given herein.

Section 3. (a) A Research and Development tax credit is allowed for qualified research conducted in Alabama. The tax credit shall be in an amount equal to the sum of the following amounts:

(1) Ten percent of the following:
a. In-house research expenses and contract research expenses for qualified research conducted in Alabama during the taxable year, minus

b. The in-house research expenses and contract research expenses conducted in Alabama, on average, over the 3 taxable years preceding the taxable year for which the credit is being determined.

(2) Twenty-five percent of the following:

a. Consortium research expenses for qualified research conducted in Alabama during the taxable year, minus

b. The consortium research expenses conducted in Alabama, on average, over the 3 taxable years preceding the taxable year for which the credit is being determined.

(b) The Research and Development tax credit may offset the taxes levied by Chapters 16 and 18, or an estimated payment of the tax due under Chapter 16 or 18, but not below zero. In no event shall the credits provided for by this article be allowed to reduce any estimated payment of the taxes levied by Chapters 16 and 18 due for tax period ending before January 1, 2021.

(c) All other state income tax and financial institution excise tax credits shall be applied prior to the application of the tax credit provided in this section.

Section 4. (a) If in any one tax year the approved Research and Development tax credit exceeds the amount of the taxpayer’s applicable tax liability, the taxpayer may carry forward the unused tax credit. However, no carryforward shall
be allowed for more than five tax years. Rules similar to those used for Section 40-18-15.2 shall be applied.

(b) A taxpayer may assign and convey the Research and Development tax credit to another entity if all of the assets of the taxpayer are assigned and conveyed in the same transaction. The Department, by rule, shall adopt a written transfer agreement form. The transfer statement form shall include the name and federal taxpayer identification number of the transferee 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 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 Department 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 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 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
1 certificate to each transferee listed in such agreement in the
2 amount of the tax credit so transferred. Such certificate
3 shall be used by the transferee in claiming the tax credit.
4 The Department may promulgate such additional rules as are
5 necessary to permit verification of the ownership of the tax
6 credits but shall not promulgate any rules which unduly
7 restrict or hinder the transfer of the tax credits.
8
9     (c) The tax credit shall be applied only to the
10    state portion of the tax liability and shall not offset or
11    reduce the financial institution excise tax distribution made
12    to municipalities and counties pursuant to Section 40-16-6.
13
14     (d) To the extent the Research and Development tax
15    credit is utilized by the taxpayer or by a permitted
16    transferee, no deduction for the related expenses shall be
17    allowed.
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19     (e) Any credit allowed shall be for research and
20    development expenses in excess of the rolling three-year
21    average of previous research and development expenses.
22
23 Section 5. (a) The maximum amount of Research and
24 Development tax credits all taxpayers shall be allowed
25 pursuant to this act in any calendar year shall be limited to
26 the following:
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28     (1) $20 million for major research and development
29     expenses.
30
31     (2) $5 million for minor research and development
32 and development expenses.
(b) No taxpayer shall receive a Research and Development tax credit of more than 20 percent of the applicable credit in a single tax year. The tax credits shall be allocated among various taxpayers using the procedures described in this section.

(c) Each taxpayer who wishes to claim an Research and Development tax credit shall file an application with the Department showing the amount of the tax credit which the taxpayer expects in good faith to claim during the tax year. No application and no claim shall exceed 20 percent. The applications shall be submitted electronically to the Department between March 15 and December 31, and such applications shall apply to the tax year that begins during that same calendar year.

(d) As applications are submitted, the Department shall approve any the Department deems sufficient under this article, until the total approved applications equal the $20 million cap on anticipated Major Research and Development tax credits and $5 million cap on Minor Research and Development tax credits. All applications received during the application period up to the respective caps shall receive approval for the full amount applied for dependent upon the qualifications. If the total amount of all of the applications shall exceed the $20 million and $5 million Research and Development caps, each applicant shall receive a pro rata share of the credits available. To the extent that the applications are not approved by December 31, the portion not approved shall be
deemed conditionally denied by the Department. Taxpayers may continue to submit applications after the applicable cap is reached, and applications that the Department deems otherwise sufficient shall be deemed conditionally denied but maintained in the order received.

(e) Following the completion of the qualifying research expenditures, the taxpayer shall submit records to the Department sufficient to document qualification for the credit. After reviewing taxpayer records and finding them satisfactory to document qualification for the credit, the Department shall issue a certificate to the taxpayer for the amount of credit not to exceed the amount originally applied for.

(f) If a tax return submitted for the corresponding tax year indicates that the full amount of the Research and Development tax credit with respect to an approved taxpayer was not claimed for use in the current or a carryforward tax year, the Department shall approve, in the order they were received, the applications that were sufficient but initially deemed conditionally denied until the approved applications represent in the aggregate the $20 million and $5 million caps of approved Research and Development tax credits. If the total Research and Development tax credits claimed exceeds the aggregate $20 million and $5 million caps of approved Research and Development credits, the Department shall allocate the total amount of Research and Development credits claimed to qualified research entities on a pro rata basis. The
Department shall timely notify all taxpayers who filed such applications.

(g) The calculations required to be made by the Department shall be based on the initial tax returns filed by taxpayers who had Research and Development tax credits approved. No taxpayer may amend a tax return to claim an Research and Development tax credit, or a larger amount of an Research and Development tax credit, that was not claimed on its tax return filed initially with the Department, unless the amendment is to claim a credit that was deemed conditionally denied but later approved by the Department, in the amount so approved.

Section 6. All filings made by a private party with the Department shall be made according to the rules and using forms promulgated by the Department. Any such filing shall be treated as a tax return, subject to taxpayer privacy restrictions as well as any penalties that may be imposed by the Department.

(b) Nothing in this article shall be construed to make available to any taxpayer any right to the benefits conferred by this article absent strict compliance with this article.

(c) The Department is authorized to issue rules under the Alabama Administrative Procedure Act as necessary to implement and administer the provisions of this article. This article shall be construed generally to conform to 26 U.S.C. § 41, except for percentage reductions specified therein. In the
event that 26 U.S.C. § 41 should be repealed or suspended by
Congress in any year, the credit provided in this article
shall refer to and be based on the version of 26 U.S.C. § 41
as it existed on the last day prior to the effective date of
such repeal or suspension.

Section 7. Reporting requirements.

(a)(1) Effective January 1, 2022, taxpayers
receiving tax credits pursuant to this act shall file an
annual informational report in a manner as prescribed by the
Department. All information submitted to the Department by
taxpayers claiming or seeking certification of a credit shall
be subject to the confidentiality provisions of Section
40-2A-10.

(2) The information on the reports required by this
section shall be consistent with the information required by
the Legislature pursuant to Section 40-1-50, and rules adopted
thereunder. Aggregated information provided pursuant to this
section is exempt from the confidentiality provisions of
Section 40-2A-10 and shall be provided by the Department to
the Legislature in accordance with Section 40-1-50 and rules
adopted by the Department.

Section 8. Unless extended by an act of the
legislature, this act shall sunset on December 31, 2025.

Section 9. Subject to Section 9 hereof, this act
shall become effective for tax years beginning on or after
January 1, 2021, following its passage and approval by the
Governor, or its otherwise becoming law.