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Commissioner

State of Alabama Department of Revenue

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50 North Ripley Street
Montgomery, Alabama 36132
June 27, 2008

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Assistant Commissioner
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Secretary

NOTICE

CLAIM FOR REFUND OF GASOLINE AND MOTOR FUEL EXCISE TAXES FOR AGRICULTURAL PURPOSES

On May 8, 2008, Governor Bob Riley signed into law Act 2008-275 which enacted the Alternative and Renewable Energy Act of 2008 with an effective date of August 6, 2008.

A portion of this Act provides a refund from state gasoline and motor fuel excise taxes of up to \$1,000 annually on fuel used to transport biomass from a farm to a facility at which the biomass is used in the generation of electricity. In addition to the refund that is currently allowed on gasoline used in tractors and farm machinery, this Act also provides for an annual refund of motor fuel excise tax for clear motor fuel that is used in tractors and farm machinery. The amount of refund allowed is \$.11 per gallon for the purposes provided for in this Act.

A daily withdrawal log of all gasoline and undyed (clear) diesel fuel must be maintained. The log must include date of withdrawal or purchase of fuel, type of equipment and identifying number, and number of gallons of fuel placed in qualifying vehicles or tractors. Each claim must include a copy of purchase invoices, list of all tractors and farm machinery, withdrawal log or other documentation showing amount of fuel placed in qualifying equipment, list of on-road vehicles if filing claim for transportation of biomass and the location of the facility where the biomass is used to generate electricity.

Claims for refund must be made between January 1 and March 31 each year for the previous calendar year and must be filed on or before March 31st. For example, claims must be filed on or before March 31, 2009 for calendar year 2008.

If you have any questions pertaining to this matter, please contact this office at the address or telephone number shown below.

**ALABAMA DEPARTMENT OF REVENUE
SALES, USE & BUSINESS TAX DIVISION
MOTOR FUELS SECTION
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ACT No. 2008-275

1 HB234
2 95892-7
3 By Representatives Thigpen, McDaniel, Warren, Wren, Jackson
4 and Hill
5 RFD: Education Appropriations
6 First Read: 05-FEB-08



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ENROLLED, An Act,

To enact the Alternative and Renewable Energy Act of 2008; to amend and renumber Sections 40-17-100, 40-17-101, 40-17-102, 40-17-103, 40-17-104, 40-17-105, 40-17-106, 40-17-107, and 40-17-108, and to amend Sections 40-9B-3, 40-9B-4, 40-18-1, 40-18-70, 40-18-190, and 40-18-194, Code of Alabama 1975, to make legislative findings and define terms; to provide requirements relating to the Alabama Public Service Commission's approval of utility programs for the purchase of electricity from distributed generation facilities; to provide similar rules for the governing boards of certain other electric service suppliers; to provide for tax credits and abatements for various energy-related expenditures; to provide for the review by the Department of Revenue of payroll filings and withholdings for wages paid to certain construction workers; and to provide effective dates.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known, and may be cited as, the "Alternative and Renewable Energy Act of 2008."

Section 2. The Legislature makes the following findings:

(1) As Alabama's industrial and commercial bases grow, stable, affordable energy is becoming even more vital to the economy and security of the state's citizens.

1 (2) Advancing the development of alternative and
2 renewable energy resources is important for the future of the
3 State of Alabama, including the stability of the energy supply
4 for the state's citizens, the health of the state's citizens,
5 the state's environment, and the state's economic development.

6 (3) Clean fossil fuel technologies, nuclear power,
7 and hydropower are alternative energy resources which are
8 viable means of producing electricity with reduced carbon
9 emissions.

10 (4) New technologies are enabling the use of
11 alternative and renewable energy resources as a reliable means
12 of providing energy to the state's citizens.

13 (5) The development of alternative and renewable
14 energy resources will help to reduce the demand for foreign
15 fuels, promote energy diversity, enhance system reliability,
16 and reduce air emissions.

17 (6) There is a need to assist in the development of
18 market demand that will help expand the use of alternative and
19 renewable energy resources.

20 Section 3. The following new Article 6, comprised of
21 Section 37-4-140, is added to Chapter 4 of Title 37 of the
22 Code of Alabama 1975, to read as follows:

23 §37-4-140.

24 (a) For purposes of this section only, the following
25 terms shall have the following meanings:

1 (1) AVOIDED COSTS. Costs that a utility or a
2 commission non-jurisdictional electric supplier which
3 purchases electrical energy from a distributed generation
4 facility would have been required to incur but for the
5 distributed generation facility's provision of electrical
6 energy during the same period of time. To the extent such
7 costs are actually avoided, the term may include incremental
8 fuel costs, incremental energy losses, incremental emission
9 allowance costs, and incremental fuel-related operation and
10 maintenance expenses. The term does not include, among other
11 things, costs associated with capacity, the transmission and
12 distribution system, administrative and general costs,
13 customer accounting costs, and general plant in service costs.

14 (2) COMMISSION. The Alabama Public Service
15 Commission.

16 (3) COMMISSION NON-JURISDICTIONAL ELECTRIC SUPPLIER.

17 a. A municipality that owns or operates an electric
18 system.

19 b. Any public corporation, cooperative corporation,
20 membership corporation, agency, authority, board, or other
21 entity or body which is engaged in the business of selling
22 electricity to its members at wholesale, or purchasing
23 electricity from, or distributing or selling electricity to,
24 retail electric consumers in the state, which is not subject
25 to the jurisdiction of the commission, and which is organized

1 and existing pursuant to the provisions of any of the
2 following:

3 1. A local act providing that the governing body of
4 the entity is to be appointed by the governing body of a
5 municipality and is authorized to furnish electricity to the
6 public in the municipality or in the municipality and the
7 surrounding territory.

8 2. Article 9 of Chapter 50 of Title 11.

9 3. Chapter 50A of Title 11.

10 4. Article 15 of Chapter 50 of Title 11.

11 5. Article 16 of Chapter 50 of Title 11.

12 6. Chapter 5 of Title 37.

13 7. Chapter 6 of Title 37.

14 8. Chapter 7 of Title 37.

15 9. Chapter 7 of Title 39.

16 (4) DISTRIBUTED GENERATION FACILITY. A facility
17 owned and operated by a customer of the utility or a
18 commission non-jurisdictional electric supplier for the
19 production of electrical energy that is located on the
20 customer's premises, that may transmit electrical energy to
21 distribution facilities at any time, that has a peak
22 generating capacity of not more than 100 kW, and that is
23 intended primarily to offset part or all of the customer's
24 requirements for electricity.

1 (5) RENEWABLE ENERGY RESOURCE. The meaning given in
2 Section 40-18-1.

3 (6) UTILITY. A utility as defined by Section
4 37-4-1(7)a., that is subject to the jurisdiction of the
5 commission.

6 (b) (1) The commission shall not require a utility to
7 purchase electrical energy from any distributed generation
8 facility at a price that exceeds the utility's avoided costs.

9 (2) Notwithstanding subdivision (1), the commission
10 may approve a utility proposal to establish a renewable energy
11 program whereby the utility purchases energy from a
12 distributed generation facility that generates electrical
13 energy from a renewable energy resource.

14 (c) To the extent a utility purchases electrical
15 energy from any distributed generation facility under
16 subsection (b), all of the following requirements shall also
17 apply:

18 (1) The commission shall approve the utility's
19 rates, fees, and charges for services to a distributed
20 generation facility including, but not limited to, metering
21 service, administering metering service, standby power,
22 supplementary power, back-up power, and maintenance power. The
23 utility shall also be allowed to recover the costs associated
24 with interconnecting a distributed generation facility from
25 the applicable customer. The commission may not require the

1 utility to allocate such costs to the utility's entire
2 customer base. The commission shall require that a customer
3 with a distributed generation facility pay for all such
4 applicable costs.

5 (2) The commission may adopt or approve any safety,
6 power quality, reliability, and interconnection requirements
7 for a distributed generation facility that the commission
8 determines are necessary to protect public safety, power
9 quality, and system reliability. ~~No utility shall be liable to
10 any person, group of persons, or legal entity, directly or
11 indirectly, for damage to or loss of property, injury, or
12 death that arises in any way from the interconnection or
13 operation of a distributed generation facility.~~

14 The customer shall at all times be responsible for
15 the proper installation, maintenance, and operation of the
16 distributed generation facility and all related wiring,
17 equipment, and apparatus. The utility shall have no obligation
18 to install, maintain, operate, or inspect any electrical
19 facilities owned or operated by the customer and shall not be
20 liable to any person, group of persons, or legal entity for
21 damage to or loss of property, injury, or death that arises in
22 any way from the improper installation, maintenance, or
23 operation of the customer's electrical facilities or the
24 failure of the customer to satisfy all applicable
25 interconnection requirements.

1 (d) (1) A commission non-jurisdictional electric
2 supplier shall not purchase electrical energy from any
3 distributed generation facility at a price that exceeds the
4 commission non-jurisdictional electric supplier's avoided
5 costs.

6 (2) Subdivision (1) shall not apply to a renewable
7 energy program established by a commission non-jurisdictional
8 electric supplier whereby the supplier purchases energy from a
9 distributed generation facility that generates electrical
10 energy from a renewable energy resource.

11 (3) To the extent that the governing board of a
12 commission non-jurisdictional electric supplier determines
13 that it will establish a program to purchase electrical energy
14 from any distributed generation facility, then all of the
15 following requirements shall also apply:

16 a. The governing board of a commission
17 non-jurisdictional electric supplier shall establish rates,
18 fees, and charges for services to a distributed generation
19 facility including, but not limited to, metering service,
20 administering metering service, standby power, supplementary
21 power, back-up power, and maintenance power. The commission
22 non-jurisdictional electric supplier shall also be allowed to
23 recover the costs associated with interconnecting a
24 distributed generation facility from the applicable customer.
25 The applicable governing board may not allocate such costs to

1 its entire customer base and shall require that a customer
2 with a distributed generation facility pay for all such
3 applicable costs.

4 b. The governing board of a commission
5 non-jurisdictional electric supplier may adopt any safety,
6 power quality, reliability, and interconnection requirements
7 for a distributed generation facility that it determines are
8 necessary to protect public safety, power quality, and system
9 reliability. ~~No commission non-jurisdictional electric
10 supplier shall be liable to any person, group of persons, or
11 legal entity, directly or indirectly, for damage to or loss of
12 property, injury, or death that arises in any way from the
13 interconnection or operation of a distributed generation
14 facility.~~

15 The customer shall at all times be responsible for
16 the proper installation, maintenance, and operation of the
17 distributed generation facility and all related wiring,
18 equipment, and apparatus. The commission non-jurisdictional
19 electric supplier shall have no obligation to install,
20 maintain, operate, or inspect any electrical facilities owned
21 or operated by the customer and shall not be liable to any
22 person, group of persons, or legal entity for damage to or
23 loss of property, injury, or death that arises in any way from
24 the improper installation, maintenance, or operation of the
25 customer's electrical facilities or the failure of the

1 customer to satisfy all applicable interconnection
2 requirements.

3 (4) Nothing in this section shall:

4 a. Subject any commission non-jurisdictional
5 electric supplier to the jurisdiction or control of the
6 commission.

7 b. Affect the authority of the governing board of
8 each commission non-jurisdictional electric supplier to
9 determine whether it will establish a program to purchase
10 electrical energy from a distributed generation facility.

11 c. Apply to any commission non-jurisdictional
12 electric supplier, which is a party to a wholesale power
13 supply contract with a federal agency or instrumentality of
14 the United States Government under which it purchases
15 electricity for resale to its customers, in any manner which
16 would be inconsistent with the terms and conditions of any of
17 its contracts with said federal agency or instrumentality of
18 the United States Government.

19 d. Apply to any commission non-jurisdictional
20 electric supplier which is a party to a contract entered into
21 pursuant to the provisions of Section 11-50A-17, Code of
22 Alabama 1975, in any manner that would be inconsistent with
23 the terms and conditions of this contract.

24 e. Apply to any contract, agreement or arrangement
25 that is in existence on the effective date of this act

1 pursuant to which a commission non-jurisdictional electric
2 supplier purchases or is entitled to purchase electrical
3 energy, electrical capacity, or both, from a distributed
4 generation facility, including without limitation, renewals
5 and extensions of such contracts, agreements or arrangements
6 whether containing the same or different terms and conditions
7 as is effect on the date of enactment of this act.

8 Section 4. Sections 40-9B-3 and 40-9B-4, Code of
9 Alabama 1975, are amended to read as follows:

10 "§40-9B-3.

11 "(a) For purposes of this chapter, the following
12 words and phrases mean:

13 (1) ABATE, ABATEMENT. A reduction or elimination of
14 a taxpayer's liability for tax or payments required to be made
15 in lieu thereof. An abatement of transaction taxes imposed
16 under Chapter 23 of this title, or payments required to be
17 made in lieu thereof, shall relieve the seller from the
18 obligation to collect and pay over the transaction tax as if
19 the sale were to a person exempt, to the extent of the
20 abatement, from the transaction tax.

21 (2) ALTERNATIVE ENERGY RESOURCES. The definition
22 given in Section 40-18-1.

23 ~~(2)~~ (3) CONSTRUCTION RELATED TRANSACTION TAXES. The
24 transaction taxes imposed by Chapter 23 of this title, or
25 payments required to be made in lieu thereof, on tangible

1 personal property and taxable services incorporated into an
2 industrial development property, the cost of which may be
3 added to capital account with respect to the property,
4 determined without regard to any rule which permits
5 expenditures properly chargeable to capital account to be
6 treated as current expenses.

7 ~~(3)~~ (4) EDUCATION TAXES. Ad valorem taxes, or
8 payments required to be made in lieu thereof, that must,
9 pursuant to the Constitution of Alabama of 1901, as amended,
10 legislative act, or the resolution or other action of the
11 governing board authorizing the tax, be used for educational
12 purposes or for capital improvements for education and local
13 construction related transaction taxes levied for educational
14 purposes or for capital improvements for education.

15 (5) HYDROPOWER PRODUCTION. The definition given in
16 Section 40-18-1.

17 ~~(4)~~ (6) INDUCEMENT. Refers to an agreement, or an
18 "inducement agreement," entered into between a private user
19 and a public authority or county or municipal government
20 and/or a resolution or other official action, an "inducement
21 resolution," "inducement letter," or "official action" adopted
22 by a public authority or county or municipal government, in
23 each case expressing, among other things, the present intent
24 of such public authority or county or municipal government to

1 issue bonds in connection with the private use property
2 therein described.

3 ~~(5)~~ (7) INDUSTRIAL DEVELOPMENT PROPERTY. Real and/or
4 personal property acquired in connection with establishing or
5 expanding an industrial or research enterprise in Alabama.

6 ~~(6)~~ (8) INDUSTRIAL OR RESEARCH ENTERPRISE. a. Any
7 trade or business described in 1987 Standard Industrial
8 Classification Industry Group Number 0724, Major Groups 20 to
9 39, inclusive, 50 and 51, Industrial Group Number 737, and
10 Industry Numbers 4613, 8731, 8733, and 8734, as set forth in
11 the Standard Industrial Classification Manual published by the
12 United States Government Office of Management and Budget.

13 b. With respect to abatements granted in accordance
14 with Section 40-9B-9, and only with respect to such
15 abatements, "industrial or research enterprise" means any
16 trade or business described in the 1997 North American
17 Industry Classification System within Subsector 493
18 (Warehousing and Storage), Industry Number 488310 (Port and
19 Harbor Operations), or Industry Number 488320 (Marine Cargo
20 Handling), when such trade or business is conducted on
21 premises in which the Alabama State Port Authority has an
22 ownership, leasehold, or other possessory interest and such
23 premises are used as part of the operations of the Alabama
24 State Port Authority.

1 c. "Industrial or research enterprise" includes the
 2 above-described trades and business and any others as may
 3 hereafter be reclassified in any subsequent publication of the
 4 NAICS or similar industry classification system developed in
 5 conjunction with the United States Department of Commerce or
 6 Office of Management and Budget.

7 d. "Industrial or research enterprise" also includes
 8 any underground natural gas storage facility which is located
 9 in the Gulf Opportunity Zone, as that phrase is defined in the
 10 Gulf Opportunity Zone Act of 2005, developed from existing
 11 geologic reservoirs, including, without limitation, salt
 12 domes, and placed in service on or before December 31, 2013.

13 e. "Industrial or research enterprise" also includes
 14 any plant, property, or facility that meets both of the
 15 following:

16 1. It produces electricity from:

17 (i) Alternative energy resources and has capital
 18 costs of at least one hundred million dollars (\$100,000,000);
 19 or

20 (ii) Hydropower production and has capital costs of
 21 at least five million dollars (\$5,000,000).

22 2. All or a portion of the plant, property, or
 23 facility is owned by one or more of the following: a utility
 24 described in Section 37-4-1(7)a., an entity organized under
 25 the provisions of Chapter 6 of Title 37, or an authority both

1 organized and existing pursuant to the provisions of Chapter
2 50A of Title 11 and subject to the payments required to be
3 made in lieu of ad valorem, sales, use, license, and severance
4 taxes imposed by Section 11-50A-7, or an entity in which one
5 or more of the foregoing owns an interest.

6 ~~(7)~~ (9) MAJOR ADDITION. Any addition to an existing
7 industrial development property that equals the lesser of: 30
8 percent of the original cost of the industrial development
9 property or two million dollars (\$2,000,000). For purposes of
10 this subsection, the original cost of existing industrial
11 development property shall be the amount of industrial
12 development property with respect to which an abatement was
13 granted under this chapter when the property was constructed,
14 or if the existing industrial development property was
15 constructed before January 1, 1993, the maximum amount that
16 would have been allowed if the provisions of this chapter had
17 applied at the time it was constructed. Only property that
18 constitutes industrial development property shall be taken
19 into account in making the determination in the previous
20 sentence.

21 ~~(8)~~ (10) MAXIMUM EXEMPTION PERIOD. ~~A~~ Except as
22 provided in Section 40-9B-11, a period equal to the shorter
23 of:

24 a. Ten years from and after: 1. The date of initial
25 issuance by a county, city, or public authority of bonds to

1 finance any costs of a private use property, or 2. If no such
2 bonds are ever issued, the later of: (i) The date on which
3 title to ~~such~~ the property was acquired by or vested in ~~such~~
4 the county, city, or public authority, or (ii) The date on
5 which ~~such~~ the property is or becomes owned, for federal
6 income tax purposes, by a private user; or b. The weighted
7 average economic life of the assets comprising such property,
8 determined consistently with the provisions of 26 U.S.C. §
9 147(b) and measured from the date such property is placed in
10 service.

11 ~~(9)~~ (11) MORTGAGE AND RECORDING TAXES. The taxes
12 imposed by Chapter 22 of this title.

13 ~~(10)~~ (12) NONEDUCATIONAL AD VALOREM TAXES. Ad
14 valorem taxes, or payments required to be made in lieu
15 thereof, imposed by the state, counties, municipalities, and
16 other taxing jurisdictions of Alabama that are not required to
17 be used for educational purposes or for capital improvements
18 for education.

19 ~~(11)~~ (13) PERSON. Includes any individual,
20 partnership, trust, estate, or corporation.

21 ~~(12)~~ (14) PRIVATE USER. Any individual, partnership,
22 or corporation organized for profit that is or will be treated
23 as the owner of private use property for federal income tax
24 purposes, any entity organized under Chapter 6 of Title 37,
25 and any authority both organized and existing pursuant to

1 Chapter 50A of Title 11 and subject to the payments required
2 to be made in lieu of ad valorem, sales, use, license, and
3 severance taxes imposed by Section 11-50A-7.

4 ~~(13)~~ (15) PRIVATE USE INDUSTRIAL PROPERTY. Private
5 use property that also constitutes industrial development
6 property.

7 ~~(14)~~ (16) PRIVATE USE PROPERTY. Any real and/or
8 personal property which is or will be treated as owned by a
9 private user for federal income tax purposes even though title
10 may be held by a public authority or municipal or county
11 government; any real and/or personal property which is owned
12 by any entity organized under Chapter 6 of Title 37; and any
13 real and/or personal property which is owned by any authority
14 both organized and existing pursuant to Chapter 50A of Title
15 11, and subject to the payments required to be made in lieu of
16 ad valorem, sales, use, license, and severance taxes imposed
17 by Section 11-50A-7.

18 ~~(15)~~ (17) PUBLIC AUTHORITY. A corporation created
19 for public purposes pursuant to a provision of the
20 Constitution of Alabama of 1901, or a general or local law
21 that authorized it to issue bonds, the interest on which is
22 exempt from the Alabama income tax, as in effect on May 21,
23 1992.

1 ~~(16)~~ (18) PUBLIC INDUSTRIAL AUTHORITY. A public
2 authority authorized to issue bonds to acquire, construct,
3 equip, or finance industrial development property.

4 (19) STATEMENT OF INTENT. A written statement of
5 intent to claim an abatement provided in this chapter, or to
6 petition for local tax abatement, relating to an industrial or
7 research enterprise described in Section 40-9B-3(a)(8)e. that
8 is filed with the Department of Revenue at any time prior to
9 the date on which the industrial or research enterprise
10 described in Section 40-9B-3(a)(8)e. is placed in service in
11 accordance with such procedures and on such form or forms as
12 may be prescribed by the Department of Revenue. Such statement
13 of intent shall contain a description of the industrial or
14 research enterprise described in Section 40-9B-3(a)(8)e.; the
15 date on which the acquisition, construction, installation or
16 equipping of the industrial or research enterprise described
17 in Section 40-9B-3(a)(8)e. was commenced or is expected to
18 commence; the actual or, if not known, the estimated capital
19 costs of the industrial or research enterprise described in
20 Section 40-9B-3(a)(8)e.; the number of new employees to be
21 employed at the industrial or research enterprise described in
22 Section 40-9B-3(a)(8)e.; and any other information required by
23 the Department of Revenue.

24 (b) The abatements of ad valorem taxes, and payments
25 in lieu thereof, allowed by amendments to this section by the

1 act adding this subsection shall become effective for projects
2 for which statements of intent are filed after December 31,
3 2011. No ad valorem taxes, or payments in lieu thereof, shall
4 be abated for periods prior to January 1, 2012. The other
5 abatements allowed by amendments made to this section by the
6 act adding this subsection shall become effective after
7 December 31, 2011."

8 "§40-9B-4.

9 "(a) Noneducational ad valorem taxes, construction
10 related transaction taxes, except those local construction
11 related transaction taxes levied for educational purposes or
12 for capital improvements for education, and mortgage and
13 recording taxes, or payments required to be made in lieu
14 thereof, and in the case of a qualifying industrial or
15 research enterprise described in Section 40-9B-3(a)(8)e. which
16 is owned by an entity organized under Chapter 6 of Title 37,
17 or by an authority both organized and existing pursuant to
18 Chapter 50A of Title 11, and subject to the payments required
19 to be made in lieu of ad valorem, sales, use, license, and
20 severance taxes imposed by Section 11-50A-7, in addition to
21 the foregoing, all other ad valorem taxes, or payments
22 required to be made in lieu thereof, imposed by the state,
23 counties, municipalities, and other taxing jurisdictions of
24 Alabama, may be abated with respect to private use industrial

1 property and security documents and other recordable documents
2 associated therewith as provided in this chapter.

3 (b) No abatement of noneducational ad valorem taxes,
4 other ad valorem taxes, or payments required to be made in
5 lieu of the foregoing, may exceed the maximum exemption
6 period. No further abatement with respect to the same private
7 use industrial property may be granted unless there is a major
8 addition to the property, in which event abatement may be
9 granted only with respect to the noneducational ad valorem
10 taxes, and in the case of a qualifying industrial or research
11 enterprise described in Section 40-9B-3(a)(8)e. which is owned
12 by an entity organized under Chapter 6 of Title 37, or by an
13 authority both organized and existing pursuant to Chapter 50A
14 of Title 11, and subject to the payments required to be made
15 in lieu of ad valorem, sales, use, license, and severance
16 taxes imposed by Section 11-50A-7, in addition to the
17 noneducational ad valorem taxes, with respect to all other ad
18 valorem taxes, or payments required to be made in lieu
19 thereof, imposed by the state, counties, municipalities, and
20 other taxing jurisdictions of Alabama, on the major addition
21 by complying with the procedures set forth in this chapter.

22 (c) An abatement of construction related transaction
23 taxes, or payments required to be made in lieu thereof, shall
24 apply only to tangible personal property and taxable services
25 incorporated into a private use industrial property, the cost

1 of which may be added to capital account with respect to the
2 property, determined without regard to any rule which permits
3 expenditures properly chargeable to capital account to be
4 treated as current expenses. No abatement of construction
5 related transaction taxes, or payments required to be made in
6 lieu thereof, shall extend beyond the date the private use
7 industrial property is placed in service. No further abatement
8 may be granted for construction related transaction taxes, or
9 payments required to be made in lieu thereof, with respect to
10 the private use industrial property unless incurred in
11 connection with a major addition, in which event only
12 construction related transaction taxes, or payments required
13 to be made in lieu thereof, that may be added to capital
14 account with respect to the major addition, determined without
15 regard to any rule which permits expenditures properly
16 chargeable to capital account to be treated as current
17 expenses, may be abated by complying with the procedures set
18 forth in Act 92-599. ~~No~~ as amended, and as amended by this
19 act. Except in the case of a qualifying industrial or research
20 enterprise described in Section 40-9B-3(a)(8)e. which is owned
21 by an entity organized under Chapter 6 of Title 37, or by an
22 authority both organized and existing pursuant to Chapter 50A
23 of Title 11, and subject to the payments required to be made
24 in lieu of ad valorem, sales, use, license, and severance
25 taxes imposed by Section 11-50A-7, no local construction

1 related transaction taxes levied for educational purposes or
2 capital improvements for education, or payments required to be
3 made in lieu thereof, may be abated.

4 (d) Mortgage and recording taxes with respect to
5 mortgages, deeds, and documents relating to issuing or
6 securing obligations and conveying title into or out of the
7 public authority or county or municipal government with
8 respect to a private use industrial property may be abated by
9 complying with the procedures set forth in this chapter.

10 (e) An abatement under this section may be granted
11 only with respect to private use industrial property that has
12 not previously been placed in service by the private user who
13 is applying for the abatement or by a person who is a related
14 party, as defined in 26 U.S.C. §267, with respect to such
15 private user.

16 (f) (1) For a qualifying industrial or research
17 enterprise described in Section 40-9B-3(a) (8)e., which is
18 owned by a utility described in Section 37-4-1(7)a., and which
19 is a coal gasification or liquefaction project or an advanced
20 fossil-based generation project, as such terms are defined in
21 Section 40-18-1, or which utilizes hydropower production, an
22 abatement under this section shall be in an amount equal to ~~80~~
23 100 percent of the state noneducational ad valorem taxes owed
24 for plant, property, and facilities for the maximum exemption
25 period, and in an amount equal to ~~60~~ 50 percent of the state

1 construction related transaction taxes. The abatement shall
2 not be subject to the procedures in Section 40-9B-5 or
3 40-9B-6.

4 (2) For a qualifying industrial or research
5 enterprise described in Section 40-9B-3(a)(8)e., which is
6 owned by a utility described in Section 37-4-1(7)a., and which
7 is a project using an alternative energy resource the
8 abatements for which are not provided in subdivision (1), an
9 abatement under this section shall be in an amount equal to 90
10 100 percent of the state noneducational ad valorem taxes owed
11 for plant, property, and facilities for the maximum exemption
12 period, and in an amount equal to 75 50 percent of the state
13 construction related transaction taxes. The abatement shall
14 not be subject to the procedures in Section 40-9B-5 or
15 40-9B-6.

16 (3) For a qualifying industrial or research
17 enterprise described in Section 40-9B-3(a)(8)e., which is
18 owned by an entity organized under Chapter 6 of Title 37, an
19 abatement under this section shall be in an amount equal to
20 100 percent of the ad valorem taxes owed for plant, property,
21 and facilities for the maximum exemption period, and in an
22 amount equal to 100 percent of the construction related
23 transaction taxes, including, without limitation, all. An
24 abatement of ad valorem taxes levied or imposed by counties or
25 municipalities may be granted as provided in subsection (h)

1 below. An abatement of the construction related transaction
2 taxes imposed by the governing body of a county pursuant to
3 authority conferred under Article 1 of Chapter 12 of Title 40,
4 or any general, special or local act of the Legislature, all
5 and such transaction taxes imposed by the governing body of a
6 municipality pursuant to authority conferred under Article 3
7 of Chapter 51 of Title 11, or any general, special, or local
8 act of the Legislature, and all transaction taxes imposed by
9 any other local taxing jurisdiction of Alabama may be granted
10 as provided in subsection (h) below. The abatement shall not
11 be subject to the procedures in Section 40-9B-5 or 40-9B-6.

12 (4) For a qualifying industrial or research
13 enterprise described in Section 40-9B-3(a)(8)e., which is
14 owned by an authority both organized and existing pursuant to
15 Chapter 50A of Title 11, and subject to the payments required
16 to be made in lieu of ad valorem, sales, use, license, and
17 severance taxes imposed by Section 11-50A-7, an abatement
18 under this section against the payments required to be made in
19 lieu of taxes imposed by Section 11-50A-7, shall be allowed in
20 an amount equal to 100 percent of the payments required to be
21 made in lieu of ad valorem taxes owed for plant, property, and
22 facilities for the maximum exemption period, and in an amount
23 equal to 100 percent of the payments required to be made in
24 lieu of the construction related transaction taxes, including,
25 without limitation, payments required to be made in lieu of

1 all transaction taxes imposed by the governing body of a
2 county pursuant to authority conferred under Article 1 of
3 Chapter 12 of Title 40, or any general, special or local act
4 of the Legislature, all transaction taxes imposed by the
5 governing body of a municipality pursuant to authority
6 conferred under Article 3 of Chapter 51 of Title 11, or any
7 general, special, or local act of the Legislature, and
8 payments required to be made in lieu of all transaction taxes
9 imposed by any other taxing jurisdiction of Alabama. The
10 abatement of such payments required to be made in lieu of
11 local taxes may be granted as provided in subsection (h)
12 below. The abatement shall not be subject to the procedures in
13 Section 40-9B-5 or 40-9B-6.

14 (5) For a qualifying industrial or research
15 enterprise described in Section 40-9B-3(a)(8)e., which is
16 owned by a utility described in Section 37-4-1(7)a., the
17 abatement for state noneducational ad valorem taxes provided
18 in subdivision (1) or (2) of this subsection, shall be equal
19 to 100 percent of the state noneducational ad valorem taxes
20 owed for plant, property, and facilities for the maximum
21 exemption period if the industrial or research enterprise is
22 located in either of the following:

23 a. Any area designated or created as an enterprise
24 zone by law or that is governed by the Alabama Enterprise Zone
25 Act.

1 b. 1. Any Alabama county which is considered to be
 2 less developed. A county is considered to be less developed if
 3 it has been found to be less developed by the Alabama
 4 Department of Industrial Relations using the most current data
 5 available from the United States Departments of Labor or
 6 Commerce, the United States Bureau of the Census, or any other
 7 federal or state agency, and which finding shall be made not
 8 later than January 1 of each year thereafter.

9 2. A county shall be found to be less developed if
 10 it is ranked as the forty-fifth through sixty-seventh county,
 11 inclusive, using the following factors:

12 (i) Percent change in population over the most
 13 recent five-year period.

14 (ii) Personal per capita income in the last calendar
 15 year for which data are available.

16 (iii) The average percent employed over the last 12
 17 months for which data are available.

18 3. The factors used in ranking counties shall be
 19 weighted in the following manner:

20 (i) Percent change in population (25 percent).

21 (ii) Personal per capita income (25 percent).

22 (iii) Average percent employed (50 percent).

23 (6) a. To the extent that a plant, property, or
 24 facility described in Section 40-9B-3(a)(8)e., is owned in
 25 whole or in part by one or more private users listed

1 hereinafter in subparagraph c., including, but not limited to,
2 ownership as tenants in common, joint tenants, or owners of an
3 undivided interest, then each private user shall be entitled
4 to the abatement allowed under this section with a percentage
5 limitation equal to the ownership interest percentage of the
6 private user multiplied by the percentage limitation found in
7 this subsection (f) applicable to the private user for the
8 tax, or payment in lieu of tax, in question.

9 b. To the extent that a plant, property, or facility
10 described in Section 40-9B-3(a)(8)e. is owned by a private
11 user which is itself owned in whole or in part by one or more
12 of the entities listed hereinafter in subparagraph c., then
13 the private user shall be entitled to the abatement allowed
14 under this section with a percentage limitation equal to the
15 sum, for all owners, of the ownership interest percentage of
16 each owner multiplied by the percentage limitation found in
17 this subsection (f) applicable to the owner for the tax, or
18 payment in lieu of tax, in question.

19 c. The entities listed in this subparagraph c. are:

20 1. A utility described in Section 37-4-1(7)a.

21 2. An entity organized under Chapter 6 of Title 37.

22 3. An authority both organized and existing pursuant
23 to Chapter 50A of Title 11 and subject to the payments
24 required to be made in lieu of ad valorem, sales, use,
25 license, and severance taxes imposed by Section 11-50A-7.

1 (7) No abatement for mortgage and recording taxes,
2 local noneducational ad valorem, or local noneducational
3 construction related transaction taxes shall be granted to a
4 qualifying industrial or research enterprise described in
5 Section 40-9B-3(a)(8)e., owned by a utility described in
6 Section 37-4-1(7)a, except upon the approval of the abatement
7 by the governing body of the county or municipality as
8 provided in subsection (b) of Section 40-9B-5.

9 (g) The abatements of ad valorem taxes, and payments
10 in lieu thereof, allowed by amendments to this section by the
11 act adding this subsection shall become effective for projects
12 for which statements of intent are filed after December 31,
13 2011. No ad valorem taxes, or payments in lieu thereof, shall
14 be abated for periods prior to January 1, 2012. The other
15 abatements allowed by amendments made to this section by the
16 act adding this subsection shall become effective after
17 December 31, 2011."

18 (h) For a qualifying industrial or research
19 enterprise described in Section 40-9B-3(a)(8)e., the approval
20 of the abatement of a specific ad valorem tax or construction
21 related tax levied or imposed by a county or municipality, or
22 payments required to be made in lieu thereof, shall take
23 effect only upon adoption of a resolution by the governing
24 body of that county or municipality approving such abatement
25 or abatements.

1 Section 5. Section 40-9B-11 is added to the Code of
2 Alabama 1975, to read as follows:

3 §40-9B-11.

4 (a) Effective October 1, 2011, the maximum exemption
5 period for a qualifying industrial or research enterprise
6 described in paragraph e. of subdivision (8) of subsection (a)
7 of Section 40-9B-3, which is owned by a utility described in
8 Section 37-4-1(7)a., shall be 10 years applied as follows:

9 (1) With respect to land, the abatement shall begin
10 with the first October 1 lien date following commencement of
11 the project, and the abatement shall be for a total of 10
12 years.

13 (2) With respect to each portion of real property
14 construction work in progress which was not taxable on the
15 prior October 1 lien date, the abatement for the portion shall
16 begin with the first October 1 lien date on which the
17 construction work in progress becomes taxable, and the
18 abatement shall be for a total of 10 years.

19 (3) With respect to each item of tangible personal
20 property, the abatement shall begin with the first October 1
21 lien date on which the item of tangible personal property
22 becomes taxable, and the abatement shall be for a total of 10
23 years.

24 (b) Effective October 1, 2011, the maximum exemption
25 period for a qualifying industrial or research enterprise

1 described in paragraph e. of subdivision (8) of subsection (a)
2 of Section 40-9B-3 which is owned by an entity organized under
3 Chapter 6 of Title 37, or by an authority both organized and
4 existing pursuant to Chapter 50A of Title 11, and subject to
5 the payments required to be made in lieu of ad valorem, sales,
6 use, license, and severance taxes imposed by Section 11-50A-7,
7 shall be 20 years applied as follows:

8 (1) With respect to land, the abatement shall begin
9 with the first October 1 lien date following commencement of
10 the project, and the abatement shall be for a total of 20
11 years.

12 (2) With respect to each portion of real property
13 construction work in progress which was not taxable on the
14 prior October 1 lien date, the abatement for that portion
15 shall begin with the first October 1 lien date on which the
16 construction work in progress becomes taxable or subject to
17 payments required to be made in lieu of taxes, and the
18 abatement shall be for a total of 20 years.

19 (3) With respect to each item of tangible personal
20 property, the abatement shall begin with the first October 1
21 lien date on which the item of tangible personal property
22 becomes taxable or subject to payments required to be made in
23 lieu of taxes, and the abatement shall be for a total of 20
24 years.

1 (c) The abatements of ad valorem taxes, and payments
2 in lieu thereof, allowed by the act shall become effective for
3 projects for which statements of intent are filed after
4 December 31, 2011, and any such abatements shall be granted
5 for ten years. No ad valorem taxes, or payments in lieu
6 thereof, shall be abated for periods prior to January 1, 2012.
7 The other abatements allowed by the act shall become effective
8 after December 31, 2011.

9 Section 6. Division 3 of Article 2 of Chapter 17 of
10 Title 40 consisting of Sections 40-17-100, 40-17-101,
11 40-17-102, 40-17-103, 40-17-104, 40-17-105, 40-17-106,
12 40-17-107, and 40-17-108 of the Code of Alabama 1975, is
13 amended and renumbered as Article 11 of Chapter 17 of Title
14 40, Sections 40-17-300, 40-17-301, 40-17-302, 40-17-303,
15 40-17-304, 40-17-305, 40-17-306, 40-17-307, and 40-17-308 of
16 the Code of Alabama 1975, to read as follows:

17 "~~§40-17-100-300~~.

18 "When used in this ~~division~~ article, the words
19 "~~gasoline motor fuel used on the farm~~ for agricultural
20 purposes" means any ~~gasoline fuel subject to taxation under~~
21 Articles 1, 2, or 6 of this chapter when used by the owner,
22 tenant, or operator of a farm in propelling either or both of
23 the following:

24 (1) Propelling or operating tractors which are used
25 exclusively in preparing and cultivating land, harvesting any

1 agricultural commodity, or for other such agricultural
 2 purposes, or which is used in operating any auxiliary engine
 3 attached to and made a part of any farm machinery which is
 4 used on the farm in preparing and cultivating land or
 5 harvesting any agricultural crop or commodity; provided, that
 6 the term "farm machinery," as used herein, shall not include
 7 automobiles, trucks, pick-ups, trailers, semitrailers, or
 8 other such vehicles.

9 (2) Propelling or operating any automobile, truck,
 10 pick-up, trailer, semitrailer, tractor, or other vehicle when
 11 used to transport any biomass as defined in Section 40-18-1,
 12 from a farm to a facility at which the biomass is used in the
 13 generation of electricity, in whole or in part, from renewable
 14 energy resources as defined in Section 40-18-1."

15 "§40-17-~~101~~-301.

16 "The purpose of this ~~division~~ article is to promote
 17 agriculture in Alabama and to encourage and foster the
 18 progress of the farmers of this state by providing for a
 19 refund of a portion of the state tax paid on ~~gasoline~~ motor
 20 fuel which is used in propelling or operating tractors used
 21 exclusively for agricultural purposes, or which is used in
 22 operating certain auxiliary engines attached to and made a
 23 part of certain farm machinery, or which is used in propelling
 24 any vehicle when used to transport farm products to be used in
 25 the generation of electricity from renewable energy resources,

1 thereby making it possible for Alabama farmers to use
2 extensively mechanized equipment in competition with the
3 farmers and agricultural interests of surrounding states."

4 "~~§40-17-102-302~~.

5 "(a) If gasoline motor fuel is used on the farm for
6 agricultural purposes, as defined by this division in
7 subsection (1) of Section 40-17-300, the ultimate purchaser of
8 such gasoline motor fuel shall be entitled to receive a refund
9 of a portion of the state tax paid on such gasoline motor fuel
10 pursuant to Articles 1, 2, or 6 of this chapter. The amount of
11 such the refund shall be equal to ~~\$.11~~ eleven cents (\$.11) per
12 gallon for each gallon of gasoline motor fuel which is
13 purchased and used for such these purposes.

14 "(b) If motor fuel is used for agricultural purposes,
15 as defined in subsection (2) of Section 40-17-300, the
16 ultimate purchaser of the motor fuel shall be entitled to
17 receive a refund of a portion of the state tax paid on the
18 motor fuel. The amount of the refund shall be equal to eleven
19 cents (\$.11) per gallon for each gallon of motor fuel which is
20 purchased and used for such purposes. The aggregate amount
21 refunded pursuant to this subsection shall not exceed one
22 thousand dollars (\$1,000) during each 12-month period ending
23 on December 31 of each year."

24 "~~§40-17-103-303~~.

1 "Claims for state ~~gasoline~~ motor fuel tax refunds
 2 ~~must shall~~ be sworn to and be filed with the Commissioner of
 3 Revenue on forms to be prepared and distributed by the
 4 commissioner. ~~Such~~ The forms ~~must shall~~ be substantially as
 5 follows:

6 CLAIM FOR REFUND OF STATE TAX ON ~~GASOLINE~~ MOTOR FUEL
 7 USED ON A FARM FOR AGRICULTURAL PURPOSES.

8 1. Name _____

9 Address (Number and street or rural route)

10 _____

11 (City, town, or post office) _____ (Zone)

12 _____ (State) _____.

13 2. Total number of gallons of ~~gasoline~~ motor fuel
 14 purchased after December 31, 2__, and before January 1, 2__,
 15 for farming purposes, and for which a claim has been filed for
 16 a refund of the federal tax on ~~gasoline~~ motor fuel under
 17 Public Law 466, H.R. 8780, 84th Congress, Chapter 160, 2nd
 18 Session _____ gallons.

19 3. Total number of gallons of ~~gasoline~~ motor fuel
 20 purchased after December 31, 2__, and before January 1, 2__,
 21 for ~~propelling tractors which are used exclusively~~ use for
 22 agricultural purposes ~~or for operating auxiliary engines~~
 23 ~~attached to and made a part of any farm machinery~~ _____
 24 gallons.

1 4. Rate of refund of state tax (per gallon),
2 \$.11.
3 5. Subtotal of refund claimed (line 3 multiplied by
4 line 4) \$ _____.
5 6. Total number of gallons of motor fuel purchased
6 after December 31, 2____, and before January 1, 2____, to
7 transport any biomass from a farm to a facility at which the
8 biomass is used in the generation of electricity from
9 renewable energy resources _____ gallons.
10 7. Rate of refund of state tax (per gallon)
11 \$.11.
12 8. Subtotal of refund claimed (line 6 multiplied by
13 line 7) \$ _____.
14 9. Enter the lesser of line 8 or \$1,000
15 \$ _____.
16 10. Total refund claimed (line 5 plus line 9)
17 \$ _____.
18 4- 11. The names and addresses of all retailers,
19 refiners, or distributors from whom the ~~gasoline~~ motor fuel
20 for which the refund is being claimed was purchased, together
21 with the dates and number of the invoices covering the total
22 number of gallons of ~~gasoline~~ motor fuel on which ~~such~~ the
23 refund is being claimed (attach sheet or enter on reverse side
24 of this form).

1 ~~5. Rate of refund of state tax (per gallon)~~
 2 ~~\$.11.~~
 3 ~~6. Amount of refund claimed (line 3 multiplied by~~
 4 ~~line 5) \$~~

5 I declare under the penalties of perjury that this
 6 claim has been examined by me and to the best of my knowledge
 7 and belief is true and correct, and that the number of gallons
 8 shown in ~~item 5 does~~ items 3 and 6 do not exceed the total
 9 number of gallons of ~~gasoline~~ motor fuel on which I am legally
 10 entitled, under the laws of this state, to a refund of a
 11 portion of the state tax paid.

12 Signed: _____

13 Date: _____

14 Sworn and subscribed before me this the _____ day
 15 of _____, 2__."

16 "~~S40-17-104~~ 304.

17 "Not more than one claim for a refund of the state
 18 tax paid on ~~gasoline~~ motor fuel may be filed by any person
 19 under the provisions of this article with respect to ~~gasoline~~
 20 motor fuel purchased during the 12-month period ending on
 21 December 31 each year; and no claim shall be allowed with
 22 respect to any such 12-month period unless ~~such~~ the claim is
 23 filed on or before March 31 of the year following ~~such~~ the
 24 12-month period.; ~~provided, that claims for state gasoline tax~~
 25 ~~refunds on gasoline purchased after June 30, 1969, and before~~

1 ~~January 1, 1970, must be sworn to and be filed with the~~
2 ~~Commissioner of Revenue on forms substantially the same as~~
3 ~~provided for in Section 40-17-103; except, that the prescribed~~
4 ~~dates in items 2 and 3 of said form shall read "June 30, 1969"~~
5 ~~and "January 1, 1970," respectively. Not more than one claim~~
6 ~~for a refund of the state gasoline tax may be filed by any~~
7 ~~person under the provisions of this division with respect to~~
8 ~~gasoline purchased during the six-month period ending on~~
9 ~~December 31, 1969; and no claim shall be allowed with respect~~
10 ~~to any such six-month period unless such claim is filed on or~~
11 ~~before February 15, 1970."~~

12 "§40-17-105-305.

13 "Upon approval of a claim by the Commissioner of
14 Revenue, the state Comptroller is authorized and directed to
15 draw a warrant for payment thereof. There is hereby
16 appropriated out of the proceeds of the state ~~tax on gasoline~~
17 taxes on motor fuels levied pursuant to Articles 1, 2, or 6 of
18 this chapter, so much thereof as may be necessary to make
19 refunds from time to time as provided for by this ~~division~~
20 article. The amount appropriated shall be credited pro rata
21 against each fund which is a recipient of the taxes levied
22 pursuant to Articles 1, 2, or 6 of this chapter, excluding any
23 fund which is entitled to receive a dollar certain solely for
24 the payment of a bond issue; provided, however, no refund
25 shall be appropriated from the portion earmarked for the

1 county or municipal governing body unless a resolution
2 approving participation in the refund procedure has been
3 adopted by the governing body of the appropriate county or
4 municipality."

5 "§40-17-~~106~~-306.

6 "For the purpose of ascertaining the correctness of
7 any claim made under the provisions of this ~~division~~ article,
8 the Commissioner of Revenue, or his or her especially
9 authorized representative, shall have the power to administer
10 oaths, take depositions, and issue subpoenas to compel the
11 attendance of witnesses and the production of books, papers,
12 or documents necessary as evidence in connection with the
13 enforcement of this ~~division~~ article. In case a person refuses
14 to obey ~~such the~~ subpoena, the commissioner, or his or her
15 representative, may invoke the aid of any circuit court in
16 order that the testimony or evidence be produced. Upon proper
17 showing, ~~such the~~ court shall issue a subpoena or order
18 requiring ~~such the~~ person to appear before the commissioner or
19 his or her representative and produce all evidence and give
20 testimony relating to the matter at issue."

21 "§40-17-~~107~~-307.

22 "Before any refund of state ~~gasoline~~ motor fuel tax
23 can be made to any applicant, all tractors owned by the
24 applicant ~~must~~ shall first be assessed for ad valorem tax
25 purposes."

1 "~~§40-17-108-308.~~

2 "Any person who knowingly files a false or
3 fraudulent claim for a ~~gasoline~~ motor fuel tax refund under
4 the provisions of this ~~division~~ article shall be guilty of
5 perjury, and upon conviction shall be imprisoned in the
6 penitentiary for not less than two nor more than five years."

7 Section 7. Section 40-18-1, Code of Alabama 1975, is
8 amended to read as follows:

9 "§40-18-1.

10 "For the purpose of this chapter, the following
11 terms shall have the respective meanings ascribed by this
12 section:

13 (1) ADVANCED FOSSIL-BASED GENERATION. The production
14 of electricity from fossil-based generation with the use of
15 technology or efficiency improvements to control or reduce
16 carbon emissions, including but not limited to technologies
17 described in 26 U.S.C. § 48A(f), as such provision existed on
18 December 31, 2007.

19 (2) ALTERNATIVE ENERGY RESOURCES. Coal gasification
20 or liquefaction, nuclear, and advanced fossil-based
21 generation.

22 (3) BIOMASS. Animals and plants, and the waste,
23 by-products, or derivatives of either, including but not
24 limited to the materials described in 26 U.S.C. §§ 45(c)(2),
25 45(c)(3), 45K(c)(3), or 48B(c)(4).

1 ~~(1)~~ (4) BUSINESS TRUST. Any entity which is a
 2 business trust for federal income tax purposes.

3 ~~(2)~~ (5) CASH. Any legal tender, negotiable paper, or
 4 solvent credit.

5 ~~(3)~~ (6) COAL GASIFICATION OR LIQUEFACTION. Liquid or
 6 gaseous fuels which are produced from coal, including lignite
 7 and including but not limited to fuels described in 26 U.S.C.
 8 §§ 45(c)(7)(A)(i), 45K(c)(1)(C), 48A(c)(7), or 48B(c)(2) as to
 9 coal, as such provisions existed on December 31, 2007.

10 ~~(4)~~ (7) CORPORATION. The term includes associations,
 11 joint stock companies, and any other entity classified as an
 12 association taxable as a corporation for federal income tax
 13 purposes.

14 ~~(5)~~ (8) DISREGARDED ENTITY. Any entity which is
 15 disregarded for federal income tax purposes.

16 ~~(6)~~ (9) DOMESTIC. When applied to a corporation or
 17 subchapter K entity means created or organized under the laws
 18 of the State of Alabama.

19 ~~(7)~~ (10) FIDUCIARY. A guardian, trustee, executor,
 20 administrator, personal representative, receiver, conservator,
 21 or any person acting in any fiduciary capacity for any person.

22 ~~(8)~~ (11) FISCAL YEAR. An accounting period of twelve
 23 months ending on the last day of any month other than
 24 December.

1 ~~(8)~~ (12) FOREIGN. When applied to a corporation or a
2 subchapter K entity means created or organized under a
3 jurisdiction other than the State of Alabama.

4 (13) GEOTHERMAL. Any geothermal reservoir in Alabama
5 consisting of natural heat which is stored in rocks or in an
6 aqueous liquid or vapor, whether or not under pressure.

7 ~~(9)~~ (14) HEAD OF FAMILY. As used in this chapter,
8 the term "head of family" has the same meaning as the term
9 "head of household" as defined in 26 U.S.C. §2(b).

10 (15) HYDROPOWER PRODUCTION. The hydropower
11 production of any hydroelectric dam or pumped hydro facility
12 in Alabama, including but not limited to the hydropower
13 production described in 26 U.S.C. § 45(c)(8), as such
14 provision existed on December 31, 2007.

15 ~~(10)~~ (16) INTANGIBLE EXPENSES AND COSTS. Any
16 expenses, losses, and costs for, related to, or in connection
17 directly or indirectly with the acquisition, use, maintenance,
18 management, ownership, sale, exchange, or disposition of
19 intangible property to the extent such amounts are allowed as
20 deductions in determining taxable income before operating loss
21 deduction and special deductions for the taxable year
22 including, without limitation, expenses or losses related to
23 or incurred in connection directly or indirectly with
24 factoring transactions or discounting transactions, royalties,
25 patents, technical and copyright licensing fees, and other

1 similar expenses and costs. Intangible expenses and costs paid
2 for the use of intangible property in this state are, to the
3 recipient, income derived from sources within Alabama.

4 ~~(11)~~ (17) INTANGIBLE PROPERTY. Patents, patent
5 applications, trade names, trademarks, service marks,
6 franchises, know-how, formulas, designs, patterns, processes,
7 formats, copyrights and similar types of intangible assets,
8 choses in action, and accounts receivable.

9 ~~(12)~~ (18) INTEREST EXPENSES AND COSTS. Amounts
10 directly or indirectly allowed as deductions under 26 U.S.C.
11 §163 for purposes of determining taxable income under the
12 Internal Revenue Code. Interest expenses and costs paid to a
13 related member by a subchapter K entity or a corporation, to
14 the extent apportioned to Alabama by the payor, are to the
15 recipient related member income derived from sources within
16 Alabama.

17 (19) MUNICIPAL SOLID WASTE. The definition given in
18 26 U.S.C. § 45(c)(6), if located in Alabama.

19 ~~(13)~~ (20) NONRESIDENT ESTATE. An estate other than a
20 resident estate of this state.

21 ~~(14)~~ (21) NONRESIDENT TRUST. A trust other than a
22 resident trust of this state.

23 (22) NUCLEAR. Any nuclear facility the reactor
24 design for which is approved after December 31, 1993, by the
25 Nuclear Regulatory Commission, including but not limited to

1 the facilities described in 26 U.S.C. § 45J(d), as such
2 provision existed on December 31, 2007.

3 ~~(15)~~ (23) PAID. For the purpose of deductions and
4 credits hereinafter provided for with respect to income tax
5 means paid or accrued or paid or incurred, and the terms "paid
6 or accrued" and "paid or incurred" shall be construed
7 according to the method of accounting on the basis of which
8 the net income is computed under this chapter.

9 ~~(16)~~ (24) PERSON. Any individual, trust, estate,
10 corporation, association, disregarded entity, or subchapter K
11 entity.

12 ~~(17)~~ (25) RELATED ENTITY. A stockholder who is an
13 individual, or a member of the stockholder's family enumerated
14 in 26 U.S.C. §318, if the stockholder and the members of the
15 stockholder's family own, directly, indirectly, beneficially,
16 or constructively, in the aggregate, at least fifty percent of
17 the value of the taxpayer's outstanding stock; a stockholder,
18 or a stockholder's partnership, limited liability company,
19 estate, trust or corporation, if the stockholder and the
20 stockholder's partnerships, limited liability companies,
21 estates, trusts, and corporations own directly, indirectly,
22 beneficially or constructively, in the aggregate, at least
23 fifty percent of the value of the taxpayer's outstanding
24 stock; or a corporation, or a party related to the corporation
25 in a manner that would require an attribution of stock from

1 the corporation to the party or from the party to the
2 corporation under the attribution rules of 26 U.S.C. §318, if
3 the taxpayer owns, directly, indirectly, beneficially, or
4 constructively, at least fifty percent of the value of the
5 corporation's outstanding stock. The attribution rules of 26
6 U.S.C. §318 shall apply for purposes of determining whether
7 the ownership requirements of this subdivision have been met.

8 ~~(18)~~ (26) RELATED MEMBER. A person that, with
9 respect to the taxpayer any time during the taxable year, is a
10 related entity as defined in this section, a component member
11 as defined in 26 U.S.C. §1563(b) of a controlled group of
12 which the taxpayer is also a component, or is a person to or
13 from whom there is attribution of stock ownership in
14 accordance with 26 U.S.C. §1563(e).

15 ~~(19)~~ (27) REPORT FROM SOURCE. All individuals,
16 corporations, associations, and partnerships, in whatever
17 capacity acting, including lessees or mortgagors of real or
18 personal property, fiduciaries, employers, and all other
19 officers and employees of the state or of any municipal
20 corporation or political subdivision of the state having
21 control, receipt, custody, or payment of interest, rent,
22 salaries, wages, premiums, annuities, compensation,
23 remunerations, emoluments, barter income, or other fixed or
24 determinable annual or periodical gains, profits, and income
25 taxable under this chapter.

1 (28) RENEWABLE ENERGY RESOURCES. Wind, biomass,
2 black liquor, tidal or ocean current, geothermal, solar
3 energy, small irrigation, municipal solid waste, and
4 hydropower production, and such term also includes hydrogen
5 when derived or produced from some other renewable energy
6 resource.

7 ~~(20)~~ (29) RESIDENT ESTATE. The estate of any person
8 who was a resident of Alabama at the time of his or her death.

9 ~~(21)~~ (30) RESIDENT TRUST. A trust is a resident
10 trust for a taxable year if it is a trust which meets both a.
11 and b.:

12 a. The trust is created by the will of a decedent
13 who was an Alabama resident at death or by a person who was an
14 Alabama resident at the time such trust became irrevocable;
15 and

16 b. For more than seven months during such taxable
17 year, a person, as defined in this section, who either resides
18 in or is domiciled in Alabama is either a fiduciary of the
19 trust or a beneficiary of the trust to whom distributions
20 currently may be made.

21 (31) SMALL IRRIGATION. An irrigation system canal or
22 ditch in Alabama which does not include a dam or impoundment
23 of water, including but not limited to facilities in Alabama
24 described in 26 U.S.C. § 45(c) (5).

1 ~~(22)~~ (32) SUBCHAPTER K ENTITY. A partnership,
 2 including a limited partnership or limited liability
 3 partnership, limited liability company, or any other entity
 4 subject to subchapter K of the Internal Revenue Code, 26
 5 U.S.C. §§701 to 761, for federal income tax purposes, not
 6 including a single member limited liability company.

7 ~~(23)~~ (33) TAXABLE YEAR. The calendar year or the
 8 fiscal year ending during the calendar year upon the basis of
 9 which net income is computed, or a period of less than twelve
 10 months resulting from a change in accounting period as
 11 provided in Section 40-18-30.

12 ~~(24)~~ (34) TAXPAYER. Any person subject to a tax
 13 imposed by this chapter, or whose income is, in whole or in
 14 part, subject to a tax imposed by this chapter.

15 ~~(25)~~ (35) TRUST. Any entity which is a trust for
 16 federal income tax purposes."

17 Section 8. ~~A new section 40-18-21.1 is added to the~~
 18 ~~Code of Alabama 1975, to read as follows:~~

19 ~~§40-18-21.1~~

20 ~~(a) For tax years and periods beginning after~~
 21 ~~December 31, 2008, there shall be allowed as a credit against~~
 22 ~~the amount of tax found to be owed under this chapter an~~
 23 ~~amount equal to twenty-five cents (\$0.25) multiplied by the~~
 24 ~~number of kilowatt hours of electricity produced by a~~

1 ~~photovoltaic system owned by the taxpayer during the taxable~~
2 ~~year.~~

3 ~~(b) As used in this section, "photovoltaic system"~~
4 ~~means devices that convert light directly into electricity~~
5 ~~through a solid-state, semiconductor process.~~

6 ~~(c) The credit allowed under subsection (a) shall~~
7 ~~not be claimed beginning in the eleventh year after the date a~~
8 ~~credit is claimed under this section for the photovoltaic~~
9 ~~system.~~

10 ~~(d) The basis of any photovoltaic system for which a~~
11 ~~credit is allowable under this section shall be reduced by the~~
12 ~~amount of such credit claimed.~~

13 Section 9. Section 40-18-70, Code of Alabama 1975,
14 is amended to read as follows:

15 "§40-18-70. Definitions.

16 For the purpose of this article, the following terms
17 shall have the respective meanings ascribed by this section:

18 (1) EMPLOYEE. "Employee" as defined in the Internal
19 Revenue Code, as amended from time to time.

20 (2) EMPLOYER. "Employer" as defined in the Internal
21 Revenue Code, as amended from time to time. An employer is
22 required to withhold tax from the wages of employees to the
23 extent that such wages are earned in Alabama, whether the
24 employee is a resident or a nonresident of the state.

1 (3) INTERNAL REVENUE CODE. The Internal Revenue Code
2 of the United States, as amended from time to time.

3 (4) PROVISIONAL CONSTRUCTION EMPLOYERS. A
4 provisional construction employer is any employer, including
5 members of its affiliated group as that term is defined in the
6 Internal Revenue Code, that (i) employs 50 or more employees
7 in a construction project for a qualifying industrial or
8 research enterprise described in Section 40-9B-3(a)(8)e, or a
9 construction project, the cost of which is part of a
10 qualifying entity's capital cost, as these terms are defined
11 in Section 40-9D-3, and (ii) has not registered in the tax
12 year preceding the current tax year with the Alabama
13 Department of Revenue for withholding tax purposes. If the
14 provisional construction employer reports and pays all past
15 withholding taxes due the state and continues to report and
16 pay for a one-year period all withholding taxes due to
17 Alabama, the employer will no longer be deemed to be a
18 provisional construction employer.

19 (5) WAGES. "Wages" as defined in the Internal
20 Revenue Code, as amended from time to time. However, Alabama
21 does differentiate from federal requirements for certain
22 classes and amounts pursuant to departmental rules adopted via
23 the procedures in Title 41.

24 Section 10. Sections 40-18-190 and 40-18-194, Code
25 of Alabama 1975, are amended to read as follows:

1 "\$40-18-190.

2 "(a) The following terms shall have the following
3 meanings, respectively, when used in this article unless the
4 context clearly requires otherwise:

5 (1) BASE WAGE REQUIREMENT. Either an average hourly
6 wage of not less than eight dollars (\$8) per hour or an
7 average total compensation of not less than ten dollars (\$10)
8 per hour, including benefits. Notwithstanding the foregoing,
9 wages of direct processors of agriculture food products shall
10 be subject to the local labor market. In the event that
11 reliable local labor market statistics are not available, the
12 department shall, by regulation or ruling, establish a source
13 of wage information that best represents the average hourly
14 wage rate in Alabama for direct processors of agriculture food
15 products.

16 (2) CAPITAL COSTS. All costs and expenses incurred
17 by one or more investing companies in connection with the
18 acquisition, construction, installation and equipping of a
19 qualifying project during the period commencing with the date
20 on which such acquisition, construction, installation and
21 equipping commences and ending on the date on which the
22 qualifying project is placed in service, including, without
23 limitation all of the following:

24 a. The costs of acquiring, constructing, installing,
25 equipping and financing a qualifying project, including all

1 obligations incurred for labor and to contractors,
2 subcontractors, builders, and materialmen.

3 b. The costs of acquiring land or rights in land and
4 any cost incidental thereto, including recording fees.

5 c. The costs of contract bonds and of insurance of
6 all kinds that may be required or necessary during the
7 acquisition, construction or installation of a qualifying
8 project.

9 d. The costs of architectural and engineering
10 services, including test borings, surveys, estimates, plans
11 and specifications, preliminary investigations, environmental
12 mitigation and supervision of construction, as well as for the
13 performance of all the duties required by or consequent upon
14 the acquisition, construction and installation of a qualifying
15 project.

16 e. The costs associated with installation of
17 fixtures and equipment; surveys, including archaeological and
18 environmental surveys; site tests and inspections; subsurface
19 site work; excavation; removal of structures, roadways,
20 cemeteries, and other surface obstructions; filling, grading,
21 paving and provisions for drainage, storm water retention,
22 installation of utilities, including water, sewer, sewage
23 treatment, gas, electricity, communications, and similar
24 facilities; off-site construction of utility extensions to the
25 boundaries of the property.

1 f. All other costs of a nature comparable to those
2 described, including, without limitation, all project costs
3 which are required to be capitalized for federal income tax
4 purposes pursuant to 26 U.S.C. § 263A.

5 g. Costs otherwise defined as capital costs that are
6 incurred by the investing company where the investing company
7 is the lessee under a lease that: (1) has a term of not less
8 than five years, and (2) is characterized as a capital lease
9 for federal income tax purposes; provided, that if the project
10 is a headquarters facility, the lease may be characterized as
11 an operating lease for federal income tax purposes in which
12 event capital costs shall include the net present value of the
13 payments made by the investing company under the lease
14 computed using the applicable federal rate for the month in
15 which the qualifying project is placed in service and for the
16 term most closely approximating the term of the lease. Capital
17 costs shall not include property owned or leased by the
18 investing company or a related party before the commencement
19 of the acquisition, construction, installation or equipping of
20 the qualifying project unless such property was physically
21 located outside the state for a period of at least one year
22 prior to the date on which the qualifying project was placed
23 in service.

24 h. Costs either paid or incurred by (i) a public
25 industrial development board or authority, city, or county, or

1 other public corporation or political subdivision (a "public
2 entity") for the benefit of a qualifying project where such
3 costs are treated as costs paid by an investing company with
4 respect to the qualifying project for federal income tax
5 purposes (such costs shall not include amounts contributed by
6 a public entity to a qualifying project as a capital
7 contribution or gift except to the extent that an investing
8 company has cost basis in the contribution or gift for federal
9 income tax purposes); or (ii) a related party to an investing
10 company to the extent such costs are included in or taken into
11 account in determining the investing company's federal income
12 tax basis in the qualifying project, whether or not incurred
13 by an investing company.

14 (3) CAPITAL CREDIT. An annual amount equal to five
15 percent of the capital costs of the qualifying project, such
16 amount to be credited or allowed in accordance with Section
17 40-18-194 hereof and other provisions of law, against the
18 state income tax liability generated by or arising out of the
19 qualifying project in each of the 20 years commencing with the
20 year during which the qualifying project is placed in service
21 and continuing for 19 consecutive years thereafter.

22 (4) DEPARTMENT. The Alabama Department of Revenue.

23 (5) FAVORED GEOGRAPHIC AREA. Either of the
24 following:

1 a. Any area designated or created as an enterprise
2 zone by law or that is governed by the Alabama Enterprise Zone
3 Act.

4 b. 1. Any Alabama county which is considered to be
5 less developed. A county is considered to be less developed if
6 it has been found to be less developed by the Alabama
7 Department of Industrial Relations using the most current data
8 available from the United States Departments of Labor or
9 Commerce, the United States Bureau of the Census, or any other
10 federal or state agency, and which finding shall be made
11 immediately upon passage of Act 2001-965 and not later than
12 January 1 of each year thereafter.

13 2. A county shall be found to be less developed if
14 it is ranked as the forty-fifth through sixty-seventh county,
15 inclusive, using the following factors:

16 (i) Percent change in population over the most
17 recent five-year period.

18 (ii) Personal per capita income in the last calendar
19 year for which data are available.

20 (iii) The average percent employed over the last 12
21 months for which data are available.

22 3. The factors used in ranking counties will be
23 weighted in the following manner:

24 (i) Percent change in population (25 percent).

25 (ii) Personal per capita income (25 percent).

1 (iii) Average percent employed (50 percent).

2 (6) HEADQUARTERS FACILITIES. A facility which will
3 serve as the national, regional or state headquarters for an
4 investing company that conducts significant business
5 operations outside the state and will serve as the principal
6 office of the principal operating officer of the qualifying
7 project. For purposes of this Article 7, the term "principal
8 operating officer" is defined as the person with chief
9 responsibility for the daily business operations of the
10 qualifying project.

11 (7) INDUSTRIAL, WAREHOUSING OR RESEARCH ACTIVITY.

12 Any trade or business described in the 1997 North American
13 Industry Classification System, promulgated by the Executive
14 Office of the President of the United States, Office of
15 Management and Budget, Sectors 31 (other than National
16 Industry 311811), 32, 33, and 42; subsector 511; Industry
17 Groups 5142 and 5415; Industries 54138, 54171; and National
18 Industry 514191 and includes such trades and businesses as may
19 be hereafter reclassified in any subsequent publication of the
20 North American Industry Classification System or other
21 industry classification system developed in conjunction with
22 the United States Department of Commerce, or any process or
23 treatment facility which recycles, reclaims, or converts
24 materials, which include solids, liquids, or gases, to a
25 reusable product.

1 (8) INVESTING COMPANY. Any corporation, partnership,
2 limited liability company, proprietorship, trust or other
3 business entity, regardless of form, making a qualified
4 investment.

5 (9) NEW EMPLOYEES. Those persons who have not been
6 previously employed at the site on which the qualifying
7 project is or will be located or by an investing company or
8 companies in the state; will be employed full-time at the
9 qualifying project; and will be subject to the personal income
10 tax imposed by Section 40-18-2, upon commencement of
11 employment at the qualifying project.

12 (10) PROJECT. Any land, building or other
13 improvement, and all real and personal properties deemed
14 necessary or useful in connection therewith, whether or not
15 previously in existence, located or to be located in the
16 state.

17 (11) QUALIFYING INVESTMENT. The undertaking by one
18 or more investing companies of a qualifying project.

19 (12) QUALIFYING PROJECT. A project to be sponsored
20 or undertaken by one or more investing companies meeting any
21 one of the following requirements:

22 a. A project the capital costs of which are not less
23 than two million dollars (\$2,000,000), and at which the
24 predominant trade or business activity conducted will
25 constitute industrial, warehousing or research activity.

1 b. A small business addition the capital costs of
 2 which are not less than one million dollars (\$1,000,000), and
 3 at which the predominant trade or business activity conducted
 4 will constitute industrial, warehousing or research activity.

5 c. A headquarters facility the capital costs of
 6 which are not less than ~~\$2,000,000~~ two million dollars
 7 (\$2,000,000) at which the predominant trade or business
 8 activity conducted will not be the production of electricity.

9 d. A project located in a favored geographic area
 10 the capital costs of which are not less than five hundred
 11 thousand dollars (\$500,000), and at which the predominant
 12 trade or business activity conducted will constitute
 13 industrial, warehousing, or research activity.

14 e. A project owned by a utility described in Section
 15 37-4-1(7)a., or owned by an investing company which is itself
 16 owned by a utility, the capital costs of which are not less
 17 than the following:

18 1. One hundred million dollars (\$100,000,000), if
 19 the predominant trade or business activity conducted will be
 20 the production of electricity from alternative energy
 21 resources.

22 2. Five million dollars (\$5,000,000), if the
 23 predominant trade or business activity conducted will be the
 24 production of electricity from hydropower production.

1 (13) RELATED PARTY. A person or entity that bears a
 2 relationship to an investing company described in Section
 3 267(b), (c), or (e) of the Internal Revenue Code of 1986, as
 4 amended.

5 (14) SMALL BUSINESS ADDITION. Any land, building or
 6 other improvement, and all real and personal properties deemed
 7 necessary or useful in connection therewith, whether or not
 8 previously in existence, to be used as a part of any existing
 9 facility of a business located in the state that, prior to the
 10 date on which the addition is placed in service, had 100 or
 11 fewer full-time employees.

12 (15) TAX YEAR. The applicable taxable year as the
 13 term is defined in Section 40-18-1(~~±2~~ 33).

14 (16) 1993 ACT. Act No. 93-851, H. 27 and Act No.
 15 93-852, H. 83 adopted at the 1993 First Special Session of the
 16 Legislature of Alabama, as amended by Act No. 94-370, S. 559
 17 adopted at the 1994 Regular Session of the Legislature of
 18 Alabama.

19 (b) The amendments made to this section by the act
 20 adding this subsection shall be effective for tax years and
 21 periods beginning after December 31, 2011."

22 "\$40-18-194.

23 "(a) The Legislature recognizes that a substantial
 24 number of businesses are organized as limited liability
 25 companies, partnerships, and other types of business entities

1 and that certain business entities, organized as corporations,
2 elect to be treated as "S" corporations under federal and
3 state tax laws, and that it is essential that the capital
4 credit amount shall be available on a pass-through basis in
5 the manner hereinafter provided.

6 (b) Each investing company, or its shareholders,
7 partners, members, owners, or beneficiaries shall be entitled
8 to the capital credit for each tax year of an investing
9 company with respect to which a capital credit is provided
10 pursuant to this article. The capital credit shall be allowed
11 as follows:

12 (1) The owner of an investing company which is a
13 proprietorship shall receive a credit against the individual
14 income tax levied by Section 40-18-5 that otherwise would be
15 owed to the state in any year by the owner with respect to the
16 income of the investing company generated by or arising out of
17 the qualifying project.

18 (2) An investing company which is an Alabama C
19 corporation as defined in Section 40-18-160, or which is an
20 Alabama S corporation and which is subject to taxation under
21 Section 40-18-174, or Section 40-18-175, shall receive a
22 credit against the corporate income tax levied by Section
23 40-18-31 or by Section 40-18-174 or Section 40-18-175, that
24 otherwise would be owed to the state in any year by the

1 investing company with respect to the income generated by or
2 arising out of the qualifying project.

3 (3) The shareholders of an investing company which
4 is an Alabama S corporation as defined in Section 40-18-160,
5 and whose taxable income is subject to determination under
6 Section 40-18-161, each shall receive a credit against the
7 individual income tax levied by Section 40-18-5 that otherwise
8 would be owed to the state in any year by each shareholder of
9 the investing company with respect to income of the investing
10 company generated by or arising out of the qualifying project.

11 (4) The partners, members, or owners of an investing
12 company, the income of which is subject to taxation under
13 Section 40-18-24, each shall receive a credit against the
14 corporate income tax levied by Section 40-18-31, or against
15 the individual income tax levied by Section 40-18-5, whichever
16 is applicable to each such partner, member, or owner that
17 otherwise would be owed to the state in any year by each
18 partner, member, or owner of the investing company with
19 respect to income of the investing company generated by or
20 arising out of the qualifying project.

21 (5) An investing company which is a trust or estate
22 having income subject to taxation under Section 40-18-25(c)
23 shall receive a credit against the income tax levied by
24 Section 40-18-5 that otherwise would be owed to the state in

1 any year by the investing company on the income generated by
2 or arising out of the qualifying project.

3 (6) The beneficiaries of an investing company which
4 is a trust or estate the income of which is subject to
5 taxation under Section 40-18-25(d) each shall receive a credit
6 against the corporate income tax levied by Section 40-18-31,
7 or against the individual income tax levied by Section
8 40-18-5, whichever is applicable to each such beneficiary,
9 that otherwise would be owed to the state in any year by each
10 beneficiary of the investing company with respect to income of
11 the investing company generated by or arising out of the
12 qualifying project.

13 (7) A shareholder, partner, member, owner or
14 beneficiary which is eligible to receive a credit under
15 subdivision (3), (4) or (6) of this subsection and which is an
16 Alabama S corporation, or which has income which is subject to
17 taxation under Section 40-18-24 or Section 40-18-25(d), solely
18 for purposes of the application of this subsection, shall be
19 treated as though the shareholder, partner, member, owner, or
20 beneficiary were also an investing company.

21 (8) The capital credit allowed under this subsection
22 for any tax year of an investing company shall not exceed the
23 aggregate amount which otherwise would be due from the
24 investing company, its shareholders, partners, members,
25 owners, or beneficiaries to the state in tax with respect to

1 the income of the investing company generated by or arising
2 out of the qualifying project, determined after the
3 application of all other deductions, losses, or credits
4 permitted under Titles 40 and 41, for the taxable year, and
5 determined by applying the maximum rate applicable to
6 individuals under Section 40-18-5, or the rate applicable to
7 corporations under Section 40-18-31, as the case may be.
8 Notwithstanding the foregoing, the capital credit allowed
9 under this subsection shall not exceed 60 percent of the
10 aggregate amount which would otherwise be due from the
11 investing company, in the case of a qualifying project for the
12 production of electricity from coal gasification or
13 liquefaction or advanced fossil-based generation, as such
14 terms are defined in Section 40-18-1, or hydropower
15 production, or 80 percent of the aggregate amount which would
16 otherwise be due, in the case of a qualifying project for the
17 production of electricity from any other type of alternative
18 energy resource.

19 (9) In no event may any amount described in this
20 subsection be carried forward or back by any investing
21 company, shareholders, partners, members, owners, or
22 beneficiaries with respect to a prior or subsequent year.

23 (10) Any shareholder, partner, member, owner, or
24 beneficiary of an investing company may elect annually to use
25 his or her allowable portion of the income tax credit created

1 by this article as a nonrefundable estimated tax payment
2 against his or her individual income tax liability. If a
3 taxpayer makes an annual election to use the aforementioned
4 credit as a nonrefundable estimated payment, the taxpayer
5 shall compute the amount of the credit as though it were a
6 credit, subject to all the requirements and limitations
7 provided by law for the credit, but shall use the amount
8 computed as a nonrefundable estimated payment and shall not
9 use the same amount as a credit. In no event shall this
10 provision be construed to allow the credit or nonrefundable
11 estimated tax payment to expand the 20-year limitation of the
12 credit or estimated tax payment. In no event shall a credit
13 used as nonrefundable estimated payment exceed the amount that
14 would be available if the credit were not used as a
15 nonrefundable estimate payment.

16 (c) The amendments made to this section by the act
17 adding this subsection shall be effective for tax years and
18 periods beginning after December 31, 2011."

19 Section 11. The capital credits authorized by the
20 amendments to Sections 40-18-190 and 40-18-194, Code of
21 Alabama 1975, shall not be subject to Section 40-18-202, Code
22 of Alabama 1975. Instead, the capital credits authorized by
23 these amendments shall not be available for new qualifying
24 projects after December 31, 2018, unless the Legislature, ~~by~~
25 ~~joint resolution,~~ votes to continue or reinstate the capital

1 credit for new projects after that date. No action or inaction
2 on the part of the Legislature shall reduce, suspend, or
3 disqualify any capital credit in any past or future year with
4 respect to any investing company which files a statement of
5 intent pursuant to Section 40-18-191, Code of Alabama 1975, on
6 or before December 31, 2018, it being the sole intention of
7 this section that the failure of the Legislature to ~~adopt the~~
8 joint resolution vote to continue or reinstate the capital
9 credit for new projects after December 31, 2018 shall
10 affect only the availability of the capital credit to new
11 qualifying projects after that date and shall not affect
12 either the qualifying projects which have established their
13 eligibility to receive capital credits under Section
14 40-18-191, Code of Alabama 1975, on or before December 31,
15 2018, or any future qualifying expansions to the qualifying
16 projects. For projects placed in service after the effective
17 date of this act, no amount shall be allowed or credited in
18 accordance with Article 7 of Chapter 18 of Title 40, or
19 Chapter 9B of Title 40, Code of Alabama 1975, to the extent
20 that the capital costs are incurred for the production of
21 electricity unless the predominant trade or business activity
22 conducted will be the production of electricity from
23 alternative energy resources or hydropower production.

24 Section 12. The tax abatements and abatements of
25 payments in lieu of taxes authorized by the amendments to

1 Sections 40-9B-3, 40-9B-4, and 40-9B-11, Code of Alabama 1975,
2 shall not be available for new industrial or research
3 enterprises described in Section 40-9B-3(a)(8)e. after
4 December 31, 2018, unless the Legislature, ~~by joint~~
5 ~~resolution,~~ votes to continue or reinstate the abatements of
6 state taxes for new industrial or research enterprises
7 described in Section 40-9B-3(a)(8)e. after that date. No
8 action or inaction on the part of the Legislature shall
9 reduce, suspend, or disqualify any abatement in any past or
10 future year with respect to any qualifying industrial or
11 research enterprises described in Section 40-9B-3(a)(8)e.
12 which files with the Department of Revenue, on or before
13 December 31, 2018, a statement of intent as defined in Section
14 40-9B-3(a)(19). The failure of the Legislature to ~~adopt the~~
15 ~~joint resolution~~ vote to continue or reinstate the capital
16 credit for new projects after December 31, 2018 shall
17 affect only the availability of the abatements to new
18 qualifying industrial or research enterprises described in
19 Section 40-9B-3(a)(8)e. after that date and shall not affect
20 either the qualifying industrial or research enterprises
21 described in Section 40-9B-3(a)(8)e. which have established
22 their eligibility to receive abatements by filing the
23 statement of intent, on or before December 31, 2018, or any
24 future qualifying major additions to such qualifying

1 industrial or research enterprises described in Section 40-9B-3(a) (8

2 Section 13. The department shall perform such
3 necessary audits and examinations of the payroll tax records
4 and returns of all contractors performing construction
5 services for projects allowed the tax abatements or qualified
6 for capital credits authorized or provided by the amendments
7 to Sections 40-18-190, 40-18-194, 40-9B-3, 40-9B-4, and
8 40-9B-11, Code of Alabama 1975, to determine that Alabama
9 income taxes are being correctly withheld on construction
10 wages paid to employees working in Alabama and that
11 appropriate withholding allowances are being claimed.

12 Section 14. All laws or parts of laws which conflict
13 with this act are repealed.

14 Section 15. Except as otherwise provided in the act,
15 the act shall become effective immediately upon its passage
16 and approval by the Governor or upon its otherwise becoming
17 law. Section 6 shall become effective 90 days after its
18 passage and approval by the Governor or upon its otherwise
19 becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 28-FEB-08, as amended.

Greg Pappas
Clerk

Senate

30-APR-08

Passed

APPROVED May 8, 2008

TIME 10:35 a.m.

GOVERNOR

Alabama Secretary Of State

Act Num....: 2008-275
Bill Num...: H-234

Recv'd 05/08/08 01:21pmJJB