

Alabama Capital Tax Credit
§ 40-18-190 through § 40-18-203
Code of Alabama 1975

Section 40-18-190

Definitions.

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

(1) **BASE WAGE REQUIREMENT.** a. For qualifying projects in which an investing company files a written statement of intent (Form INT) with the Department on or before May 21, 2009, "base wage requirement" means either an average hourly wage of not less than eight dollars (\$8) per hour or an average total compensation of not less than ten dollars (\$10) per hour, including benefits.

b. For qualifying projects that are not located in a favored geographic area and for which an investing company files a written statement of intent (Form INT) with the Department after May 21, 2009, "base wage requirement" means an average hourly wage, inclusive of all employees in Alabama, of not less than the lesser of fifteen dollars (\$15) per hour (indexed annually in accordance with the manner provided in Section 25-5-68) or the average hourly wage of the county where the qualifying project is located (as reported annually by the Department of Industrial Relations), both excluding benefits.

c. For qualifying projects that are located in a favored geographic area and for which an investing company files a written statement of intent (Form INT) with the Department after May 21, 2009, "base wage requirement" means an average hourly wage, inclusive of all employees in Alabama, of not less than the lesser of twelve dollars (\$12) per hour (indexed annually in accordance with the manner provided in Section 25-5-68) or the average hourly wage of the county where the qualifying project is located (as reported annually by the Department of Industrial Relations), both excluding benefits.

d. Notwithstanding the foregoing, wages of direct processors of agriculture food products shall be subject to the local labor market. In the event that reliable local labor market statistics are not available, the department shall, by regulation or ruling, establish a source of wage information that best represents the average hourly wage rate in Alabama for direct processors of agriculture food products.

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

a. The costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and to contractors, subcontractors, builders, and materialmen.

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

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

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

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

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

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

h. Costs either paid or incurred by (i) a public industrial development board or authority, city, or county, or other public corporation or political subdivision (a "public entity") for the benefit of a qualifying project where such costs are treated as costs paid by an investing company with respect to the qualifying project for federal income tax purposes (such costs shall not include amounts contributed by a public entity to a qualifying project as a capital contribution or gift except to the extent that an investing company has cost basis in the contribution or gift for federal income tax purposes); or (ii) a related party to an investing company to the extent such costs are included in or taken into account in determining the investing company's federal income tax basis in the qualifying project, whether or not incurred by an investing company.

(3) CAPITAL CREDIT. An annual amount equal to up to five percent of the capital costs of the qualifying project, such amount to be credited or allowed in accordance with Section 40-18-194 and Section 40-18-195 hereof and other provisions of law, against the state income tax or

financial institution excise tax, as provided in Section 40-18-194, liability generated by or arising out of the qualifying project in each of the 20 years commencing with the year during which the qualifying project is placed in service and continuing for 19 consecutive years thereafter.

(4) DATA PROCESSING CENTER. An establishment engaged in the provision of complete processing and specialized reports from data, the provision of automated data processing and data entry services, the provision of an infrastructure for hosting or data processing services, the provision of specialized hosting activities, the provision of application service provisioning, the provision of general time-share mainframe facilities, or some combination of the foregoing, without regard to whether any other activities are conducted at the establishment.

(5) DEPARTMENT. The Alabama Department of Revenue.

(6) FAVORED GEOGRAPHIC AREA. Either of the following:

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

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

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

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

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

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

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

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

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

(iii) Average percent employed (50 percent).

(7) HEADQUARTERS FACILITIES. a. For qualifying projects in which an investing company files a written statement of intent (Form INT) with the Department on or before May 21, 2009, "headquarters facilities" means a facility which will serve as the national, regional or state headquarters for an investing company that conducts significant business operations outside the state and will serve as the principal office of the principal operating officer of the qualifying project. For purposes of this Article 7, the term "principal operating officer" is defined as the person with chief responsibility for the daily business operations of the qualifying project.

b. For qualifying projects in which an investing company files a written statement of intent (Form INT) with the Department after May 21, 2009, "headquarters facilities" means any trade or business described in the 2007 North American Industry Classification System, promulgated by the Executive Office of the President of the United States, Office of Management and Budget, National Industry 551114.

(8) INDUSTRIAL, WAREHOUSING OR RESEARCH ACTIVITY. Any trade or business described in the 2007 North American Industry Classification System, promulgated by the Executive Office of the President of the United States, Office of Management and Budget, Sectors 31 (other than National Industry 311811), 32, and 33; Subsectors 423, 424, 511, and 927; Industry Groups 5417, 5415, and 5182 (without regard to the premise that data processing and related services be performed in conjunction with a third-party); Industries 11331 and 48691; and National Industries 115111, 517110, 541380, and 561422 (other than establishments that originate telephone calls) and includes such trades and businesses as may be hereafter reclassified in any subsequent publication of the North American Industry Classification System or other industry classification system developed in conjunction with the United States Department of Commerce, or any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product.

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

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

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

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

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

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

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

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

production of electricity.

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

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

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

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

f. A data processing center the capital costs of which are not less than the following:

1. Two million dollars (\$2,000,000), if the data processing center is not located in a favored geographic area.

2. Five hundred thousand dollars (\$500,000), if the data processing center is located in a favored geographic area.

g. A research and development facility the capital costs of which are not less than the following:

1. Two million dollars (\$2,000,000), if the research and development facility is not located in a favored geographic area.

2. Five hundred thousand dollars (\$500,000), if the research and development facility is located in a favored geographic area.

h. A renewable energy facility the capital costs of which are not less than the following:

1. Two million dollars (\$2,000,000), if the renewable energy facility is not located in a favored geographic area.

2. Five hundred thousand dollars (\$500,000), if the renewable energy facility is located in a favored geographic area.

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

(15) RENEWABLE ENERGY FACILITY. Any plant, property, or facility that either:

1. Produces electricity or natural gas, in whole or in part, from biofuels as such term is defined in Section 2-2-90(c)(2) or from renewable energy resources as such term is defined in Section 40-18-1(30) with the exception that hydropower production shall be excluded from such

definition; or

2. Produces biofuel as such term is defined in Section 2-2-90(c)(2).

(16) RESEARCH AND DEVELOPMENT FACILITY. An establishment engaged in conducting original investigations undertaken on a systematic basis to gain new knowledge and/or applying research findings or other scientific knowledge to create new or significantly improved products or processes.

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

(18) TAX YEAR. The applicable taxable year as the term is defined in Section 40-18-1(36).

(19) 1993 ACT. Act No. 93-851, H. 27 and Act No. 93-852, H. 83 adopted at the 1993 First Special Session of the Legislature of Alabama, as amended by Act No. 94-370, S. 559 adopted at the 1994 Regular Session of the Legislature of Alabama.

(b) The amendments made to this section by Acts 2008, No. 08-275 shall be effective for tax years and periods beginning after December 31, 2011.

Section 40-18-191

Filing with department written statement of intent to claim credit.

At anytime prior to the date on which a qualifying project is placed in service, an investing company may file with the department a written statement of intent to claim the capital credit provided in this article. Such filing by an investing company shall constitute a filing on behalf of the shareholders, partners, members, owners or beneficiaries of the investing company entitled to the capital credit in accordance with such subsection (b) of Section 40-18-194. Such statement shall contain a description of the qualifying project; the date on which the acquisition, construction, installation or equipping of the qualifying project was commenced or is expected to commence; the actual or if not known the estimated capital costs of the qualifying project; the number of new employees to be employed at the qualifying project; the name of each investing company, or the name or names of its shareholders, partners, members, owners or beneficiaries to become entitled to the capital credit; and any other information required by the department.

Section 40-18-192

Effect of compliance with requirements; agreements specifying method by which income generated and allocation of credit.

Subject to compliance with Section 40-18-193, each investing company shall, upon filing of the statement required by Section 40-18-191 and upon the making of qualified investments and upon compliance with subsection (a) of Section 40-18-193, be entitled to the capital credit, such credit to be allocated and available in accordance with subsection (b) of Section 40-18-194. The department shall enter into written agreements with an investing company or companies specifying the method by which income generated by or arising out of the project will be determined, and with respect to qualifying projects undertaken by partnerships, limited liability companies, or other joint ventures, the allocation and treatment of the capital credit provided pursuant to this article.

Section 40-18-193

Qualifications for capital credits.

(a) It shall be a condition to the receipt of a capital credit that :

(1) For a qualifying project described in Section 40-18-190(a)(13)c or f, not less than 50 jobs for new employees at the qualifying project be provided commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at the qualifying project be not less than the base wage requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or any part of the capital credit is available with respect to the qualifying project.

(2) For any qualifying project other than a qualifying project described in Sections 40-18-190(a)(13)c or f, either of the following occur:

a. Not less than 20 jobs for new employees at a qualifying project except as otherwise provided in this subdivision and commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at the qualifying project be not less than the base wage requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or any part of the capital credit is available with respect to the qualifying project.

b. Not less than 15 jobs for new employees at the qualifying project which is a small business addition be provided commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at the qualifying project be not less than the base wage requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or any part of the capital credit is available with respect to the qualifying project.

c. Not less than five jobs for new employees at the qualifying project which is located in a favored geographic area and commencing with the date which is not later than one year after the qualifying project is placed in service and that the average wages for all new employees at the qualifying project be not less than the base wage, as defined in Section 40-18-190 (a)(1), requirement by the date which is not later than one year after the qualifying project is placed in service and during each year during which all or part of the capital credit is available with respect to the qualifying project.

If an investing company closes or reduces its level of employment at an existing facility in this state and within two years following the closing or reduction in its level of employment places a qualifying project in service, only the number of new employees in excess of the number of employees who worked at the existing facility at the time of the closure or prior to the reduction in employment shall be deemed to be new employees for purposes of this section.

(b) The Legislature recognizes that one or more entities may enter into a joint venture in the form of a limited liability company, partnership, or other form of business entity in connection with a qualifying project. It is the intent of this article that the requirements of this article respecting minimum capital costs and employment be applied to the qualifying project and that the capital credit be available and granted to those entities liable for or against which the state income tax is allocated or assessed with respect to the income generated by or arising out of the qualifying project. It shall not be a requirement of this article that the entity employing any new employees be the same entity entitled to receive the capital credit so long as the requirements of capital costs and new employees are implemented and maintained with respect to the qualifying project.

(c) A change of ownership or assignment of interest in any qualifying project shall not qualify the qualifying project or any taxpayer to receive any additional capital credits, and the purchaser, assignee, or successor of the qualifying project or interests therein shall be entitled to the capital credit upon the same conditions and for the same period as the investing company or companies originally entitled to the capital credit.

(d) The Legislature recognizes that while certain periods specified in this article with respect to the capital credit are measured by calendar years it will be necessary for the capital credit to be applied with respect to the tax years of the recipients of the capital credit. Accordingly, the department is hereby authorized to adopt regulations to provide that the capital credit may be allocated to the tax years of the recipient of the capital credit, including the method of determining the pro rata amount of capital credit, if any, available where the tax year of the recipient of the capital credit will end subsequent to the end of any calendar year period specified in this article.

(e) A company shall be considered to have met the employment and wage requirements for the portion of the year following the date upon which such requirements are first met and for each full year thereafter (such portion of a year and each full year thereafter during the 20 year credit period is hereinafter referred to as a "compliance year") if the employment requirement is satisfied for at least 11/12 of each compliance year and the wage requirement is met based on an average determined over each compliance year.

(f) (1) Any investing company that meets the employment and wage requirements of this section by a date which is not later than one year after the date on which the qualifying project is placed in service, but fails to meet such requirements in any subsequent compliance year, may still

claim the capital credit for each compliance year in which such investing company again meets the employment and wage requirements of this section. In no event, however, shall an investing company be able to claim a capital credit in a compliance year beginning: (i) after the third compliance year (whether or not consecutive) in which the investing company fails to meet the employment and wage requirements of this section; or (ii) more than nineteen (19) years after the year in which the qualifying project is first placed in service.

(2) Any investing company that files a written statement of intent (Form INT) with the Department after May 21, 2009 and that meets the employment and wage requirements of this section by a date which is not later than one year after the date on which the qualifying project is placed in service, but fails to meet such requirements in any subsequent compliance year, shall forfeit a percentage of the capital credits claimed in the prior five years. The forfeiture shall equal 100 percent of the capital credits claimed in the year immediately preceding the year in which the investing company fails to maintain the employment and wage requirements of this section. The forfeiture percentage shall be reduced by 20 percent for each successive prior year in the five year forfeiture period. The forfeiture of capital credits shall be treated in the same manner as the imposition of the tax imposed by this chapter and shall be payable by the investing company on the fifteenth day of the third month following the close of the year in which the investing company failed to meet the employment and wage requirements of this section.

Section 40-18-194

Entities allowed capital credit.

(a) The Legislature recognizes that a substantial number of businesses are organized as limited liability companies, partnerships, and other types of business entities and that certain business entities, organized as corporations, elect to be treated as "S" corporations under federal and state tax laws, and that it is essential that the capital credit amount shall be available on a pass-through basis in the manner hereinafter provided.

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

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

(2) An investing company which is an Alabama C corporation as defined in Section 40-18-160, or which is an Alabama S corporation and which is subject to taxation under Section 40-18-174, or Section 40-18-175, shall receive a credit against the corporate income tax levied by Section 40-18-31 or by Section 40-18-174 or Section 40-18-175, that otherwise would be owed to the state in any year by the investing company with respect to the income generated by or arising out of the qualifying project.

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

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

(5) An investing company which is a trust or estate having income subject to taxation under Section 40-18-25(c) shall receive a credit against the income tax levied by Section 40-18-5 that otherwise would be owed to the state in any year by the investing company on the income generated by or arising out of the qualifying project.

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

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

(8) a. An investing company which is a financial institution as defined in Section 40-16-1 shall receive a credit against the financial institution excise tax levied by Section 40-16-4 that otherwise would be owed to the state in any year by the investing company with respect to the income generated by or arising out of the qualifying project which is a data processing center, is a headquarters facility, or is described in the 2007 North American Industry Classification System National Industry 561422 (other than establishments that originate telephone calls). To receive the capital credit authorized by this paragraph (8)a., Section 40-18-193 shall be complied with. Further, the financial institution must be the investing company or it must own, directly or indirectly, at least 50 percent of the investing company. If the financial institution is a shareholder, partner, member, owner, or beneficiary of an investing company which is not itself subject to taxation, the financial institution shall be entitled to a capital credit corresponding to its relative ownership interest in the investing company, subject to the 50 percent ownership requirement of the immediately preceding sentence.

b. In making the report required by Section 40-16-6(d), a financial institution receiving the capital credit authorized in paragraph (8)a. shall not take into account the qualifying project.

(9) The capital credit allowed under this subsection for any tax year of an investing company shall not exceed the aggregate amount which otherwise would be due from the investing company, its shareholders, partners, members, owners, or beneficiaries to the state in tax with respect to the income of the investing company generated by or arising out of the qualifying project, determined after the application of all other deductions, losses, or credits permitted under Titles 40 and 41, for the taxable year, and determined by applying the maximum rate applicable to individuals under Section 40-18-5, or the rate applicable to corporations under Section 40-18-31, or the rate applicable to financial institutions under Section 40-16-4, as the case may be. Notwithstanding the foregoing, the capital credit allowed under this subsection shall not exceed 60 percent of the aggregate amount which would otherwise be due from the investing company, in the case of a qualifying project for the production of electricity from coal gasification or liquefaction or advanced fossil-based generation, as such terms are defined in Section 40-18-1, or hydropower production, or 80 percent of the aggregate amount which would otherwise be due, in the case of a qualifying project described in Section 40-18-190(a)(13)e which produces electricity from any other type of alternative energy resource.

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

(11) Any shareholder, partner, member, owner, or beneficiary of an investing company may elect annually to use his or her allowable portion of the tax credit created by this article as a nonrefundable estimated tax payment against his or her individual income tax liability. If a taxpayer makes an annual election to use the aforementioned credit as a nonrefundable estimated payment, the taxpayer shall compute the amount of the credit as though it were a credit, subject to all the requirements and limitations provided by law for the credit, but shall use the amount computed as a nonrefundable estimated payment and shall not use the same amount as a credit. In no event shall this provision be construed to allow the credit or nonrefundable estimated tax payment to expand the 20-year limitation of the credit or estimated tax payment. In no event shall a credit used as nonrefundable estimated payment exceed the amount that would be available if the credit were not used as a nonrefundable estimate payment.

(c) The amendments made to this section by Act 2008-275 shall be effective for tax years and periods beginning after December 31, 2011.

Section 40-18-195

Capital credit not to exceed capital costs of project.

The capital credit shall be reduced or eliminated with respect to a qualifying project at the time the sum of all capital credits received or allowed with respect to a qualifying project equals 100 percent of the capital costs of such qualifying project, all to the end that the aggregate amount of capital credits shall not exceed 100 percent of the capital costs of the qualifying project.

Section 40-18-196

Department to report annually.

The department shall report annually to the Legislature and the public as to qualifying projects with respect to which capital credits are claimed during the year. The report shall be due on the fifth legislative day of each regular session and shall state the number of qualifying projects, the capital costs of each qualifying project and the total amount of capital credits claimed during the year.

Section 40-18-197

Department to adopt regulations and to audit companies.

The department shall adopt regulations to carry out the provisions of this article. The department shall audit each investing company periodically to monitor compliance by the investing company with the provisions hereof which are conditions to the availability of capital credits for each year.

Section 40-18-198

Officer to file affidavit with department.

At the time of filing any tax return with the department in which any capital credit is claimed under this article, the chief executive officer, the chief financial officer, or the person signing the tax return on behalf of the investing company shall file with the department an affidavit stating that the investing company was, during the tax year for which a capital credit is claimed, in compliance with this article which are conditions to the qualification for and the availability of the capital credit herein authorized. The affidavit shall certify that the sum of all capital credits therefore received or allowed, when added to the capital credit claimed in the return, does not exceed the capital costs of the qualifying project.

Section 40-18-199

State Industrial Development Authority not to grant credits except for certain entities.

This article shall supersede the provisions of the 1993 Act pertaining to the income tax credits and the job development fee provided for in the 1993 Act except with respect to projects approved by the State Industrial Development Authority prior to January 16, 1995. Upon the passage of this article, the State Industrial Development Authority shall not grant tax credits or job development fees pursuant to Section 41-10-44.8, except with respect to entities with respect to which a resolution was adopted by the State Industrial Development Authority prior to January 16, 1995. The State Industrial Development Authority shall continue to have full power to implement the 1993 Act with respect to entities and projects approved prior to January 16, 1995, and all incentives shall remain in effect and may be fully implemented by the State Industrial Development Authority. Nothing contained in this section shall limit any other power

or authority of the State Industrial Development Authority heretofore conferred upon it, and the authority shall possess all power and authority heretofore conferred upon it by law other than those enumerated in this section. Each agreement or action on the part of the State Industrial Development Authority intended to constitute an inducement or official action on the part of the authority for purposes of Section 1.150-2 of the regulations under the Internal Revenue Code of 1986, as amended, shall remain in full force and effect.

Section 40-18-200

Entities approved by State Industrial Development Authority prior to January 16, 1995, may elect to receive credit under article.

Each business entity and each project for each business entity with respect to which the State Industrial Development Authority adopted, prior to January 16, 1995, a resolution accepting a project for such entity may, at any time prior to December 31, 1996, file with the department a written election to receive the capital credit granted by this article, and upon the filing, each entity shall thereupon become entitled to the capital credit provided for in this article. Each entity shall, however, upon the filing of the election, be deemed to have waived and relinquished all tax future credits, job development fees, or other incentives provided for in the 1993 Act, and the amount of any tax credits, job development fees, or other incentives actually received by the entity pursuant to the 1993 Act, as well as the period during which the entity was entitled to receive any incentives under the 1993 Act, shall be taken into account for all purposes of this article, specifically including, without limitation, the period during which the capital credit is available and the limitation on the total amount of capital credits provided in Section 40-18-195.

Section 40-18-201

Companies to maintain records; regulations concerning determination of income.

Each investing company receiving a capital credit shall maintain or cause to be maintained records with respect to the qualifying project sufficient to allow the income of the investing company to be identified separately from other income of such investing company subject to Alabama income taxation. In order to limit the capital credit to the income tax liability attributable to the income generated by or arising from the qualified project within the state, the department shall promulgate regulations respecting the determination of income generated by or arising from the qualified project and the income tax attributable to such income.

Section 40-18-202

Availability of capital credits for new projects after December 31, 1998.

Capital credits authorized by this article shall not be available for new qualifying projects after December 31, 1998, unless the Legislature, by joint resolution, votes to continue or reinstate the capital credit for new projects after that date. No action or inaction on the part of the Legislature shall reduce or suspend any capital credit in any past or future calendar year with respect to any investing company which files a statement of intent pursuant to Section 40-18-191 on or prior to

December 31, 1998, it being the sole intention of this section that failure of the Legislature to adopt a joint resolution continuing the capital credit for periods after December 31, 1998, shall affect only the availability of the capital credit to new qualifying projects after that date, and shall not affect qualifying projects which have established their eligibility to receive capital credits under Section 40-18-191 on or prior to December 31, 1998.

Section 40-18-202.1

Availability of capital credits after December 31, 2018. THIS SECTION WAS ASSIGNED BY THE CODE COMMISSIONER IN THE 2008 REGULAR SESSION, EFFECTIVE MAY 8, 2008.

The capital credits authorized by the amendments to Sections 40-18-190 and 40-18-194 by Act 2008-275 shall not be subject to Section 40-18-202. Instead, the capital credits authorized by these amendments shall not be available for new qualifying projects after December 31, 2018, unless the Legislature votes to continue or reinstate the capital credit for new projects after that date. No action or inaction on the part of the Legislature shall reduce, suspend, or disqualify any capital credit in any past or future year with respect to any investing company which files a statement of intent pursuant to Section 40-18-191 on or before December 31, 2018, it being the sole intention of this section that the failure of the Legislature to vote to continue or reinstate the capital credit for new projects after December 31, 2018, shall affect only the availability of the capital credit to new qualifying projects after that date and shall not affect either the qualifying projects which have established their eligibility to receive capital credits under Section 40-18-191 on or before December 31, 2018, or any future qualifying expansions to the qualifying projects.

Section 40-18-203

Provisions to govern administration of article.

The administration of this article by the department shall be governed by the provisions of the Taxpayers' Bill of Rights and the Uniform Revenue Procedures Act contained in Chapter 2A of this title.