

1 HB142
2 164990-1
3 By Representative Hill (M)
4 RFD: Ways and Means Education
5 First Read: 05-MAR-15

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8 SYNOPSIS: Under current law, each entity, subject to
9 the Alabama corporate income tax, is required to
10 file a separate return and calculate the income tax
11 on its separately accounted for taxable income,
12 regardless whether the entity is part of a larger
13 business that consists of an affiliated group of
14 entities. This filing method allows large corporate
15 taxpayers to take advantage of tax planning options
16 to shift income to other entities within the
17 affiliated group located in tax favorable states.
18 Most large corporate businesses consist of a parent
19 corporation and a number of corporate subsidiaries.

20 This bill would amend the corporate income
21 tax law to require the operations of all related
22 entities, involved in a unitary business, file one
23 corporate income tax return on a combined basis,
24 known as combined reporting.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend the corporate income tax law to require the
4 operations of all related entities, involved in a unitary
5 business, to file one corporate income tax return on a
6 combined basis, known as combined reporting; to implement
7 combined reporting by requiring that a business report, on a
8 combined basis, the operations of all related entities
9 involved in a unitary business.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 40-18-1, 40-18-30, and 40-18-31,
12 Code of Alabama 1975, are hereby amended to read as follows:

13 "§40-18-1.

14 For the purpose of this chapter, the following terms
15 shall have the respective meanings ascribed by this section:

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

22 (2) AFFILIATED GROUP. An affiliated group has the
23 meaning ascribed to that term in 26 U.S.C. §§ 1504 except that
24 it shall include all corporations incorporated in the United
25 States or formed under the laws of the United States, any
26 state, the district of Columbia or any territory or possession
27 of the United States that are commonly owned, directly or

1 indirectly, by any member of such affiliated group. Also, an
2 affiliated group shall include other commonly owned
3 corporations incorporated in the United States or formed under
4 the laws of the United States, any state, the District of
5 Columbia or any territory or possession of the United States
6 that is described as a related entity in this section.

7 (23) ALTERNATIVE ENERGY RESOURCES. Coal gasification
8 or liquefaction, nuclear, and advanced fossil-based
9 generation.

10 (34) BIOMASS. Animals and plants, and the waste,
11 by-products, or derivatives of either, including, but not
12 limited to, the materials described in 26 U.S.C. §§ 45(c)(2),
13 45(c)(3), 45K(c)(3), or 48B(c)(4).

14 (45) BUSINESS TRUST. Any entity which is a business
15 trust for federal income tax purposes.

16 (56) CAPTIVE REIT. Any REIT whose shares or
17 certificates of beneficial interest are not regularly traded
18 on an established securities market and are owned or
19 controlled, at any time during the last half of the tax year,
20 by an association taxable as a corporation that is not exempt
21 from tax under 26 U.S.C. § 501(a), and is not any of the
22 following: (i) a REIT; (ii) a listed Australian property trust
23 (including any trust that a listed Australian property trust
24 owns or controls, directly or indirectly, seventy-five percent
25 or more of the voting power or value of the beneficial
26 interests or shares of such trust); or (iii) any qualified
27 foreign entity. The term Captive REIT shall not include any

1 REIT at least 50 percent of the shares of which (by vote or
2 value) are owned or controlled, directly or indirectly, at any
3 time during the last half of the tax year, by a financial
4 institution, as such term is defined in Chapter 16. For
5 purposes of this definition, own or control means to own or
6 control directly, indirectly, beneficially, or constructively
7 more than fifty percent (50%) of the voting power or value of
8 an entity. The attribution rules of 26 U.S.C. § 318, as
9 modified by 26 U.S.C. § 856(d)(5), apply in determining
10 ownership and control.

11 (67) CASH. Any legal tender, negotiable paper, or
12 solvent credit.

13 (78) COAL GASIFICATION OR LIQUEFACTION. Liquid or
14 gaseous fuels which are produced from coal, including lignite
15 and including but not limited to fuels described in 26 U.S.C.
16 §§ 45(c)(7)(A)(i), 45K(c)(1)(C), 48A(c)(7), or 48B(c)(2) as to
17 coal, as such provisions existed on December 31, 2007.

18 (9) COMBINED GROUP. The group of all persons whose
19 income and apportionment factors are required to be taken into
20 account pursuant to Sections 40-18-31(b) and 40-18-31(c) in
21 determining the taxpayer's share of the net business income or
22 loss apportionable to this state.

23 (810) CORPORATION. The term includes ~~associations,~~
24 ~~joint stock companies, and any other entity classified as an~~
25 ~~association taxable as a corporation for federal income tax~~
26 ~~purposes.~~ any corporation as defined by the laws of this state
27 or organization of any kind treated as a corporation for tax

1 purposes under the laws of this state, or any other entity
2 classified as an association taxable as a corporation for
3 federal income tax purposes, wherever located, which if it
4 were doing business in this state would be a "taxpayer." The
5 business conducted by a partnership which is directly or
6 indirectly held by a corporation shall be considered the
7 business of the corporation to the extent of the corporation's
8 distributive share of the partnership income, inclusive of
9 guaranteed payments to the extent prescribed by regulation.

10 (911) DISREGARDED ENTITY. Any entity which is
11 disregarded for federal income tax purposes.

12 (1012) DOMESTIC. When applied to a corporation or
13 subchapter K entity means created or organized under the laws
14 of the State of Alabama.

15 (1113) FIDUCIARY. A guardian, trustee, executor,
16 administrator, personal representative, receiver, conservator,
17 or any person acting in any fiduciary capacity for any person.

18 (1214) FISCAL YEAR. An accounting period of 12
19 months ending on the last day of any month other than
20 December.

21 (1315) FOREIGN. When applied to a corporation or a
22 subchapter K entity means created or organized under a
23 jurisdiction other than the State of Alabama.

24 (1416) GEOTHERMAL. Any geothermal reservoir in
25 Alabama consisting of natural heat which is stored in rocks or
26 in an aqueous liquid or vapor, whether or not under pressure.

1 (~~15~~17) HEAD OF FAMILY. As used in this chapter, the
2 term head of family has the same meaning as the term head of
3 household as defined in 26 U.S.C. §2(b).

4 (~~16~~18) HYDROPOWER PRODUCTION. The hydropower
5 production of any hydroelectric dam or pumped hydro facility
6 in Alabama, including, but not limited to, the hydropower
7 production described in 26 U.S.C. § 45(c)(8), as such
8 provision existed on December 31, 2007.

9 (~~17~~19) INTANGIBLE EXPENSES AND COSTS. Any expenses,
10 losses, and costs for, related to, or in connection directly
11 or indirectly with the acquisition, use, maintenance,
12 management, ownership, sale, exchange, or disposition of
13 intangible property to the extent such amounts are allowed as
14 deductions in determining taxable income before operating loss
15 deduction and special deductions for the taxable year
16 including, without limitation, expenses or losses related to
17 or incurred in connection directly or indirectly with
18 factoring transactions or discounting transactions, royalties,
19 patents, technical and copyright licensing fees, and other
20 similar expenses and costs. Intangible expenses and costs paid
21 for the use of intangible property in this state are, to the
22 recipient, income derived from sources within Alabama.

23 (~~18~~20) INTANGIBLE PROPERTY. Patents, patent
24 applications, trade names, trademarks, service marks,
25 franchises, know-how, formulas, designs, patterns, processes,
26 formats, copyrights and similar types of intangible assets,
27 choses in action, and accounts receivable.

1 (~~19~~21) INTEREST EXPENSES AND COSTS. Amounts directly
2 or indirectly allowed as deductions under 26 U.S.C. § 163 for
3 purposes of determining taxable income under the Internal
4 Revenue Code. Interest expenses and costs paid to a related
5 member by a subchapter K entity or a corporation, to the
6 extent apportioned to Alabama by the payor, are to the
7 recipient related member income derived from sources within
8 Alabama.

9 (22) INTERNAL REVENUE CODE. Title 26 of the United
10 States Code, and amendments thereto, without regard to
11 application of federal treaties unless expressly made
12 applicable to states of the United States.

13 (~~20~~23) MUNICIPAL SOLID WASTE. The definition given
14 in 26 U.S.C. § 45(c)(6), if located in Alabama.

15 (~~21~~24) NONRESIDENT ESTATE. An estate other than a
16 resident estate of this state.

17 (~~22~~25) NONRESIDENT TRUST. A trust other than a
18 resident trust of this state.

19 (~~23~~26) NUCLEAR. Any nuclear facility the reactor
20 design for which is approved after December 31, 1993, by the
21 Nuclear Regulatory Commission, including, but not limited to,
22 the facilities described in 26 U.S.C. § 45J(d), as such
23 provision existed on December 31, 2007.

24 (~~24~~27) PAID. For the purpose of deductions and
25 credits hereinafter provided for with respect to income tax
26 means paid or accrued or paid or incurred, and the terms paid
27 or accrued and paid or incurred shall be construed according

1 to the method of accounting on the basis of which the net
2 income is computed under this chapter.

3 (28) PARTNERSHIP. A general or limited partnership,
4 or organization of any kind treated as a partnership for tax
5 purposes under the laws of this state.

6 (2529) PERSON. Any individual, firm, trust, estate,
7 corporation, association, disregarded entity, or subchapter K
8 entity, disregarded entity, foreign limited liability
9 partnership, association, corporation (whether or not the
10 corporation is, or would be if doing business in this state,
11 subject to the tax imposed by Section 40-18-2), company,
12 syndicate, estate, trust, business trust, trustee, trustee in
13 bankruptcy, receiver, executor, administrator, assignee or
14 organization of any kind.

15 (2630) QUALIFIED FOREIGN ENTITY. An entity organized
16 outside of the U.S. that is similar in operation and form to a
17 U.S. REIT that is not a captive REIT, and shall take into
18 account the entity's: (i) total real estate assets; (ii) tax
19 transparency; (iii) actual distribution or required
20 distribution of taxable income; and (iv) concentration of
21 ownership.

22 (2731) REIT. A Real Estate Investment Trust having
23 the meaning ascribed to that term in 26 U.S.C. §§ 856 to 858,
24 inclusive.

25 (2832) RELATED ENTITY. A stockholder who is an
26 individual, or a member of the stockholder's family enumerated
27 in 26 U.S.C. § 318, if the stockholder and the members of the

1 stockholder's family own, directly, indirectly, beneficially,
2 or constructively, in the aggregate, at least 50 percent of
3 the value of the taxpayer's outstanding stock; a stockholder,
4 or a stockholder's partnership, limited liability company,
5 estate, trust or corporation, if the stockholder and the
6 stockholder's partnerships, limited liability companies,
7 estates, trusts, and corporations own directly, indirectly,
8 beneficially, or constructively, in the aggregate, at least 50
9 percent of the value of the taxpayer's outstanding stock; or a
10 corporation, or a party related to the corporation in a manner
11 that would require an attribution of stock from the
12 corporation to the party or from the party to the corporation
13 under the attribution rules of 26 U.S.C. § 318, if the
14 taxpayer owns, directly, indirectly, beneficially, or
15 constructively, at least 50 percent of the value of the
16 corporation's outstanding stock. The attribution rules of 26
17 U.S.C. § 318 shall apply for purposes of determining whether
18 the ownership requirements of this subdivision have been met.

19 ~~(2933)~~ RELATED MEMBER. A person that, with respect
20 to the taxpayer any time during the taxable year, is a related
21 entity as defined in this section, a component member as
22 defined in 26 U.S.C. § 1563(b) of a controlled group of which
23 the taxpayer is also a component, or is a person to or from
24 whom there is attribution of stock ownership in accordance
25 with 26 U.S.C. § 1563(e).

26 ~~(3034)~~ RENEWABLE ENERGY RESOURCES. Wind, biomass,
27 black liquor, tidal or ocean current, geothermal, solar

1 energy, small irrigation, municipal solid waste, and
2 hydropower production, and such term also includes hydrogen
3 when derived or produced from some other renewable energy
4 resource.

5 (~~31~~35) REPORT FROM SOURCE. All individuals,
6 corporations, associations, and partnerships, in whatever
7 capacity acting, including lessees or mortgagors of real or
8 personal property, fiduciaries, employers, and all other
9 officers and employees of the state or of any municipal
10 corporation or political subdivision of the state having
11 control, receipt, custody, or payment of interest, rent,
12 salaries, wages, premiums, annuities, compensation,
13 remunerations, emoluments, barter income, or other fixed or
14 determinable annual or periodical gains, profits, and income
15 taxable under this chapter.

16 (~~32~~36) RESIDENT ESTATE. The estate of any person who
17 was a resident of Alabama at the time of his or her death.

18 (~~33~~37) RESIDENT TRUST. A trust is a resident trust
19 for a taxable year if it is a trust which meets both a. and
20 b.:

21 a. The trust is created by the will of a decedent
22 who was an Alabama resident at death or by a person who was an
23 Alabama resident at the time such trust became irrevocable;
24 and

25 b. For more than seven months during such taxable
26 year, a person, as defined in this section, who either resides
27 in or is domiciled in Alabama is either a fiduciary of the

1 trust or a beneficiary of the trust to whom distributions
2 currently may be made.

3 (3438) SMALL IRRIGATION. An irrigation system canal
4 or ditch in Alabama which does not include a dam or
5 impoundment of water, including, but not limited to,
6 facilities in Alabama described in 26 U.S.C. § 45(c)(5).

7 (3539) SUBCHAPTER K ENTITY. A partnership, including
8 a limited partnership or limited liability partnership,
9 limited liability company, or any other entity subject to
10 subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701 to
11 761, for federal income tax purposes, not including a single
12 member limited liability company.

13 (3640) TAXABLE YEAR. The calendar year or the fiscal
14 year ending during the calendar year upon the basis of which
15 net income is computed, or a period of less than 12 months
16 resulting from a change in accounting period as provided in
17 Section 40-18-30.

18 (41) TAX HAVEN. A jurisdiction that, during the tax
19 year in question, has no or nominal effective tax on the
20 relevant income and:

21 (i) has laws or practices that prevent effective
22 exchange of information for tax purposes with other
23 governments on taxpayers benefiting from the tax regime;

24 (ii) has a tax regime that lacks transparency. A tax
25 regime lacks transparency if the details of the legislative,
26 legal or administrative provisions are not open and apparent
27 or are not consistently applied among similarly situated

1 taxpayers, or if the information needed by tax authorities to
2 determine a taxpayer's correct tax liability, such as
3 accounting records and underlying documentation, is not
4 adequately available;

5 (iii) facilitates the establishment of foreign-owned
6 entities without the need for a local substantive presence or
7 prohibits these entities from having any commercial impact on
8 the local economy;

9 (iv) explicitly or implicitly excludes the
10 jurisdiction's resident taxpayers from taking advantage of the
11 tax regime's benefits or prohibits enterprises that benefit
12 from the regime from operating in the jurisdiction's domestic
13 market; or

14 (v) has created a tax regime which is favorable for
15 tax avoidance, based upon an overall assessment of relevant
16 factors, including whether the jurisdiction has a significant
17 untaxed offshore financial/other services sector relative to
18 its overall economy.

19 ~~(3742) TAXPAYER. Any person subject to a tax imposed~~
20 ~~by this chapter, or whose income is, in whole or in part,~~
21 ~~subject to a tax imposed by this chapter. Any person subject~~
22 ~~to the tax imposed by Section 40-18-2.~~

23 ~~(3843) TRUST. Any entity which is a trust for~~
24 ~~federal income tax purposes.~~

25 (44) UNITARY BUSINESS. A single economic enterprise
26 that is made up of either of separate parts of a single
27 business entity or of a commonly controlled group of business

1 entities that are sufficiently interdependent, integrated and
2 interrelated through their activities so as to provide a
3 synergy and mutual benefit that produces a sharing or exchange
4 of value among them and a significant flow of value to the
5 separate parts. Any business conducted by a partnership shall
6 be treated as conducted by its partners, whether directly held
7 or indirectly held through a series of partnerships, to the
8 extent of the partner's distributive share of the
9 partnership's income, regardless of the percentage of the
10 partner's ownership interest or its distributive share or any
11 other share of partnership income. A business conducted
12 directly or indirectly by one corporation is unitary with that
13 portion of a business conducted by another corporation through
14 its direct or indirect interest in a partnership if the
15 conditions of the first sentence of this subdivision are
16 satisfied, to wit: there is a synergy, and exchange and flow
17 of value between the two parts of the business and the two
18 corporations are members of the same commonly controlled
19 group.

20 (45) UNITED STATES. The 50 states of the United
21 States, the District of Columbia, and United States'
22 territories and possessions."

23 "§40-18-30.

24 (a) ~~Taxpayer filing separate returns~~ Return when
25 accounting period changes. If a taxpayer, with the approval of
26 the Department of Revenue, changes the basis of computing
27 taxable income from the fiscal year to the calendar year, a

1 separate return shall be filed for the period between the
2 close of the last fiscal year for which return shall be made
3 and the following December 31. If the change is made from the
4 calendar year to the fiscal year, a separate return shall be
5 filed for the period between the close of the last calendar
6 year for which return was filed and the date designated as the
7 close of the last fiscal year. If the change is made from one
8 fiscal year to another fiscal year, a separate return shall be
9 filed for the period between the close of the former fiscal
10 year and the date designated as the close of the new fiscal
11 year. If a taxpayer filing the taxpayer's first return for
12 income tax keeps accounts on the basis of a fiscal year, the
13 taxpayer shall file a separate return for the period between
14 the beginning of a calendar year in which such fiscal year
15 ends and the end of such fiscal year. In all of the above
16 cases the taxable income shall be computed on the basis of
17 such period for which the separate return is filed, and the
18 tax shall be paid thereon at the rate in effect during the
19 calendar year in which such period is included; and, except
20 for the period during which the taxpayer dies, the exemptions
21 allowed in this chapter shall be reduced respectively to
22 amounts which bear the same ratio to the full exemptions
23 provided for as the number of months in such period to 12
24 months.

25 ~~(b) Corporations filing Alabama consolidated~~
26 ~~returns. If a corporation changes the basis of computing its~~
27 ~~income from the fiscal year to the calendar year by virtue of~~

1 ~~its election to file an Alabama consolidated return under~~
2 ~~Section 40-18-39, an Alabama consolidated return shall be~~
3 ~~filed for the period between the close of the last fiscal year~~
4 ~~for which the return shall be filed and the following December~~
5 ~~31. If the change is made from the calendar year to the fiscal~~
6 ~~year, and the taxpayer elects to file an Alabama consolidated~~
7 ~~return under Section 40-18-39, an Alabama consolidated return~~
8 ~~shall be filed for the period between the close of the last~~
9 ~~calendar year for which the return was filed and the date~~
10 ~~designated as the close of the first fiscal year. If the~~
11 ~~change is made from one fiscal year to another fiscal year,~~
12 ~~and the taxpayer elects to file an Alabama consolidated return~~
13 ~~under Section 40-18-39, an Alabama consolidated return shall~~
14 ~~be filed for the period between the close of the former fiscal~~
15 ~~year and the date designated as the close of the new fiscal~~
16 ~~year for the Alabama affiliated group. If a taxpayer filing an~~
17 ~~initial return for income tax keeps accounts on the basis of a~~
18 ~~fiscal year, and the taxpayer elects to file an Alabama~~
19 ~~consolidated return under Section 40-18-39, the taxpayer shall~~
20 ~~file an Alabama consolidated return for the period between the~~
21 ~~beginning of the calendar year in which its fiscal year ends~~
22 ~~and the end of such fiscal year for the Alabama consolidated~~
23 ~~group. In all the above cases, the taxpayer's taxable income~~
24 ~~shall be computed on the basis of the period for which the~~
25 ~~Alabama consolidated return is filed, and the tax shall be~~
26 ~~paid thereon at the rate in effect during the calendar year in~~
27 ~~which such period is included.~~

1 "§40-18-31.

2 (a) A corporation subject to the tax imposed by
3 Section 40-18-2 shall pay a tax equal to six and one-half
4 percent of the taxable income of the corporation, as defined
5 in this chapter.

6 ~~(b) If the taxpayer elects to file an Alabama
7 consolidated return under Section 40-18-39, the tax shall be
8 assessed, collected, and paid annually for each taxable year
9 at the rate specified in subsection (a), upon and with respect
10 to the taxable income of the Alabama affiliated group.~~

11 (b) Combined reporting required. A taxpayer engaged
12 in a unitary business with one or more other corporations
13 shall file a combined report which includes the income,
14 determined under Section 40-18-36(c) (3), and apportionment
15 factors, determined under Sections 40-27-1 and 40-18-36(c) (2),
16 of all corporations, except those organizations described in
17 Section 40-18-32, that are members of the unitary business,
18 and such other information as required by the Commissioner.

19 (c) Combined reporting at Commissioner's discretion.
20 The Commissioner may, by regulation, require the combined
21 report to include the income and associated apportionment
22 factors of any persons that are not included pursuant to
23 subsection (b), but that are members of a unitary business, in
24 order to reflect proper apportionment of income of entire
25 unitary businesses. Authority to require combination by
26 regulation under this subsection (c) includes authority to
27 require combination of persons that are not, or would not be

1 if doing business in this state, subject to the taxes levied
2 in this Chapter.

3 (1) In addition, if the Commissioner determines that
4 the reported income or loss of a taxpayer engaged in a unitary
5 business with any person not included pursuant to subsection
6 (b) represents an avoidance or evasion of tax by such
7 taxpayer, the Commissioner may, on a case by case basis,
8 require all or any part of the income and associated
9 apportionment factors of such person be included in the
10 taxpayer's combined report.

11 (2) With respect to inclusion of associated
12 apportionment factors pursuant to subsection (c), the
13 Commissioner may require the exclusion of any one or more of
14 the factors, the inclusion of one or more additional factors
15 which will fairly represent the taxpayer's business activity
16 in this state, or the employment of any other method to
17 effectuate a proper reflection of the total amount of income
18 subject to apportionment and an equitable allocation and
19 apportionment of the taxpayer's income."

20 Section 2. Section 40-18-36 is added to the Code of
21 Alabama 1975, to read as follows:

22 "40-18-36. Determination of taxable income or loss
23 using combined report.

24 (a) The use of a combined report does not disregard
25 the separate identities of the taxpayer members of the
26 combined group.

1 (b) Each taxpayer member is responsible for tax
2 based on its taxable income or loss apportioned or allocated
3 to this state, which shall include, in addition to other types
4 of income, the taxpayer member's apportioned share of business
5 income of the combined group, where business income of the
6 combined group is calculated as a summation of the individual
7 net business incomes of all members of the combined group.

8 (c) A member's net business income is determined by
9 removing all but business income, expense and loss from that
10 member's total income, as provided in detail below.

11 (1) Components of income subject to tax in this
12 state; application of tax credits and post apportionment
13 deductions.

14 a. Each taxpayer member is responsible for tax based
15 on its taxable income or loss apportioned or allocated to this
16 state, which shall include:

17 1. its share of any business income apportionable to
18 this state of each of the combined groups of which it is a
19 member, determined under subdivision (2),

20 2. its share of any business income apportionable to
21 this state of a distinct business activity conducted within
22 and without the state wholly by the taxpayer member,
23 determined under Section 40-27-1,

24 3. its income from a business conducted wholly by
25 the taxpayer member entirely within the state,

1 4. its income sourced to this state from the sale or
2 exchange of capital or assets, and from involuntary
3 conversions, as determined under subparagraph (3)b.8. below,

4 5. its nonbusiness income or loss allocable to this
5 state, determined under Section 40-27-1,

6 6. its income or loss allocated or apportioned in an
7 earlier year, required to be taken into account as state
8 source income during the income year, other than a net
9 operating loss, and

10 7. its net operating loss carryover. If the taxable
11 income computed pursuant to subsection (c) results in a loss
12 for a taxpayer member of the combined group, that taxpayer
13 member has an Alabama net operating loss (NOL), subject to the
14 net operating loss limitations, carryforward provisions of
15 Section 40-18-35.1. Such NOL is applied as a deduction in a
16 prior or subsequent year only if that taxpayer has Alabama
17 source positive net income, whether or not the taxpayer is or
18 was a member of a combined reporting group in the prior or
19 subsequent year.

20 b. Except where otherwise provided, no tax credit or
21 post-apportionment deduction earned by one member of the
22 group, but not fully used by or allowed to that member, may be
23 used in whole or in part by another member of the group or
24 applied in whole or in part against the total income of the
25 combined group; and a post-apportionment deduction carried
26 over into a subsequent year as to the member that incurred it,
27 and available as a deduction to that member in a subsequent

1 year, will be considered in the computation of the income of
2 that member in the subsequent year, regardless of the
3 composition of that income as apportioned, allocated or wholly
4 within this state.

5 (2) Determination of taxpayer's share of the
6 business income of a combined group apportionable to this
7 state. The taxpayer's share of the business income
8 apportionable to this state of each combined group of which it
9 is a member shall be the product of:

10 a. the business income of the combined group,
11 determined under subdivision (3), and

12 b. the taxpayer member's apportionment percentage,
13 determined under Chapter 27, including in the property,
14 payroll and sales factor numerators the taxpayer's property,
15 payroll and sales, respectively, associated with the combined
16 group's unitary business in this state, and including in the
17 denominator the property, payroll and sales of all members of
18 the combined group, including the taxpayer, which property,
19 payroll and sales are associated with the combined group's
20 unitary business wherever located. The property, payroll, and
21 sales of a partnership shall be included in the determination
22 of the partner's apportionment percentage in proportion to a
23 ratio the numerator of which is the amount of the partner's
24 distributive share of partnership's unitary income included in
25 the income of the combined group in accordance with
26 subparagraph (3)b.4. and the denominator of which is the
27 amount of the partnership's total unitary income.

1 (3) Determination of the business income of the
2 combined group. The business income of a combined group is
3 determined as follows:

4 a. From the total income of the combined group,
5 determined under paragraph (3)b., subtract any income, and add
6 any expense or loss, other than the business income, expense
7 or loss of the combined group.

8 b. Except as otherwise provided, the total income of
9 the combined group is the sum of the income of each member of
10 the combined group determined under federal income tax laws,
11 as adjusted for state purposes, as if the member were not
12 consolidated for federal purposes. The income of each member
13 of the combined group shall be determined as follows:

14 1. For any member incorporated in the United States,
15 or included in a consolidated federal corporate income tax
16 return, the income to be included in the total income of the
17 combined group shall be the taxable income for the corporation
18 after making appropriate adjustments under Sections 40-18-34
19 and 40-18-35.

20 2. For any member not included in subparagraph
21 (3)b.1., the income to be included in the total income of the
22 combined group shall be determined as follows:

23 (i) A profit and loss statement shall be prepared
24 for each foreign branch or corporation in the currency in
25 which the books of account of the branch or corporation are
26 regularly maintained.

1 (ii) Adjustments shall be made to the profit and
2 loss statement to conform it to the accounting principles
3 generally accepted in the United States for the preparation of
4 such statements except as modified by this title.

5 (iii) Adjustments shall be made to the profit and
6 loss statement to conform it to the tax accounting standards
7 required by this title.

8 (iv) Except as otherwise provided by regulation, the
9 profit and loss statement of each member of the combined
10 group, and the apportionment factors related thereto, whether
11 United States or foreign, shall be translated into the
12 currency in which the parent company maintains its books and
13 records.

14 (v) Income apportioned to this state shall be
15 expressed in United States dollars.

16 3. In lieu of the procedures set forth in
17 subparagraph (3)b.2., above, and subject to the determination
18 of the Commissioner that it reasonably approximates income as
19 determined under this title any member not included in
20 subparagraph (3)b.1., may determine its income on the basis of
21 the consolidated profit and loss statement which includes the
22 member and which is prepared for filing with the Securities
23 and Exchange Commission by related corporations. If the member
24 is not required to file with the Securities and Exchange
25 Commission, the Commissioner may allow the use of the
26 consolidated profit and loss statement prepared for reporting
27 to shareholders and subject to review by an independent

1 auditor. If above statements do not reasonably approximate
2 income as determined under this title, the Commissioner may
3 accept those statements with appropriate adjustments to
4 approximate that income.

5 4. If a unitary business includes income from a
6 partnership, the income to be included in the total income of
7 the combined group shall be the member of the combined group's
8 direct and indirect distributive share of the partnership's
9 unitary business income.

10 5. All dividends paid by one to another of the
11 members of the combined group shall, to the extent those
12 dividends are paid out of the earnings and profits of the
13 unitary business included in the combined report, in the
14 current or an earlier year, be eliminated from the income of
15 the recipient. This provision shall not apply to dividends
16 received from members of the unitary business which are not a
17 part of the combined group.

18 6. Except as otherwise provided by regulation,
19 business income from an intercompany transaction between
20 members of the same combined group shall be deferred in a
21 manner similar to 26 C.F.R. 1.1502-13. Upon the occurrence of
22 any of the following events, deferred business income
23 resulting from an intercompany transaction between members of
24 a combined group shall be restored to the income of the
25 seller, and shall be apportioned as business income earned
26 immediately before the event:

1 (i) the object of a deferred intercompany
2 transaction is (1) re-sold by the buyer to an entity that is
3 not a member of the combined group, (2) re-sold by the buyer
4 to an entity that is a member of the combined group for use
5 outside the unitary business in which the buyer and seller are
6 engaged, or (3) converted by the buyer to a use outside the
7 unitary business in which the buyer and seller are engaged, or

8 (ii) the buyer and seller are no longer members of
9 the same combined group, regardless of whether the members
10 remain unitary.

11 7. A charitable expense incurred by a member of a
12 combined group shall, to the extent allowable as a deduction
13 pursuant to Internal Revenue Code Section 170, be subtracted
14 first from the business income of the combined group (subject
15 to the income limitations of that section applied to the
16 entire business income of the group), and any remaining amount
17 shall then be treated as a nonbusiness expense allocable to
18 the member that incurred the expense (subject to the income
19 limitations of that section applied to the nonbusiness income
20 of that specific member). Any charitable deduction disallowed
21 under the foregoing rule, but allowed as a carryover deduction
22 in a subsequent year, shall be treated as originally incurred
23 in the subsequent year by the same member, and the rules of
24 this section shall apply in the subsequent year in determining
25 the allowable deduction in that year.

26 8. Gain or loss from the sale or exchange of capital
27 assets, property described by Internal Revenue Code Section

1 1231(a)(3), and property subject to an involuntary conversion,
2 shall be removed from the total separate net income of each
3 member of a combined group and shall be apportioned and
4 allocated as follows:

5 (i) For each class of gain or loss (short term
6 capital, long term capital, Internal Revenue Code Section
7 1231, and involuntary conversions) all members' business gain
8 and loss for the class shall be combined (without netting
9 between such classes), and each class of net business gain or
10 loss separately apportioned to each member using the member's
11 apportionment percentage determined under subdivision (2),
12 above.

13 (ii) Each taxpayer member shall then net its
14 apportioned business gain or loss for all classes, including
15 any such apportioned business gain and loss from other
16 combined groups, against the taxpayer member's nonbusiness
17 gain and loss for all classes allocated to this state, using
18 the rules of Internal Revenue Code Sections 1231 and 1222,
19 without regard to any of the taxpayer member's gains or losses
20 from the sale or exchange of capital assets, Section 1231
21 property, and involuntary conversions which are nonbusiness
22 items allocated to another state.

23 (iii) Any resulting state source income (or loss, if
24 the loss is not subject to the limitations of Internal Revenue
25 Code Section 1211) of a taxpayer member produced by the
26 application of the preceding subsections shall then be applied
27 to all other state source income or loss of that member.

1 (iv) Any resulting state source loss of a member
2 that is subject to the limitations of Section 1211 shall be
3 carried forward by that member, and shall be treated as state
4 source short-term capital loss incurred by that member for the
5 year for which the carryover applies.

6 9. Any expense of one member of the unitary group
7 which is directly or indirectly attributable to the
8 nonbusiness or exempt income of another member of the unitary
9 group shall be allocated to that other member as corresponding
10 nonbusiness or exempt expense, as appropriate."

11 Section 3. Section 40-18-38 is added to the Code of
12 Alabama 1975, to read as follows:

13 "40-18-38. Water's-edge election; initiation and
14 withdrawal.

15 (a) Water's-edge election. Taxpayer members of a
16 unitary group that meet the requirements of subsection (b) may
17 elect to determine each of their apportioned shares of the net
18 business income or loss of the combined group pursuant to a
19 water's-edge election. Under such election, taxpayer members
20 shall take into account all or a portion of the income and
21 apportionment factors of only the following members otherwise
22 included in the combined group pursuant to Section 40-18-31,
23 as described below:

24 (1) the entire income and apportionment factors of
25 any member incorporated in the United States or formed under
26 the laws of any state, the District of Columbia, or any
27 territory or possession of the United States;

1 (2) the entire income and apportionment factors of
2 any member, regardless of the place incorporated or formed, if
3 the average of its property, payroll, and sales factors within
4 the United States is 20 percent or more;

5 (3) the entire income and apportionment factors of
6 any member which is a domestic international sales corporation
7 as described in Internal Revenue Code Sections 991 to 994,
8 inclusive; a foreign sales corporation as described in
9 Internal Revenue Code Sections 921 to 927, inclusive; or any
10 member which is an export trade corporation, as described in
11 Internal Revenue Code Sections 970 to 971, inclusive;

12 (4) any member not described in subdivision (1),
13 subdivision (2) and subdivision (3), inclusive, shall include
14 the portion of its income derived from or attributable to
15 sources within the United States, as determined under the
16 Internal Revenue Code without regard to federal treaties, and
17 its apportionment factors related thereto;

18 (5) any member that is a "controlled foreign
19 corporation," as defined in Internal Revenue Code Section 957,
20 to the extent of the income of that member that is defined in
21 Section 952 of Subpart F of the Internal Revenue Code
22 ("Subpart F income") not excluding lower-tier subsidiaries'
23 distributions of such income which were previously taxed,
24 determined without regard to federal treaties, and the
25 apportionment factors related to that income; any item of
26 income received by a controlled foreign corporation shall be
27 excluded if such income was subject to an effective rate of

1 income tax imposed by a foreign country greater than 90
2 percent of the maximum rate of tax specified in Internal
3 Revenue Code Section 11;

4 (6) any member that earns more than 20 percent of
5 its income, directly or indirectly, from intangible property
6 or service related activities that are deductible against the
7 business income of other members of the combined group, to the
8 extent of that income and the apportionment factors related
9 thereto; and

10 (7) the entire income and apportionment factors of
11 any member that is doing business in a tax haven, where "doing
12 business in a tax haven" is defined as being engaged in
13 activity sufficient for that tax haven jurisdiction to impose
14 a tax under United States constitutional standards. If the
15 member's business activity within a tax haven is entirely
16 outside the scope of the laws, provisions and practices that
17 cause the jurisdiction to meet the criteria established in the
18 definition of a tax haven pursuant to Section 40-18-1, the
19 activity of the member shall be treated as not having been
20 conducted in a tax haven.

21 (b) Initiation and withdrawal of election.

22 (1) A water's-edge election is effective only if
23 made on a timely-filed, original return for a tax year by
24 every member of the unitary business subject to tax under this
25 chapter. The Commissioner shall develop rules and regulations
26 governing the impact, if any, on the scope or application of a
27 water's-edge election, including termination or deemed

1 election, resulting from a change in the composition of the
2 unitary group, the combined group, the taxpayer members, and
3 any other similar change.

4 (2) Such election shall constitute consent to the
5 reasonable production of documents and taking of depositions
6 in accordance with Section 40-2A-7(a).

7 (3) In the discretion of the Commissioner, a
8 water's-edge election may be disregarded in whole or in part,
9 and the income and apportionment factors of any member of the
10 taxpayer's unitary group may be included in the combined
11 report without regard to the provisions of this section, if
12 any member of the unitary group fails to comply with any
13 provision of this act or if a person otherwise not included in
14 the water's-edge combined group was availed of with a
15 substantial objective of avoiding state income tax.

16 (4) A water's-edge election is binding for and
17 applicable to the tax year it is made and all tax years
18 thereafter for a period of 10 years. It may be withdrawn or
19 reinstated after withdrawal, prior to the expiration of the
20 10 year period, only upon written request for reasonable cause
21 based on extraordinary hardship due to unforeseen changes in
22 state tax statutes, law, or policy, and only with the written
23 permission of the Commissioner. If the Commissioner grants a
24 withdrawal of election, he or she shall impose reasonable
25 conditions as necessary to prevent the evasion of tax or to
26 clearly reflect income for the election period prior to or
27 after the withdrawal. Upon the expiration of the 10 year

1 period, a taxpayer may withdraw from the water's edge
2 election. Such withdrawal must be made in writing within one
3 year of the expiration of the election, and is binding for a
4 period of 10 years, subject to the same conditions as applied
5 to the original election. If no withdrawal is properly made,
6 the water's edge election shall be in place for an additional
7 10 year period, subject to the same conditions as applied to
8 the original election."

9 Section 4. Section 40-18-38.1 is added to the Code
10 of Alabama 1975, to read as follows:

11 40-18-38.1. Affiliated group election; initiation
12 and withdrawal.

13 (a) Affiliated group election. A taxpayer may elect,
14 without the consent of the commissioner, to treat as its
15 combined group all corporations that are members of its
16 affiliated group. The corporations referred to above shall
17 include members of such affiliated group that are subject to
18 tax or that would be subject to tax if doing business in the
19 state under Section 40-18-2, but not including members that
20 are or would be exempt pursuant to Section 40-18-32. Such
21 affiliated group shall calculate taxable income in accordance
22 with Section 40-18-36, provided that all income of all group
23 members, whether or not such income would otherwise be subject
24 to apportionment or would be allocable to a particular state
25 in the absence of an election under this section, shall be
26 treated as apportionable income for purposes of returns filed
27 pursuant to an election under this section.

1 (b) Initiation and withdrawal of election.

2 (1) The affiliated group election is effective if
3 made on an original, timely filed return by any member of the
4 combined group. Any corporation entering an affiliated group
5 subsequent to the year of election must be included in the
6 combined group and is considered to have waived any objection
7 to its inclusion in the combined group.

8 (2) An affiliated group election is binding for and
9 applicable to the tax year for which it is made and all tax
10 years thereafter for a period of 10 years. An election may be
11 revoked, or renewed for another 10 taxable years, without the
12 consent of the commissioner after it has been in effect for 10
13 taxable years, provided however that in the case of a
14 revocation a new election under this section shall not be
15 permitted in any of the immediately following three tax years.
16 The revocation or renewal shall be made on an original, timely
17 filed return for the first tax year after the completion of a
18 10-year period for which an election under this subsection was
19 in place.

20 Section 5. Section 40-18-39, Code of Alabama 1975,
21 is hereby amended to read as follows:

22 "§40-18-39.

23 (a) ~~Except as provided in subsection (c),~~ Every
24 corporation, joint stock company, or association subject to
25 income tax under this chapter shall file a return with the
26 Department of Revenue for each taxable year, stating
27 specifically the items of its gross income and the deductions

1 and credits allowed by this chapter. In cases where receivers,
2 trustees in bankruptcy, or assignees are operating the
3 property or business of corporations, such receivers,
4 trustees, or assignees shall file returns for such
5 corporations in the same manner and form as corporations are
6 required to file returns. Any tax due on the basis of such
7 returns filed by receivers, trustees, or assignees shall be
8 collected in the same manner as if collected from the
9 corporations of whose business or property they have custody
10 and control. Returns filed on the basis of the calendar year
11 shall be filed on or before March 15 following the close of
12 the calendar year. Returns filed on the basis of a fiscal year
13 shall be filed on or before the fifteenth day of the third
14 month following the close of the fiscal year. The Department
15 of Revenue may grant a reasonable extension of time for filing
16 returns under such rules and regulations as it shall
17 prescribe. Except in the case of taxpayers who are abroad, no
18 such extension shall be for more than six months.

19 ~~(b) As used in this chapter, unless the context~~
20 ~~requires otherwise:~~

21 ~~(1) "Alabama affiliated group" means a group of~~
22 ~~corporations, each member of which is subject to tax under~~
23 ~~Section 40-18-31 and Public Law 86-272 (15 U.S.C. §§ 381-384),~~
24 ~~which are members of an affiliated group as defined in 26~~
25 ~~U.S.C. § 1504 and which affiliated group files a federal~~
26 ~~consolidated corporate income tax return, each member of~~
27 ~~which:~~

- 1 ~~a. Has the same taxable year;~~
- 2 ~~b. Is a member of the group for the entire taxable~~
3 ~~year or was a member of the group for a portion of the taxable~~
4 ~~year if the member was subject to Section 40-18-31 during the~~
5 ~~entire portion of the taxable year during which it was not a~~
6 ~~member of the federal consolidated group;~~
- 7 ~~c. Apportions Alabama taxable income or loss~~
8 ~~separately for each corporation;~~
- 9 ~~d. Allocates taxable income or loss separately for~~
10 ~~each corporation in accordance with Section 40-27-1, Article~~
11 ~~IV;~~
- 12 ~~e. Computes apportionable income or loss utilizing~~
13 ~~separate apportionment factors for each corporation in~~
14 ~~accordance with Section 40-27-1, Article IV; and~~
- 15 ~~f. Combines and reports taxable income or loss~~
16 ~~computed in accordance with paragraphs c through e of this~~
17 ~~subsection on a single return for the Alabama affiliated~~
18 ~~group; and which includes all members of the affiliated group~~
19 ~~included on the federal consolidated income tax return that~~
20 ~~are eligible under this section to be included in the Alabama~~
21 ~~affiliated group; but shall not include corporations subject~~
22 ~~to the insurance premium license tax imposed by Section~~
23 ~~27-4A-1 et seq. or the financial institution excise tax~~
24 ~~imposed by Section 40-16-1 et seq.~~

25 ~~(2) "Alabama consolidated return" means an Alabama~~
26 ~~corporation income tax return filed by or on behalf of the~~
27 ~~members of an Alabama affiliated group in accordance with this~~

1 section, pursuant to an election made under subsection (c)
2 below.

3 ~~(3) "Separate return" means an Alabama corporation~~
4 ~~income tax return filed by a single corporation in accordance~~
5 ~~with this chapter.~~

6 ~~(4) "Common parent" shall have the meaning given to~~
7 ~~that term by 26 U.S.C. § 1504(a).~~

8 ~~(5) "Treasury regulations" means final and temporary~~
9 ~~regulations now or hereafter promulgated by the U.S. Treasury~~
10 ~~Department pursuant to 26 U.S.C. § 1501 et seq. References to~~
11 ~~applicable Internal Revenue Code sections in this section~~
12 ~~shall include the related Treasury regulations.~~

13 (b) Designation of Surety. As a filing convenience,
14 and without changing the respective liability of the group
15 members, members of a combined reporting group may annually
16 elect to designate one taxpayer member of the combined group
17 to file a single return in the form and manner prescribed by
18 the department, in lieu of filing their own respective
19 returns, provided that the taxpayer designated to file the
20 single return consents to act as surety with respect to the
21 tax liability of all other taxpayers properly included in the
22 combined report, and agrees to act as agent on behalf of those
23 taxpayers for the year of the election for tax matters
24 relating to the combined report for that year. If for any
25 reason the surety is unwilling or unable to perform its
26 responsibilities, tax liability may be assessed against the
27 taxpayer members.

1 ~~(c)(1) An Alabama affiliated group filing or~~
2 ~~required to file a federal consolidated income tax return may~~
3 ~~elect to file an Alabama consolidated return for the same~~
4 ~~taxable year. However, under no circumstances may the~~
5 ~~Department of Revenue compel a taxpayer to file an Alabama~~
6 ~~consolidated return if the taxpayer has not so elected.~~

7 ~~(2) Notwithstanding any provision in this section to~~
8 ~~the contrary, foreign corporations that are members of an~~
9 ~~Alabama affiliated group electing to file an Alabama~~
10 ~~consolidated return and not otherwise subject to the business~~
11 ~~privilege tax levied by Section 40-14A-22 shall not become~~
12 ~~subject to the business privilege tax by virtue of being a~~
13 ~~member of an Alabama affiliated group filing an Alabama~~
14 ~~consolidated return.~~

15 ~~(3) All transactions between and among members of~~
16 ~~the Alabama affiliated group shall be reported on an arm's~~
17 ~~length basis consistent with subsection (j) in determining the~~
18 ~~property, payroll, and sales factors of each member of the~~
19 ~~Alabama affiliated group, in determining the separate~~
20 ~~allocation and apportionment of income and loss by each member~~
21 ~~of the Alabama affiliated group, and in computing taxable~~
22 ~~income in accordance with Section 40-18-33.~~

23 ~~(4) The election made in accordance with this~~
24 ~~subsection shall be filed by the common parent of the Alabama~~
25 ~~affiliated group as agent for all members of the Alabama~~
26 ~~affiliated group, on a form prescribed by the Department of~~
27 ~~Revenue. If the common parent is not a member of the Alabama~~

1 ~~affiliated group, the members shall designate to the~~
2 ~~Department of Revenue which member of the Alabama affiliated~~
3 ~~group shall serve in that role for purposes of this section.~~
4 ~~The election and designation of common parent, if required,~~
5 ~~shall be filed with the department on or before the due date~~
6 ~~of the Alabama consolidated return, including extensions, for~~
7 ~~the first taxable year for which the election is made and is~~
8 ~~to be effective.~~

9 ~~(5) Each member of the Alabama affiliated group~~
10 ~~shall determine and allocate and apportion its separate income~~
11 ~~and loss under Chapter 27 before consolidation. For purposes~~
12 ~~of allocation and apportionment, each member of the Alabama~~
13 ~~affiliated group shall be considered a separate taxpayer. Any~~
14 ~~taxable loss of a member of the Alabama affiliated group shall~~
15 ~~be deductible against the taxable income of any other member~~
16 ~~of the Alabama affiliated group only if and to the extent such~~
17 ~~loss is apportioned and allocated to Alabama.~~

18 ~~(6) The tax liability of the Alabama affiliated~~
19 ~~group shall be determined by applying the rate specified in~~
20 ~~Section 40-18-31 to the taxable income of the Alabama~~
21 ~~affiliated group. The separate taxable income or loss of each~~
22 ~~corporation that is included in the Alabama affiliated group~~
23 ~~shall be included in the consolidated taxable income or loss~~
24 ~~to the extent that its taxable income or loss is separately~~
25 ~~apportioned or allocated to the State of Alabama. The separate~~
26 ~~taxable income or loss of each member of the Alabama~~
27 ~~affiliated group, and the separate business and nonbusiness~~

1 ~~income of each member, shall be computed and determined in~~
2 ~~accordance with this chapter and with the rules of allocation~~
3 ~~and apportionment under Section 40-27-1, Article IV, and the~~
4 ~~regulations promulgated thereunder by the Department of~~
5 ~~Revenue.~~

6 ~~(7) Any election to file an Alabama consolidated~~
7 ~~return pursuant to this subsection shall be binding on both~~
8 ~~the Department of Revenue and the Alabama affiliated group for~~
9 ~~a period beginning with the first month of the first taxable~~
10 ~~year for which the election is made and ending with the~~
11 ~~conclusion of the taxable year in which the one hundred~~
12 ~~twentieth consecutive calendar month expires, except that the~~
13 ~~election shall terminate automatically upon the revocation or~~
14 ~~termination of its federal consolidated return election. If an~~
15 ~~election made pursuant to this subsection is terminated by an~~
16 ~~Alabama affiliated group by virtue of the revocation or~~
17 ~~termination of its federal or Alabama consolidated return~~
18 ~~election, no member of the Alabama affiliated group may be~~
19 ~~included in an Alabama consolidated return filed by the~~
20 ~~Alabama affiliated group, or by another Alabama affiliated~~
21 ~~group with the same common parent or a successor to the same~~
22 ~~common parent, before the sixty-first month beginning after~~
23 ~~the first taxable year for which the election was revoked;~~
24 ~~provided, however, that the Department of Revenue may waive~~
25 ~~application of this provision to any corporation or Alabama~~
26 ~~affiliated group for any period, consistent with the~~
27 ~~provisions of 26 U.S.C. § 1504.~~

1 ~~(8) An Alabama affiliated group that has made an~~
2 ~~Alabama consolidated return election under this subsection~~
3 ~~shall be assessed an annual fee for the privilege of filing an~~
4 ~~Alabama consolidated return, which shall be assessed, col-~~
5 ~~lected, and distributed as an income tax but shall be due and~~
6 ~~payable at the time the return is due, including any exten-~~
7 ~~sions thereof. The annual fee shall be a graduated fee based~~
8 ~~upon the aggregate amount of total assets, determined in ac-~~
9 ~~cordance with Treasury Department Form 1120 or any successor~~
10 ~~form, of the Alabama affiliated group for the taxable year to~~
11 ~~which the fee relates, as set out below:~~

Total Assets	Annual Fee
\$0 to \$2,500,000	\$5,000
\$2,500,001 to \$5,000,000	\$10,000
\$5,000,001 to \$7,500,000	\$15,000
\$7,500,001 to \$10,000,000	\$20,000
\$10,000,001 and over	\$25,000

18 ~~(d) Each corporation included as part of an Alabama~~
19 ~~affiliated group filing an Alabama consolidated return shall~~
20 ~~be jointly and severally liable for the Alabama income tax~~
21 ~~liability of the Alabama affiliated group with respect to the~~
22 ~~taxable year, and the fee prescribed above, except that any~~
23 ~~corporation which was not a member of the Alabama affiliated~~

1 group for the entire taxable year shall be jointly and
2 severally liable only for the portion of the Alabama
3 consolidated income tax liability attributable to that portion
4 of the year during which the corporation was a member of the
5 Alabama affiliated group, prorated on a daily basis.

6 (e) Every corporation return or report required by
7 this chapter shall be executed by one of the following
8 officers of the corporation: The president, vice-president,
9 secretary, treasurer, assistant secretary, assistant
10 treasurer, or chief accounting or financial officer, except
11 that in the case of an Alabama affiliated group filing an
12 Alabama consolidated return, one of the above-described
13 officers of the common parent of the Alabama affiliated group
14 may execute the return on behalf of the Alabama affiliated
15 group. The Department of Revenue may require a further or
16 supplemental report of information and data necessary for
17 computation of the tax.

18 (f) If the taxpayer has requested an extension of
19 time for the filing of a separate or Alabama consolidated
20 return, the period during which such return will be considered
21 timely filed shall not expire until 10 days after the
22 Department of Revenue mails to the taxpayer a rejection of its
23 request for an extension of time for filing such return.

24 (g) If, in a taxable year preceding the filing of
25 the first Alabama consolidated return for the Alabama
26 affiliated group of which the corporation is a member, (1) the
27 corporation realized a gain or loss on a transaction; (2) the

1 corporation was subject to tax under Section 40-18-31 in the
2 year; (3) the transaction was treated as a deferred
3 intercompany transaction for federal income tax purposes; and
4 (4) the transaction was not deferred for Alabama income tax
5 purposes, the taxable income and basis in the hands of the
6 Alabama affiliated group shall be adjusted to reflect the
7 different treatment of the transaction and any property
8 acquired or disposed of in the transaction.

9 (h) If, in a taxable year before the corporation
10 became a member of an Alabama affiliated group that has
11 elected to file an Alabama consolidated return, the
12 corporation incurred a net operating loss, the deductibility
13 of the loss on the Alabama consolidated return shall be
14 limited to only the amount necessary to reduce to zero the
15 Alabama taxable income, calculated on a separate return basis,
16 of the corporation that incurred the net operating loss.
17 Except as provided in the preceding sentence, the separate
18 return limitation year ("SRLY") rules contained in 26 U.S.C. §
19 1502 shall apply.

20 (i) Nothing in this section shall be construed as
21 allowing or requiring the filing of a combined income tax
22 return under the unitary business concept.

23 (j) The Department of Revenue shall promulgate
24 regulations interpreting the provisions of this section that
25 are consistent, to the maximum extent possible, with
26 applicable Treasury regulations. The regulations shall further
27 provide that, if the commissioner, for the tax year in

1 ~~question, establishes that one or more members of an Alabama~~
2 ~~affiliated group have engaged in any nonarm's-length~~
3 ~~transaction that causes a material distortion of income~~
4 ~~allocated or apportioned to this state, the commissioner may~~
5 ~~deny retroactively, for the taxable year or years in which the~~
6 ~~material distortion occurs or occurred, the consolidation~~
7 ~~election of any member of an Alabama affiliated group, in~~
8 ~~order to fairly represent the tax base attributable to this~~
9 ~~state.~~

10 ~~(k) Notwithstanding subdivision (c) (7), due to the~~
11 ~~material change in the criteria for qualification as a member~~
12 ~~of an Alabama affiliated group, an Alabama affiliated group~~
13 ~~filing an Alabama consolidated return under this section,~~
14 ~~prior to its amendment by Act 2001-1089, shall have the option~~
15 ~~either to terminate its election with respect to tax years~~
16 ~~after the period covered by the last Alabama consolidated~~
17 ~~return due under this section prior to its amendment, or to~~
18 ~~re-elect under the revised criteria imposed by Act 2001-1089~~
19 ~~and to begin another 120 calendar month election period. The~~
20 ~~decision of an Alabama affiliated group currently filing an~~
21 ~~Alabama consolidated income tax return to opt out of the~~
22 ~~Alabama consolidated return election shall be evidenced by~~
23 ~~written notice thereof to the department. Such notice shall be~~
24 ~~filed by March 15, 2002, or the due date, with extensions, of~~
25 ~~the last consolidated income tax return due to be filed under~~
26 ~~the law prior to its amendment by Act 2001-1089, whichever~~
27 ~~date occurs last. The failure to timely file such notice shall~~

1 ~~be deemed an election by those members of the Alabama~~
2 ~~affiliated group that are subject to tax under Section~~
3 ~~40-18-31 and otherwise qualify under this section as members~~
4 ~~of an Alabama affiliated group to file an Alabama consolidated~~
5 ~~return under this section, as amended, including a new~~
6 ~~120-calendar month election period under subdivision (c) (7).~~

7 Section 6. The Department of Revenue is hereby given
8 broad discretion to promulgate rules to facilitate the
9 transition from separate entity reported to unitary combined
10 reporting .

11 Section 7. The provisions of this act are severable.
12 If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 8. All laws or parts of laws which conflict
16 with this act are hereby repealed.

17 Section 9. This act shall become effective for all
18 taxable years beginning after December 31, 2014, following its
19 passage and approval by the Governor, or upon its otherwise
20 becoming law.