

1 HB286  
2 136685-2  
3 By Representative Love  
4 RFD: Ways and Means Education  
5 First Read: 09-FEB-12

1 ENGROSSED

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4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
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8 To amend Sections 40-18-14 and 40-18-21, Code of  
9 Alabama 1975, relating to the manner in which resident  
10 individual owners of Subchapter K entities and Alabama S  
11 corporations are taxed on the entity's income earned from  
12 sources outside of Alabama, to provide those owners, as well  
13 as resident beneficiaries of an estate or trust, with a credit  
14 equal to their proportionate share of certain income or gross  
15 profits taxes paid or accrued to other states or territories  
16 on behalf of the owners and a credit for a portion of income  
17 taxes paid or accrued to a foreign country with respect to the  
18 trade or business or investment income of such entity; and to  
19 require the Department of Revenue to report annually to the  
20 Legislature.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 40-18-14 and 40-18-21, Code of  
23 Alabama 1975, are amended to read as follows:

24 "§40-18-14.

25 "The term "gross income" as used herein:

26 "(1) Includes gains, profits and income derived from  
27 salaries, wages, or compensation for personal services of

1 whatever kind, or in whatever form paid, including the  
2 salaries, income, fees, and other compensation of state,  
3 county, and municipal officers and employees, or from  
4 professions, vocations, trades, business, commerce or sales,  
5 or dealings in property whether real or personal, growing out  
6 of ownership or use of or interest in such property; also from  
7 interest, royalties, rents, dividends, securities, or  
8 transactions of any business carried on for gain or profit and  
9 the income derived from any source whatever, including any  
10 income not exempted under this chapter and against which  
11 income there is no provision for a tax. The term "gross  
12 income" as used herein also includes alimony and separate  
13 maintenance payments to the extent they are includable in  
14 gross income for federal income tax purposes under 26 U.S.C. §  
15 71 (relating to alimony and separate maintenance payments).  
16 The term "gross income" as used herein also includes any  
17 amount included in gross income under 26 U.S.C. § 83 at the  
18 time it is so included under 26 U.S.C. § 83.

19 "(2) For purposes of this chapter, the reductions in  
20 tax attributes required by 26 U.S.C. § 108 shall be applied  
21 only to the net operating losses determined under this chapter  
22 and the basis of depreciable property. The basis reductions  
23 of depreciable property shall not exceed the basis reductions  
24 for federal income tax purposes. All other tax attribute  
25 reductions required by 26 U.S.C. § 108 shall not be  
26 recognized.

1           "(3) Gross income does not include the following  
2 items which shall be exempt from income tax under this  
3 chapter:

4           "a. Amounts received under life insurance policies  
5 and contracts paid by reason of the death of the insured in  
6 accordance with 26 U.S.C. § 101;

7           "b. Amounts received, other than amounts paid by  
8 reason of the death of the insured, under life insurance,  
9 endowment or annuity contracts, determined in accordance with  
10 26 U.S.C. § 72;

11           "c. The value of property acquired by gift, bequest,  
12 devise, or descent, but the income from such property shall be  
13 included in the gross income, in accordance with 26 U.S.C. §  
14 102;

15           "d. Interest upon obligations of the United States  
16 or its possessions; or securities issued under provisions of  
17 the Federal Farm Loan Act of July 18, 1916;

18           "e. Any amounts received by an individual which are  
19 excludable from gross income under 26 U.S.C. § 104 (relating  
20 to compensation for injuries or sickness) or 26 U.S.C. § 105  
21 (relating to amounts received under accident or health plans);

22           "f. Interest on obligations of the State of Alabama  
23 and any county, municipality, or other political subdivision  
24 thereof;

25           "g. The rental value of a parsonage provided to a  
26 minister of the gospel to the extent excludable under 26  
27 U.S.C. § 107;

1            "h. Income from discharge of indebtedness to the  
2 extent allowed by 26 U.S.C. § 108;

3            "i. For each individual resident taxpayer, or each  
4 husband and wife filing a joint income tax return, as the case  
5 may be, any gain realized from the sale of a personal  
6 residence of the taxpayer shall be excluded to the extent  
7 excludable for federal income tax purposes under 26 U.S.C. §  
8 121;

9            "j. Contributions made by an employer on behalf of  
10 an employee to a trust which is part of a qualified cash or  
11 deferred arrangement (as defined in 26 U.S.C. § 401(k)(2), or  
12 5 U.S.C. § 8437) under which the employee has an election  
13 whether the contribution will be made to the trust or received  
14 by the employee in cash and contributions made by an employer  
15 for an employee for an annuity contract, which contributions  
16 would be excludable from the gross income (for federal income  
17 tax purposes) of the employee in accordance with the  
18 provisions of 26 U.S.C. § 403(b). The limitations imposed by  
19 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

20            "k. Amounts that an employee is allowed to exclude  
21 from gross income for federal income tax purposes pursuant to  
22 26 U.S.C. § 125 (relating to cafeteria plans) and 26 U.S.C. §  
23 132 (relating to certain fringe benefits); and

24            "l. Amounts paid or incurred by an employer on  
25 behalf of an employee if the amounts may be excluded from  
26 gross income for federal income tax purposes by an employee

1 pursuant to 26 U.S.C. § 129 (relating to dependent care  
2 expenses).

3 "(4) The term "gross income," in the case of a  
4 resident individual, includes income from sources within and  
5 outside Alabama, ~~and~~ including without limitation, the  
6 resident's proportionate share of any income arising from a  
7 Subchapter K entity, Alabama S corporation, or estate or  
8 trust, regardless of the geographic source of the income. The  
9 term gross income, in the case of a nonresident individual,  
10 includes only income from property owned or business  
11 transacted in Alabama. For purposes of this article,  
12 proportionate share shall be defined by reference to (i) the  
13 status of the individual owner as a partner or member of a  
14 Subchapter K entity, shareholder of an Alabama S corporation,  
15 or beneficiary of an estate or trust, and (ii) the allocable  
16 interest in that entity owned by the individual.

17 "§40-18-21.

18 "(a) (1) For the purpose of ascertaining the income  
19 tax due under the provisions of this chapter by individual  
20 residents of Alabama whose gross income, as defined herein, is  
21 derived from sources both within and ~~without~~ outside the State  
22 of Alabama, there shall be allowed a credit against the amount  
23 of tax found to be due by such resident, on account of income  
24 derived from ~~without~~ outside the State of Alabama, the amount  
25 of income tax actually paid by such resident to any state or  
26 territory on account of business transacted or property held  
27 ~~without,~~ directly or indirectly, outside the State of Alabama.

1 Resident individual owners of Subchapter K entities, Alabama S  
2 corporations, and beneficiaries of estates or trusts who  
3 include their proportionate share of the income arising from  
4 one or more of these entities in their Alabama gross income  
5 shall be allowed a credit for their proportionate share of the  
6 income tax actually paid by the entity to any state or  
7 territory on account of business transacted or property held  
8 outside the State of Alabama, whether the payment was made on  
9 behalf of the resident individual owner or because the entity  
10 was not recognized by such state or territory as a non-taxable  
11 pass-through entity. For purposes of this subsection, income  
12 tax shall be defined to include, but not be limited to, any  
13 tax based in whole or in part on the entity's net income, net  
14 profits, or gross profits; provided, however, that the term  
15 income tax shall not include any tax based on the entity's net  
16 worth, capital, or asset values, and shall not include any tax  
17 for which an exclusion or deduction is claimed in the  
18 calculation of taxable income reported on the Alabama income  
19 tax return.

20 " (2) In case the amount of income tax actually paid  
21 by or on behalf of an individual resident of Alabama, or by  
22 one of the entities described in subdivision (a)(1) above, to  
23 another state or territory is in excess of the amount of tax  
24 that would be due on the same income computed ~~on the~~ using the  
25 applicable Alabama income tax ~~rate in Alabama~~ rates, then only  
26 such amount as would be due in this state on such taxable  
27 income shall be allowed as a credit. In no event shall the

1 credit for income taxes paid to another state exceed the  
2 amount of tax that would be due on the same taxable income  
3 computed using the applicable Alabama income tax rates.

4 "(3) If the amount of income tax actually paid by or  
5 on behalf of an individual resident of ~~this state~~ Alabama to  
6 any other state or territory on account of business transacted  
7 or property held is less than the amount of tax that would be  
8 due, as computed ~~on~~ using the applicable Alabama income tax  
9 rates, then the income tax levied herein shall be computed on  
10 the entire taxable income from sources from both within and  
11 ~~without~~ outside the state as defined herein, and the tax shall  
12 be paid less the credit allowed in this section for tax paid  
13 on income derived, directly or indirectly, from ~~without~~  
14 outside the state.

15 "(4) Before a resident of Alabama may claim the  
16 credit allowed under this subsection (a), he or she shall file  
17 with his or her Alabama income tax return a certificate  
18 showing the amount of gross and net income derived, directly  
19 or indirectly, from sources ~~without~~ outside this state,  
20 together with the amount of tax paid or to be paid on such  
21 income.

22 "(b) Any taxpayer described in Section 40-18-2(1) or  
23 Section 40-18-2(6), who, during any year, has been assessed a  
24 job development fee as described in Section 41-10-44.8(b),  
25 shall be allowed a credit against the amount of income tax due  
26 under the provisions of this chapter in such year in an amount



1 equal to the job development fee withheld from the taxpayer's  
2 wages during the year.

3 "(c) (1) A resident individual taxpayer, who is  
4 either a partner or member of a Subchapter K entity, a  
5 shareholder of an Alabama S corporation, or a beneficiary of  
6 an estate or trust, during all or part of a year, shall be  
7 allowed a credit equal to fifty percent (50%) of his or her  
8 proportionate share of the income taxes paid or accrued,  
9 including a payment recognized by 26 U.S.C. §901, to a foreign  
10 country with respect to the trade or business or investment  
11 income of such business, including related operations and  
12 affiliates, ~~whose income in the foreign country is all~~  
13 ~~principally related to the following 2002 North American~~  
14 ~~Industry Classification System Sectors and Subsectors in all~~  
15 ~~of the following manners:~~

16 ~~"a. The income must be related to Sector 21.~~

17 ~~"b. The income must be related to at least two of~~  
18 ~~the following Subsectors: 324, 325, 482, 483, and 486.~~

19 ~~"c. The income must be attributable to the foreign~~  
20 ~~country.~~

21 "(2) Notwithstanding the foregoing, the credit  
22 allowed in this subsection shall not exceed the amount of  
23 income tax that would otherwise be imposed by Alabama on the  
24 individual's income derived from the foreign country."

25 Section 2. The Department of Revenue shall report  
26 annually to the ~~Legislative Council~~ Legislature the extent to  
27 which credits for taxes paid to foreign countries are claimed

1 during the preceding tax year. The report shall be due on the  
2 fifth legislative day of each regular session and shall state  
3 the number of taxpayers who claim the credits and the total  
4 amount of credits claimed during the year.

5 Section 3. For purposes of Chapter 9 of Title 29 of  
6 the Code of Alabama 1975 cited as "The Education Trust Fund  
7 ~~Rolling Reserve Act,~~" ~~the funds received by the Education~~  
8 ~~Trust Fund under this act after September 30, 2012 shall be~~  
9 Rolling Reserve Act", and notwithstanding the provisions of  
10 Section 29-9-3(b) (4) Code of Alabama, 1975, the funds received  
11 by the Education Trust Fund under this act after September 30,  
12 2012 totals \$10,000,000 and shall be considered "New Recurring  
13 Revenue" as defined by Section 29-9-2 and be available for  
14 appropriation in FY 2013 because they will be deposited into  
15 the Education Trust Fund in FY 2013 for the first time due to  
16 a change in statute rather than by a Department of Revenue  
17 rule.

18 Section 4. The provisions of this act are severable.  
19 If any part of this act is declared invalid or  
20 unconstitutional, that declaration shall not affect the part  
21 which remains.

22 Section 5. All laws or parts of laws which conflict  
23 with this act are repealed.

24 Section 6. The amendments by this act to Section  
25 40-18-14, relating to gross income, and to Section  
26 40-18-21(a), relating to credits for taxes paid to other  
27 states and territories, shall apply to all tax years beginning

1 after December 31, 2010. The amendments by this act to Section  
2 40-18-21(c), relating to credits for taxes paid to foreign  
3 countries, shall apply to all tax years beginning after  
4 December 31, 2011. Notwithstanding the foregoing, taxpayers  
5 otherwise subject to this act may recognize gains from any  
6 taxable disposition of all or any portion of assets or  
7 Subchapter K interests consistent with pre-act application  
8 under Sections 40-18-14 and 40-18-21 where the parties thereto  
9 can document that negotiations began prior to January 1, 2011  
10 and continued with regularity until the transaction was  
11 completed in 2011. No penalty, including any payment otherwise  
12 required under Section 40-18-80, Code of Alabama 1975, shall  
13 be due or assessed for any underpayment of or failure to pay  
14 estimated income tax resulting from any retroactive  
15 application of the amendments contained herein.

16 Section 7. This act shall become effective upon its  
17 passage and approval by the Governor or its otherwise becoming  
18 law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Ways and Means  
Education..... . . . . . 09-FEB-12

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 23-FEB-12

Read for the third time and passed  
as amended..... . . . . . 24-APR-12

Yeas 54, Nays 32, Abstains 0

Greg Pappas  
Clerk