

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

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ENROLLED, An Act,

To amend Sections 40-18-14 and 40-18-21, Code of Alabama 1975, relating to the manner in which resident individual owners of Subchapter K entities and Alabama S corporations are taxed on the entity's income earned from sources outside of Alabama, to provide those owners, as well as resident beneficiaries of an estate or trust, with a credit equal to their proportionate share of certain income or gross profits taxes paid or accrued to other states or territories on behalf of the owners and a credit for a portion of income taxes paid or accrued to a foreign country with respect to the trade or business or investment income of such entity; and to require the Department of Revenue to report annually to the Legislature.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-18-14.

"The term "gross income" as used herein:

"(1) Includes gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, income, fees, and other compensation of state, county, and municipal officers and employees, or from

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

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

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

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

6 "i. For each individual resident taxpayer, or each
7 husband and wife filing a joint income tax return, as the case
8 may be, any gain realized from the sale of a personal
9 residence of the taxpayer shall be excluded to the extent
10 excludable for federal income tax purposes under 26 U.S.C. §
11 121;

12 "j. Contributions made by an employer on behalf of
13 an employee to a trust which is part of a qualified cash or
14 deferred arrangement (as defined in 26 U.S.C. § 401(k)(2), or
15 5 U.S.C. § 8437) under which the employee has an election
16 whether the contribution will be made to the trust or received
17 by the employee in cash and contributions made by an employer
18 for an employee for an annuity contract, which contributions
19 would be excludable from the gross income (for federal income
20 tax purposes) of the employee in accordance with the
21 provisions of 26 U.S.C. § 403(b). The limitations imposed by
22 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

23 "k. Amounts that an employee is allowed to exclude
24 from gross income for federal income tax purposes pursuant to

1 26 U.S.C. § 125 (relating to cafeteria plans) and 26 U.S.C. §
2 132 (relating to certain fringe benefits); and

3 "1. Amounts paid or incurred by an employer on
4 behalf of an employee if the amounts may be excluded from
5 gross income for federal income tax purposes by an employee
6 pursuant to 26 U.S.C. § 129 (relating to dependent care
7 expenses).

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

22 "§40-18-21.

23 "(a) (1) For the purpose of ascertaining the income
24 tax due under the provisions of this chapter by individual
25 residents of Alabama whose gross income, as defined herein, is

1 derived from sources both within and ~~without~~ outside the State
2 of Alabama, there shall be allowed a credit against the amount
3 of tax found to be due by such resident, on account of income
4 derived from ~~without~~ outside the State of Alabama, the amount
5 of income tax actually paid by such resident to any state or
6 territory on account of business transacted or property held
7 ~~without~~, directly or indirectly, outside the State of Alabama.
8 Resident individual owners of Subchapter K entities, Alabama S
9 corporations, and beneficiaries of estates or trusts who
10 include their proportionate share of the income arising from
11 one or more of these entities in their Alabama gross income
12 shall be allowed a credit for their proportionate share of the
13 income tax actually paid by the entity to any state or
14 territory on account of business transacted or property held
15 outside the State of Alabama, whether the payment was made on
16 behalf of the resident individual owner or because the entity
17 was not recognized by such state or territory as a non-taxable
18 pass-through entity. For purposes of this subsection, income
19 tax shall be defined to include, but not be limited to, any
20 tax based in whole or in part on the entity's net income, net
21 profits, or gross profits; provided, however, that the term
22 income tax shall not include any tax based on the entity's net
23 worth, capital, or asset values, and shall not include any tax
24 for which an exclusion or deduction is claimed in the

1 calculation of taxable income reported on the Alabama income
2 tax return.

3 "(2) In case the amount of income tax actually paid
4 by or on behalf of an individual resident of Alabama, or by
5 one of the entities described in subdivision (a)(1) above, to
6 another state or territory is in excess of the amount of tax
7 that would be due on the same income computed ~~on the~~ using the
8 applicable Alabama income tax ~~rate in Alabama~~ rates, then only
9 such amount as would be due in this state on such taxable
10 income shall be allowed as a credit. In no event shall the
11 credit for income taxes paid to another state exceed the
12 amount of tax that would be due on the same taxable income
13 computed using the applicable Alabama income tax rates.

14 "(3) If the amount of income tax actually paid by or
15 on behalf of an individual resident of ~~this state~~ Alabama to
16 any other state or territory on account of business transacted
17 or property held is less than the amount of tax that would be
18 due, as computed ~~on~~ using the applicable Alabama income tax
19 rates, then the income tax levied herein shall be computed on
20 the entire taxable income from sources from both within and
21 ~~without~~ outside the state as defined herein, and the tax shall
22 be paid less the credit allowed in this section for tax paid
23 on income derived, directly or indirectly, from ~~without~~
24 outside the state.

1 "(4) Before a resident of Alabama may claim the
2 credit allowed under this subsection (a), he or she shall file
3 with his or her Alabama income tax return a certificate
4 showing the amount of gross and net income derived, directly
5 or indirectly, from sources ~~without~~ outside this state,
6 together with the amount of tax paid or to be paid on such
7 income.

8 "(b) Any taxpayer described in Section 40-18-2(1) or
9 Section 40-18-2(6), who, during any year, has been assessed a
10 job development fee as described in Section 41-10-44.8(b),
11 shall be allowed a credit against the amount of income tax due
12 under the provisions of this chapter in such year in an amount
13 equal to the job development fee withheld from the taxpayer's
14 wages during the year.

15 "(c) (1) A resident individual taxpayer, who is
16 either a partner or member of a Subchapter K entity, a
17 shareholder of an Alabama S corporation, or a beneficiary of
18 an estate or trust, during all or part of a year, shall be
19 allowed a credit equal to fifty percent (50%) of his or her
20 proportionate share of the income taxes paid or accrued,
21 including a payment recognized by 26 U.S.C. §901, to a foreign
22 country with respect to the trade or business or investment
23 income of such business, including related operations and
24 affiliates, ~~whose income in the foreign country is all~~
25 ~~principally related to the following 2002 North American~~

1 ~~Industry Classification System Sectors and Subsectors in all~~
2 ~~of the following manners:~~

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

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

6 ~~"c. The income must be attributable to the foreign~~
7 ~~country.~~

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

12 Section 2. The Department of Revenue shall report
13 annually to the ~~Legislative Council~~ Legislature the extent to
14 which credits for taxes paid to foreign countries are claimed
15 during the preceding tax year. The report shall be due on the
16 fifth legislative day of each regular session and shall state
17 the number of taxpayers who claim the credits and the total
18 amount of credits claimed during the year.

19 Section 3. For purposes of Chapter 9 of Title 29 of
20 the Code of Alabama 1975 cited as "The Education Trust Fund
21 ~~Rolling Reserve Act,~~" the funds received by the Education
22 Trust Fund under this act after September 30, 2012 shall be
23 Rolling Reserve Act", and notwithstanding the provisions of
24 Section 29-9-3(b) (4) Code of Alabama, 1975, the funds received
25 by the Education Trust Fund under this act after September 30,

1 2012 totals \$10,000,000 and shall be considered "New Recurring
2 Revenue" as defined by Section 29-9-2 and be available for
3 appropriation in FY 2013 because they will be deposited into
4 the Education Trust Fund in FY 2013 for the first time due to
5 a change in statute rather than by a Department of Revenue
6 rule.

7 Section 4. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 which remains.

11 Section 5. All laws or parts of laws which conflict
12 with this act are repealed.

13 Section 6. The amendments by this act to Section
14 40-18-14, relating to gross income, and to Section
15 40-18-21(a), relating to credits for taxes paid to other
16 states and territories, shall apply to all tax years beginning
17 after December 31, 2010. The amendments by this act to Section
18 40-18-21(c), relating to credits for taxes paid to foreign
19 countries, shall apply to all tax years beginning after
20 December 31, 2011. Notwithstanding the foregoing, taxpayers
21 otherwise subject to this act may recognize gains from any
22 taxable disposition of all or any portion of assets or
23 Subchapter K interests consistent with pre-act application
24 under Sections 40-18-14 and 40-18-21 where the parties thereto
25 can document that negotiations began prior to January 1, 2011

1 and continued with regularity until the transaction was
2 completed in 2011. No penalty, including any payment otherwise
3 required under Section 40-18-80, Code of Alabama 1975, shall
4 be due or assessed for any underpayment of or failure to pay
5 estimated income tax resulting from any retroactive
6 application of the amendments contained herein.

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 24-APR-12, as amended.

Greg Pappas
Clerk

Senate

10-MAY-12

Passed