

1 SB344
2 137170-2
3 By Senator Keahey
4 RFD: Finance and Taxation Education
5 First Read: 14-MAR-13

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8 SYNOPSIS: Under existing law, there is no definition
9 of the term unitary business for taxable purpose.

10 Existing law levies an income tax on
11 corporations. Alabama corporate income tax law is
12 linked to federal corporate income tax law, which
13 allows a domestic production activities deduction
14 that is equal to a percentage of income earned from
15 domestic production or taxable income, whichever is
16 less.

17 Also under existing law, Alabama corporate
18 income tax law is linked to the federal corporate
19 income tax law, which allows a temporary increase
20 in the bonus depreciation deduction from 50 percent
21 to 100 percent of the adjusted basis of qualified
22 property pursuant to the Tax Relief, Unemployment
23 Insurance Reauthorization, and Job Creation Act of
24 2010 (Public Law 111-312).

25 This bill defines unitary business and
26 requires taxpayers who are part of a unitary

1 business to use a combined report to determine
2 their Alabama taxable income.

3 This bill would limit the Alabama deduction
4 to three percent of qualifying income.

5 This bill would limit the Alabama deduction
6 to 50 percent of the adjusted basis of qualified
7 property.

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9 A BILL
10 TO BE ENTITLED
11 AN ACT

12
13 To amend Sections 40-18-1, 40-18-34, and 40-2A-17,
14 Code of Alabama 1975, to provide for additional definitions;
15 to require taxpayers who are part of a unitary business to use
16 a combined report to determine their Alabama taxable income;
17 to limit the domestic production activities deduction to three
18 percent of qualified production activities income or taxable
19 income, whichever is less; and to limit the bonus depreciation
20 deduction to 50 percent of the adjusted basis of qualified
21 property.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-18-1, 40-18-34, and 40-2A-17,
24 Code of Alabama 1975, are amended to read as follows:

25 "§40-18-1.

1 "For the purpose of this chapter, the following
2 terms shall have the respective meanings ascribed by this
3 section:

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

10 "(2) ALTERNATIVE ENERGY RESOURCES. Coal gasification
11 or liquefaction, nuclear, and advanced fossil-based
12 generation.

13 "(3) BIOMASS. Animals and plants, and the waste,
14 by-products, or derivatives of either, including, but not
15 limited to, the materials described in 26 U.S.C. §§ 45(c)(2),
16 45(c)(3), 45K(c)(3), or 48B(c)(4).

17 "(4) BUSINESS TRUST. Any entity which is a business
18 trust for federal income tax purposes.

19 "(5) CAPTIVE REIT. Any REIT whose shares or
20 certificates of beneficial interest are not regularly traded
21 on an established securities market and are owned or
22 controlled, at any time during the last half of the tax year,
23 by an association taxable as a corporation that is not exempt
24 from tax under 26 U.S.C. § 501(a), and is not any of the
25 following: (i) a REIT; (ii) a listed Australian property trust
26 (including any trust that a listed Australian property trust
27 owns or controls, directly or indirectly, seventy-five percent

1 or more of the voting power or value of the beneficial
2 interests or shares of such trust); or (iii) any qualified
3 foreign entity. The term Captive REIT shall not include any
4 REIT at least 50 percent of the shares of which (by vote or
5 value) are owned or controlled, directly or indirectly, at any
6 time during the last half of the tax year, by a financial
7 institution, as such term is defined in Chapter 16. For
8 purposes of this definition, own or control means to own or
9 control directly, indirectly, beneficially, or constructively
10 more than fifty percent (50%) of the voting power or value of
11 an entity. The attribution rules of 26 U.S.C. § 318, as
12 modified by 26 U.S.C. § 856(d)(5), apply in determining
13 ownership and control.

14 "(6) CASH. Any legal tender, negotiable paper, or
15 solvent credit.

16 "(7) COAL GASIFICATION OR LIQUEFACTION. Liquid or
17 gaseous fuels which are produced from coal, including lignite
18 and including but not limited to fuels described in 26 U.S.C.
19 §§ 45(c)(7)(A)(i), 45K(c)(1)(C), 48A(c)(7), or 48B(c)(2) as to
20 coal, as such provisions existed on December 31, 2007.

21 "(8) CORPORATION. The term includes associations,
22 joint stock companies, and any other entity classified as an
23 association taxable as a corporation for federal income tax
24 purposes.

25 "(9) DISREGARDED ENTITY. Any entity which is
26 disregarded for federal income tax purposes.

1 "(10) DOMESTIC. When applied to a corporation or
2 subchapter K entity means created or organized under the laws
3 of the State of Alabama.

4 "(11) FIDUCIARY. A guardian, trustee, executor,
5 administrator, personal representative, receiver, conservator,
6 or any person acting in any fiduciary capacity for any person.

7 "(12) FISCAL YEAR. An accounting period of 12 months
8 ending on the last day of any month other than December.

9 "(13) FOREIGN. When applied to a corporation or a
10 subchapter K entity means created or organized under a
11 jurisdiction other than the State of Alabama.

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

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

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

23 "(17) INTANGIBLE EXPENSES AND COSTS. Any expenses,
24 losses, and costs for, related to, or in connection directly
25 or indirectly with the acquisition, use, maintenance,
26 management, ownership, sale, exchange, or disposition of
27 intangible property to the extent such amounts are allowed as

1 deductions in determining taxable income before operating loss
2 deduction and special deductions for the taxable year
3 including, without limitation, expenses or losses related to
4 or incurred in connection directly or indirectly with
5 factoring transactions or discounting transactions, royalties,
6 patents, technical and copyright licensing fees, and other
7 similar expenses and costs. Intangible expenses and costs paid
8 for the use of intangible property in this state are, to the
9 recipient, income derived from sources within Alabama.

10 "(18) INTANGIBLE PROPERTY. Patents, patent
11 applications, trade names, trademarks, service marks,
12 franchises, know-how, formulas, designs, patterns, processes,
13 formats, copyrights and similar types of intangible assets,
14 choses in action, and accounts receivable.

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

23 "(20) MUNICIPAL SOLID WASTE. The definition given in
24 26 U.S.C. § 45(c)(6), if located in Alabama.

25 "(21) NONRESIDENT ESTATE. An estate other than a
26 resident estate of this state.

1 "(22) NONRESIDENT TRUST. A trust other than a
2 resident trust of this state.

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

8 "(24) PAID. For the purpose of deductions and
9 credits hereinafter provided for with respect to income tax
10 means paid or accrued or paid or incurred, and the terms paid
11 or accrued and paid or incurred shall be construed according
12 to the method of accounting on the basis of which the net
13 income is computed under this chapter.

14 "(25) PERSON. Any individual, trust, estate,
15 corporation, association, disregarded entity, or subchapter K
16 entity.

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

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

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

22 "(29) RELATED MEMBER. A person that, with respect to
23 the taxpayer any time during the taxable year, is a related
24 entity as defined in this section, a component member as
25 defined in 26 U.S.C. § 1563(b) of a controlled group of which
26 the taxpayer is also a component, or is a person to or from

1 whom there is attribution of stock ownership in accordance
2 with 26 U.S.C. § 1563(e).

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

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

20 "(32) RESIDENT ESTATE. The estate of any person who
21 was a resident of Alabama at the time of his or her death.

22 "(33) RESIDENT TRUST. A trust is a resident trust
23 for a taxable year if it is a trust which meets both a. and
24 b.:

25 "a. The trust is created by the will of a decedent
26 who was an Alabama resident at death or by a person who was an

1 Alabama resident at the time such trust became irrevocable;
2 and

3 "b. For more than seven months during such taxable
4 year, a person, as defined in this section, who either resides
5 in or is domiciled in Alabama is either a fiduciary of the
6 trust or a beneficiary of the trust to whom distributions
7 currently may be made.

8 "(34) SMALL IRRIGATION. An irrigation system canal
9 or ditch in Alabama which does not include a dam or
10 impoundment of water, including, but not limited to,
11 facilities in Alabama described in 26 U.S.C. § 45(c) (5).

12 "(35) SUBCHAPTER K ENTITY. A partnership, including
13 a limited partnership or limited liability partnership,
14 limited liability company, or any other entity subject to
15 subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701 to
16 761, for federal income tax purposes, not including a single
17 member limited liability company.

18 "(36) TAXABLE YEAR. The calendar year or the fiscal
19 year ending during the calendar year upon the basis of which
20 net income is computed, or a period of less than 12 months
21 resulting from a change in accounting period as provided in
22 Section 40-18-30.

23 "(37) TAXPAYER. Any person subject to a tax imposed
24 by this chapter, or whose income is, in whole or in part,
25 subject to a tax imposed by this chapter.

26 "(38) TRUST. Any entity which is a trust for federal
27 income tax purposes.

1 "(39) UNITARY BUSINESS. A single economic enterprise
2 that is made up either of separate parts of a single business
3 entity or of a commonly controlled group of business entities
4 that are sufficiently interdependent, integrated, and
5 interrelated through their activities so as to provide a
6 synergy and mutual benefit that produces a sharing or exchange
7 of value among them and a significant flow of value to the
8 separate parts. For Alabama income tax purposes, the term
9 unitary business shall be interpreted broadly, limited only by
10 the boundaries imposed by the U.S. Constitution.

11 "\$40-18-34.

12 "The following items shall be added to federal
13 taxable income for purposes of computing taxable income under
14 this chapter:

15 "(a) State and local income taxes that are
16 deductible in computing federal taxable income.

17 "(b) Interest on obligations of state or local
18 governments other than Alabama that is excludable from gross
19 income for federal income tax purposes.

20 "(c) Refunds of federal income taxes deducted.

21 "(d) Dividends received from a corporation in which
22 the taxpayer owns less than 20% of the stock (by vote and
23 value), but only to the extent such dividends are properly
24 deducted in computing taxable income for federal income tax
25 purposes.

26 "(e) For taxable years beginning on or after January
27 1, 2013, any amount deducted in accordance with 26 U.S.C. §

1 199 which is in excess of three percent of the lesser of
2 qualified production activities income or taxable income for
3 the taxable year.

4 "(f) For taxable years beginning on or after January
5 1, 2012, any amount deducted in accordance with 26 U.S.C. §
6 168 which is in excess of 50 percent of the adjusted basis of
7 qualified property.

8 "§40-2A-17.

9 "For purposes of the tax imposed in Chapter 18 of
10 this title, the following rules shall apply:

11 "(a) In any case of two or more organizations,
12 trades, or businesses (whether or not affiliated within the
13 meaning of 26 U.S.C. § 1504) owned or controlled directly or
14 indirectly by the same interests, the Commissioner of the
15 Alabama Department of Revenue may distribute, apportion, or
16 allocate gross income, deductions, credits, or allowances, if
17 the commissioner determines that such distribution,
18 apportionment, or allocation is necessary in order to prevent
19 evasion of Alabama income taxes or to clearly reflect the
20 income of any such organization, trade, or business.

21 "(b) (1) When an Alabama taxpayer is part of a
22 unitary business consisting of multiple business entities, the
23 Commissioner of the Department of Revenue shall require the
24 taxpayer to use a combined report to determine its Alabama
25 taxable income.

26 "(2) The combined report shall include all members
27 of the unitary business doing business in the United States or

1 commercially domiciled in a non-U.S. jurisdiction designated a
2 tax haven by the Organization for Economic Cooperation and
3 Development (OECD). Together these members shall be recognized
4 as the taxpayer's combined group. In the combined report, the
5 taxpayer will calculate its Alabama taxable income by
6 apportioning the combined group's income to Alabama using a
7 formula that measures the taxpayer's Alabama source
8 apportionment data relative to the combined group's
9 apportionment data from all sources.

10 "(3) The commissioner shall promulgate rules as
11 necessary to provide details of the combined report
12 calculations required by this subsection and as needed to
13 further enforce these provisions.

14 "(b)(c) Any transaction based upon tax planning
15 advice, tax return preparation advice, or tax return
16 preparation services with respect to which an improper
17 contingent fee is directly or indirectly paid by the taxpayer
18 shall be evidence of the evasion of Alabama income taxes.

19 "(c)(d) Any paid tax return preparer or tax planner
20 who provides to a taxpayer tax planning advice, tax return
21 preparation advice, or tax return preparation services in
22 consideration for an improper contingent fee shall be subject
23 to a penalty as if such paid tax return preparer or tax
24 planner was subject to the penalties imposed by 26 U.S.C. §
25 6701.

26 "(d)(e) "Improper contingent fee" shall mean
27 compensation received by a person or entity that is subject to

1 the Code of Professional Conduct of the American Institute of
2 Certified Public Accountants (or the applicable state version
3 of such code) for tax planning advice or tax return advice or
4 preparation that would be improper under the terms of the code
5 rendered after December 31, 2001. With respect to any person
6 or entity that renders tax planning advice, tax return advice,
7 or tax return preparations, but is not a certified public
8 accountant, an improper contingent fee shall be defined in
9 regulations prescribed by the Alabama Department of Revenue on
10 a basis consistent with the Code of Professional Conduct of
11 the American Institute of Certified Public Accountants.

12 "~~(e)~~(f) Subsections ~~(b)~~(c), ~~(c)~~(d), and ~~(d)~~(e) shall
13 not apply to any contingent fee contract executed prior to
14 January 1, 2002.

15 "~~(f)~~(g) The Commissioner of the Alabama Department
16 of Revenue shall exercise such authority in a manner
17 consistent with Act 2001-1088 and, to the extent applicable,
18 26 U.S.C. § 482 and the rulings and regulations issued
19 thereunder. The commissioner is authorized and directed to
20 promulgate such additional regulations as are necessary to
21 enforce the provisions of Act 2001-1088."

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.