

1 HB4
2 44227-3
3 By Representatives McDaniel, Wren, Hawkins and Newton (C)
4 RFD: Ways and Means Education Fund
5 First Read: 04-DEC-2001

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Enrolled, An Act,

To amend Section 40-18-39, Code of Alabama of 1975, relating to corporate income tax returns; to limit the use of the consolidated corporate income tax return election to only those members of an Alabama affiliated group that are subject to Alabama income tax and have a defined nexus with the state, commonly known as "nexus consolidation"; to require separate calculation of apportionment factors for each member of the consolidated group; to clarify calculation of the affiliated group's SRLY losses; to increase to 120 months the minimum election period; to increase the annual filing fees; to provide authority to the commissioner to deny consolidation to avoid material distortions of income from certain transactions; to allow affiliated groups presently filing Alabama consolidated returns under the current law the option either to terminate their election or to begin a new election under this act, if they so qualify; and to prescribe an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-18-39, Code of Alabama of 1975, is amended to read as follows:

"§40-18-39.

"(a) Except as provided in subsection (c), every corporation, joint stock company, or association subject to

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

22 "(b) As used in this chapter, unless the context
23 requires otherwise:

24 "(1) "Alabama affiliated group" means a group of
25 corporations, each member of which is subject to tax under

1 Section 40-18-31 and Public Law 86-272 (15 U.S.C. §§ 381-384),
2 that constitute which are members of an affiliated group as
3 defined in 26 U.S.C. § 1504 and which affiliated group files a
4 federal consolidated corporate income tax return, one or more
5 members each member of which are subject to tax under Section
6 40-18-31, but

7 a. has the same taxable year;

8 b. is part a member of the group for the entire
9 taxable year or was a member of the group for a portion of the
10 taxable year if the member was subject to Section 40-18-31
11 during the entire portion of the taxable year during which it
12 was not a member of the federal consolidated group;

13 c. computes apportions Alabama taxable income or
14 loss separately for each corporation;

15 d. allocates taxable income or loss separately for
16 each corporation in accordance with Section 40-27-1 Article
17 IV;

18 e. computes apportionable income or loss utilizing
19 separate apportionment factors for each corporation in
20 accordance with Section 40-27-1 Article IV; and

21 f. combines and reports taxable income or loss
22 computed in accordance with items c. through e. of this
23 subsection on a single return for the Alabama affiliated
24 group;

1 and which includes all members of the affiliated
2 group included on the federal consolidated income tax return
3 that are eligible under this section to be included in the
4 Alabama affiliated group; but shall not include corporations
5 subject to the insurance premium license tax imposed by
6 Section 27-4A-1 et seq. or the financial institution excise
7 tax imposed by Section 40-16-1 et seq.

8 "(2) "Alabama consolidated return" means an Alabama
9 corporation income tax return filed by or on behalf of the
10 members of an Alabama affiliated group in accordance with this
11 section, pursuant to an election made under subsection (c)
12 below.

13 "(3) "Separate return" means an Alabama corporation
14 income tax return filed by a single corporation in accordance
15 with this chapter.

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

18 "(5) "Treasury regulations" means final and
19 temporary regulations now or hereafter promulgated by the U.S.
20 Treasury Department pursuant to 26 U.S.C. § 1501 et seq.
21 References to applicable Internal Revenue Code sections in
22 this section shall include the related Treasury regulations.

23 "(c)(1) An Alabama affiliated group filing or
24 required to file a federal consolidated income tax return may
25 elect to file an Alabama consolidated return for the same

1 taxable year. However, under no circumstances may the
 2 Department of Revenue compel a taxpayer to file an Alabama
 3 consolidated return if the taxpayer has not so elected.

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

12 ~~"(3) Other than separate determinations of the~~
 13 ~~property, payroll, and sales factors in accordance with~~
 14 ~~Section 40-27-1 Article IV, and separate allocation and~~
 15 ~~apportionment of income and loss by each member of the Alabama~~
 16 ~~affiliated group, A an Alabama affiliated group electing to~~
 17 ~~file an Alabama consolidated return under this subsection~~
 18 ~~shall be treated as a single corporation solely for purposes~~
 19 ~~of this chapter and Chapter 27 of this title. All transactions~~
 20 ~~between and among members of the Alabama affiliated group~~
 21 ~~shall be eliminated reported on an arm's length basis~~
 22 ~~consistent with subsection (j) in determining the property,~~
 23 ~~payroll and sales factors of each member of the Alabama~~
 24 ~~affiliated group, in determining the separate allocation and~~
 25 ~~apportionment of income and loss by each member of the Alabama~~

1 affiliated group, and in computing taxable income in
 2 accordance with Section 40-18-33., ~~and in determining the~~
 3 ~~property, payroll, and sales factors in accordance with~~
 4 ~~Section 40-27-1, Article IV.~~

5 "(4) The election made in accordance with this
 6 subsection shall be filed by the common parent of the Alabama
 7 affiliated group as agent for all members of the Alabama
 8 affiliated group, on a form prescribed by the Department of
 9 Revenue. If the common parent is not a member of the Alabama
 10 affiliated group, the members shall designate to the
 11 Department of Revenue which ~~of the members~~ member of the
 12 Alabama affiliated group shall serve in that role for purposes
 13 of this section. The election and designation of common
 14 parent, if required, shall be filed with the department on or
 15 before the due date of the Alabama consolidated return,
 16 including extensions, for the first taxable year for which the
 17 election is made and is to be effective.

18 "(5) Each member of the Alabama affiliated group
 19 shall determine and allocate and apportion its separate income
 20 and loss under Chapter 27 of this title before consolidation.
 21 For purposes of allocation and apportionment, each member of
 22 the Alabama affiliated group shall be considered a separate
 23 taxpayer. Any taxable loss of a member of the Alabama
 24 affiliated group shall be deductible against the taxable
 25 income of any other member of the Alabama affiliated group

1 only if and to the extent such loss is apportioned and
2 allocated to Alabama.

3 ~~"(5)~~ (6) The tax liability of the Alabama affiliated
4 group shall be determined by applying the rate specified in
5 Section 40-18-31 to the taxable income of the Alabama
6 affiliated group. The separate net taxable income or loss of
7 each corporation that is included in the Alabama affiliated
8 group shall be included in the consolidated net taxable income
9 or loss to the extent that its net taxable income or loss is
10 separately apportioned or allocated to the State of Alabama.
11 The separate taxable income or loss of each member of the
12 Alabama affiliated group, and the separate business and
13 nonbusiness income of each member, shall be computed and
14 determined in accordance with this chapter and with the rules
15 of allocation and apportionment under Section 40-27-1, Article
16 IV, and the regulations promulgated thereunder by the
17 Department of Revenue.

18 ~~"(6)~~ (7) Any election to file an Alabama
19 consolidated return pursuant to this subsection shall be
20 binding on both the Department of Revenue and the Alabama
21 affiliated group for a period beginning with the first month
22 of the first taxable year for which the election is made and
23 ending with the conclusion of the taxable year in which the
24 ~~ninety-sixth~~ one hundred twentieth consecutive calendar month
25 expires, except that the election shall terminate

1 automatically upon the revocation or termination of its
2 federal consolidated return election. If an election made
3 pursuant to this subsection is terminated by an Alabama
4 affiliated group by virtue of the revocation or termination of
5 its federal or Alabama consolidated return election, no member
6 of the Alabama affiliated group may be included in an Alabama
7 consolidated return filed by the Alabama affiliated group, or
8 by another Alabama affiliated group with the same common
9 parent or a successor to the same common parent, before the
10 sixty-first month beginning after the first taxable year for
11 which the election was revoked; provided, however, that the
12 Department of Revenue may waive application of this provision
13 to any corporation or Alabama affiliated group for any period,
14 consistent with the provisions of 26 U.S.C. § 1504.

15 ~~"(7)~~ (8) An Alabama affiliated group that has made
16 an Alabama consolidated return election under this subsection
17 shall be assessed an annual fee for the privilege of filing an
18 Alabama consolidated return, which shall be assessed, col-
19 lected, and distributed as an income tax but shall be due and
20 payable at the time the return is due, including any exten-
21 sions thereof. The annual fee shall be a graduated fee based
22 upon the aggregate amount of total assets, determined in
23 accordance with Treasury Department Form 1120 or any successor
24 form, of the Alabama affiliated group for the taxable year to
25 which the fee relates, as set out below:

1 "Total Assets	Annual Fee
2 \$0 to \$2,500,000	\$2,500 <u>\$5,000</u>
3 \$2,500,001 to \$5,000,000	\$5,000 <u>\$10,000</u>
4 \$5,000,001 to \$7,500,000	\$7,500 <u>\$15,000</u>
5 \$7,500,001 to \$10,000,000	\$10,000 <u>\$20,000</u>
6 \$10,000,001 and over	\$12,500 <u>\$25,000</u>

7 "(d) Each corporation included as part of an Alabama
8 affiliated group filing an Alabama consolidated return shall
9 be jointly and severally liable for the Alabama income tax
10 liability of the Alabama affiliated group with respect to the
11 taxable year, and the fee prescribed above; except that any
12 corporation which was not a member of the Alabama affiliated
13 group for the entire taxable year shall be jointly and
14 severally liable only for the portion of the Alabama
15 consolidated income tax liability attributable to that portion
16 of the year during which the corporation was a member of the
17 Alabama affiliated group, prorated on a daily basis.

18 "(e) Every corporation return or report required by
19 this chapter shall be executed by one of the following
20 officers of the corporation: The president, vice-president,
21 secretary, treasurer, assistant secretary, assistant
22 treasurer, or chief accounting or financial officer, except
23 that in the case of an Alabama affiliated group filing an
24 Alabama consolidated return, one of the above-described
25 officers of the common parent of the Alabama affiliated group
26 may execute the return on behalf of the Alabama affiliated

1 group. The Department of Revenue may require a further or
2 supplemental report of information and data necessary for
3 computation of the tax.

4 "(f) If the taxpayer has requested an extension of
5 time for the filing of a separate or Alabama consolidated
6 return, the period during which such return will be considered
7 timely filed shall not expire until 10 days after the
8 Department of Revenue mails to the taxpayer a rejection of its
9 request for an extension of time for filing such return.

10 "(g) If, in a taxable year preceding the filing of
11 the first Alabama consolidated return for the Alabama
12 affiliated group of which the corporation is a member, (1) the
13 corporation realized a gain or loss on a transaction; (2) the
14 corporation was subject to tax under Section 40-18-31 in the
15 year; (3) the transaction was treated as a deferred
16 intercompany transaction for federal income tax purposes; and
17 (4) the transaction was not deferred for Alabama income tax
18 purposes, the taxable income and basis in the hands of the
19 Alabama affiliated group shall be adjusted to reflect the
20 different treatment of the transaction and any property
21 acquired or disposed of in the transaction.

22 "(h) If, in a taxable year before the corporation
23 became a member of an Alabama affiliated group that has
24 elected to file an Alabama consolidated return, the
25 corporation incurred a net operating loss, the deductibility
26 of the loss on the Alabama consolidated return shall be
27 limited to only the amount necessary to reduce to zero the

1 Alabama taxable income, calculated on a separate return basis,
2 of the corporation that incurred the net operating loss. in
3 accordance with Except as provided in the preceding sentence,
4 the separate return limitation year ("SRLY") rules contained
5 in 26 U.S.C. § 1502 shall apply.

6 "(i) Nothing in this section shall be construed as
7 allowing or requiring the filing of a combined income tax
8 return under the unitary business concept.

9 "(j) The Department of Revenue shall promulgate
10 regulations interpreting the provisions of this section that
11 are consistent, to the maximum extent possible, with
12 applicable Treasury regulations. The regulations shall further
13 provide that, if the commissioner, for the tax year in
14 question, establishes that one or more members of an Alabama
15 affiliated group have engaged in any non-arm's-length
16 transaction that causes a material distortion of income
17 allocated or apportioned to this state, the commissioner may
18 deny retroactively, for the taxable year or years in which the
19 material distortion occurs or occurred, the consolidation
20 election of any member of an Alabama affiliated group, in
21 order to fairly represent the tax base attributable to this
22 state.

23 "(k) Notwithstanding subdivision (c) (7) above, due
24 to the material change in the criteria for qualification as a
25 member of an Alabama affiliated group, an Alabama affiliated
26 group filing an Alabama consolidated return under the
27 provisions of this section, prior to its amendment by this

1 act, shall have the option either to terminate its election
2 with respect to tax years after the period covered by the last
3 Alabama consolidated return due under this section prior to
4 its amendment, or to re-elect under the revised criteria
5 imposed by this act and to begin another 120 calendar month
6 election period. The decision of an Alabama affiliated group
7 currently filing an Alabama consolidated income tax return to
8 opt out of the Alabama consolidated return election shall be
9 evidenced by written notice thereof to the department. Such
10 notice shall be filed by March 15, 2002, or the due date, with
11 extensions, of the last consolidated income tax return due to
12 be filed under the law prior to its amendment by this act,
13 whichever date occurs last. The failure to timely file such
14 notice shall be deemed an election by those members of the
15 Alabama affiliated group that are subject to tax under Section
16 40-18-31 and otherwise qualify under this section as members
17 of an Alabama affiliated group to file an Alabama consolidated
18 return under the provisions of this section, as amended,
19 including a new 120-calendar month election period under
20 subdivision (c)(7) above."

21 Section 2. Notwithstanding the provisions of Chapter
22 18, Title 40 relating to timing of payments, for any
23 corporation having an election in effect under Section
24 40-18-39, as amended by this act, the estimated income tax
25 payment otherwise due on December 15, 2002 shall be due and
26 payable on September 15, 2002.

1 Section 3. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 4. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 5. This act shall be effective for taxable
8 years beginning after December 31, 2001, and shall take effect
9 upon its passage and approval by the Governor or its otherwise
10 becoming a law. The amendment to Section 40-18-39(h) is
11 intended to clarify, not change, existing 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 17-DEC-2001, as amended.

Greg Pappas
Clerk

Senate	<hr/>	20-DEC-2001	Amended and Passed
House	<hr/>	21-DEC-2001	Passed, as amended by Conference Com- mittee Report
Senate	<hr/>	21-DEC-2001	Passed, as amended by Conference Com- mittee Report

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2	House	December 21, 2001	Passed, the Governor's
3			objections to the
4			contrary notwithstanding
5			
6			Yeas 74, Nays 5

7	Seante	December 21, 2001	Passed, the Governor's
8			objections to the
9			contrary notwithstanding
10			Yeas 31, Nays 1