HB2

44231-4

By Representative Lindsey

RFD: Ways and Means Education Fund

First Read: 04-DEC-2001
Enrolled, An Act,

To amend Sections 40-18-1, 40-18-24, 40-18-35, 40-18-35.1, 40-18-42, 40-18-80, 40-18-82, 40-18-83, and add new Sections 40-2A-17, 40-2A-18 and 40-18-80.1, Code of Alabama 1975, to disallow deductions for certain payments for intangible property (patents and copyright) and interest expense to related entities; to restore the federal income tax deduction to a calculation based on the ratio of Alabama income to total income; to provide that allocation of interest from nonbusiness income is based on cost of assets instead of value; to suspend for one year the net operating loss deduction for corporate taxpayers; to allow the Commissioner of the Department of Revenue to apportion or allocate gross income, deductions, credits, or allowances between two or more businesses owned or controlled by the same interest if such allocation is necessary to prevent evasion of Alabama income taxes or to clearly reflect income; to provide that tax related services provided on a contingent fee basis is evidence of the evasion of taxes and provide for penalties; to revise rules for payment of estimated income taxes to conform more closely to federal estimated tax payment rules; to waive certain interest and penalties for underpayments of estimated tax resulting from suspension of net operating loss deductions and the add back of certain interest and intangible expenses;
to clarify and confirm current law as it relates to interest accrual after final assessment; and to authorize certain pass-through entities not to pay certain income taxes on behalf of nonresident owners who have already paid those taxes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-18-1, 40-18-24, 40-18-35 and 40-18-35.1, Code of Alabama 1975, are amended to read as follows:

"§40-18-1.

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

(1) CASH. Any legal tender, negotiable paper, or solvent credit.

(2) CORPORATION. The term includes associations and joint stock companies and any other entity classified as an association taxable as a corporation for federal income tax purposes.

(3) DISREGARDED ENTITY. A limited liability entity that is disregarded for purposes of federal income tax or a qualified subchapter S subsidiary, as defined in 26 U.S.C. § 1361."
(4) DOMESTIC. When applied to a corporation or subchapter K entity means created or organized under the laws of the State of Alabama.

(5) FIDUCIARY. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(6) FISCAL YEAR. An accounting period of twelve months ending on the last day of any month other than December.

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

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

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

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

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

(12) PAID. For the purpose of deductions and
credits hereinafter provided for with respect to income tax
means paid or accrued or paid or incurred, and the terms "paid
or accrued" and "paid or incurred" shall be construed
according to the method of accounting on the basis of which
the net income is computed under this chapter.
(9)(13) PERSON. Any individual, trust, estate, private corporation, association, disregarded entity, or partnership subchapter K entity.

(14) RELATED ENTITY. A stockholder who is an individual, or a member of the stockholder’s family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder’s family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer’s outstanding stock; a stockholder, or a stockholder’s partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder’s partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent of the value of the taxpayer’s outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of 26 U.S.C. §318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent of the value of the corporation’s outstanding stock. The attribution rules on 26 U.S.C. §318 shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.
(15) RELATED MEMBER. A person that, with respect to the taxpayer any time during the taxable year, is a related entity, as defined in this subsection, a component member as defined in 26 U.S.C. §1563(b) of a controlled group of which the taxpayer is also a component, or is a person to or from whom there is attribution of stock ownership in accordance with 26 U.S.C. §1563(e).

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

(17) SUBCHAPTER K ENTITY. A partnership, including a limited partnership or limited liability partnership, limited liability company, or any other entity subject to subchapter K of the Internal Revenue Code, 26 U.S.C. §§701 to 761, for federal income tax purposes, not including a single member limited liability company.
TAXABLE YEAR. The calendar year or the fiscal year ending during the calendar year upon the basis of which net income is computed, or a period of less than twelve months resulting from a change in accounting period as provided in Section 40-18-30.

TAXPAYER. Any person subject to a tax imposed by this chapter, or whose income is, in whole or in part, subject to a tax imposed by this chapter."


"(a) The amount of income, deduction, gain, loss, or credit includable or deductible by an owner of an interest in a subchapter K entity shall be determined in accordance with subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701-761.

(b) For purposes of computing its net income, a subchapter K entity shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with, one or more direct or indirect transactions, with one or more related members, except to the extent the subchapter K entity shows, upon request by the Commissioner, that the corresponding item of income was in the same taxable year:
(1) subject to a tax based on or measured by the related member’s net income in Alabama or any other state of the United States, or

(2) subject to a tax based on or measured by the related member’s net income by a foreign nation which has in force an income tax treaty with the United States, if the recipient was a "resident" (as defined in the income tax treaty) of the foreign nation.

(c) For purposes of this subsection (b), "subject to a tax based on or measured by the related member’s net income" means that the receipt of the payment by the recipient related member is reported and included in income for purposes of a tax on net income, and not offset or eliminated in a combined or consolidated return which includes the payor.

(d) The subchapter K entity shall make the adjustments required in subsection (b) of this section unless the subchapter K entity establishes that the adjustments are unreasonable, or the subchapter K entity and the Commissioner of Revenue agree in writing to the application or use of alternative adjustments and computations. Nothing in this section shall be construed to limit or negate the Commissioner’s authority to otherwise enter into agreements and compromises otherwise allowed by law.

(e) The adjustments required in subsection (b) shall not apply to that portion of interest expenses and costs and
intangible expenses and costs if the subchapter K entity can
establish that the transaction giving rise to the interest
costs or the intangible expenses and costs
between the subchapter K entity and the related member did not
have as a principal purpose the avoidance of any Alabama tax
and the related member is not primarily engaged in the
acquisition, use, licensing, maintenance, management,
ownership, sale, exchange, or any other disposition of
intangible property, or in the financing of related entities.
If the transaction giving rise to the interest expenses and
costs or intangible expenses and costs, as the case may be,
has a substantial business purpose and economic substance and
contains terms and conditions comparable to a similar arm’s
length transaction between unrelated parties, the transaction
will be presumed to not have as its principal purpose tax
avoidance, subject to rebuttal by the Commissioner of the
Department of Revenue.
(f) Nothing in this section shall require a
subchapter K entity to add to its net income more than once
any amount of interest expenses and costs or intangible
expenses and costs that the subchapter K entity pays, accrues
or incurs to a related member described in subsection (b).
(g) Nothing in this section shall be construed to
limit or negate the Commissioner’s authority to make
adjustments under this chapter.
(h) Subsection (b) shall not limit the deduction of the interest portion of rent paid under lease agreements described in § 40-18-35(a)(9).

(i) Except with regard to payments described in §§ 40-18-35(a)(4)b. and 40-18-35(a)(9) nothing in this section shall be construed to allow any item to be deducted more than once or to allow a deduction for any item that is excluded from income or to allow any item to be included in the Alabama taxable income of more than one taxpayer."

"§40-18-35.

"(a) The following items shall be deducted from federal taxable income for purposes of computing taxable income under this chapter:

(1) Refunds of state and local income taxes.
(2) Federal income tax paid or accrued during the taxpayer's taxable year. The portion of federal income tax deductible by a corporation earning income from sources both inside and outside of Alabama shall be determined by the ratio that the corporation's taxable income, computed without the deduction for federal income tax, apportioned and allocated to Alabama bears to the corporation's taxable income, computed without the deduction for federal income tax, apportioned and allocated everywhere.
(3) Interest income earned on obligations of the United States.
(4)a. Interest income earned on obligations of the State of Alabama or its subdivisions or instrumentalities thereof to the extent included in gross income for the purposes of federal income taxation.
b. Interest income earned on obligations of the State of Alabama or its subdivisions or instrumentalities thereof to the extent included in gross income for the purposes of federal income taxation if such obligations were issued prior to December 31, 1994 January 1, 1995, to pay the cost of assets to which subsections (c) through (e) of Section 40-9B-7 apply.

(5) The amount of any aid or assistance, whether in the form of property, services or monies, provided to the State Industrial Development Authority pursuant to Section 41-10-44.8(d) in order to induce an approved company to undertake a major project within the state.

(6) Expenses otherwise deductible that were not deducted on the federal income tax return as a result of an election to claim a credit for those expenses.

(7) To the extent If the taxpayer owns greater than 20 percent of the stock, by vote or value, of the distributing corporation the following deductions are allowed:
   a. Amounts described in 26 U.S.C. Section § 78;
   b. Dividend income, including amounts described in 26 U.S.C. Section § 951, from non-U.S. corporations to the
same extent such dividend income would be deductible under 26 U.S.C. Section § 243 if received from U.S. corporations; and
c. Dividends received from foreign sales corporations as defined in 26 U.S.C. Section § 922.
d. (8) The department shall promulgate a regulation regarding the allowable amount portion of total deductible interest expense classified as nonbusiness interest expense not deductible at arriving at apportioned income, but instead allocated to the situs of the related nonbusiness income producing assets, related to the production of nonbusiness income, which shall be based upon a formula using the ratio of the average cost value of the corporation's nonbusiness assets producing nonbusiness income as compared to the average cost value of the corporation's total assets.

(9) The interest portion of rent paid under lease agreements entered into prior to December 31, 1994 January 1, 1995, relating to obligations issued by the State of Alabama or subdivisions or instrumentalities thereof, to the extent that such obligations were issued to pay the cost of assets to which subsections (c) through (e) of Section 40-9B-7 apply.

(10) The amount by which the depletion allowance specified in Section 40-18-16(b) exceeds the depletion allowance deducted in calculating federal taxable income.
(b) Restrictions on the deductibility of certain intangible expenses and interest expenses with a related member.

(1) For purposes of computing its taxable income, a corporation shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions, with one or more related members, except to the extent the corporation shows, upon request by the Commissioner, that the corresponding item of income was in the same taxable year: a. subject to a tax based on or measured by the related member’s net income in Alabama or any other state of the United States, or b. subject to a tax based on or measured by the related member’s net income by a foreign nation which has in force an income tax treaty with the United States, if the recipient was a "resident" (as defined in the income tax treaty) of the foreign nation. For purposes of this section, "subject to a tax based on or measured by the related member’s net income" means that the receipt of the payment by the recipient related member is reported and included in income for purposes of a tax on net income, and not offset or eliminated in a combined or consolidated return which includes the payor.
(2) The corporation shall make the adjustments required in subsection (b) (1) of this section unless the corporation establishes that the adjustments are unreasonable, or the corporation and the Commissioner of Revenue agree in writing to the application or use of alternative adjustments and computations. Nothing in this section shall be construed to limit or negate the Commissioner’s authority to otherwise enter into agreements and compromises otherwise allowed by law.

(3) The adjustments required in subsection (b)(1) shall not apply to that portion of interest expenses and costs and intangible expenses and costs if the corporation can establish that the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any Alabama tax and the related member is not primarily engaged in the acquisition, use, licensing, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related entities. If the transaction giving rise to the interest expenses and costs or intangible expenses and costs, as the case may be, has a substantial business purpose and economic substance and contains terms and conditions comparable to a similar arm’s length transaction between unrelated parties, the transaction will be presumed to
not have as its principal purpose tax avoidance, subject to rebuttal by the Commissioner of the Department of Revenue.

(4) Nothing in this section shall require a corporation to add to its taxable income more than once any amount of interest expenses and costs or intangible expenses and costs that the corporation pays, accrues or incurs to a related member described in subsection (b)(1).

(5) Nothing in this section shall be construed to limit or negate the Commissioner’s authority to make adjustments under this chapter.

(6) Subsection (b) shall not limit the deduction of the interest portion of rent paid under lease agreements described in subsection (a)(9).

(c) Except with regard to payments described in subsections (a)(4)b. and (a)(9), nothing in this section shall be construed to allow any item to be deducted more than once or to allow a deduction for any item that is excluded from income or to allow any item to be included in the Alabama taxable income of more than one taxpayer.

(d) The following credits shall be allowed against the tax levied by Section 40-18-31:

(1) the amount provided to an approved company pursuant to Section 41-10-44.8(a)(1), subject however, to the limitations contained in Section 41-10-44.8(c); and
(2) the amount provided in Section 41-10-44.9 to an approved company for a payment by such company into a tax increment fund."

"$40-18-35.1.

In computing the taxable income of corporations subject to income tax as outlined in Section 40-18-35, there shall be allowed, in addition to the deductions specified therein, a deduction for the sum of the net operating losses which may be carried forward to the taxable year for which the net income of the corporation is being computed.

(1) The term "net operating loss" for the purposes of this section means the excess of the deductions (other than the deduction allowed by this subdivision) allowed by this chapter during a taxable year of the corporation over the corporation's gross income during that taxable year. For purposes of this paragraph, the corporation's gross income and allowable deductions shall be determined under the provisions of this chapter applicable to the year in which the net operating loss arises.

(2) A net operating loss shall be carried forward to the earliest subsequent taxable year in which the corporation has taxable income (determined without taking into account the deduction allowed by this subdivision). The amount of a net operating loss which may be carried to any later taxable year shall be the excess of the net operating loss over the sum of
the amounts thereof deductible under this subdivision in all
the taxable years preceding this taxable year.

(3) If net operating losses arising in more than one
taxable year can be carried forward to a taxable year of the
corporation, the net operating loss arising from the earliest
of those years shall be deducted first.

(4) The net operating loss deduction allowed by this
section shall be limited to sources attributable to Alabama.

(5) A net operating loss may be carried forward and
deducted only during the 15 consecutive year period
immediately following the taxable year in which it arose.

(6) In the case of an acquiring corporation subject
to the rules of 26 U.S.C. § 381, or in the case of a new loss
corporation within the meaning of 26 U.S.C. § 382, or in the
case of the recognized built-in gains of a gain corporation
within the meaning of 26 U.S.C. § 384, only the net operating
losses as are allowable in accordance with 26 U.S.C. §§ 381,
382, and 384 shall be allowed as a deduction under this
section. This subdivision shall be applied before the
limitations in the preceding subdivisions are applied.

(7) Notwithstanding the foregoing provisions of this
section, for a taxpayer's taxable year beginning during
calendar year 2001 no deduction for any net operating loss
shall be allowed or allowable. If and only to the extent that
any net operating loss deduction is disallowed by reason of
this subsection, the date on which the amount of the
disallowed net operating loss deduction would otherwise expire
will be extended by one year. A corporation dissolved and
completely liquidated within calendar year 2001 may use its
net operating loss without the restrictions provided in this
subsection (7).

Section 2. Section 40-2A-17 is hereby added to the
Code of Alabama 1975, to read as follows:

§ 40-2A-17.

For purposes of the tax imposed in Chapter 18 of
Title 40 of the Code of Alabama 1975, the following rules
shall apply:

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

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

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

(d) "Improper contingent fee" shall mean compensation received by a person or entity that is subject to the Code of Professional Conduct of the American Institute of Certified Public Accountants (or the applicable state version of such Code) for tax planning advice or tax return advice or preparation that would be improper under the terms of the Code rendered after December 31, 2001. With respect to any person or entity that renders tax planning advice, tax return advice or tax return preparations, but is not a certified public accountant, an "improper contingent fee" shall be defined in regulations prescribed by the Alabama Department of Revenue on a basis consistent with the Code of Professional Conduct of the American Institute of Certified Public Accountants.

(e) Subsections (b), (c), and (d) shall not apply to any contingent fee contract executed prior to January 1, 2002.
(f) The Commissioner of the Alabama Department of Revenue shall exercise such authority in a manner consistent with this act and, to the extent applicable, 26 U.S.C. § 482 and the rulings and regulations issued thereunder. The Commissioner is authorized and directed to promulgate such additional regulations as are necessary to enforce the provisions of this act."

Section 3. Sections 40-18-42 and 40-18-80, Code of Alabama 1975, are amended to read as follows:

"§40-18-42.

(a) Time of payment for individuals. —In the case of individuals the total balance of the tax owed after credits for taxes paid through withholding as provided in Section 40-18-78, or through declarations estimated payments as provided in Sections 40-18-82 and 40-18-83, shall be due and payable on April 15 following the close of the calendar year or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the fourth month following the close of the fiscal year.

(b) Time of payment for fiduciaries. —In the case of fiduciaries, the total amount of the tax imposed by this chapter shall be paid on April 15 following the close of the calendar year or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the fourth month following the close of the fiscal year.
(c) Time of payment for corporations. - In the case of corporations, the balance of the tax owed after credits for taxes paid through declarations estimated payments as provided in Sections 40-18-82 and 40-18-83 shall be due and paid on March 15 following the close of the calendar year or, if the return should be made on the basis of the fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

(d) Extension of time for payment. - At the request of the taxpayer, the department may extend the time for payment of the amount determined as the tax due by the taxpayer, for a period of not to exceed three months from the date prescribed for the payment of tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of expiration of the period of the extension.

t(e)(c) Voluntary advance payment. - The tax imposed by this chapter or any estimated tax payment thereof may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

§ 40-18-80. Penalty where certain percent of tax exceeds estimated tax for individuals.

(a) If 90 percent of the tax, determined without regard to the credit under Section 40-18-78, in the case of individuals other than farmers exercising an election under
Sections 40-18-82 and 40-18-83, or 66 2/3 percent of such tax so determined in the case of such farmers, exceeds the estimated tax increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to six percent of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser.

(b) This subsection shall not apply to the taxable year in which:

(1) falls the death of the taxpayer occurs,

(2) nor shall it apply to the taxable year in which the taxpayer makes a timely payment on April 15, June 15, or September 15 of such that year, or and on January 15 of the year succeeding the taxable year, or in the case of farmers exercising an election under Section 40-18-82(a)(6) within the last quarter and making who make payment in an amount at least as great as though computed on the basis of the facts shown on his return for the preceding taxable year equal to one hundred percent of the tax shown on the return for the preceding taxable year (or, if no return is filed, ninety percent of the tax for such year).

(3) if the liability for the previous year was zero (0) (except for a net operating loss carryback to that year).

(b) In the case of corporations, if 90 percent of the tax exceeds the estimated tax there shall be added to the tax an amount equal to such excess or equal to six percent of
the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This subsection shall not apply to the taxable year in which the taxpayer makes a timely payment on April 15, June 15, September 15, or December 15 of such year, in an amount at least as great as though computed on the basis of the facts shown on its return for the preceding taxable year.

Section 4. A new section 40-18-80.1 is added to the Code of Alabama 1975, to read as follows:

§40-18-80.1. Addition to Tax on Corporations.

(a) Addition to tax.

Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under Chapter 18 for the taxable year an amount determined by applying the underpayment rate established under 26 U.S.C. § 6621, to the amount of the underpayment for the period of the underpayment.

(b) Amount of underpayment; period of underpayment.

For purposes of subsection (a):

(1) Amount is the required installment, in excess of the amount (if any) of the installment paid on or before the due date for the installment.

(2) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:
a. the 15th day of the 3rd month following the close of the taxable year, or
b. with respect to any portion of the underpayment, the date on which such portion is paid.

(3) For purposes of paragraph (2) b., a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates. For purposes of this section there shall be four required installments for each taxable year, the time for payment of installments shall be

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(d) Amount of required installments.

For purposes of this section:

(1) a. Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

b. Except as otherwise provided in this subsection, the term "required annual payment" means the lesser of:
1. 100 percent of the tax shown on the return for the taxable year (or, if no return is filed, 100 percent of the tax for such year), or

2. 100 percent of the tax shown on the return of the corporation for the preceding taxable year. However, this shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax. For the first taxable year beginning after December 31, 2000, the first sentence of this subparagraph shall be applied using 130 percent of the tax shown on the return for the preceding taxable year in lieu of 100 percent of such amount.

(2) Large corporations are required to pay 100 percent of the current year tax.

Except as provided in paragraph b., subparagraph 2. of paragraph (1)b. shall not apply in the case of a large corporation.

a. The corporation may use the amount of last year’s tax for first installment.

b. Paragraph a. shall not apply for purposes of determining the amount of the first required installment for any taxable year. Any reduction in such first installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under subdivision (1) by the amount of such reduction.
(e) Lower required installment where annualized income installment or adjusted seasonal installment is less than amount determined under subsection (d). In the case of any required installment, the corporation may establish that the accrued income installment or the adjusted seasonal installment is less than the amount determined under (d) (1) in accordance with 26 U.S.C. § 6655(e).

(f) Exception where tax is small amount.

No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $5000.

(g) Definitions and special rules.

For purposes of this section, the meaning of the following terms are:

(1) Tax:

a. The excess of the tax levied by §40-18-31, over
b. the credits against tax provided by §40-18-35(b) and §40-18-243.

(2) Large corporation:

a. Any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

b. Rules for applying subparagraph a.

1. Testing period.
For purposes of subparagraph a. the term "testing period" means the 3 taxable years immediately preceding the taxable year involved.

2. Certain carrybacks and carryovers not taken into account.

For purposes of subparagraph a., taxable income shall be determined without regard to any net operating loss carried to the taxable year under Section 40-18-35.1.

(3) Certain tax-exempt organizations.

a. Any organization subject to the tax on unrelated business taxable income shall be treated as a corporation subject to tax under 40-18-31.

b. Any reference to taxable income shall be treated as including a reference to unrelated business taxable income.

In the case of any organization described in paragraph a., subsection (b)(2)a. shall be applied by substituting "5th month" for "3rd month."

(4) Application of section to certain taxes imposed on S corporations.

In the case of an S corporation, for purposes of this section:

a. The following taxes shall be treated as imposed by 40-18-31:

1. The tax imposed by 40-18-174(a) (or the corresponding provisions of prior law.)

2. The tax imposed by 40-18-175(a).

b. Paragraph (2) of subsection (d) shall not apply.
c. Subparagraph 2. of subsection (d)(1)b. shall be applied as if it read as follows:

2. the sum of
   (i) the amount determined under subparagraph 1. by only taking into account the taxes referred to in subparagraphs 1. and 3. of subsection (g)(4)a. and
   (ii) 100 percent of the tax imposed by 40-18-175(a) which was shown on the return of the corporation of the preceding taxable year.

d. The requirement in the last sentence in subsection (d)(1)b. that the return for the preceding taxable year show a liability for tax shall not apply.

e. Any reference to subsection (e) to taxable income shall be treated as including a reference to the net recognized built-in gain or the excess passive income (as the case may be.)

(h) Fiscal years and short years.

(1) Fiscal years.

In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year.

This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Commissioner.

(i) Regulations.
The Commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

Section 5. Sections 40-18-82 and 40-18-83, Code of Alabama 1975, are amended to read as follows:

"§40-18-82.

(a) Every individual and corporation shall, at the time prescribed in subsection (c) of this section, make a declaration of estimated tax for the taxable year if net income from sources other than wages, in the case of a single person or married persons filing separate returns, can reasonably be expected to exceed $1,500 for the taxable year; and in the case of married persons living with husband or wife and filing a joint return, if net income can be reasonably expected to exceed $3,000; and in the case of corporations, if Alabama income tax liability can reasonably be expected to exceed $5,000.

(b) In the declaration required under subsection (a), the taxpayer shall state:

(1) The amount which he estimates as the amount of tax under Section 40-18-5 for the taxable year; or in the case of a corporation the amount of tax estimated as the amount of tax due under Section 40-18-31;

(2) The amount which an individual taxpayer estimates as the credits for the taxable year under Section 40-18-21(b) or Section 40-18-71, or the amount which a
corporate taxpayer estimates as the credits for the taxable year under Section 40-18-38(b);

(3) The excess of the amount estimated under subdivision (1) over the amount estimated under subdivision (2), which excess, for the purposes of this chapter, shall be considered the estimated tax for the taxable year, and

(4) Such other information as may be prescribed in regulations promulgated by the department.

(b) The declaration payments required under subsection (a) of this section shall be filed with remitted to the department on or before April 15 of the taxable year; except, that if the requirements of subsection (a) of this section are first met:

(1) After April 1 and before June 2 of the taxable year, the declaration payment shall be filed remitted on or before June 15 of the taxable year;

(2) After June 1 and before September 2 of the taxable year, the declaration payment shall be filed remitted on or before September 15 of the taxable year; or

(3) After September 1 of the taxable year, the declaration payment shall be filed remitted on or before January 15 of the succeeding taxable year; or in the case of corporations on or before December 15 of the taxable year. However, if a return is filed and payment made by January 15 of the succeeding taxable year by individuals, the estimated payment provided for by this subsection shall not be required.
(d) A taxpayer may make amendments of a declaration filed during the taxable year under subsection (c) of this section, under regulations prescribed by the department.

(e) If, on or before January 15 of the succeeding taxable year, an individual taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on the return as payable then, under regulations prescribed by the department:

(1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this section, be considered as such declaration, and

(2) If the tax shown on the return, reduced by the credits under Section 40–18–78, is greater than the estimated tax shown in a declaration previously made or, in the last amendment thereof, such return shall, for the purposes of this section, be considered as the amendment of the declaration permitted by subsection (d) of this section to be filed on or before January 15.

(f) The department shall promulgate regulations governing reasonable extensions of time for filing declarations and paying the estimated tax. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

(g) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly
authorized agent or by the guardian or other person charged
with the care of the person or property of such taxpayer.

§40-18-83.

(a) The estimated tax provided for in Section
40-18-82 shall be paid as follows:

(1) If the declaration is filed requirements of
Section 40-18-82(a) are first met on or before April 15 of the
year, the estimated tax shall be paid in four equal
installments. The first installment shall be paid at the time
of the filing of the declaration on April 15, the second and
third on June 15 and September 15, respectively, of the
taxable year and the fourth on December 15 of the taxable year
for corporations or on January 15 of the succeeding taxable
year for individuals.

(2) If the declaration is filed requirements of
Section 40-18-82(a) are first met after April 15 and not after
June 15 of the taxable year and is not required by subsection
(c)(a) of Section 40-18-82 to be filed on or before April 15
of the taxable year, the estimated tax shall be paid in three
equal installments. The first installment shall be paid at the
time of the filing of the declaration on June 15 and the
second on September 15 of the taxable year and the third on
December 15 of the taxable year for corporations, or on
January 15 of the succeeding taxable year for individuals.

(3) If the declaration is filed filing requirements
of Section 40-18-82(a) are first met after June 15 and not
after September 15 of the taxable year and is not required by
subsection (c) (a) of Section 40-18-82 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments; the first installment shall be paid at the time of the filing of the declaration September 15 and the second on December 15 of the taxable year for corporations, or on January 15 of the succeeding taxable year for individuals.

(4) If the declaration is filed filing requirements of Section 40-18-82(a) are first met after September 15 of the taxable year, and is not required by subsection (c) (a) of Section 40-18-82 to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration on January 15 of the succeeding taxable year for individuals.

(5) If the declaration is filed installment payments are made after the time prescribed in Section 40-18-82 subsection (a), including cases where extensions of time have been granted, subdivisions (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such the payment filing all installments of estimated tax, including interest at the prescribed rate which would have been payable on or before such that time if the declaration installments had been filed paid within the time(s) prescribed in subsection (c) (a) of Section 40-18-82, and the remaining installments shall be paid at the times at which and in the amounts in which they would have been payable if the declaration had been so filed.
(6) In the case of an individual whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year shall be permitted to make the estimated payment on or before February 15 of the succeeding tax year, and further provided that if such an individual files a return on or before February 28 of the succeeding tax year and pays in full the amount computed on the return as payable, such return shall have the effect of satisfying the requirements prescribed in subdivisions (1), (2), (3), (4), and (5) of this subsection.

(b) If any amendment of the declaration is filed during the taxable year a taxpayer determines that the estimated tax payments were incorrect, the remaining installments, if any, shall be ratably increased or decreased as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment; and if any amendment taxpayer determination is made after October 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment the taxpayer determination.

(c) At the election of the taxpayer, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(d) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for
the taxable year. Assessment in respect of the estimated tax shall be limited to the amount paid.

(e) In the case of an individual whose estimated gross income from farming for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, in lieu of the time prescribed in subsection (c) of Section 40-18-82, the declaration for the taxable year may be made at any time on or before February 15 of the succeeding taxable year, and if such an individual files a return on or before February 28 of the succeeding taxable year and pays in full the amount computed on the return as payable, such return shall have the same effect as that prescribed in subsection (e) of Section 40-18-82 in the case of a return filed on or before February 15.

(f) The application of this section, Section 40-18-82 and subsection (a) of Section 40-18-80 to taxable years of less than 12 months shall be as prescribed in regulations promulgated by the department.

(g) In the application of this section and Section 40-18-82 to taxpayers reporting income on a fiscal year basis, there shall be substituted for the dates specified therein the months corresponding thereto."

Section 6. Section 40-2A-18 is hereby added to the Code of Alabama 1975, to read as follows:

$40-2A-18.

Interest on any final assessment accrues from the date of entry of the final assessment on the total amount of
its components including tax, interest, and any penalty, as
one lump sum amount. The preceding sentence is a restatement
of current law as it applies to interest accrual after final
assessment. Notwithstanding any provision of this act, this
section shall apply to all open tax years as of the effective
date of this act and for all subsequent tax years.

Section 7. Notwithstanding any other provision of
law, including any law enacted at the Fourth Special Session
of 2001, if a nonresident owner of a subchapter K entity
certifies in writing, under penalty of perjury, to the entity,
prior to the filing of the entity’s income tax return for the
first taxable year beginning in calendar year 2002, that the
nonresident owner has fully paid its Alabama income tax
attributable to its distributive share of the entity’s net
taxable income allocated and apportioned to Alabama with
respect to its taxable year ending in 2001 the entity shall
not be required to pay to Alabama an annual amount equal to
the highest tax rate applicable to C corporations under
Chapter 18 of Title 40, if the nonresident owner is a
corporation, and otherwise the highest tax rate applicable to
individuals under Chapter 18 of Title 40, multiplied by the
amount of the nonresident owner’s distributive share of the
net taxable income allocated and apportioned to Alabama, as
reflected on the entity’s return for the period in question.
"Nonresident owner" and "subchapter K entity" shall have the
same meanings for purposes of this section as defined in
Section 40-18-1. This section shall have no force or effect if
House Bill 7, as introduced in the Fourth Special Session of 2001, does not become law.

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

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

Section 10. This act shall become effective for all tax years beginning subsequent to December 31, 2000, following its passage and approval by the Governor, or its otherwise becoming law.
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