

1 SB252  
2 122359-1  
3 By Senators Blackwell, Beason, Reed, Orr, Taylor and Whatley  
4 RFD: Finance and Taxation Education  
5 First Read: 08-FEB-12

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8 SYNOPSIS: Under existing law, an Alabama resident who  
9 incurs a capital loss is allowed to use a deduction  
10 for state income tax purposes only in the year in  
11 which the loss is incurred.

12 Also under existing law, a net operating  
13 loss for state income tax purposes may be carried  
14 back two taxable years from the year in which the  
15 loss is incurred.

16 This bill would allow an Alabama resident  
17 who incurs a capital loss to carry forward the loss  
18 for state income tax purposes for three years from  
19 the year in which the loss is incurred.

20  
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24  
25 To amend Section 40-18-15, Code of Alabama 1975,  
26 relating to income tax deductions for individuals; to allow  
27 each Alabama resident who incurs a capital loss to carry

1 forward the loss for state income tax purposes for three years  
2 from the year in which the loss is incurred.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-18-15, Code of Alabama 1975,  
5 is amended to read as follows:

6 "§40-18-15.

7 "(a) No deduction shall be allowed for any losses,  
8 expenses, or interest deferred or disallowed pursuant to 26  
9 U.S.C. § 267 or for any cost required to be capitalized in  
10 accordance with 26 U.S.C. § 263A; otherwise, there shall be  
11 allowed as deductions:

12 "(1) All ordinary and necessary expenses paid or  
13 incurred during the taxable year in carrying on any trade or  
14 business, as determined in accordance with 26 U.S.C. § 162.

15 "(2) Interest paid or accrued within the taxable  
16 year on indebtedness, limited to the amount allowable as an  
17 interest deduction for federal income tax purposes in the  
18 corresponding tax year or period pursuant to the provisions of  
19 26 U.S.C. §§ 163, 264, and 265.

20 "(3) The following taxes paid or accrued within the  
21 taxable year:

22 "a. Income taxes, Federal Insurance Contribution Act  
23 taxes, taxes on self-employment income and estate and gift  
24 taxes imposed by authority of the United States or any  
25 possession of the United States.

26 "b. State and local, and foreign, occupational  
27 license taxes, and contributions to state unemployment funds.

1            "c. State and local, and foreign, real property  
2 taxes.

3            "d. State and local personal property taxes.

4            "e. The generation-skipping transfer (GST) tax  
5 imposed on income distributions by 26 U.S.C. § 2601.

6            "f. The taxes described in paragraphs c., d., and e.  
7 shall be deductible only to the extent that the taxes are  
8 deductible for federal income tax purposes under 26 U.S.C. §  
9 164 (relating to taxes).

10           "g. In addition, there shall be allowed as a  
11 deduction, state and local, and foreign taxes, except income  
12 taxes, and taxes imposed by authority of the United States or  
13 any possession of the United States, which are paid or accrued  
14 within the taxable year in carrying on a trade or business or  
15 an activity described in 26 U.S.C. § 212 (relating to expenses  
16 for the production of income).

17           "h. Notwithstanding paragraph g., any tax described  
18 in any paragraph preceding paragraph g. that is paid or  
19 accrued in connection with an acquisition or disposition of  
20 property shall be treated as part of the cost of the acquired  
21 property or, in the case of a disposition, as a reduction in  
22 the amount realized on the disposition of that property.

23           "(4) Losses sustained during the taxable year and  
24 not compensated for by insurance or otherwise if incurred in a  
25 trade or business, in accordance with 26 U.S.C. § 165(c)(1).

26           "(5) Losses sustained during the taxable year and  
27 not compensated for by insurance or otherwise, if incurred in

1 any transaction entered into for profit, though not connected  
2 with the trade or business in accordance with 26 U.S.C. §  
3 165(c)(2); but, in the case of a taxpayer other than a  
4 resident of the state, only as to those transactions within  
5 the state.

6 "(6) Casualty and theft losses sustained during the  
7 taxable year of property not connected with the conduct of a  
8 trade or business or a transaction entered into for profit as  
9 determined in accordance with subsections (c)(3) and (h) of 26  
10 U.S.C. § 165. In the case of a nonresident, the deduction  
11 shall be allowed only for the losses arising from property  
12 located within the State of Alabama and the limitations in 26  
13 U.S.C. § 165 shall be applied with regard only to the  
14 taxpayer's Alabama adjusted gross income. No loss shall be  
15 allowed if at the time of filing the return, the loss has been  
16 claimed on a federal estate tax return.

17 "(7) Losses from debts ascertained to be worthless  
18 and charged off during the taxable year of ascertainment, if  
19 sustained in the conduct of the regular trade or business of  
20 the taxpayer.

21 "(8) A reasonable allowance for the exhaustion, wear  
22 and tear of property from which any income is derived,  
23 including a reasonable allowance for obsolescence, in  
24 accordance with 26 U.S.C. §§ 167 and 168, and an allowance for  
25 the amortization of intangibles determined in accordance with  
26 26 U.S.C. § 197.

1           "(9) In the case of mines, oil, and gas wells, other  
2 natural deposits and timber, a reasonable allowance for  
3 depletion and for depreciation of improvements, according to  
4 the peculiar condition in each case based upon the cost,  
5 including the cost of development not otherwise deducted, such  
6 reasonable allowance in all cases to be made under rules and  
7 regulations to be prescribed by the Department of Revenue;  
8 and, in the case of leasehold interests, the deduction allowed  
9 by this section shall be equitably apportioned between the  
10 lessor and the lessee.

11           "(10) Charitable contributions to the extent allowed  
12 for federal income tax purposes under 26 U.S.C. § 170  
13 (relating to charitable contributions and gifts).

14           "(11) The deduction allowed to the individual for  
15 federal income tax purposes by 26 U.S.C. § 219 (relating to  
16 retirement savings).

17           "(12) The deduction allowed for federal income tax  
18 purposes by 26 U.S.C. § 404 (relating to qualified pension,  
19 profit sharing, stock bonus, and annuity plans).

20           "(13) For each individual income taxpayer, medical  
21 and dental expenses, including amounts paid for medicine and  
22 drugs and amounts paid for accident and health insurance, as  
23 determined in accordance with 26 U.S.C. § 213; provided,  
24 however, that the limitation of the deduction to the excess of  
25 those expenses over 7.5 percent of adjusted gross income as  
26 provided in 26 U.S.C. § 213 shall instead be limited to the

1 excess of those expenses over 4.0 percent of adjusted gross  
2 income.

3 "(14) For each individual income taxpayer, the  
4 deduction determined in accordance with 26 U.S.C. § 212 for  
5 all the ordinary and necessary expenses paid or incurred  
6 during the taxable year for the production or collection of  
7 income, or for the management, conservation, or maintenance of  
8 property held for the production of income, or in connection  
9 with the determination, collection, or refund of any tax.

10 "(15) Any expense not exceeding \$1,000 actually  
11 incurred during the taxable year in constructing on his or her  
12 property a family radioactive fallout shelter, as approved and  
13 certified by the State Department of Emergency Management, and  
14 any amount not exceeding \$1,000 which he or she contributed  
15 during the taxable year toward the construction of a community  
16 radioactive fallout shelter.

17 "(16) A deduction from the taxpayer's adjusted gross  
18 income for state income tax purposes of the total cost of  
19 installation for conversion from gas or electricity to wood as  
20 the primary energy source for heating their individual  
21 domestic homes for the taxable year during which a conversion  
22 was completed.

23 "(17) Alimony and separate maintenance payments, the  
24 amount deductible to be the same as the amount deductible for  
25 federal income tax purposes under 26 U.S.C. § 215 (relating to  
26 alimony payments).

1           "(18) Moving expenses paid or incurred during the  
2 taxable year as allowed under 26 U.S.C. § 217 (relating to  
3 moving expenses). However, in applying 26 U.S.C. § 217, the  
4 term "new principal place of work" means only places of work  
5 located within the State of Alabama.

6           "(19) Any expense not exceeding \$35,000 actually  
7 incurred during the taxable year in removing from his or her  
8 property any architectural or transportation barriers to  
9 handicapped persons with nonambulatory and semiambulatory  
10 disabilities; provided, however, that any improvements  
11 resulting from that expense shall not be eligible to be  
12 capitalized for depreciation.

13           "(20) Notwithstanding subdivision (1), the deduction  
14 for expenses of travel, entertainment, and meals shall be  
15 determined in accordance with 26 U.S.C. § 274.

16           "(21) The deduction allowed by 26 U.S.C. § 179  
17 (relating to expensing certain depreciable property), provided  
18 that no deduction shall be allowed under subdivision (8) for  
19 any amount allowed as a deduction under this subdivision.

20           "(22) The deduction allowed by 26 U.S.C. § 195  
21 (relating to amortization of start-up expenditures), but in  
22 the case of a nonresident, only if the principal place of  
23 business of the business investigated, created, or acquired is  
24 located in the State of Alabama.

25           "(23) The deduction allowed by subdivision (1), to  
26 the extent that it consists of unreimbursed employee business  
27 expenses, and the deduction allowed by subdivision (14) shall



1 be allowed only to the extent that the aggregate of the  
2 deductions exceeds 2 percent of adjusted gross income.

3 "(24) The reasonable medical and legal expenses paid  
4 or incurred by the taxpayer in connection with the adoption of  
5 a minor. For purposes of this subdivision, medical expenses  
6 shall include any medical and hospital expenses of the adoptee  
7 and the adoptee's biological mother which are incident to the  
8 adoptee's birth and subsequent medical care and which, in the  
9 case of the adoptee, are paid or incurred before the petition  
10 is granted.

11 "(25) The amount of any aid or assistance, whether  
12 in the form of property, services, or monies, provided to the  
13 State Industrial Development Authority pursuant to Section  
14 41-10-44.8(d) in order to induce an approved company to  
15 undertake a major project within the state.

16 "(26) The amount of premiums paid pursuant to a  
17 qualifying insurance contract for qualified long-term care  
18 coverage.

19 "(27) The amount deductible by the taxpayer in  
20 accordance with 26 U.S.C. § 162(h).

21 "(28) The amount, up to five thousand dollars  
22 (\$5,000) per annum, contributed subsequent to December 31,  
23 2007, to the Alabama Prepaid Affordable College Tuition  
24 Program or the Alabama College Education Savings Program as  
25 defined in Chapter 33C of Title 16. If the taxpayer makes a  
26 nonqualified withdrawal as defined by Section 529 of the  
27 Internal Revenue Code (26 U.S.C. 529), the amount of the

1 nonqualified withdrawal, plus 10 percent of the amount  
2 withdrawn, shall be added back to the income of the  
3 contributing taxpayer in the year the nonqualified withdrawal  
4 was distributed.

5 "(b) (1) In lieu of the deductions allowable to  
6 individual taxpayers, as provided in subdivision (1) of  
7 subsection (a) to the extent of unreimbursed employee business  
8 expenses, and as provided in subdivisions (2), (3), (5), (6),  
9 (10), (13), (14), (15), (16), (19), (22), and (26) of  
10 subsection (a), the taxpayer may elect to take the optional  
11 standard deduction of 20 percent of the adjusted gross income  
12 or \$2,000, whichever is the lesser. Taxpayers filing jointly  
13 as defined in Section 40-18-27 may elect to take the optional  
14 standard deduction of 20 percent of the adjusted gross income  
15 or \$4,000, whichever is the lesser.

16 "(2) For tax years beginning after December 31,  
17 2006, the optional standard deduction shall be determined as  
18 follows:

19 "a. The standard deduction for married taxpayers  
20 filing jointly with adjusted gross income of \$20,000 or less  
21 shall be \$7,500. For married taxpayers filing jointly with  
22 adjusted gross income of greater than \$20,000, the standard  
23 deduction shall be reduced by \$175 for each \$500 of adjusted  
24 gross income in excess of \$20,000. Notwithstanding the  
25 preceding sentence, the standard deduction shall not be less  
26 than \$4,000 for married taxpayers filing jointly.

1            "b. The standard deduction for married taxpayers  
2 filing separate returns with adjusted gross income of \$10,000  
3 or less shall be \$3,750. For married taxpayers filing separate  
4 returns with adjusted gross income of greater than \$10,000,  
5 the standard deduction shall be reduced by \$88 for each \$250  
6 of adjusted gross income in excess of \$10,000. Notwithstanding  
7 the preceding sentence, the standard deduction shall not be  
8 less than \$2,000 for married taxpayers filing separate  
9 returns.

10           "c. The standard deduction for head of family  
11 taxpayers with adjusted gross income of \$20,000 or less shall  
12 be \$4,700. For head of family taxpayers with adjusted gross  
13 income of greater than \$20,000, the standard deduction shall  
14 be reduced by \$135 for each \$500 of adjusted gross income in  
15 excess of \$20,000. Notwithstanding the preceding sentence, the  
16 standard deduction shall not be less than \$2,000 for head of  
17 family taxpayers.

18           "d. The standard deduction for single taxpayers with  
19 adjusted gross income of \$20,000 or less shall be \$2,500. For  
20 single taxpayers with adjusted gross income of greater than  
21 \$20,000, the standard deduction shall be reduced by \$25 for  
22 each \$500 of adjusted gross income in excess of \$20,000.  
23 Notwithstanding the preceding sentence, the standard deduction  
24 shall not be less than \$2,000 for single taxpayers.

25           "(c) A deduction is allowable for the amount of  
26 federal income tax paid or accrued within the taxable year. In  
27 the case of a nonresident taxpayer, the amount of federal

1 income tax deductible to Alabama shall be determined by the  
2 ratio that the amount of adjusted gross income received from  
3 sources within the State of Alabama bears to the amount of  
4 adjusted gross income received from sources within and outside  
5 the State of Alabama.

6 "(d) If separate returns are filed by husband and  
7 wife and one spouse elects to claim the optional standard  
8 deduction, the other spouse must also claim the optional  
9 standard deduction.

10 "(e) In the case of a nonresident individual:

11 "(1) The deductions allowed in subdivisions (1),  
12 (2), (3), (4), (5), (7), (8), (9), (11), (12), (19), (21),  
13 (23), and (25) of subsection (a) shall be allowed only to the  
14 extent that they are paid or incurred in carrying on a trade  
15 or business within the State of Alabama and the deduction  
16 allowed by Section 40-18-15.2 shall be allowed only to the  
17 extent it arose from a trade or business carried on in  
18 Alabama.

19 "(2) The deductions allowed by subdivisions (2),  
20 (3), (5), (8), (9), (14), and (19) of subsection (a) shall be  
21 allowed only to the extent arising from property located in  
22 Alabama or transactions producing income that is subject to  
23 tax in the State of Alabama.

24 "(3) The amount of the deductions allowed by  
25 subdivisions (2), (3), (6), (10), (13), (15), (16), (17),  
26 (19), (24), and (26) of subsection (a) (and not allowed by  
27 subdivisions (1) or (2) of this subsection), or by subsection

1 (b) if the taxpayer elects the standard deduction, shall be  
2 limited to the amount determined by multiplying the total of  
3 such deductions by a fraction, the numerator of which is the  
4 taxpayer's adjusted gross income determined using the rules  
5 provided in subdivisions (1) and (2) of this subsection and  
6 the denominator of which is the taxpayer's adjusted gross  
7 income determined under Section 40-18-14.2. The deduction  
8 allowed in subdivision (17) of subsection (a) shall not be  
9 subtracted in calculating either the numerator or denominator  
10 in the previous sentence.

11 (f) Nothing in this section shall allow any item to  
12 be deducted more than once.

13 "(g) Notwithstanding the provisions of this section,  
14 26 U.S.C. §1212, with respect to capital loss carrybacks and  
15 carryforwards, shall be operative for the purposes of this  
16 section except that the capital loss carryback provisions of  
17 26 U.S.C. §1212 may not be operative and the capital loss  
18 carryforward allowed by subsection (a) of 26 U.S.C. §1212  
19 shall be limited to three years."

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