

1 SB425
2 136681-1
3 By Senator Irons
4 RFD: Finance and Taxation Education
5 First Read: 20-MAR-12

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8 SYNOPSIS: This bill would clarify that certain owners
9 of limited liability companies are not personally
10 liable for non-income taxes solely because the
11 company is classified as a partnership for Alabama
12 income tax purposes.

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14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Sections 10A-5-3.02 and 40-29-72, Code of
19 Alabama 1975, to clarify that certain owners of limited
20 liability companies are not personally liable for the
21 company's non-income taxes solely because the company is
22 classified as a partnership for Alabama income tax purposes.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 2 of this act is intended to
25 clarify current law, resolve the inconsistent rulings issued
26 by the Administrative Law Division of the Department of
27 Revenue, most recently in Nonna Rose Kingsley, LLC, and its

1 Members v. State Dep't of Revenue, Admin. L. Div. Dkt. No. W.
2 09-1194 (April 15, 2010), and overrule the Department of
3 Revenue's erroneous position with respect to the joint
4 personal liability of members or managers for non-income state
5 or local taxes owed or incurred by their limited liability.

6 Section 2. Sections 10A-5-3.02 and 40-29-72, Code of
7 Alabama 1975, are amended to read as follows:

8 "§10A-5-3.02.

9 "Liability of members to third parties.

10 "(a) Except as otherwise provided in this chapter, a
11 member of a limited liability company is not liable under a
12 judgment, decree, or order of a court, or in any other manner,
13 for a debt, obligation, or liability of the limited liability
14 company, whether arising in contract, tort, or otherwise, or
15 for the acts or omissions of any other member, manager, agent,
16 or employee of the limited liability company.

17 "(b) A member may be liable to creditors of the
18 limited liability company for a written agreement to make a
19 contribution to the limited liability company.

20 "(c) A member of a limited liability company may
21 become liable by reason of the member's own acts or conduct.

22 "(d) A member of a limited liability company shall
23 not be personally liable for non-income state or local taxes
24 except as may be provided for under Sections 40-29-72 and
25 40-29-73, as may be amended from time to time.

26 "§40-29-72.

1 "(a) Penalty assessed as tax. The penalties and
2 liabilities provided by this article shall be paid upon notice
3 and demand by the commissioner or his delegate, and shall be
4 assessed and collected in the same manner as taxes. Except as
5 otherwise provided, any reference in this title to "tax"
6 imposed by this title shall be deemed also to refer to the
7 penalties and liabilities provided by this article.

8 "(b) "Person" defined. The term "person," as used in
9 this article, includes an officer of a corporation, ~~or a~~
10 ~~member~~ partner of a partnership or a manager or member of a
11 limited liability company, who as such officer, partner,
12 manager, or member is under a duty to perform the act in
13 respect of which the violation occurs."

14 Section 3. This act is only a clarification of
15 existing law and shall therefore become effective for all open
16 tax periods immediately following its passage and approval by
17 the Governor, or its otherwise becoming law.