

1 HB462
2 175707-1
3 By Representative Martin
4 RFD: Ways and Means General Fund
5 First Read: 22-MAR-16

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8 SYNOPSIS: Under current law, all entities doing
9 business or registered to do business in Alabama,
10 have an annual filing obligation for Business
11 Privilege Tax. The Business Privilege Tax is
12 calculated based on an entity's net worth,
13 apportioned to Alabama. There is a minimum of \$100
14 Business Privilege Tax imposed annually on all
15 entities subject to this tax. Currently, taxpayers
16 have an annual maximum Business Privilege Tax due
17 of \$15,000.

18 In addition, under current law, the Business
19 Privilege Tax due date for Financial Institutions
20 is March 15. The Alabama Excise Tax return filed by
21 financial institutions is due April 15. Taxpayers
22 often need to extend the filing date of the
23 Business Privilege Tax in order to have complete
24 information not available until the Financial
25 Institution Excise Tax return is completed. In
26 addition, this bill ensures that all other entity
27 types have corresponding due dates for both the

1 Business Privilege Tax and the Alabama Income Tax
2 return.

3 This bill will increase the annual maximum
4 amount of Business Privilege Tax due from \$15,000
5 to \$24,500. Taxpayers that have less than \$10,000
6 in Alabama taxable net worth will be relieved from
7 their Business Privilege Tax filing obligation. In
8 addition, the initial Business Privilege Tax return
9 is eliminated. This bill updates the public
10 information record filing requirements.

11 This bill amends the Business Privilege Tax
12 due date for taxpayer's subject to the Financial
13 Institution Excise Tax from March 15, to provide
14 for corresponding tax return due dates for
15 financial institutions.

16 In addition, this bill modifies due dates
17 for all entities to ensure that the Business
18 Privilege Tax return is due at the same time as the
19 Federal Income Tax return.

20 In addition, Section 12 of Act 99-665, as
21 amended by Act 2000-705, is codified by this bill
22 as part of Section 40-14A-22. Other technical
23 corrections from these acts are also codified by
24 this bill.

25 This bill repeals Section 40-14A-29 in its
26 entirety to remove the requirement for an initial
27 Business Privilege Tax return.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 This bill will increase the annual maximum amount of
7 Business Privilege Tax due from \$15,000 to \$24,500. Taxpayers
8 that have less than \$10,000 in Alabama taxable net worth will
9 be relieved from their Business Privilege Tax filing
10 obligation. In addition, the initial Business Privilege Tax
11 return is eliminated. This bill updates the public information
12 record filing requirements. This bill also amends the Business
13 Privilege Tax due date for taxpayer's subject to the Financial
14 Institution Excise Tax from March 15, to provide for
15 corresponding tax return due dates for financial institutions.
16 Modifies due dates for all entities to ensure that the
17 Business Privilege Tax return is due at the same time as the
18 Federal Income Tax return. In addition, Section 12 of Act
19 99-665, as amended by Act 2000-705, is codified by this bill
20 as part of Section 40-14A-22. This bill repeals Section
21 40-14A-29 in its entirety to remove the requirement for an
22 initial Business Privilege Tax return.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 10A-2-16.22, 40-14A-22, and
25 40-14A-25, Code of Alabama 1975, are hereby amended to read as
26 follows:

27 "§10A-2-16.22.

1 "(a) Each domestic corporation, and each foreign
2 corporation authorized to transact business in this state,
3 shall deliver to the Secretary of State for filing an annual
4 report that sets forth:

5 "(1) The name of the corporation and the state or
6 other jurisdiction under whose law it is incorporated;

7 "(2) The address of its registered office and the
8 name of its registered agent at that office in this state;

9 "(3) The address of its principal office including,
10 in the case of a foreign corporation, the address of its
11 principal office in the state or other jurisdiction under
12 whose law it is incorporated;

13 "(4) The names and respective addresses of its
14 president and secretary; and

15 "(5) A brief statement of the character of business
16 in which it is actually engaged in this state.

17 "(b) Information in the annual report must be
18 current as of the date the annual report is executed on behalf
19 of the corporation.

20 "(c) The first annual report must be delivered to
21 the Secretary of State between January 1 and March 15 of the
22 year following the calendar year in which a domestic
23 corporation was incorporated or a foreign corporation was
24 authorized to transact business. Subsequent annual reports
25 must be delivered to the Secretary of State between January 1
26 and March 15 of the following calendar years.

1 "(d) If an annual report does not contain the
2 information required by this section, the Secretary of State
3 shall promptly notify the reporting domestic or foreign
4 corporation in writing and return the report to it for
5 correction. If the report is corrected to contain the
6 information required by this section and delivered to the
7 Secretary of State within 30 days after the effective date of
8 notice, it is deemed to be timely filed.

9 "~~(e) The public record information filed with the~~
10 ~~Department of Revenue, pursuant to Chapter 14A of Title 40~~
11 ~~shall constitute and be accepted in lieu of the annual report~~
12 ~~required pursuant to this section, provided that a A ten~~
13 dollar (\$10) fee for the State of Alabama shall accompany the
14 public record information filed by the corporation annually
15 with the ~~Department of Revenue~~ Secretary of State. The fee for
16 the annual report shall be deposited in the State Treasury to
17 the credit of the Secretary of State Entity Fund as prescribed
18 by Section 10A-1-4.31.

19 "§40-14A-22.

20 "(a) Levy of tax. There is hereby levied an annual
21 privilege tax on every corporation, limited liability entity,
22 and disregarded entity doing business in Alabama, or
23 organized, incorporated, qualified, or registered under the
24 laws of Alabama.~~The tax shall accrue as of January 1 of every~~
25 ~~taxable year, or in the case of a taxpayer organized,~~
26 ~~incorporated, qualified, or registered during the year, or~~
27 ~~doing business in Alabama for the first time, as of the date~~

~~the taxpayer is organized, incorporated, registered, or~~
~~qualifies to do business, or begins to do business in Alabama,~~
~~as the case may be.~~ The taxpayer shall be liable for the tax
 levied by this article for each year beginning before the
 taxpayer has been dissolved or otherwise ceased to exist or
 has withdrawn or forfeited its qualification to do business in
 Alabama. The amount of the tax due shall be determined by
 multiplying the taxpayer's net worth in Alabama by the rate
 determined in subsection (b).

"(b) Rate of tax. ~~For all taxable years of taxpayers~~
~~that begin after December 31, 1999, the rate of tax shall be~~
~~as set forth below.~~

"If taxable income of the
 taxpayer is:

	at least	but less than	The tax rate shall be
	\$1		\$0.25 per \$1,000
	\$1	\$200,000	\$1.00 per \$1,000
	\$200,000	\$500,000	\$1.25 per \$1,000
	\$500,000	\$2,500,000	\$1.50 per \$1,000
	\$2,500,000		\$1.75 per \$1,000

"(c) Exemption.

1 "(1) For purposes of this section, Alabama taxable
2 net worth will be computed in the manner prescribed by this
3 Chapter.

4 "(2) All entities, subject to the tax levied in
5 Title 40, Chapter 14A, with Alabama taxable net worth less
6 than \$10,000 are relieved from filing an annual Business
7 Privilege Tax return and the associated tax liability.

8 "~~(c)~~ (d) Minimum tax. Except as provided in
9 subsection ~~(f)~~ (g), the privilege tax levied by this article
10 on certain corporations, business trusts, limited liability
11 entities, and disregarded entities shall not be less than
12 \$100.

13 "~~(d)~~ (e) Maximum tax.

14 "(1) Except as provided in subdivision (2), the
15 privilege tax levied by this article shall not exceed ~~\$15,250~~
16 \$24,500 for any taxpayer ~~for the taxable year beginning~~
17 ~~January 1, 2000. For each taxable year thereafter, the maximum~~
18 ~~tax shall not exceed \$15,000 for any taxpayer, except as~~
19 provided in subdivision (2).

20 "(2) With respect to any (i) financial institution
21 groups as defined in subsection ~~(f)~~ ~~(1)~~ (g) (1); (ii)
22 insurance company that is subject to the premium taxes levied
23 by Chapter 4A of Title 27; and (iii) corporation, company,
24 limited liability entity, or association whose property is
25 assessed for taxation pursuant to the provisions of Chapter 21
26 and is ~~also~~ obligated to serve the general public, but is not
27 subject to the Alabama Corporate Income Tax, the privilege tax

1 levied by this article shall not exceed \$3,000,000, for any
2 taxpayer or, for a financial institution group, for the
3 financial institution group as a whole each year except as
4 provided in subsection ~~(e)~~ (f). ~~With respect to any real~~
5 ~~estate investment trust as defined in Chapter 13 of Title 10,~~
6 ~~the privilege tax levied by this article shall not exceed~~
7 ~~\$500,000, for any taxpayer each year except as provided in~~
8 ~~subsection (e).~~ The privilege tax levied by this article on
9 any electing family limited liability entity shall not exceed
10 \$500.

11 "The privilege tax levied by this article on any
12 corporation organized as a not-for-profit corporation that
13 does not engage in any business other than holding title to
14 property and paying the expenses thereof, including, without
15 limitation, a property owners' association or a corporation
16 organized solely to hold title to property on a temporary
17 basis, shall not exceed \$100.

18 "~~(e)~~ (f) Short taxable years. If any taxpayer's
19 taxable year is less than 12 months because the taxpayer ~~is~~
20 ~~incorporated or organized within the taxable year, or if any~~
21 ~~foreign corporation or foreign limited liability entity~~
22 ~~qualifies, registers, or begins to do business in this state~~
23 ~~within the taxable year or converts to a different taxable~~
24 ~~year other than the calendar year,~~ the amount of the tax
25 levied by this article shall be determined in the manner
26 specified in this article but apportioned to the short taxable
27 year in same proportion as the number of days in the short

1 taxable year bears to 365, but in no event less than \$100 nor
2 more than the applicable amount specified in subsection ~~(d)~~
3 (e), unless exempted pursuant to subsection (c)(2).

4 "~~(f)~~ (g) Minimum taxes for financial institution
5 groups.

6 "(1) For purposes of this subsection, the following
7 terms shall mean:

8 "a. Affiliated Group. (i) One or more chains of
9 corporations or limited liability entities connected through
10 the ownership of stock or ownership interests with a common
11 parent which is a corporation or limited liability entity, but
12 only if the common parent owns directly stock or ownership
13 interests meeting the requirements of item (ii) in at least
14 one of the other corporations or limited liability entities,
15 and only if stock or ownership interests meeting the
16 requirements of item (ii) in each of the corporations or
17 limited liability entities (except the common parent) is owned
18 directly by one or more of the other corporations or limited
19 liability entities. (ii) The ownership of stock or ownership
20 interests of any corporation or limited liability entity meets
21 the requirements of this paragraph if it possesses at least 80
22 percent of the total voting power or capital and profits
23 interest of the corporation or limited liability entity.

24 "b. Financial Institution. The meaning given in
25 Section 40-16-1.

26 "c. Financial Institution Group. All taxpayers in an
27 affiliated group where at least one member of the group is a

1 financial institution that is subject to the provisions of
2 Chapter 16. In the event a financial institution taxpayer is
3 not a member of an affiliated group, that financial
4 institution shall be treated as a financial institution group.

5 "(2) To the extent that the members of a financial
6 institution group have different taxable years, the group
7 shall be deemed, for purposes of the business privilege tax
8 ~~and corporate shares tax~~ levied by ~~Articles~~ Article 2 and 3,
9 to have a calendar taxable year.

10 "(3) Taxpayers who are members of a financial
11 institution group shall complete their ~~corporate shares tax~~
12 ~~and~~ business privilege tax returns without regard to this
13 subsection. Those taxpayers shall submit their returns
14 together, and the minimum tax amount provided in subdivision
15 (5) shall apply to the aggregate business privilege tax ~~and~~
16 ~~corporate shares tax~~ liability of the group. To the extent
17 that the minimum amount provided in subdivision (5) applies to
18 determine the liability of the group, each taxpayer which is a
19 member of the group shall be liable for that portion of the
20 group liability which is equal to the amount multiplied by the
21 ratio of the taxpayer's liability without regard to this
22 subsection over the liability of the group without regard to
23 this subsection. Upon the annual election of the common
24 parent, a financial institution group may file a single
25 return, executed by the common parent of that financial
26 institution group. The return shall be completed as if the
27 financial institution group were a single taxpayer. Each

1 member of the financial institution group shall be jointly and
2 severally liable for the group's business privilege tax and
3 corporate shares tax liabilities.

4 ~~"(4) For the taxable year beginning January 1, 2000,~~
5 ~~the tax returns of all members of a financial institution~~
6 ~~group shall be due July 10, 2000. For taxable years beginning~~
7 ~~after December 31, 2000, the tax returns for all members of a~~
8 ~~financial institution group shall be due March 15 of the~~
9 ~~taxable year. The tax returns for all members of a financial~~
10 ~~institution group shall be due no later in the same manner as~~
11 ~~the federal income tax return prescribed in 26 US Code § 6072.~~
12 Extensions for filing these returns shall not be granted
13 beyond September 15 of the taxable year. For the return due
14 July 10, 2000, any corporate shares taxes and business
15 privilege taxes accrued and paid by any member of the
16 financial institution group before July 10, 2000, shall be
17 applied against the minimum tax amount provided in subdivision
18 ~~(5) for more than six months.~~

19 ~~"(5) For taxable years beginning on or after January~~
20 ~~1, 2000, the The minimum aggregate business privilege and~~
21 ~~corporate shares taxes tax levied by Articles Article 2 and 3~~
22 on all members of a financial institution group shall be:

23 "a. For financial institutions with total deposits
24 inside Alabama of less than one billion dollars
25 (\$1,000,000,000) within that financial institution group, as
26 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
27 immediately preceding taxable year, the tax rate shall be

1 \$.125 per one thousand dollars (\$1,000) of such deposits. For
2 deposit rate purposes for all future periods, the deposits
3 shall in no event be less than the deposits listed as of June
4 30, 1999.

5 "b. For financial institutions with total deposits
6 inside Alabama of one billion dollars (\$1,000,000,000) or
7 greater up to and including six billion dollars
8 (\$6,000,000,000) within that financial institution group, as
9 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
10 immediately preceding taxable year, the tax rate shall be \$.17
11 per one thousand dollars (\$1,000) of such deposits. For
12 deposit rate purposes for all future periods, the deposits
13 shall in no event be less than the deposits listed as of June
14 30, 1999.

15 "c. For financial institutions with total deposits
16 inside Alabama greater than six billion dollars
17 (\$6,000,000,000) within that financial institution group, as
18 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
19 immediately preceding taxable year, the tax rate shall be
20 \$.225 per one thousand dollars (\$1,000) of such deposits. For
21 deposit rate purposes for all future periods, the deposits
22 shall in no event be less than the deposits listed as of June
23 30, 1999.

24 "d. Provided, however, that in the case of a
25 financial institution group that, as of June 30, 1999, (i) had
26 total deposits of less than one billion dollars
27 (\$1,000,000,000) and (ii) derived at least a majority of its

1 deposits, as reported to FDIC, OTS, or NCUSIF, that were
2 booked to one or more branches or offices located within
3 Alabama from account holders whose addresses of record on the
4 books of the financial institution group were outside the
5 State of Alabama, the phrase "total deposits in Alabama," for
6 purposes of calculating the minimum aggregate business
7 privilege ~~and shares tax~~ levied by ~~Articles~~ Article 2 and 3
8 for all taxable years beginning on and after January 1, 2000,
9 shall only include deposits of account holders whose addresses
10 of record on the books of the financial institution group are
11 inside the State of Alabama.

12 "e. In the event a financial institution group sells
13 Alabama deposits to another financial institution group that
14 reports those deposits in Alabama for purposes of Act
15 2000-705, those deposits shall not be taxed more than once
16 pursuant to the provisions of Act 2000-705 in the same taxable
17 year. The liability for such taxes shall be the responsibility
18 of the purchaser, and the tax base for the selling group shall
19 be adjusted accordingly.

20 "f. In the event an existing financial institution
21 group reports deposits in any year less than 96.5 percent of
22 the deposits reported as of June 30, 1999, the alternative
23 minimum tax shall be based on the deposits reported as of June
24 30, 1999. In the event an existing financial institution group
25 reports deposits in any year more than 96.5 percent of the
26 deposits reported as of June 30, 1999, the alternative minimum
27 tax shall be based on the deposits reported for that taxable

1 year. For financial institutions coming into existence after
2 June 30, 1999, the deposits upon which the alternative minimum
3 tax is based shall not be less than the deposits reported the
4 first full year that financial institution reported deposits
5 to the FDIC, OTS, or NCUSIF.

6 "§40-14A-25.

7 "(a) Every taxpayer shall file a privilege tax
8 return, ~~which shall include the public record disclosures~~
9 ~~required by Section 10-2B-16.22,~~ with the department for every
10 taxable year for which it is subject to the tax levied by this
11 article, except those exempt under Section 40-14A-22(c). A
12 disregarded entity that is owned by an individual, general
13 partnership, or other entity not subject to the tax levied by
14 this article shall file a return and pay the tax levied on it
15 by this article. Except as provided in Section
16 40-14A-22 ~~(f)~~ (g) (4), ~~the return is due not later than March 15~~
17 ~~of the taxable year for all taxpayers except limited liability~~
18 ~~entities for which the due date of the return shall be April~~
19 ~~15 of the taxable year, or, in the case of a taxpayer's~~
20 ~~initial return, 30 days after the taxpayer comes into~~
21 ~~existence, qualifies or registers to do business, or commences~~
22 ~~doing business in Alabama as the case may be. For all taxable~~
23 ~~years beginning after December 31, 2000,~~ a corporation shall
24 file the return required by this section ~~not later than two~~
25 ~~and one-half months after the beginning of the corporation's~~
26 ~~taxable year~~ in the same manner as the federal income tax
27 return prescribed in 26 US Code § 6072; a limited liability

1 entity shall file the return required by this section ~~not~~
2 ~~later than three and one-half months after the beginning of~~
3 ~~the limited liability entity's taxable year~~ in the same manner
4 as the federal income tax return prescribed in 26 US Code §
5 6072; and a disregarded entity that is required to file a
6 return by this section shall file the return not later than
7 the time its owner is required to file its return. ~~If a~~
8 ~~taxpayer is required to change its taxable year pursuant to~~
9 ~~the previous sentence, then it shall file a return for the~~
10 ~~short taxable year beginning January 1, 2001, and ending on~~
11 ~~the day before the beginning of its new taxable year, and the~~
12 ~~return shall be filed not later than two and one-half months,~~
13 ~~if a corporation, and three and one-half months, if a limited~~
14 ~~liability entity, after the beginning of its new taxable year.~~
15 In cases where receivers, trustees in bankruptcy, or assignees
16 are operating the property or business of taxpayers, those
17 receivers, trustees, or assignees shall file returns for the
18 taxpayers in the same manner and form as the taxpayers are
19 required to file returns. Any tax due on the basis of returns
20 filed by receivers, trustees, or assignees shall be collected
21 in the same manner as if collected from the taxpayers for
22 whose business or property they have custody and control. The
23 department may grant a reasonable extension of time for filing
24 returns under rules and regulations prescribed by the
25 department. No extension shall be for more than six months.

26 "(b) The tax provided in this article shall be
27 reported on forms and in the manner as prescribed by the

1 department. The failure to receive a form from the department
2 shall not relieve a taxpayer from liability for any tax,
3 penalty, or interest otherwise due. The tax due, as reported,
4 shall constitute an admitted liability for that amount. The
5 department may compute and assess additional tax, penalty, and
6 interest against a taxpayer as provided in Chapter 2A.
7 Interest on overpayments of business privilege tax will be
8 computed and paid in the manner provided in Section
9 40-1-44(b)(1)b.

10 "(c) A corporation that is a member of an Alabama
11 affiliated group that has elected to file a consolidated
12 return pursuant to Section 40-18-39 or Section 40-16-3(b), if
13 it is subject to the tax imposed by this article, shall file a
14 separate return reporting and paying tax on its net worth
15 without regard to other members of the affiliated group."

16 Section 2. Section 40-14A-29 is repealed in its
17 entirety.

18 Section 3. All laws or parts of laws which conflict
19 with this act are hereby repealed. Section 12 of Act 99-665,
20 as amended by Act 2000-705, is not repealed by this act.

21 Section 4. This act shall become effective for all
22 Business Privilege Tax returns due after December 31, 2016.

23 Section 5. Effective January 1, 2017; following its
24 passage and approval by the Governor or upon its otherwise
25 becoming law.