

1 SB51  
2 170985-1  
3 By Senators Coleman, Singleton, and Beasley  
4 RFD: Finance and Taxation Education  
5 First Read: 04-AUG-15

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8 SYNOPSIS: Under current law, each entity, subject to  
9 the Alabama corporate income tax, is required to  
10 file a separate return and calculate the income tax  
11 on its separately accounted for taxable income,  
12 regardless whether the entity is part of a larger  
13 business that consists of an affiliated group of  
14 entities. This filing method allows large corporate  
15 taxpayers to take advantage of tax planning options  
16 to shift income to other entities within the  
17 affiliated group located in tax favorable states.  
18 Most large corporate businesses consist of a parent  
19 corporation and a number of corporate subsidiaries.

20 This bill would amend the corporate income  
21 tax law to require the operations of all related  
22 entities, involved in a unitary business, file one  
23 corporate income tax return on a combined basis,  
24 known as combined reporting.

25  
26 A BILL  
27 TO BE ENTITLED

1 AN ACT

2  
3 To amend Sections 40-18-1, 40-18-30, 40-18-31, and  
4 40-18-39, Code of Alabama 1975, relating to income tax, to  
5 require the operations of all related entities, involved in a  
6 unitary business, to file one corporate income tax return on a  
7 combined basis, known as combined reporting; to implement  
8 combined reporting by requiring that a business report, on a  
9 combined basis, the operations of all related entities  
10 involved in a unitary business.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 40-18-1, 40-18-30, and 40-18-31,  
13 Code of Alabama 1975, are amended to read as follows:

14 "§40-18-1.

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

18 "(1) ADVANCED FOSSIL-BASED GENERATION. The  
19 production of electricity from fossil-based generation with  
20 the use of technology or efficiency improvements to control or  
21 reduce carbon emissions, including but not limited to,  
22 technologies described in 26 U.S.C. § 48A(f), as such  
23 provision existed on December 31, 2007.

24 "(2) AFFILIATED GROUP. An affiliated group has the  
25 meaning ascribed to that term in 26 U.S.C. §§ 1504 except that  
26 it shall include all corporations incorporated in the United  
27 States or formed under the laws of the United States, any

1 state, the district of Columbia or any territory or possession  
2 of the United States that are commonly owned, directly or  
3 indirectly, by any member of such affiliated group. Also, an  
4 affiliated group shall include other commonly owned  
5 corporations incorporated in the United States or formed under  
6 the laws of the United States, any state, the District of  
7 Columbia or any territory or possession of the United States  
8 that is described as a related entity in this section.

9           "~~(2)~~(3) ALTERNATIVE ENERGY RESOURCES. Coal  
10 gasification or liquefaction, nuclear, and advanced  
11 fossil-based generation.

12           "~~(3)~~(4) BIOMASS. Animals and plants, and the waste,  
13 by-products, or derivatives of either, including, but not  
14 limited to, the materials described in 26 U.S.C. §§ 45(c)(2),  
15 45(c)(3), 45K(c)(3), or 48B(c)(4).

16           "~~(4)~~(5) BUSINESS TRUST. Any entity which is a  
17 business trust for federal income tax purposes.

18           "~~(5)~~(6) CAPTIVE REIT. Any REIT whose shares or  
19 certificates of beneficial interest are not regularly traded  
20 on an established securities market and are owned or  
21 controlled, at any time during the last half of the tax year,  
22 by an association taxable as a corporation that is not exempt  
23 from tax under 26 U.S.C. § 501(a), and is not any of the  
24 following: (i) a REIT; (ii) a listed Australian property trust  
25 (including any trust that a listed Australian property trust  
26 owns or controls, directly or indirectly, seventy-five percent  
27 or more of the voting power or value of the beneficial

1 interests or shares of such trust); or (iii) any qualified  
2 foreign entity. The term Captive REIT shall not include any  
3 REIT at least 50 percent of the shares of which (by vote or  
4 value) are owned or controlled, directly or indirectly, at any  
5 time during the last half of the tax year, by a financial  
6 institution, as such term is defined in Chapter 16. For  
7 purposes of this definition, own or control means to own or  
8 control directly, indirectly, beneficially, or constructively  
9 more than fifty percent (50%) of the voting power or value of  
10 an entity. The attribution rules of 26 U.S.C. § 318, as  
11 modified by 26 U.S.C. § 856(d) (5), apply in determining  
12 ownership and control.

13 ~~"(6)(7)~~ CASH. Any legal tender, negotiable paper, or  
14 solvent credit.

15 ~~"(7)(8)~~ COAL GASIFICATION OR LIQUEFACTION. Liquid or  
16 gaseous fuels which are produced from coal, including lignite  
17 and including but not limited to fuels described in 26 U.S.C.  
18 §§ 45(c) (7) (A) (i), 45K(c) (1) (C), 48A(c) (7), or 48B(c) (2) as to  
19 coal, as such provisions existed on December 31, 2007.

20 "(9) COMBINED GROUP. The group of all persons whose  
21 income and apportionment factors are required to be taken into  
22 account pursuant to Sections 40-18-31(b) and 40-18-31(c) in  
23 determining the taxpayer's share of the net business income or  
24 loss apportionable to this state.

25 ~~"(8)(10)~~ CORPORATION. The term includes  
26 associations, joint stock companies, and any other entity  
27 classified as an association taxable as a corporation for

1 ~~federal income tax purposes~~ any corporation as defined by the  
2 laws of this state or organization of any kind treated as a  
3 corporation for tax purposes under the laws of this state, or  
4 any other entity classified as an association taxable as a  
5 corporation for federal income tax purposes, wherever located,  
6 which if it were doing business in this state would be a  
7 "taxpayer." The business conducted by a partnership which is  
8 directly or indirectly held by a corporation shall be  
9 considered the business of the corporation to the extent of  
10 the corporation's distributive share of the partnership  
11 income, inclusive of guaranteed payments to the extent  
12 prescribed by regulation.

13 ~~"(9)(11)~~ DISREGARDED ENTITY. Any entity which is  
14 disregarded for federal income tax purposes.

15 ~~"(10)(12)~~ DOMESTIC. When applied to a corporation or  
16 subchapter K entity means created or organized under the laws  
17 of the State of Alabama.

18 ~~"(11)(13)~~ FIDUCIARY. A guardian, trustee, executor,  
19 administrator, personal representative, receiver, conservator,  
20 or any person acting in any fiduciary capacity for any person.

21 ~~"(12)(14)~~ FISCAL YEAR. An accounting period of 12  
22 months ending on the last day of any month other than  
23 December.

24 ~~"(13)(15)~~ FOREIGN. When applied to a corporation or  
25 a subchapter K entity means created or organized under a  
26 jurisdiction other than the State of Alabama.

1           "~~(14)~~(16) GEOTHERMAL. Any geothermal reservoir in  
2 Alabama consisting of natural heat which is stored in rocks or  
3 in an aqueous liquid or vapor, whether or not under pressure.

4           "~~(15)~~(17) HEAD OF FAMILY. As used in this chapter,  
5 the term head of family has the same meaning as the term head  
6 of household as defined in 26 U.S.C. §2(b).

7           "~~(16)~~(18) HYDROPOWER PRODUCTION. The hydropower  
8 production of any hydroelectric dam or pumped hydro facility  
9 in Alabama, including, but not limited to, the hydropower  
10 production described in 26 U.S.C. § 45(c)(8), as such  
11 provision existed on December 31, 2007.

12           "~~(17)~~(19) INTANGIBLE EXPENSES AND COSTS. Any  
13 expenses, losses, and costs for, related to, or in connection  
14 directly or indirectly with the acquisition, use, maintenance,  
15 management, ownership, sale, exchange, or disposition of  
16 intangible property to the extent such amounts are allowed as  
17 deductions in determining taxable income before operating loss  
18 deduction and special deductions for the taxable year  
19 including, without limitation, expenses or losses related to  
20 or incurred in connection directly or indirectly with  
21 factoring transactions or discounting transactions, royalties,  
22 patents, technical and copyright licensing fees, and other  
23 similar expenses and costs. Intangible expenses and costs paid  
24 for the use of intangible property in this state are, to the  
25 recipient, income derived from sources within Alabama.

26           "~~(18)~~(20) INTANGIBLE PROPERTY. Patents, patent  
27 applications, trade names, trademarks, service marks,

1 franchises, know-how, formulas, designs, patterns, processes,  
2 formats, copyrights and similar types of intangible assets,  
3 choses in action, and accounts receivable.

4 "~~(19)~~ (21) INTEREST EXPENSES AND COSTS. Amounts  
5 directly or indirectly allowed as deductions under 26 U.S.C. §  
6 163 for purposes of determining taxable income under the  
7 Internal Revenue Code. Interest expenses and costs paid to a  
8 related member by a subchapter K entity or a corporation, to  
9 the extent apportioned to Alabama by the payor, are to the  
10 recipient related member income derived from sources within  
11 Alabama.

12 "(22) INTERNAL REVENUE CODE. Title 26 of the United  
13 States Code, and amendments thereto, without regard to  
14 application of federal treaties unless expressly made  
15 applicable to states of the United States.

16 "~~(20)~~ (23) MUNICIPAL SOLID WASTE. The definition  
17 given in 26 U.S.C. § 45(c)(6), if located in Alabama.

18 "~~(21)~~ (24) NONRESIDENT ESTATE. An estate other than a  
19 resident estate of this state.

20 "~~(22)~~ (25) NONRESIDENT TRUST. A trust other than a  
21 resident trust of this state.

22 "~~(23)~~ (26) NUCLEAR. Any nuclear facility the reactor  
23 design for which is approved after December 31, 1993, by the  
24 Nuclear Regulatory Commission, including, but not limited to,  
25 the facilities described in 26 U.S.C. § 45J(d), as such  
26 provision existed on December 31, 2007.



1           "~~(24)~~(27) PAID. For the purpose of deductions and  
2 credits hereinafter provided for with respect to income tax  
3 means paid or accrued or paid or incurred, and the terms paid  
4 or accrued and paid or incurred shall be construed according  
5 to the method of accounting on the basis of which the net  
6 income is computed under this chapter.

7           "(28) PARTNERSHIP. A general or limited partnership,  
8 or organization of any kind treated as a partnership for tax  
9 purposes under the laws of this state.

10           "~~(25)~~(29) PERSON. Any individual, firm, trust,  
11 estate, corporation, association, disregarded entity, or  
12 subchapter K entity, disregarded entity, foreign limited  
13 liability partnership, association, corporation (whether or  
14 not the corporation is, or would be if doing business in this  
15 state, subject to the tax imposed by Section 40-18-2),  
16 company, syndicate, estate, trust, business trust, trustee,  
17 trustee in bankruptcy, receiver, executor, administrator,  
18 assignee or organization of any kind.

19           "~~(26)~~(30) QUALIFIED FOREIGN ENTITY. An entity  
20 organized outside of the U.S. that is similar in operation and  
21 form to a U.S. REIT that is not a captive REIT, and shall take  
22 into account the entity's: (i) total real estate assets; (ii)  
23 tax transparency; (iii) actual distribution or required  
24 distribution of taxable income; and (iv) concentration of  
25 ownership.

1           "~~(27)~~(31) REIT. A Real Estate Investment Trust  
2           having the meaning ascribed to that term in 26 U.S.C. §§ 856  
3           to 858, inclusive.

4           "~~(28)~~(32) RELATED ENTITY. A stockholder who is an  
5           individual, or a member of the stockholder's family enumerated  
6           in 26 U.S.C. § 318, if the stockholder and the members of the  
7           stockholder's family own, directly, indirectly, beneficially,  
8           or constructively, in the aggregate, at least 50 percent of  
9           the value of the taxpayer's outstanding stock; a stockholder,  
10          or a stockholder's partnership, limited liability company,  
11          estate, trust or corporation, if the stockholder and the  
12          stockholder's partnerships, limited liability companies,  
13          estates, trusts, and corporations own directly, indirectly,  
14          beneficially, or constructively, in the aggregate, at least 50  
15          percent of the value of the taxpayer's outstanding stock; or a  
16          corporation, or a party related to the corporation in a manner  
17          that would require an attribution of stock from the  
18          corporation to the party or from the party to the corporation  
19          under the attribution rules of 26 U.S.C. § 318, if the  
20          taxpayer owns, directly, indirectly, beneficially, or  
21          constructively, at least 50 percent of the value of the  
22          corporation's outstanding stock. The attribution rules of 26  
23          U.S.C. § 318 shall apply for purposes of determining whether  
24          the ownership requirements of this subdivision have been met.

25          "~~(29)~~(33) RELATED MEMBER. A person that, with  
26          respect to the taxpayer any time during the taxable year, is a  
27          related entity as defined in this section, a component member

1 as defined in 26 U.S.C. § 1563(b) of a controlled group of  
2 which the taxpayer is also a component, or is a person to or  
3 from whom there is attribution of stock ownership in  
4 accordance with 26 U.S.C. § 1563(e).

5 "~~(30)~~(34) RENEWABLE ENERGY RESOURCES. Wind, biomass,  
6 black liquor, tidal or ocean current, geothermal, solar  
7 energy, small irrigation, municipal solid waste, and  
8 hydropower production, and such term also includes hydrogen  
9 when derived or produced from some other renewable energy  
10 resource.

11 "~~(31)~~(35) REPORT FROM SOURCE. All individuals,  
12 corporations, associations, and partnerships, in whatever  
13 capacity acting, including lessees or mortgagors of real or  
14 personal property, fiduciaries, employers, and all other  
15 officers and employees of the state or of any municipal  
16 corporation or political subdivision of the state having  
17 control, receipt, custody, or payment of interest, rent,  
18 salaries, wages, premiums, annuities, compensation,  
19 remunerations, emoluments, barter income, or other fixed or  
20 determinable annual or periodical gains, profits, and income  
21 taxable under this chapter.

22 "~~(32)~~(36) RESIDENT ESTATE. The estate of any person  
23 who was a resident of Alabama at the time of his or her death.

24 "~~(33)~~(37) RESIDENT TRUST. A trust is a resident  
25 trust for a taxable year if it is a trust which meets both a.  
26 and b.:

1            "a. The trust is created by the will of a decedent  
2 who was an Alabama resident at death or by a person who was an  
3 Alabama resident at the time such trust became irrevocable;  
4 and

5            "b. For more than seven months during such taxable  
6 year, a person, as defined in this section, who either resides  
7 in or is domiciled in Alabama is either a fiduciary of the  
8 trust or a beneficiary of the trust to whom distributions  
9 currently may be made.

10           ~~"(34)~~ (38) SMALL IRRIGATION. An irrigation system  
11 canal or ditch in Alabama which does not include a dam or  
12 impoundment of water, including, but not limited to,  
13 facilities in Alabama described in 26 U.S.C. § 45(c)(5).

14           ~~"(35)~~ (39) SUBCHAPTER K ENTITY. A partnership,  
15 including a limited partnership or limited liability  
16 partnership, limited liability company, or any other entity  
17 subject to subchapter K of the Internal Revenue Code, 26  
18 U.S.C. §§ 701 to 761, for federal income tax purposes, not  
19 including a single member limited liability company.

20           ~~"(36)~~ (40) TAXABLE YEAR. The calendar year or the  
21 fiscal year ending during the calendar year upon the basis of  
22 which net income is computed, or a period of less than 12  
23 months resulting from a change in accounting period as  
24 provided in Section 40-18-30.

25           "(41) TAX HAVEN. A jurisdiction that, during the tax  
26 year in question, has no or nominal effective tax on the  
27 relevant income and:

1           "(i) has laws or practices that prevent effective  
2 exchange of information for tax purposes with other  
3 governments on taxpayers benefiting from the tax regime;

4           "(ii) has a tax regime that lacks transparency. A  
5 tax regime lacks transparency if the details of the  
6 legislative, legal or administrative provisions are not open  
7 and apparent or are not consistently applied among similarly  
8 situated taxpayers, or if the information needed by tax  
9 authorities to determine a taxpayer's correct tax liability,  
10 such as accounting records and underlying documentation, is  
11 not adequately available;

12           "(iii) facilitates the establishment of  
13 foreign-owned entities without the need for a local  
14 substantive presence or prohibits these entities from having  
15 any commercial impact on the local economy;

16           "(iv) explicitly or implicitly excludes the  
17 jurisdiction's resident taxpayers from taking advantage of the  
18 tax regime's benefits or prohibits enterprises that benefit  
19 from the regime from operating in the jurisdiction's domestic  
20 market; or

21           "(v) has created a tax regime which is favorable for  
22 tax avoidance, based upon an overall assessment of relevant  
23 factors, including whether the jurisdiction has a significant  
24 untaxed offshore financial/other services sector relative to  
25 its overall economy.

1           "~~(37)~~(42) TAXPAYER. Any person subject to a tax  
2 imposed by this chapter, or whose income is, in whole or in  
3 part, subject to a tax imposed by this chapter.

4           "~~(38)~~(43) TRUST. Any entity which is a trust for  
5 federal income tax purposes.

6           "(44) UNITARY BUSINESS. A single economic enterprise  
7 that is made up of either of separate parts of a single  
8 business entity or of a commonly controlled group of business  
9 entities that are sufficiently interdependent, integrated and  
10 interrelated through their activities so as to provide a  
11 synergy and mutual benefit that produces a sharing or exchange  
12 of value among them and a significant flow of value to the  
13 separate parts. Any business conducted by a partnership shall  
14 be treated as conducted by its partners, whether directly held  
15 or indirectly held through a series of partnerships, to the  
16 extent of the partner's distributive share of the  
17 partnership's income, regardless of the percentage of the  
18 partner's ownership interest or its distributive share or any  
19 other share of partnership income. A business conducted  
20 directly or indirectly by one corporation is unitary with that  
21 portion of a business conducted by another corporation through  
22 its direct or indirect interest in a partnership if the  
23 conditions of the first sentence of this subdivision are  
24 satisfied, to wit: there is a synergy, and exchange and flow  
25 of value between the two parts of the business and the two  
26 corporations are members of the same commonly controlled  
27 group.

1                   "(45) UNITED STATES. The 50 states of the United  
2                   States, the District of Columbia, and United States'  
3                   territories and possessions.

4                   "§40-18-30.

5                   "~~(a) Taxpayer filing separate returns~~ Return when  
6                   accounting period changes. If a taxpayer, with the approval  
7                   of the Department of Revenue, changes the basis of computing  
8                   taxable income from the fiscal year to the calendar year, a  
9                   separate return shall be filed for the period between the  
10                  close of the last fiscal year for which return shall be made  
11                  and the following December 31. If the change is made from the  
12                  calendar year to the fiscal year, a separate return shall be  
13                  filed for the period between the close of the last calendar  
14                  year for which return was filed and the date designated as the  
15                  close of the last fiscal year. If the change is made from one  
16                  fiscal year to another fiscal year, a separate return shall be  
17                  filed for the period between the close of the former fiscal  
18                  year and the date designated as the close of the new fiscal  
19                  year. If a taxpayer filing the taxpayer's first return for  
20                  income tax keeps accounts on the basis of a fiscal year, the  
21                  taxpayer shall file a separate return for the period between  
22                  the beginning of a calendar year in which such fiscal year  
23                  ends and the end of such fiscal year. In all of the above  
24                  cases the taxable income shall be computed on the basis of  
25                  such period for which the separate return is filed, and the  
26                  tax shall be paid thereon at the rate in effect during the  
27                  calendar year in which such period is included; and, except

1 for the period during which the taxpayer dies, the exemptions  
2 allowed in this chapter shall be reduced respectively to  
3 amounts which bear the same ratio to the full exemptions  
4 provided for as the number of months in such period to 12  
5 months.

6 ~~"(b) Corporations filing Alabama consolidated~~  
7 ~~returns. If a corporation changes the basis of computing its~~  
8 ~~income from the fiscal year to the calendar year by virtue of~~  
9 ~~its election to file an Alabama consolidated return under~~  
10 ~~Section 40-18-39, an Alabama consolidated return shall be~~  
11 ~~filed for the period between the close of the last fiscal year~~  
12 ~~for which the return shall be filed and the following December~~  
13 ~~31. If the change is made from the calendar year to the fiscal~~  
14 ~~year, and the taxpayer elects to file an Alabama consolidated~~  
15 ~~return under Section 40-18-39, an Alabama consolidated return~~  
16 ~~shall be filed for the period between the close of the last~~  
17 ~~calendar year for which the return was filed and the date~~  
18 ~~designated as the close of the first fiscal year. If the~~  
19 ~~change is made from one fiscal year to another fiscal year,~~  
20 ~~and the taxpayer elects to file an Alabama consolidated return~~  
21 ~~under Section 40-18-39, an Alabama consolidated return shall~~  
22 ~~be filed for the period between the close of the former fiscal~~  
23 ~~year and the date designated as the close of the new fiscal~~  
24 ~~year for the Alabama affiliated group. If a taxpayer filing an~~  
25 ~~initial return for income tax keeps accounts on the basis of a~~  
26 ~~fiscal year, and the taxpayer elects to file an Alabama~~  
27 ~~consolidated return under Section 40-18-39, the taxpayer shall~~



1 ~~file an Alabama consolidated return for the period between the~~  
2 ~~beginning of the calendar year in which its fiscal year ends~~  
3 ~~and the end of such fiscal year for the Alabama consolidated~~  
4 ~~group. In all the above cases, the taxpayer's taxable income~~  
5 ~~shall be computed on the basis of the period for which the~~  
6 ~~Alabama consolidated return is filed, and the tax shall be~~  
7 ~~paid thereon at the rate in effect during the calendar year in~~  
8 ~~which such period is included.~~

9 "§40-18-31.

10 "(a) A corporation subject to the tax imposed by  
11 Section 40-18-2 shall pay a tax equal to six and one-half  
12 percent of the taxable income of the corporation, as defined  
13 in this chapter.

14 "(b) ~~If the taxpayer elects to file an Alabama~~  
15 ~~consolidated return under Section 40-18-39, the tax shall be~~  
16 ~~assessed, collected, and paid annually for each taxable year~~  
17 ~~at the rate specified in subsection (a), upon and with respect~~  
18 ~~to the taxable income of the Alabama affiliated group.~~

19 Combined reporting required. A taxpayer engaged in a unitary  
20 business with one or more other corporations shall file a  
21 combined report which includes the income, determined under  
22 Section 40-18-36(c) (3), and apportionment factors, determined  
23 under Sections 40-27-1 and 40-18-36(c) (2), of all  
24 corporations, except those organizations described in Section  
25 40-18-32, that are members of the unitary business, and such  
26 other information as required by the commissioner.

1           "(c) Combined reporting at commissioner's  
2           discretion. The commissioner may, by regulation, require the  
3           combined report to include the income and associated  
4           apportionment factors of any persons that are not included  
5           pursuant to subsection (b), but that are members of a unitary  
6           business, in order to reflect proper apportionment of income  
7           of entire unitary businesses. Authority to require combination  
8           by regulation under this subsection includes authority to  
9           require combination of persons that are not, or would not be  
10           if doing business in this state, subject to the taxes levied  
11           in this chapter.

12           "(1) In addition, if the commissioner determines  
13           that the reported income or loss of a taxpayer engaged in a  
14           unitary business with any person not included pursuant to  
15           subsection (b) represents an avoidance or evasion of tax by  
16           such taxpayer, the commissioner may, on a case by case basis,  
17           require all or any part of the income and associated  
18           apportionment factors of such person be included in the  
19           taxpayer's combined report.

20           "(2) With respect to inclusion of associated  
21           apportionment factors pursuant to subsection, the commissioner  
22           may require the exclusion of any one or more of the factors,  
23           the inclusion of one or more additional factors which will  
24           fairly represent the taxpayer's business activity in this  
25           state, or the employment of any other method to effectuate a  
26           proper reflection of the total amount of income subject to

1 apportionment and an equitable allocation and apportionment of  
2 the taxpayer's income."

3 Section 2. Section 40-18-36 is added to the Code of  
4 Alabama 1975, to read as follows:

5 §40-18-36. Determination of taxable income or loss  
6 using combined report.

7 (a) The use of a combined report does not disregard  
8 the separate identities of the taxpayer members of the  
9 combined group.

10 (b) Each taxpayer member is responsible for tax  
11 based on its taxable income or loss apportioned or allocated  
12 to this state, which shall include, in addition to other types  
13 of income, the taxpayer member's apportioned share of business  
14 income of the combined group, where business income of the  
15 combined group is calculated as a summation of the individual  
16 net business incomes of all members of the combined group.

17 (c) A member's net business income is determined by  
18 removing all but business income, expense and loss from that  
19 member's total income, as provided in detail below.

20 (1) Components of income subject to tax in this  
21 state; application of tax credits and post apportionment  
22 deductions.

23 a. Each taxpayer member is responsible for tax based  
24 on its taxable income or loss apportioned or allocated to this  
25 state, which shall include:

1           1. Its share of any business income apportionable to  
2 this state of each of the combined groups of which it is a  
3 member, determined under subdivision (2),

4           2. Its share of any business income apportionable to  
5 this state of a distinct business activity conducted within  
6 and without the state wholly by the taxpayer member,  
7 determined under Section 40-27-1,

8           3. Its income from a business conducted wholly by  
9 the taxpayer member entirely within the state,

10          4. Its income sourced to this state from the sale or  
11 exchange of capital or assets, and from involuntary  
12 conversions, as determined under subparagraph (3)b.8.,

13          5. Its nonbusiness income or loss allocable to this  
14 state, determined under Section 40-27-1,

15          6. Its income or loss allocated or apportioned in an  
16 earlier year, required to be taken into account as state  
17 source income during the income year, other than a net  
18 operating loss, and

19          7. Its net operating loss carryover. If the taxable  
20 income computed pursuant to subsection (c) results in a loss  
21 for a taxpayer member of the combined group, that taxpayer  
22 member has an Alabama net operating loss (NOL), subject to the  
23 net operating loss limitations, carryforward provisions of  
24 Section 40-18-35.1. Such NOL is applied as a deduction in a  
25 prior or subsequent year only if that taxpayer has Alabama  
26 source positive net income, whether or not the taxpayer is or

1 was a member of a combined reporting group in the prior or  
2 subsequent year.

3 b. Except where otherwise provided, no tax credit or  
4 post-apportionment deduction earned by one member of the  
5 group, but not fully used by or allowed to that member, may be  
6 used in whole or in part by another member of the group or  
7 applied in whole or in part against the total income of the  
8 combined group; and a post-apportionment deduction carried  
9 over into a subsequent year as to the member that incurred it,  
10 and available as a deduction to that member in a subsequent  
11 year, will be considered in the computation of the income of  
12 that member in the subsequent year, regardless of the  
13 composition of that income as apportioned, allocated or wholly  
14 within this state.

15 (2) Determination of taxpayer's share of the  
16 business income of a combined group apportionable to this  
17 state. The taxpayer's share of the business income  
18 apportionable to this state of each combined group of which it  
19 is a member shall be the product of:

20 a. The business income of the combined group,  
21 determined under subdivision (3), and

22 b. The taxpayer member's apportionment percentage,  
23 determined under Chapter 27, including in the property,  
24 payroll and sales factor numerators the taxpayer's property,  
25 payroll and sales, respectively, associated with the combined  
26 group's unitary business in this state, and including in the  
27 denominator the property, payroll and sales of all members of

1 the combined group, including the taxpayer, which property,  
2 payroll and sales are associated with the combined group's  
3 unitary business wherever located. The property, payroll, and  
4 sales of a partnership shall be included in the determination  
5 of the partner's apportionment percentage in proportion to a  
6 ratio the numerator of which is the amount of the partner's  
7 distributive share of partnership's unitary income included in  
8 the income of the combined group in accordance with  
9 subparagraph (3)b.4. and the denominator of which is the  
10 amount of the partnership's total unitary income.

11 (3) Determination of the business income of the  
12 combined group. The business income of a combined group is  
13 determined as follows:

14 a. From the total income of the combined group,  
15 determined under paragraph (3)b., subtract any income, and add  
16 any expense or loss, other than the business income, expense  
17 or loss of the combined group.

18 b. Except as otherwise provided, the total income of  
19 the combined group is the sum of the income of each member of  
20 the combined group determined under federal income tax laws,  
21 as adjusted for state purposes, as if the member were not  
22 consolidated for federal purposes. The income of each member  
23 of the combined group shall be determined as follows:

24 1. For any member incorporated in the United States,  
25 or included in a consolidated federal corporate income tax  
26 return, the income to be included in the total income of the  
27 combined group shall be the taxable income for the corporation

1 after making appropriate adjustments under Sections 40-18-34  
2 and 40-18-35.

3 2. For any member not included in subparagraph  
4 (3)b.1., the income to be included in the total income of the  
5 combined group shall be determined as follows:

6 (i) A profit and loss statement shall be prepared  
7 for each foreign branch or corporation in the currency in  
8 which the books of account of the branch or corporation are  
9 regularly maintained.

10 (ii) Adjustments shall be made to the profit and  
11 loss statement to conform it to the accounting principles  
12 generally accepted in the United States for the preparation of  
13 such statements except as modified by this title.

14 (iii) Adjustments shall be made to the profit and  
15 loss statement to conform it to the tax accounting standards  
16 required by this title.

17 (iv) Except as otherwise provided by regulation, the  
18 profit and loss statement of each member of the combined  
19 group, and the apportionment factors related thereto, whether  
20 United States or foreign, shall be translated into the  
21 currency in which the parent company maintains its books and  
22 records.

23 (v) Income apportioned to this state shall be  
24 expressed in United States dollars.

25 3. In lieu of the procedures set forth in  
26 subparagraph (3)b.2., and subject to the determination of the  
27 commissioner that it reasonably approximates income as

1 determined under this title any member not included in  
2 subparagraph (3)b.1., may determine its income on the basis of  
3 the consolidated profit and loss statement which includes the  
4 member and which is prepared for filing with the Securities  
5 and Exchange Commission by related corporations. If the member  
6 is not required to file with the Securities and Exchange  
7 Commission, the commissioner may allow the use of the  
8 consolidated profit and loss statement prepared for reporting  
9 to shareholders and subject to review by an independent  
10 auditor. If above statements do not reasonably approximate  
11 income as determined under this title, the commissioner may  
12 accept those statements with appropriate adjustments to  
13 approximate that income.

14 4. If a unitary business includes income from a  
15 partnership, the income to be included in the total income of  
16 the combined group shall be the member of the combined group's  
17 direct and indirect distributive share of the partnership's  
18 unitary business income.

19 5. All dividends paid by one to another of the  
20 members of the combined group shall, to the extent those  
21 dividends are paid out of the earnings and profits of the  
22 unitary business included in the combined report, in the  
23 current or an earlier year, be eliminated from the income of  
24 the recipient. This provision shall not apply to dividends  
25 received from members of the unitary business which are not a  
26 part of the combined group.



1           6. Except as otherwise provided by regulation,  
2 business income from an intercompany transaction between  
3 members of the same combined group shall be deferred in a  
4 manner similar to 26 C.F.R. 1.1502-13. Upon the occurrence of  
5 any of the following events, deferred business income  
6 resulting from an intercompany transaction between members of  
7 a combined group shall be restored to the income of the  
8 seller, and shall be apportioned as business income earned  
9 immediately before the event:

10           (i) The object of a deferred intercompany  
11 transaction is (1) re-sold by the buyer to an entity that is  
12 not a member of the combined group, (2) re-sold by the buyer  
13 to an entity that is a member of the combined group for use  
14 outside the unitary business in which the buyer and seller are  
15 engaged, or (3) converted by the buyer to a use outside the  
16 unitary business in which the buyer and seller are engaged, or

17           (ii) The buyer and seller are no longer members of  
18 the same combined group, regardless of whether the members  
19 remain unitary.

20           7. A charitable expense incurred by a member of a  
21 combined group shall, to the extent allowable as a deduction  
22 pursuant to Internal Revenue Code Section 170, be subtracted  
23 first from the business income of the combined group (subject  
24 to the income limitations of that section applied to the  
25 entire business income of the group), and any remaining amount  
26 shall then be treated as a nonbusiness expense allocable to  
27 the member that incurred the expense (subject to the income

1 limitations of that section applied to the nonbusiness income  
2 of that specific member). Any charitable deduction disallowed  
3 under the foregoing rule, but allowed as a carryover deduction  
4 in a subsequent year, shall be treated as originally incurred  
5 in the subsequent year by the same member, and the rules of  
6 this section shall apply in the subsequent year in determining  
7 the allowable deduction in that year.

8 8. Gain or loss from the sale or exchange of capital  
9 assets, property described by Internal Revenue Code Section  
10 1231(a)(3), and property subject to an involuntary conversion,  
11 shall be removed from the total separate net income of each  
12 member of a combined group and shall be apportioned and  
13 allocated as follows:

14 (i) For each class of gain or loss (short term  
15 capital, long term capital, Internal Revenue Code Section  
16 1231, and involuntary conversions) all members' business gain  
17 and loss for the class shall be combined (without netting  
18 between such classes), and each class of net business gain or  
19 loss separately apportioned to each member using the member's  
20 apportionment percentage determined under subdivision (2).

21 (ii) Each taxpayer member shall then net its  
22 apportioned business gain or loss for all classes, including  
23 any such apportioned business gain and loss from other  
24 combined groups, against the taxpayer member's nonbusiness  
25 gain and loss for all classes allocated to this state, using  
26 the rules of Internal Revenue Code Sections 1231 and 1222,  
27 without regard to any of the taxpayer member's gains or losses

1 from the sale or exchange of capital assets, Section 1231  
2 property, and involuntary conversions which are nonbusiness  
3 items allocated to another state.

4 (iii) Any resulting state source income (or loss, if  
5 the loss is not subject to the limitations of Internal Revenue  
6 Code Section 1211) of a taxpayer member produced by the  
7 application of the preceding subsections shall then be applied  
8 to all other state source income or loss of that member.

9 (iv) Any resulting state source loss of a member  
10 that is subject to the limitations of Section 1211 shall be  
11 carried forward by that member, and shall be treated as state  
12 source short-term capital loss incurred by that member for the  
13 year for which the carryover applies.

14 9. Any expense of one member of the unitary group  
15 which is directly or indirectly attributable to the  
16 nonbusiness or exempt income of another member of the unitary  
17 group shall be allocated to that other member as corresponding  
18 nonbusiness or exempt expense, as appropriate.

19 Section 3. Section 40-18-38 is added to the Code of  
20 Alabama 1975, to read as follows:

21 §40-18-38. Water's-edge election; initiation and  
22 withdrawal.

23 (a) Water's-edge election. Taxpayer members of a  
24 unitary group that meet the requirements of subsection (b) may  
25 elect to determine each of their apportioned shares of the net  
26 business income or loss of the combined group pursuant to a  
27 water's-edge election. Under such election, taxpayer members

1 shall take into account all or a portion of the income and  
2 apportionment factors of only the following members otherwise  
3 included in the combined group pursuant to Section 40-18-31,  
4 as described below:

5 (1) The entire income and apportionment factors of  
6 any member incorporated in the United States or formed under  
7 the laws of any state, the District of Columbia, or any  
8 territory or possession of the United States;

9 (2) The entire income and apportionment factors of  
10 any member, regardless of the place incorporated or formed, if  
11 the average of its property, payroll, and sales factors within  
12 the United States is 20 percent or more;

13 (3) The entire income and apportionment factors of  
14 any member which is a domestic international sales corporation  
15 as described in Internal Revenue Code Sections 991 to 994,  
16 inclusive; a foreign sales corporation as described in  
17 Internal Revenue Code Sections 921 to 927, inclusive; or any  
18 member which is an export trade corporation, as described in  
19 Internal Revenue Code Sections 970 to 971, inclusive;

20 (4) Any member not described in subdivision (1),  
21 subdivision (2) and subdivision (3), inclusive, shall include  
22 the portion of its income derived from or attributable to  
23 sources within the United States, as determined under the  
24 Internal Revenue Code without regard to federal treaties, and  
25 its apportionment factors related thereto;

26 (5) Any member that is a "controlled foreign  
27 corporation," as defined in Internal Revenue Code Section 957,

1 to the extent of the income of that member that is defined in  
2 Section 952 of Subpart F of the Internal Revenue Code  
3 ("Subpart F income") not excluding lower-tier subsidiaries"  
4 distributions of such income which were previously taxed,  
5 determined without regard to federal treaties, and the  
6 apportionment factors related to that income; any item of  
7 income received by a controlled foreign corporation shall be  
8 excluded if such income was subject to an effective rate of  
9 income tax imposed by a foreign country greater than 90  
10 percent of the maximum rate of tax specified in Internal  
11 Revenue Code Section 11;

12 (6) Any member that earns more than 20 percent of  
13 its income, directly or indirectly, from intangible property  
14 or service-related activities that are deductible against the  
15 business income of other members of the combined group, to the  
16 extent of that income and the apportionment factors related  
17 thereto; and

18 (7) The entire income and apportionment factors of  
19 any member that is doing business in a tax haven, where "doing  
20 business in a tax haven" is defined as being engaged in  
21 activity sufficient for that tax haven jurisdiction to impose  
22 a tax under United States constitutional standards. If the  
23 member's business activity within a tax haven is entirely  
24 outside the scope of the laws, provisions and practices that  
25 cause the jurisdiction to meet the criteria established in the  
26 definition of a tax haven pursuant to Section 40-18-1, the

1 activity of the member shall be treated as not having been  
2 conducted in a tax haven.

3 (b) Initiation and withdrawal of election.

4 (1) A water's-edge election is effective only if  
5 made on a timely filed, original return for a tax year by  
6 every member of the unitary business subject to tax under this  
7 chapter. The commissioner shall develop rules and regulations  
8 governing the impact, if any, on the scope or application of a  
9 water's-edge election, including termination or deemed  
10 election, resulting from a change in the composition of the  
11 unitary group, the combined group, the taxpayer members, and  
12 any other similar change.

13 (2) Such election shall constitute consent to the  
14 reasonable production of documents and taking of depositions  
15 in accordance with Section 40-2A-7(a).

16 (3) In the discretion of the commissioner, a  
17 water's-edge election may be disregarded in whole or in part,  
18 and the income and apportionment factors of any member of the  
19 taxpayer's unitary group may be included in the combined  
20 report without regard to the provisions of this section, if  
21 any member of the unitary group fails to comply with any  
22 provision of this act or if a person otherwise not included in  
23 the water's-edge combined group was availed of with a  
24 substantial objective of avoiding state income tax.

25 (4) A water's-edge election is binding for and  
26 applicable to the tax year it is made and all tax years  
27 thereafter for a period of 10 years. It may be withdrawn or

1 reinstituted after withdrawal, prior to the expiration of the  
2 10-year period, only upon written request for reasonable cause  
3 based on extraordinary hardship due to unforeseen changes in  
4 state tax statutes, law, or policy, and only with the written  
5 permission of the commissioner. If the commissioner grants a  
6 withdrawal of election, he or she shall impose reasonable  
7 conditions as necessary to prevent the evasion of tax or to  
8 clearly reflect income for the election period prior to or  
9 after the withdrawal. Upon the expiration of the 10-year  
10 period, a taxpayer may withdraw from the water's edge  
11 election. Such withdrawal must be made in writing within one  
12 year of the expiration of the election, and is binding for a  
13 period of 10 years, subject to the same conditions as applied  
14 to the original election. If no withdrawal is properly made,  
15 the water's edge election shall be in place for an additional  
16 10-year period, subject to the same conditions as applied to  
17 the original election.

18 Section 4. Section 40-18-38.1 is added to the Code  
19 of Alabama 1975, to read as follows:

20 §40-18-38.1. Affiliated group election; initiation  
21 and withdrawal.

22 (a) Affiliated group election. A taxpayer may elect,  
23 without the consent of the commissioner, to treat as its  
24 combined group all corporations that are members of its  
25 affiliated group. The corporations referred to above shall  
26 include members of such affiliated group that are subject to  
27 tax or that would be subject to tax if doing business in the

1 state under Section 40-18-2, but not including members that  
2 are or would be exempt pursuant to Section 40-18-32. Such  
3 affiliated group shall calculate taxable income in accordance  
4 with Section 40-18-36, provided that all income of all group  
5 members, whether or not such income would otherwise be subject  
6 to apportionment or would be allocable to a particular state  
7 in the absence of an election under this section, shall be  
8 treated as apportionable income for purposes of returns filed  
9 pursuant to an election under this section.

10 (b) Initiation and withdrawal of election.

11 (1) The affiliated group election is effective if  
12 made on an original, timely filed return by any member of the  
13 combined group. Any corporation entering an affiliated group  
14 subsequent to the year of election must be included in the  
15 combined group and is considered to have waived any objection  
16 to its inclusion in the combined group.

17 (2) An affiliated group election is binding for and  
18 applicable to the tax year for which it is made and all tax  
19 years thereafter for a period of 10 years. An election may be  
20 revoked, or renewed for another 10 taxable years, without the  
21 consent of the commissioner after it has been in effect for 10  
22 taxable years; provided, however, that in the case of a  
23 revocation a new election under this section shall not be  
24 permitted in any of the immediately following three tax years.  
25 The revocation or renewal shall be made on an original, timely  
26 filed return for the first tax year after the completion of a



1 10-year period for which an election under this subsection was  
2 in place.

3 Section 5. Section 40-18-39, Code of Alabama 1975,  
4 is amended to read as follows:

5 "§40-18-39.

6 "(a) ~~Except as provided in subsection (c), every~~  
7 Every corporation, joint stock company, or association subject  
8 to income tax under this chapter shall file a return with the  
9 Department of Revenue for each taxable year, stating  
10 specifically the items of its gross income and the deductions  
11 and credits allowed by this chapter. In cases where receivers,  
12 trustees in bankruptcy, or assignees are operating the  
13 property or business of corporations, such receivers,  
14 trustees, or assignees shall file returns for such  
15 corporations in the same manner and form as corporations are  
16 required to file returns. Any tax due on the basis of such  
17 returns filed by receivers, trustees, or assignees shall be  
18 collected in the same manner as if collected from the  
19 corporations of whose business or property they have custody  
20 and control. Returns filed on the basis of the calendar year  
21 shall be filed on or before March 15 following the close of  
22 the calendar year. Returns filed on the basis of a fiscal year  
23 shall be filed on or before the fifteenth day of the third  
24 month following the close of the fiscal year. The Department  
25 of Revenue may grant a reasonable extension of time for filing  
26 returns under such rules and regulations as it shall

1 prescribe. Except in the case of taxpayers who are abroad, no  
2 such extension shall be for more than six months.

3 "(b) Designation of Surety. As a filing convenience,  
4 and without changing the respective liability of the group  
5 members, members of a combined reporting group may annually  
6 elect to designate one taxpayer member of the combined group  
7 to file a single return in the form and manner prescribed by  
8 the department, in lieu of filing their own respective  
9 returns, provided that the taxpayer designated to file the  
10 single return consents to act as surety with respect to the  
11 tax liability of all other taxpayers properly included in the  
12 combined report, and agrees to act as agent on behalf of those  
13 taxpayers for the year of the election for tax matters  
14 relating to the combined report for that year. If for any  
15 reason the surety is unwilling or unable to perform its  
16 responsibilities, tax liability may be assessed against the  
17 taxpayer members.

18 ~~"(b) As used in this chapter, unless the context~~  
19 ~~requires otherwise:~~

20 ~~"(1) "Alabama affiliated group" means a group of~~  
21 ~~corporations, each member of which is subject to tax under~~  
22 ~~Section 40-18-31 and Public Law 86-272 (15 U.S.C. §§ 381-384),~~  
23 ~~which are members of an affiliated group as defined in 26~~  
24 ~~U.S.C. § 1504 and which affiliated group files a federal~~  
25 ~~consolidated corporate income tax return, each member of~~  
26 ~~which:~~

27 ~~"a. Has the same taxable year;~~

1           ~~"b. Is a member of the group for the entire taxable~~  
2 ~~year or was a member of the group for a portion of the taxable~~  
3 ~~year if the member was subject to Section 40-18-31 during the~~  
4 ~~entire portion of the taxable year during which it was not a~~  
5 ~~member of the federal consolidated group;~~

6           ~~"c. Apportions Alabama taxable income or loss~~  
7 ~~separately for each corporation;~~

8           ~~"d. Allocates taxable income or loss separately for~~  
9 ~~each corporation in accordance with Section 40-27-1, Article~~  
10 ~~IV;~~

11           ~~"e. Computes apportionable income or loss utilizing~~  
12 ~~separate apportionment factors for each corporation in~~  
13 ~~accordance with Section 40-27-1, Article IV; and~~

14           ~~"f. Combines and reports taxable income or loss~~  
15 ~~computed in accordance with paragraphs c through e of this~~  
16 ~~subsection on a single return for the Alabama affiliated~~  
17 ~~group;~~

18           ~~"and which includes all members of the affiliated~~  
19 ~~group included on the federal consolidated income tax return~~  
20 ~~that are eligible under this section to be included in the~~  
21 ~~Alabama affiliated group; but shall not include corporations~~  
22 ~~subject to the insurance premium license tax imposed by~~  
23 ~~Section 27-4A-1 et seq. or the financial institution excise~~  
24 ~~tax imposed by Section 40-16-1 et seq.~~

25           ~~"(2) "Alabama consolidated return" means an Alabama~~  
26 ~~corporation income tax return filed by or on behalf of the~~  
27 ~~members of an Alabama affiliated group in accordance with this~~

1 section, pursuant to an election made under subsection (c)  
2 below.

3 ~~"(3) "Separate return" means an Alabama corporation~~  
4 ~~income tax return filed by a single corporation in accordance~~  
5 ~~with this chapter.~~

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

8 ~~"(5) "Treasury regulations" means final and~~  
9 ~~temporary regulations now or hereafter promulgated by the U.S.~~  
10 ~~Treasury Department pursuant to 26 U.S.C. § 1501 et seq.~~  
11 ~~References to applicable Internal Revenue Code sections in~~  
12 ~~this section shall include the related Treasury regulations.~~

13 ~~"(c) (1) An Alabama affiliated group filing or~~  
14 ~~required to file a federal consolidated income tax return may~~  
15 ~~elect to file an Alabama consolidated return for the same~~  
16 ~~taxable year. However, under no circumstances may the~~  
17 ~~Department of Revenue compel a taxpayer to file an Alabama~~  
18 ~~consolidated return if the taxpayer has not so elected.~~

19 ~~"(2) Notwithstanding any provision in this section~~  
20 ~~to the contrary, foreign corporations that are members of an~~  
21 ~~Alabama affiliated group electing to file an Alabama~~  
22 ~~consolidated return and not otherwise subject to the business~~  
23 ~~privilege tax levied by Section 40-14A-22 shall not become~~  
24 ~~subject to the business privilege tax by virtue of being a~~  
25 ~~member of an Alabama affiliated group filing an Alabama~~  
26 ~~consolidated return.~~

1           ~~"(3) All transactions between and among members of~~  
2           ~~the Alabama affiliated group shall be reported on an arm's~~  
3           ~~length basis consistent with subsection (j) in determining the~~  
4           ~~property, payroll, and sales factors of each member of the~~  
5           ~~Alabama affiliated group, in determining the separate~~  
6           ~~allocation and apportionment of income and loss by each member~~  
7           ~~of the Alabama affiliated group, and in computing taxable~~  
8           ~~income in accordance with Section 40-18-33.~~

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

22           ~~"(5) Each member of the Alabama affiliated group~~  
23           ~~shall determine and allocate and apportion its separate income~~  
24           ~~and loss under Chapter 27 before consolidation. For purposes~~  
25           ~~of allocation and apportionment, each member of the Alabama~~  
26           ~~affiliated group shall be considered a separate taxpayer. Any~~  
27           ~~taxable loss of a member of the Alabama affiliated group shall~~

1 be deductible against the taxable income of any other member  
2 of the Alabama affiliated group only if and to the extent such  
3 loss is apportioned and allocated to Alabama.

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

19 "(7) Any election to file an Alabama consolidated  
20 return pursuant to this subsection shall be binding on both  
21 the Department of Revenue and the Alabama affiliated group for  
22 a period beginning with the first month of the first taxable  
23 year for which the election is made and ending with the  
24 conclusion of the taxable year in which the one hundred  
25 twentieth consecutive calendar month expires, except that the  
26 election shall terminate automatically upon the revocation or  
27 termination of its federal consolidated return election. If an

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

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

25 ~~"Total Assets~~

~~Annual Fee~~

1	<del>\$0 to \$2,500,000</del>	<del>\$5,000</del>
2	<del>\$2,500,001 to \$5,000,000</del>	<del>\$10,000</del>
3	<del>\$5,000,001 to \$7,500,000</del>	<del>-\$15,000</del>
4	<del>\$7,500,001 to \$10,000,000</del>	<del>\$20,000</del>
5	<del>\$10,000,001 and over</del>	<del>\$25,000</del>

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

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



1 may execute the return on behalf of the Alabama affiliated  
2 group. The Department of Revenue may require a further or  
3 supplemental report of information and data necessary for  
4 computation of the tax.

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

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

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

1 ~~limited to only the amount necessary to reduce to zero the~~  
2 ~~Alabama taxable income, calculated on a separate return basis,~~  
3 ~~of the corporation that incurred the net operating loss.~~  
4 ~~Except as provided in the preceding sentence, the separate~~  
5 ~~return limitation year ("SRLY") rules contained in 26 U.S.C. §~~  
6 ~~1502 shall apply.~~

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

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

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

1 ~~prior to its amendment by Act 2001-1089, shall have the option~~  
2 ~~either to terminate its election with respect to tax years~~  
3 ~~after the period covered by the last Alabama consolidated~~  
4 ~~return due under this section prior to its amendment, or to~~  
5 ~~re-elect under the revised criteria imposed by Act 2001-1089~~  
6 ~~and to begin another 120 calendar month election period. The~~  
7 ~~decision of an Alabama affiliated group currently filing an~~  
8 ~~Alabama consolidated income tax return to opt out of the~~  
9 ~~Alabama consolidated return election shall be evidenced by~~  
10 ~~written notice thereof to the department. Such notice shall be~~  
11 ~~filed by March 15, 2002, or the due date, with extensions, of~~  
12 ~~the last consolidated income tax return due to be filed under~~  
13 ~~the law prior to its amendment by Act 2001-1089, whichever~~  
14 ~~date occurs last. The failure to timely file such notice shall~~  
15 ~~be deemed an election by those members of the Alabama~~  
16 ~~affiliated group that are subject to tax under Section~~  
17 ~~40-18-31 and otherwise qualify under this section as members~~  
18 ~~of an Alabama affiliated group to file an Alabama consolidated~~  
19 ~~return under this section, as amended, including a new~~  
20 ~~120-calendar month election period under subdivision (c) (7)."~~

21 Section 6. The Department of Revenue is given broad  
22 discretion to promulgate rules to facilitate the transition  
23 from separate entity reported to unitary combined reporting .

24 Section 7. The provisions of this act are severable.  
25 If any part of this act is declared invalid or  
26 unconstitutional, that declaration shall not affect the part  
27 which remains.

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

3                   Section 9. This act shall become effective for all  
4 taxable years beginning after December 31, 2014, following its  
5 passage and approval by the Governor, or upon its otherwise  
6 becoming law.