

1 HB203
2 145256-1
3 By Representative Lindsey
4 RFD: Ways and Means Education
5 First Read: 07-FEB-13

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8 SYNOPSIS: This bill defines unitary business and
9 requires taxpayers who are part of a unitary
10 business to use a combined report to determine
11 their Alabama taxable income.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 To amend Section 40-18-1, Code of Alabama 1975, to
18 provide for additional definitions and Sections 40-2A-17 and
19 40-18-39, Code of Alabama 1975, to require taxpayers who are
20 part of a unitary business to use a combined report to
21 determine their Alabama taxable income.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-2A-17, 40-18-1 and 40-18-39,
24 Code of Alabama 1975, are hereby amended to read as follows:

25 "§40-2A-17.

26 "For purposes of the tax imposed in Chapter 18 of
27 this title, the following rules shall apply:

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

11 "(b) (1) When an Alabama taxpayer is part of a
12 unitary business consisting of multiple business entities, the
13 Commissioner of the Department of Revenue shall require the
14 taxpayer to use a combined report to determine its Alabama
15 taxable income.

16 "(2) The combined report shall include all members
17 of the unitary business doing business in the United States or
18 commercially domiciled in a non-U.S. jurisdiction designated a
19 tax haven by the Organization for Economic Cooperation and
20 Development (OECD). Together these members shall be recognized
21 as the taxpayer's combined group. In the combined report, the
22 taxpayer will calculate its Alabama taxable income by
23 apportioning the combined group's income to Alabama using a
24 formula that measures the taxpayer's Alabama source
25 apportionment data relative to the combined group's
26 apportionment data from all sources.

1 "(3) The commissioner shall promulgate regulations
2 as necessary to provide details of the combined report
3 calculations required by this subsection and as needed to
4 further enforce these provisions.

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

10 "~~(c)~~(d) Any paid tax return preparer or tax planner
11 who provides to a taxpayer tax planning advice, tax return
12 preparation advice, or tax return preparation services in
13 consideration for an improper contingent fee shall be subject
14 to a penalty as if such paid tax return preparer or tax
15 planner was subject to the penalties imposed by 26 U.S.C. §
16 6701.

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

1 a basis consistent with the Code of Professional Conduct of
2 the American Institute of Certified Public Accountants.

3 "~~(e)~~ (f) Subsections ~~(b)~~ (c), ~~(c)~~ (d), and ~~(d)~~ (e)
4 shall not apply to any contingent fee contract executed prior
5 to January 1, 2002.

6 "~~(f)~~ (g) The Commissioner of the Alabama Department
7 of Revenue shall exercise such authority in a manner
8 consistent with Act 2001-1088 and, to the extent applicable,
9 26 U.S.C. § 482 and the rulings and regulations issued
10 thereunder. The commissioner is authorized and directed to
11 promulgate such additional regulations as are necessary to
12 enforce the provisions of Act 2001-1088."

13 "§40-18-1.

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

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

23 "(2) ALTERNATIVE ENERGY RESOURCES. Coal gasification
24 or liquefaction, nuclear, and advanced fossil-based
25 generation.

26 "(3) BIOMASS. Animals and plants, and the waste,
27 by-products, or derivatives of either, including, but not

1 limited to, the materials described in 26 U.S.C. §§ 45(c)(2),
2 45(c)(3), 45K(c)(3), or 48B(c)(4).

3 "(4) BUSINESS TRUST. Any entity which is a business
4 trust for federal income tax purposes.

5 "(5) CAPTIVE REIT. Any REIT whose shares or
6 certificates of beneficial interest are not regularly traded
7 on an established securities market and are owned or
8 controlled, at any time during the last half of the tax year,
9 by an association taxable as a corporation that is not exempt
10 from tax under 26 U.S.C. § 501(a), and is not any of the
11 following: (i) a REIT; (ii) a listed Australian property trust
12 (including any trust that a listed Australian property trust
13 owns or controls, directly or indirectly, seventy-five percent
14 or more of the voting power or value of the beneficial
15 interests or shares of such trust); or (iii) any qualified
16 foreign entity. The term Captive REIT shall not include any
17 REIT at least 50 percent of the shares of which (by vote or
18 value) are owned or controlled, directly or indirectly, at any
19 time during the last half of the tax year, by a financial
20 institution, as such term is defined in Chapter 16. For
21 purposes of this definition, own or control means to own or
22 control directly, indirectly, beneficially, or constructively
23 more than fifty percent (50%) of the voting power or value of
24 an entity. The attribution rules of 26 U.S.C. § 318, as
25 modified by 26 U.S.C. § 856(d)(5), apply in determining
26 ownership and control.

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

3 "(7) COAL GASIFICATION OR LIQUEFACTION. Liquid or
4 gaseous fuels which are produced from coal, including lignite
5 and including but not limited to fuels described in 26 U.S.C.
6 §§ 45(c)(7)(A)(i), 45K(c)(1)(C), 48A(c)(7), or 48B(c)(2) as to
7 coal, as such provisions existed on December 31, 2007.

8 "(8) CORPORATION. The term includes associations,
9 joint stock companies, and any other entity classified as an
10 association taxable as a corporation for federal income tax
11 purposes.

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

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

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

20 "(12) FISCAL YEAR. An accounting period of 12-months
21 ending on the last day of any month other than December.

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

25 "(14) GEOTHERMAL. Any geothermal reservoir in
26 Alabama consisting of natural heat which is stored in rocks or
27 in an aqueous liquid or vapor, whether or not under pressure.

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

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

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

23 "(18) INTANGIBLE PROPERTY. Patents, patent
24 applications, trade names, trademarks, service marks,
25 franchises, know-how, formulas, designs, patterns, processes,
26 formats, copyrights and similar types of intangible assets,
27 choses in action, and accounts receivable.

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

9 "(20) MUNICIPAL SOLID WASTE. The definition given in
10 26 U.S.C. § 45(c) (6), if located in Alabama.

11 "(21) NONRESIDENT ESTATE. An estate other than a
12 resident estate of this state.

13 "(22) NONRESIDENT TRUST. A trust other than a
14 resident trust of this state.

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

20 "(24) PAID. For the purpose of deductions and
21 credits hereinafter provided for with respect to income tax
22 means paid or accrued or paid or incurred, and the terms paid
23 or accrued and paid or incurred shall be construed according
24 to the method of accounting on the basis of which the net
25 income is computed under this chapter.

1 "(25) PERSON. Any individual, trust, estate,
2 corporation, association, disregarded entity, or subchapter K
3 entity.

4 "(26) QUALIFIED FOREIGN ENTITY. An entity organized
5 outside of the U.S. that is similar in operation and form to a
6 U.S. REIT that is not a captive REIT, and shall take into
7 account the entity's: (i) total real estate assets; (ii) tax
8 transparency; (iii) actual distribution or required
9 distribution of taxable income; and (iv) concentration of
10 ownership.

11 "(27) REIT. A Real Estate Investment Trust having
12 the meaning ascribed to that term in 26 U.S.C. §§856 to 858,
13 inclusive.

14 "(28) RELATED ENTITY. A stockholder who is an
15 individual, or a member of the stockholder's family enumerated
16 in 26 U.S.C. §318, if the stockholder and the members of the
17 stockholder's family own, directly, indirectly, beneficially,
18 or constructively, in the aggregate, at least 50 percent of
19 the value of the taxpayer's outstanding stock; a stockholder,
20 or a stockholder's partnership, limited liability company,
21 estate, trust or corporation, if the stockholder and the
22 stockholder's partnerships, limited liability companies,
23 estates, trusts, and corporations own directly, indirectly,
24 beneficially, or constructively, in the aggregate, at least 50
25 percent of the value of the taxpayer's outstanding stock; or a
26 corporation, or a party related to the corporation in a manner
27 that would require an attribution of stock from the

1 corporation to the party or from the party to the corporation
2 under the attribution rules of 26 U.S.C. §318, if the taxpayer
3 owns, directly, indirectly, beneficially, or constructively,
4 at least 50 percent of the value of the corporation's
5 outstanding stock. The attribution rules of 26 U.S.C. §318
6 shall apply for purposes of determining whether the ownership
7 requirements of this subdivision have been met.

8 "(29) RELATED MEMBER. A person that, with respect to
9 the taxpayer any time during the taxable year, is a related
10 entity as defined in this section, a component member as
11 defined in 26 U.S.C. §1563(b) of a controlled group of which
12 the taxpayer is also a component, or is a person to or from
13 whom there is attribution of stock ownership in accordance
14 with 26 U.S.C. §1563(e).

15 "(30) RENEWABLE ENERGY RESOURCES. Wind, biomass,
16 black liquor, tidal or ocean current, geothermal, solar
17 energy, small irrigation, municipal solid waste, and
18 hydropower production, and such term also includes hydrogen
19 when derived or produced from some other renewable energy
20 resource.

21 "(31) REPORT FROM SOURCE. All individuals,
22 corporations, associations, and partnerships, in whatever
23 capacity acting, including lessees or mortgagors of real or
24 personal property, fiduciaries, employers, and all other
25 officers and employees of the state or of any municipal
26 corporation or political subdivision of the state having
27 control, receipt, custody, or payment of interest, rent,

1 salaries, wages, premiums, annuities, compensation,
2 remunerations, emoluments, barter income, or other fixed or
3 determinable annual or periodical gains, profits, and income
4 taxable under this chapter.

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

7 "(33) RESIDENT TRUST. A trust is a resident trust
8 for a taxable year if it is a trust which meets both a. and
9 b.:

10 "a. The trust is created by the will of a decedent
11 who was an Alabama resident at death or by a person who was an
12 Alabama resident at the time such trust became irrevocable;
13 and

14 "b. For more than seven months during such taxable
15 year, a person, as defined in this section, who either resides
16 in or is domiciled in Alabama is either a fiduciary of the
17 trust or a beneficiary of the trust to whom distributions
18 currently may be made.

19 "(34) SMALL IRRIGATION. An irrigation system canal
20 or ditch in Alabama which does not include a dam or
21 impoundment of water, including, but not limited to,
22 facilities in Alabama described in 26 U.S.C. § 45(c)(5).

23 "(35) SUBCHAPTER K ENTITY. A partnership, including
24 a limited partnership or limited liability partnership,
25 limited liability company, or any other entity subject to
26 subchapter K of the Internal Revenue Code, 26 U.S.C. §§701 to

1 761, for federal income tax purposes, not including a single
2 member limited liability company.

3 "(36) TAXABLE YEAR. The calendar year or the fiscal
4 year ending during the calendar year upon the basis of which
5 net income is computed, or a period of less than 12 months
6 resulting from a change in accounting period as provided in
7 Section 40-18-30.

8 "(37) TAXPAYER. Any person subject to a tax imposed
9 by this chapter, or whose income is, in whole or in part,
10 subject to a tax imposed by this chapter.

11 "(38) TRUST. Any entity which is a trust for federal
12 income tax purposes.

13 "(39) UNITARY BUSINESS. A single economic enterprise
14 that is made up either of separate parts of a single business
15 entity or of a commonly controlled group of business entities
16 that are sufficiently interdependent, integrated, and
17 interrelated through their activities so as to provide a
18 synergy and mutual benefit that produces a sharing or exchange
19 of value among them and a significant flow of value to the
20 separate parts. For Alabama income tax purposes, the term
21 unitary business shall be interpreted broadly, limited only by
22 the boundaries imposed by the U.S. Constitution.

23 "§40-18-39.

24 (a) Except as provided in subsection (c), every
25 corporation, joint stock company, or association subject to
26 income tax under this chapter shall file a return with the
27 Department of Revenue for each taxable year, stating

1 specifically the items of its gross income and the deductions
2 and credits allowed by this chapter. In cases where receivers,
3 trustees in bankruptcy, or assignees are operating the
4 property or business of corporations, such receivers,
5 trustees, or assignees shall file returns for such
6 corporations in the same manner and form as corporations are
7 required to file returns. Any tax due on the basis of such
8 returns filed by receivers, trustees, or assignees shall be
9 collected in the same manner as if collected from the
10 corporations of whose business or property they have custody
11 and control. Returns filed on the basis of the calendar year
12 shall be filed on or before March 15 following the close of
13 the calendar year. Returns filed on the basis of a fiscal year
14 shall be filed on or before the fifteenth day of the third
15 month following the close of the fiscal year. The Department
16 of Revenue may grant a reasonable extension of time for filing
17 returns under such rules and regulations as it shall
18 prescribe. Except in the case of taxpayers who are abroad, no
19 such extension shall be for more than six months.

20 (b) As used in this chapter, unless the context
21 requires otherwise:

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

1 consolidated corporate income tax return, each member of
2 which:

3 a. Has the same taxable year;

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

9 c. Apportions Alabama taxable income or loss
10 separately for each corporation;

11 d. Allocates taxable income or loss separately for
12 each corporation in accordance with Section 40-27-1, Article
13 IV;

14 e. Computes apportionable income or loss utilizing
15 separate apportionment factors for each corporation in
16 accordance with Section 40-27-1, Article IV; and

17 f. Combines and reports taxable income or loss
18 computed in accordance with paragraphs c through e of this
19 subsection on a single return for the Alabama affiliated
20 group;

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

1 (2) "Alabama consolidated return" means an Alabama
2 corporation income tax return filed by or on behalf of the
3 members of an Alabama affiliated group in accordance with this
4 section, pursuant to an election made under subsection (c)
5 below.

6 (3) "Separate return" means an Alabama corporation
7 income tax return filed by a single corporation in accordance
8 with this chapter.

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

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

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

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

1 member of an Alabama affiliated group filing an Alabama
2 consolidated return.

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

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

24 (5) Each member of the Alabama affiliated group
25 shall determine and allocate and apportion its separate income
26 and loss under Chapter 27 before consolidation. For purposes
27 of allocation and apportionment, each member of the Alabama

1 affiliated group shall be considered a separate taxpayer. Any
2 taxable loss of a member of the Alabama affiliated group shall
3 be deductible against the taxable income of any other member
4 of the Alabama affiliated group only if and to the extent such
5 loss is apportioned and allocated to Alabama.

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

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

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

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

1	Total Assets	Annual Fee
2	\$0 to \$2,500,000	\$5,000
3	\$2,500,001 to	\$10,000
4	\$5,000,000	
5	\$5,000,001 to	\$15,000
6	\$7,500,000	
7	\$7,500,001 to	\$20,000
8	\$10,000,000	
9	\$10,000,001 and over	\$25,000

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

21 (e) Every corporation return or report required by
22 this chapter shall be executed by one of the following
23 officers of the corporation: The president, vice-president,
24 secretary, treasurer, assistant secretary, assistant

1 treasurer, or chief accounting or financial officer, except
2 that in the case of an Alabama affiliated group filing an
3 Alabama consolidated return, one of the above-described
4 officers of the common parent of the Alabama affiliated group
5 may execute the return on behalf of the Alabama affiliated
6 group. The Department of Revenue may require a further or
7 supplemental report of information and data necessary for
8 computation of the tax.

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

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

1 (h) If, in a taxable year before the corporation
2 became a member of an Alabama affiliated group that has
3 elected to file an Alabama consolidated return, the
4 corporation incurred a net operating loss, the deductibility
5 of the loss on the Alabama consolidated return shall be
6 limited to only the amount necessary to reduce to zero the
7 Alabama taxable income, calculated on a separate return basis,
8 of the corporation that incurred the net operating loss.
9 Except as provided in the preceding sentence, the separate
10 return limitation year ("SRLY") rules contained in 26 U.S.C. §
11 1502 shall apply.

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

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

1 order to fairly represent the tax base attributable to this
2 state.

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

1 Section 2. This act shall become effective for all
2 tax years beginning after December 31, 2012, following its
3 passage and approval by the Governor, or its otherwise
4 becoming law.