

1 SB442
2 150840-1
3 By Senators Ross and Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 11-APR-13

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8 SYNOPSIS: Currently, if separate returns are filed by
9 husband and wife and one spouse elects to claim the
10 optional standard deduction, the other spouse must
11 also claim the optional standard deduction. This
12 bill would allow spouses who live apart for the
13 entire year to claim either the optional standard
14 deduction or itemized deductions, regardless of the
15 deductions claimed by the other spouse.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

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21 To amend Section 40-18-15, Code of Alabama 1975,
22 relating to the election to claim the optional standard
23 deduction by married taxpayers filing separate tax returns.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 "§40-18-15.

1 (a) No deduction shall be allowed for any losses,
2 expenses, or interest deferred or disallowed pursuant to 26
3 U.S.C. § 267 or for any cost required to be capitalized in
4 accordance with 26 U.S.C. § 263A; otherwise, there shall be
5 allowed as deductions:

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

9 (2) Interest paid or accrued within the taxable year
10 on indebtedness, limited to the amount allowable as an
11 interest deduction for federal income tax purposes in the
12 corresponding tax year or period pursuant to the provisions of
13 26 U.S.C. §§ 163, 264, and 265.

14 (3) The following taxes paid or accrued within the
15 taxable year:

16 a. Income taxes, Federal Insurance Contribution Act
17 taxes, taxes on self-employment income and estate and gift
18 taxes imposed by authority of the United States or any
19 possession of the United States.

20 b. State and local, and foreign, occupational
21 license taxes, and contributions to state unemployment funds.

22 c. State and local, and foreign, real property
23 taxes.

24 d. State and local personal property taxes.

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

1 f. The taxes described in paragraphs c., d., and e.
2 shall be deductible only to the extent that the taxes are
3 deductible for federal income tax purposes under 26 U.S.C. §
4 164 (relating to taxes).

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

12 h. Notwithstanding paragraph g., any tax described
13 in any paragraph preceding paragraph g. that is paid or
14 accrued in connection with an acquisition or disposition of
15 property shall be treated as part of the cost of the acquired
16 property or, in the case of a disposition, as a reduction in
17 the amount realized on the disposition of that property.

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

21 (5) Losses sustained during the taxable year and not
22 compensated for by insurance or otherwise, if incurred in any
23 transaction entered into for profit, though not connected with
24 the trade or business in accordance with 26 U.S.C. §
25 165(c)(2); but, in the case of a taxpayer other than a
26 resident of the state, only as to those transactions within
27 the state.

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

12 (7) Losses from debts ascertained to be worthless
13 and charged off during the taxable year of ascertainment, if
14 sustained in the conduct of the regular trade or business of
15 the taxpayer.

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

22 (9) In the case of mines, oil, and gas wells, other
23 natural deposits and timber, a reasonable allowance for
24 depletion and for depreciation of improvements, according to
25 the peculiar condition in each case based upon the cost,
26 including the cost of development not otherwise deducted, such
27 reasonable allowance in all cases to be made under rules and

1 regulations to be prescribed by the Department of Revenue;
2 and, in the case of leasehold interests, the deduction allowed
3 by this section shall be equitably apportioned between the
4 lessor and the lessee.

5 (10) Charitable contributions to the extent allowed
6 for federal income tax purposes under 26 U.S.C. § 170
7 (relating to charitable contributions and gifts).

8 (11) The deduction allowed to the individual for
9 federal income tax purposes by 26 U.S.C. § 219 (relating to
10 retirement savings).

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

14 (13) For each individual income taxpayer, medical
15 and dental expenses, including amounts paid for medicine and
16 drugs and amounts paid for accident and health insurance, as
17 determined in accordance with 26 U.S.C. § 213; provided,
18 however, that the limitation of the deduction to the excess of
19 those expenses over 7.5 percent of adjusted gross income as
20 provided in 26 U.S.C. § 213 shall instead be limited to the
21 excess of those expenses over 4.0 percent of adjusted gross
22 income.

23 (14) For each individual income taxpayer, the
24 deduction determined in accordance with 26 U.S.C. § 212 for
25 all the ordinary and necessary expenses paid or incurred
26 during the taxable year for the production or collection of
27 income, or for the management, conservation, or maintenance of

1 property held for the production of income, or in connection
2 with the determination, collection, or refund of any tax.

3 (15) Any expense not exceeding \$1,000 actually
4 incurred during the taxable year in constructing on his or her
5 property a family radioactive fallout shelter, as approved and
6 certified by the State Department of Emergency Management, and
7 any amount not exceeding \$1,000 which he or she contributed
8 during the taxable year toward the construction of a community
9 radioactive fallout shelter.

10 (16) A deduction from the taxpayer's adjusted gross
11 income for state income tax purposes of the total cost of
12 installation for conversion from gas or electricity to wood as
13 the primary energy source for heating their individual
14 domestic homes for the taxable year during which a conversion
15 was completed.

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

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

25 (19) Any expense not exceeding \$35,000 actually
26 incurred during the taxable year in removing from his or her
27 property any architectural or transportation barriers to

1 handicapped persons with nonambulatory and semiambulatory
2 disabilities; provided, however, that any improvements
3 resulting from that expense shall not be eligible to be
4 capitalized for depreciation.

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

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

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

17 (23) The deduction allowed by subdivision (1), to
18 the extent that it consists of unreimbursed employee business
19 expenses, and the deduction allowed by subdivision (14) shall
20 be allowed only to the extent that the aggregate of the
21 deductions exceeds 2 percent of adjusted gross income.

22 (24) The reasonable medical and legal expenses paid
23 or incurred by the taxpayer in connection with the adoption of
24 a minor. For purposes of this subdivision, medical expenses
25 shall include any medical and hospital expenses of the adoptee
26 and the adoptee's biological mother which are incident to the
27 adoptee's birth and subsequent medical care and which, in the

1 case of the adoptee, are paid or incurred before the petition
2 is granted.

3 (25) The amount of any aid or assistance, whether in
4 the form of property, services, or monies, provided to the
5 State Industrial Development Authority pursuant to Section
6 41-10-44.8(d) in order to induce an approved company to
7 undertake a major project within the state.

8 (26) The amount of premiums paid pursuant to a
9 qualifying insurance contract for qualified long-term care
10 coverage.

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

13 (28) The amount, up to five thousand dollars
14 (\$5,000) per annum, contributed subsequent to December 31,
15 2007, to the Alabama Prepaid Affordable College Tuition
16 Program or the Alabama College Education Savings Program as
17 defined in Chapter 33C of Title 16. If the taxpayer makes a
18 nonqualified withdrawal as defined by Section 529 of the
19 Internal Revenue Code (26 U.S.C. 529), the amount of the
20 nonqualified withdrawal, plus 10 percent of the amount
21 withdrawn, shall be added back to the income of the
22 contributing taxpayer in the year the nonqualified withdrawal
23 was distributed.

24 (b)(1) In lieu of the deductions allowable to
25 individual taxpayers, as provided in subdivision (1) of
26 subsection (a) to the extent of unreimbursed employee business
27 expenses, and as provided in subdivisions (2), (3), (5), (6),

1 (10), (13), (14), (15), (16), (19), (22), and (26) of
2 subsection (a), the taxpayer may elect to take the optional
3 standard deduction of 20 percent of the adjusted gross income
4 or \$2,000, whichever is the lesser. Taxpayers filing jointly
5 as defined in Section 40-18-27 may elect to take the optional
6 standard deduction of 20 percent of the adjusted gross income
7 or \$4,000, whichever is the lesser.

8 (2) For tax years beginning after December 31, 2006,
9 the optional standard deduction shall be determined as
10 follows:

11 a. The standard deduction for married taxpayers
12 filing jointly with adjusted gross income of \$20,000 or less
13 shall be \$7,500. For married taxpayers filing jointly with
14 adjusted gross income of greater than \$20,000, the standard
15 deduction shall be reduced by \$175 for each \$500 of adjusted
16 gross income in excess of \$20,000. Notwithstanding the
17 preceding sentence, the standard deduction shall not be less
18 than \$4,000 for married taxpayers filing jointly.

19 b. The standard deduction for married taxpayers
20 filing separate returns with adjusted gross income of \$10,000
21 or less shall be \$3,750. For married taxpayers filing separate
22 returns with adjusted gross income of greater than \$10,000,
23 the standard deduction shall be reduced by \$88 for each \$250
24 of adjusted gross income in excess of \$10,000. Notwithstanding
25 the preceding sentence, the standard deduction shall not be
26 less than \$2,000 for married taxpayers filing separate
27 returns.

1 c. The standard deduction for head of family
2 taxpayers with adjusted gross income of \$20,000 or less shall
3 be \$4,700. For head of family taxpayers with adjusted gross
4 income of greater than \$20,000, the standard deduction shall
5 be reduced by \$135 for each \$500 of adjusted gross income in
6 excess of \$20,000. Notwithstanding the preceding sentence, the
7 standard deduction shall not be less than \$2,000 for head of
8 family taxpayers.

9 d. The standard deduction for single taxpayers with
10 adjusted gross income of \$20,000 or less shall be \$2,500. For
11 single taxpayers with adjusted gross income of greater than
12 \$20,000, the standard deduction shall be reduced by \$25 for
13 each \$500 of adjusted gross income in excess of \$20,000.
14 Notwithstanding the preceding sentence, the standard deduction
15 shall not be less than \$2,000 for single taxpayers.

16 (c) A deduction is allowable for the amount of
17 federal income tax paid or accrued within the taxable year. In
18 the case of a nonresident taxpayer, the amount of federal
19 income tax deductible to Alabama shall be determined by the
20 ratio that the amount of adjusted gross income received from
21 sources within the State of Alabama bears to the amount of
22 adjusted gross income received from sources within and outside
23 the State of Alabama.

24 (d) If separate returns are filed by husband and
25 wife and one spouse elects to claim the optional standard
26 deduction, the other spouse must also claim the optional
27 standard deduction, unless the spouses have lived apart for

1 the entire year. In this case, each spouse may claim either
2 the optional standard deduction or itemized deductions.
3 Neither spouse may claim a deduction for expenses paid by the
4 other spouse.

5 (e) In the case of a nonresident individual:

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

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

18 (3) The amount of the deductions allowed by
19 subdivisions (2), (3), (6), (10), (13), (15), (16), (17),
20 (19), (24), and (26) of subsection (a) (and not allowed by
21 subdivisions (1) or (2) of this subsection), or by subsection
22 (b) if the taxpayer elects the standard deduction, shall be
23 limited to the amount determined by multiplying the total of
24 such deductions by a fraction, the numerator of which is the
25 taxpayer's adjusted gross income determined using the rules
26 provided in subdivisions (1) and (2) of this subsection and
27 the denominator of which is the taxpayer's adjusted gross

1 income determined under Section 40-18-14.2. The deduction
2 allowed in subdivision (17) of subsection (a) shall not be
3 subtracted in calculating either the numerator or denominator
4 in the previous sentence.

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

7 Section 2. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, such declaration shall not affect the part
10 which remains.

11 Section 3. All laws or parts of laws which conflict
12 with this act are repealed.

13 Section 4. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law, for
16 the tax returns filed for the 2013 and subsequent tax years.