

1 HB302
2 127518-1
3 By Representative Lindsey
4 RFD: Ways and Means General Fund
5 First Read: 22-MAR-11

SYNOPSIS: This bill would limit the state depletion allowance for oil and gas to the amount allowed by the federal depletion allowance.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 40-18-35, Code of Alabama 1975, relating to the taxation of oil and gas, to limit the state depletion allowance for oil and gas to the amount allowed by the federal depletion allowance.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-18-35, Code of Alabama 1975, is amended to read as follows:

"§40-18-35.

"(a) The following items shall be deducted from federal taxable income for purposes of computing taxable income under this chapter:

"(1) Refunds of state and local income taxes.

1 "(2) Federal income tax paid or accrued during the
2 taxpayer's taxable year. The portion of federal income tax
3 deductible by a corporation earning income from sources both
4 inside and outside of Alabama shall be determined by the ratio
5 that the corporation's taxable income, computed without the
6 deduction for federal income tax, apportioned and allocated to
7 Alabama bears to the corporation's taxable income, computed
8 without the deduction for federal income tax, apportioned and
9 allocated everywhere.

10 "(3) Interest income earned on obligations of the
11 United States.

12 "(4)a. Interest income earned on obligations of the
13 State of Alabama or its subdivisions or instrumentalities
14 thereof to the extent included in gross income for the
15 purposes of federal income taxation.

16 b. Interest income earned on obligations of the
17 State of Alabama or its subdivisions or instrumentalities
18 thereof to the extent included in gross income for the
19 purposes of federal income taxation if such obligations were
20 issued prior to January 1, 1995, to pay the cost of assets to
21 which subsections (c) through (e) of Section 40-9B-7 apply.

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

1 "(6) Expenses otherwise deductible that were not
2 deducted on the federal income tax return as a result of an
3 election to claim a credit for those expenses.

4 "(7) If the taxpayer owns greater than 20 percent of
5 the stock, by vote or value, of the distributing corporation
6 the following deductions are allowed:

7 "a. Amounts described in 26 U.S.C. § 78;

8 "b. Dividend income, including amounts described in
9 26 U.S.C. § 951, from non-U.S. corporations to the same extent
10 such dividend income would be deductible under 26 U.S.C. § 243
11 if received from U.S. corporations; and

12 "c. Dividends received from foreign sales
13 corporations as defined in 26 U.S.C. § 922.

14 "d. Dividend income from a Captive REIT to the same
15 extent such dividend income would be deductible under 26
16 U.S.C. §243 if received from an entity that is not a REIT.

17 "(8) The portion of total deductible interest
18 expense classified as nonbusiness interest expense not
19 deductible at arriving at apportioned income, but instead
20 allocated to the situs of the related nonbusiness income
21 producing assets, shall be based upon the ratio of the average
22 cost of the corporation's nonbusiness assets to the average
23 cost of the corporation's total assets.

24 "(9) The interest portion of rent paid under lease
25 agreements entered into prior to January 1, 1995, relating to
26 obligations issued by the State of Alabama or subdivisions or
27 instrumentalities thereof, to the extent that such obligations

1 were issued to pay the cost of assets to which subsections (c)
2 through (e) of Section 40-9B-7 apply.

3 ~~"(10) The amount by which the depletion allowance~~
4 ~~specified in Section 40-18-16(b) exceeds the depletion~~
5 ~~allowance deducted in calculating federal taxable income.~~

6 "(b) Restrictions on the deductibility of certain
7 intangible expenses and interest expenses with a related
8 member.

9 "(1) For purposes of computing its taxable income, a
10 corporation shall add back otherwise deductible interest
11 expenses and costs and intangible expenses and costs directly
12 or indirectly paid, accrued, or incurred to, or in connection
13 directly or indirectly with one or more direct or indirect
14 transactions, with one or more related members, except to the
15 extent the corporation shows, upon request by the
16 commissioner, that the corresponding item of income was in the
17 same taxable year: a. Subject to a tax based on or measured by
18 the related member's net income in Alabama or any other state
19 of the United States, or b. subject to a tax based on or
20 measured by the related member's net income by a foreign
21 nation which has in force an income tax treaty with the United
22 States, if the recipient was a "resident" (as defined in the
23 income tax treaty) of the foreign nation. For purposes of this
24 section, subject to a tax based on or measured by the related
25 member's net income means that the receipt of the payment by
26 the recipient related member is reported and included in
27 income for purposes of a tax on net income, and not offset or

1 eliminated in a combined or consolidated return which includes
2 the payor. Any portion of an item of income that is not
3 attributed to the taxing jurisdiction, as determined by that
4 jurisdiction's allocation and apportionment methodology or
5 other sourcing methodology, is not included in income for
6 purposes of a tax on net income and, therefore, shall not be
7 considered subject to a tax. That portion of an item of income
8 which is attributed to a taxing jurisdiction having a tax on
9 net income shall be considered subject to a tax even if no
10 actual taxes are paid on such item of income in the taxing
11 jurisdiction by reason of deductions or otherwise.

12 "(2) The corporation shall make the adjustments
13 required in subdivision (1) unless the corporation establishes
14 that the adjustments are unreasonable, or the corporation and
15 the Commissioner of Revenue agree in writing to the
16 application or use of alternative adjustments and
17 computations. Nothing in this section shall be construed to
18 limit or negate the commissioner's authority to otherwise
19 enter into agreements and compromises otherwise allowed by
20 law.

21 "(3) The adjustments required in subdivision (1)
22 shall not apply to that portion of interest expenses and costs
23 and intangible expenses and costs if the corporation can
24 establish that the transaction giving rise to the interest
25 expenses and costs or the intangible expenses and costs
26 between the corporation and the related member did not have as
27 a principal purpose the avoidance of any Alabama tax and the

1 related member is not primarily engaged in the acquisition,
2 use, licensing, maintenance, management, ownership, sale,
3 exchange, or any other disposition of intangible property, or
4 in the financing of related entities. If the transaction
5 giving rise to the interest expenses and costs or intangible
6 expenses and costs, as the case may be, has a substantial
7 business purpose and economic substance and contains terms and
8 conditions comparable to a similar arm's length transaction
9 between unrelated parties, the transaction will be presumed to
10 not have as its principal purpose tax avoidance, subject to
11 rebuttal by the Commissioner of the Department of Revenue.

12 "(4) The adjustments required in subdivision (b)(1)
13 shall not apply to that portion of interest expenses and costs
14 and intangible expenses and costs that the corporation can
15 establish was paid, accrued or incurred, directly or
16 indirectly, by the related member during the same taxable year
17 to a person that is not a related member.

18 "(5) Nothing in this section shall require a
19 corporation to add to its taxable income more than once any
20 amount of interest expenses and costs or intangible expenses
21 and costs that the corporation pays, accrues or incurs to a
22 related member described in subdivision (1).

23 "(6) Nothing in this section shall be construed to
24 limit or negate the commissioner's authority to make
25 adjustments under this chapter.

1 "(7) This subsection shall not limit the deduction
2 of the interest portion of rent paid under lease agreements
3 described in subsection (a)(9).

4 "(c) Restrictions on the deductibility of Captive
5 REIT dividends. For purposes of computing its taxable income,
6 a Captive REIT shall add back any dividend paid to a related
7 member that it deducted pursuant to Section 10-13-21 and/or 26
8 U.S.C. §§561 and 857.

9 "(d) Except with regard to payments described in
10 subsections (a)(4)b and (a)(9), nothing in this section shall
11 be construed to allow any item to be deducted more than once
12 or to allow a deduction for any item that is excluded from
13 income or to allow any item to be included in the Alabama
14 taxable income of more than one taxpayer.

15 "(e) The following credits shall be allowed against
16 the tax levied by Section 40-18-31:

17 "(1) the amount provided to an approved company
18 pursuant to Section 41-10-44.8(a)(1), subject however, to the
19 limitations contained in Section 41-10-44.8(c); and

20 "(2) the amount provided in Section 41-10-44.9 to an
21 approved company for a payment by such company into a tax
22 increment fund."

23 Section 2. This act shall become effective for all
24 tax years beginning after December 31, 2011, following its
25 passage and approval by the Governor, or its otherwise
26 becoming law.