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

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

A BILL

TO BE ENTITLED
AN ACT

To amend the corporate income tax law to require the operations of all related entities, involved in a unitary business, to file one corporate income tax return on a combined basis, known as combined reporting; to implement combined reporting by requiring that a business report, on a combined basis, the operations of all related entities involved in a unitary business.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-18-1.

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

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

(2) AFFILIATED GROUP. An affiliated group has the meaning ascribed to that term in 26 U.S.C. §§ 1504 except that it shall include all corporations incorporated in the United States or formed under the laws of the United States, any state, the district of Columbia or any territory or possession of the United States that are commonly owned, directly or
indirectly, by any member of such affiliated group. Also, an
affiliated group shall include other commonly owned
corporations incorporated in the United States or formed under
the laws of the United States, any state, the District of
Columbia or any territory or possession of the United States
that is described as a related entity in this section.

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

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

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

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

(67) CASH. Any legal tender, negotiable paper, or
solvent credit.

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

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

(810) CORPORATION. The term includes associations,
joint stock companies, and any other entity classified as an
association taxable as a corporation for federal income tax
purposes, any corporation as defined by the laws of this state
or organization of any kind treated as a corporation for tax
purposes under the laws of this state, or any other entity
classified as an association taxable as a corporation for
federal income tax purposes, wherever located, which if it
were doing business in this state would be a "taxpayer." The
business conducted by a partnership which is directly or
indirectly held by a corporation shall be considered the
business of the corporation to the extent of the corporation's
distributive share of the partnership income, inclusive of
guaranteed payments to the extent prescribed by regulation.

(911) DISREGARDED ENTITY. Any entity which is
disregarded for federal income tax purposes.

(1012) DOMESTIC. When applied to a corporation or
subchapter K entity means created or organized under the laws
of the State of Alabama.

(1113) FIDUCIARY. A guardian, trustee, executor,
administrator, personal representative, receiver, conservator,
or any person acting in any fiduciary capacity for any person.

(1214) FISCAL YEAR. An accounting period of 12
months ending on the last day of any month other than
December.

(1315) FOREIGN. When applied to a corporation or a
subchapter K entity means created or organized under a
jurisdiction other than the State of Alabama.

(1416) GEOTHERMAL. Any geothermal reservoir in
Alabama consisting of natural heat which is stored in rocks or
in an aqueous liquid or vapor, whether or not under pressure.
HEAD OF FAMILY. As used in this chapter, the term head of family has the same meaning as the term head of household as defined in 26 U.S.C. §2(b).

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

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

INTANGIBLE PROPERTY. Patents, patent applications, trade names, trademarks, service marks, franchises, know-how, formulas, designs, patterns, processes, formats, copyrights and similar types of intangible assets, choses in action, and accounts receivable.
INTEREST EXPENSES AND COSTS. Amounts directly or indirectly allowed as deductions under 26 U.S.C. § 163 for purposes of determining taxable income under the Internal Revenue Code. Interest expenses and costs paid to a related member by a subchapter K entity or a corporation, to the extent apportioned to Alabama by the payor, are to the recipient related member income derived from sources within Alabama.

INTERNAL REVENUE CODE. Title 26 of the United States Code, and amendments thereto, without regard to application of federal treaties unless expressly made applicable to states of the United States.

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

NONRESIDENT ESTATE. An estate other than a resident estate of this state.

NONRESIDENT TRUST. A trust other than a resident trust of this state.

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

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

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

(2529) PERSON. Any individual, firm, trust, estate,
corporation, association, disregarded entity, or subchapter K
entity, disregarded entity, foreign limited liability
partnership, association, corporation (whether or not the
corporation is, or would be if doing business in this state,
subject to the tax imposed by Section 40-18-2), company,
syndicate, estate, trust, business trust, trustee, trustee in
bankruptcy, receiver, executor, administrator, assignee or
organization of any kind.

(2630) QUALIFIED FOREIGN ENTITY. An entity organized
outside of the U.S. that is similar in operation and form to a
U.S. REIT that is not a captive REIT, and shall take into
account the entity's: (i) total real estate assets; (ii) tax
transparency; (iii) actual distribution or required
distribution of taxable income; and (iv) concentration of
ownership.

(2731) REIT. A Real Estate Investment Trust having
the meaning ascribed to that term in 26 U.S.C. §§ 856 to 858,
inclusive.

(2832) RELATED ENTITY. A stockholder who is an
individual, or a member of the stockholder's family enumerated
in 26 U.S.C. § 318, if the stockholder and the members of the
stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of 26 U.S.C. § 318, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of 26 U.S.C. § 318 shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

(2933) RELATED MEMBER. A person that, with respect to the taxpayer any time during the taxable year, is a related entity as defined in this section, a component member as defined in 26 U.S.C. § 1563(b) of a controlled group of which the taxpayer is also a component, or is a person to or from whom there is attribution of stock ownership in accordance with 26 U.S.C. § 1563(e).

(3034) RENEWABLE ENERGY RESOURCES. Wind, biomass, black liquor, tidal or ocean current, geothermal, solar
energy, small irrigation, municipal solid waste, and
hydropower production, and such term also includes hydrogen
when derived or produced from some other renewable energy
resource.

REPORT FROM SOURCE. All individuals,
corporations, associations, and partnerships, in whatever
capacity acting, including lessees or mortgagors of real or
personal property, fiduciaries, employers, and all other
officers and employees of the state or of any municipal
corporation or political subdivision of the state having
control, receipt, custody, or payment of interest, rent,
salaries, wages, premiums, annuities, compensation,
remunerations, emoluments, barter income, or other fixed or
determinable annual or periodical gains, profits, and income
taxable under this chapter.

RESIDENT ESTATE. The estate of any person who
was a resident of Alabama at the time of his or her death.

RESIDENT TRUST. A trust is a resident trust
for a taxable year if it is a trust which meets both a. and
b.:

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

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

(3438) SMALL IRRIGATION. An irrigation system canal or ditch in Alabama which does not include a dam or impoundment of water, including, but not limited to, facilities in Alabama described in 26 U.S.C. § 45(c)(5).

(3539) SUBCHAPTER K ENTITY. A partnership, including a limited partnership or limited liability partnership, limited liability company, or any other entity subject to subchapter K of the Internal Revenue Code, 26 U.S.C. §§ 701 to 761, for federal income tax purposes, not including a single member limited liability company.

(3640) TAXABLE YEAR. The calendar year or the fiscal year ending during the calendar year upon the basis of which net income is computed, or a period of less than 12 months resulting from a change in accounting period as provided in Section 40-18-30.

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

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

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

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

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

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

(3742) TAXPAYER. Any person subject to a tax imposed
by this chapter, or whose income is, in whole or in part,
subject to a tax imposed by this chapter. Any person subject
to the tax imposed by Section 40-18-2.

(3843) TRUST. Any entity which is a trust for
federal income tax purposes.

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

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

"§40-18-30.

(a) Taxpayer filing separate returns Return when accounting period changes. If a taxpayer, with the approval of the Department of Revenue, changes the basis of computing taxable income from the fiscal year to the calendar year, a
separate return shall be filed for the period between the
close of the last fiscal year for which return shall be made
and the following December 31. If the change is made from the
calendar year to the fiscal year, a separate return shall be
filed for the period between the close of the last calendar
year for which return was filed and the date designated as the
close of the last fiscal year. If the change is made from one
fiscal year to another fiscal year, a separate return shall be
filed for the period between the close of the former fiscal
year and the date designated as the close of the new fiscal
year. If a taxpayer filing the taxpayer's first return for
income tax keeps accounts on the basis of a fiscal year, the
taxpayer shall file a separate return for the period between
the beginning of a calendar year in which such fiscal year
ends and the end of such fiscal year. In all of the above
cases the taxable income shall be computed on the basis of
such period for which the separate return is filed, and the
tax shall be paid thereon at the rate in effect during the
calendar year in which such period is included; and, except
for the period during which the taxpayer dies, the exemptions
allowed in this chapter shall be reduced respectively to
amounts which bear the same ratio to the full exemptions
provided for as the number of months in such period to 12
months.

(b) Corporations filing Alabama consolidated
returns. If a corporation changes the basis of computing its
income from the fiscal year to the calendar year by virtue of
its election to file an Alabama consolidated return under
Section 40-18-39, an Alabama consolidated return shall be
filed for the period between the close of the last fiscal year
for which the return shall be filed and the following December
31. If the change is made from the calendar year to the fiscal
year, and the taxpayer elects to file an Alabama consolidated
return under Section 40-18-39, an Alabama consolidated return
shall be filed for the period between the close of the last
calendar year for which the return was filed and the date
designated as the close of the first fiscal year. If the
change is made from one fiscal year to another fiscal year,
and the taxpayer elects to file an Alabama consolidated return
under Section 40-18-39, an Alabama consolidated return shall
be filed for the period between the close of the former fiscal
year and the date designated as the close of the new fiscal
year for the Alabama affiliated group. If a taxpayer filing an
initial return for income tax keeps accounts on the basis of a
fiscal year, and the taxpayer elects to file an Alabama
consolidated return under Section 40-18-39, the taxpayer shall
file an Alabama consolidated return for the period between the
beginning of the calendar year in which its fiscal year ends
and the end of such fiscal year for the Alabama consolidated
group. In all the above cases, the taxpayer's taxable income
shall be computed on the basis of the period for which the
Alabama consolidated return is filed, and the tax shall be
paid thereon at the rate in effect during the calendar year in
which such period is included.

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

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

(c) Combined reporting at Commissioner’s discretion. The Commissioner may, by regulation, require the combined report to include the income and associated apportionment factors of any persons that are not included pursuant to subsection (b), but that are members of a unitary business, in order to reflect proper apportionment of income of entire unitary businesses. Authority to require combination by regulation under this subsection (c) includes authority to require combination of persons that are not, or would not be
if doing business in this state, subject to the taxes levied in this Chapter.

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

(2) With respect to inclusion of associated apportionment factors pursuant to subsection (c), the Commissioner may require the exclusion of any one or more of the factors, the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer's income.”

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


(a) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group.
(b) Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include, in addition to other types of income, the taxpayer member’s apportioned share of business income of the combined group, where business income of the combined group is calculated as a summation of the individual net business incomes of all members of the combined group.

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

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

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

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

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

3. its income from a business conducted wholly by the taxpayer member entirely within the state,
4. its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under subparagraph (3)b.8. below,

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

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

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

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

(2) Determination of taxpayer’s share of the
5 business income of a combined group apportionable to this
6 state. The taxpayer’s share of the business income
7 apportionable to this state of each combined group of which it
8 is a member shall be the product of:

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

b. the taxpayer member’s apportionment percentage,
   determined under Chapter 27, including in the property,
   payroll and sales factor numerators the taxpayer’s property,
   payroll and sales, respectively, associated with the combined
   group’s unitary business in this state, and including in the
   denominator the property, payroll and sales of all members of
   the combined group, including the taxpayer, which property,
   payroll and sales are associated with the combined group’s
   unitary business wherever located. The property, payroll, and
   sales of a partnership shall be included in the determination
   of the partner’s apportionment percentage in proportion to a
   ratio the numerator of which is the amount of the partner’s
   distributive share of partnership’s unitary income included in
   the income of the combined group in accordance with
   subparagraph (3)b.4. and the denominator of which is the
   amount of the partnership’s total unitary income.
(3) Determination of the business income of the combined group. The business income of a combined group is determined as follows:

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

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

1. For any member incorporated in the United States, or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group shall be the taxable income for the corporation after making appropriate adjustments under Sections 40-18-34 and 40-18-35.

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

   (i) A profit and loss statement shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained.
(ii) Adjustments shall be made to the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements except as modified by this title.

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

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

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

3. In lieu of the procedures set forth in subparagraph (3)b.2., above, and subject to the determination of the Commissioner that it reasonably approximates income as determined under this title any member not included in subparagraph (3)b.1., may determine its income on the basis of the consolidated profit and loss statement which includes the member and which is prepared for filing with the Securities and Exchange Commission by related corporations. If the member is not required to file with the Securities and Exchange Commission, the Commissioner may allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent
1 auditor. If above statements do not reasonably approximate income as determined under this title, the Commissioner may accept those statements with appropriate adjustments to approximate that income.

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

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

6. Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller, and shall be apportioned as business income earned immediately before the event:
(i) the object of a deferred intercompany transaction is (1) re-sold by the buyer to an entity that is not a member of the combined group, (2) re-sold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (3) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged, or

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

7. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group (subject to the income limitations of that section applied to the entire business income of the group), and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense (subject to the income limitations of that section applied to the nonbusiness income of that specific member). Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

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

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

(ii) Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, using the rules of Internal Revenue Code Sections 1231 and 1222, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Section 1231 property, and involuntary conversions which are nonbusiness items allocated to another state.

(iii) Any resulting state source income (or loss, if the loss is not subject to the limitations of Internal Revenue Code Section 1211) of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.
(iv) Any resulting state source loss of a member that is subject to the limitations of Section 1211 shall be carried forward by that member, and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryover applies.

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

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


(a) Water’s-edge election. Taxpayer members of a unitary group that meet the requirements of subsection (b) may elect to determine each of their apportioned shares of the net business income or loss of the combined group pursuant to a water’s-edge election. Under such election, taxpayer members shall take into account all or a portion of the income and apportionment factors of only the following members otherwise included in the combined group pursuant to Section 40-18-31, as described below:

(1) the entire income and apportionment factors of any member incorporated in the United States or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States;
(2) the entire income and apportionment factors of any member, regardless of the place incorporated or formed, if the average of its property, payroll, and sales factors within the United States is 20 percent or more;

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

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

(5) any member that is a “controlled foreign corporation,” as defined in Internal Revenue Code Section 957, to the extent of the income of that member that is defined in Section 952 of Subpart F of the Internal Revenue Code (“Subpart F income”) not excluding lower-tier subsidiaries’ distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of
income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in Internal Revenue Code Section 11;

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

(7) the entire income and apportionment factors of any member that is doing business in a tax haven, where “doing business in a tax haven” is defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards. If the member’s business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria established in the definition of a tax haven pursuant to Section 40-18-1, the activity of the member shall be treated as not having been conducted in a tax haven.

(b) Initiation and withdrawal of election.

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

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

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

(4) A water’s-edge election is binding for and
applicable to the tax year it is made and all tax years
thereafter for a period of 10 years. It may be withdrawn or
reinstituted after withdrawal, prior to the expiration of the
10 year period, only upon written request for reasonable cause
based on extraordinary hardship due to unforeseen changes in
state tax statutes, law, or policy, and only with the written
permission of the Commissioner. If the Commissioner grants a
withdrawal of election, he or she shall impose reasonable
conditions as necessary to prevent the evasion of tax or to
clearly reflect income for the election period prior to or
after the withdrawal. Upon the expiration of the 10 year
period, a taxpayer may withdraw from the water’s edge
election. Such withdrawal must be made in writing within one
year of the expiration of the election, and is binding for a
period of 10 years, subject to the same conditions as applied
to the original election. If no withdrawal is properly made,
the water’s edge election shall be in place for an additional
10 year period, subject to the same conditions as applied to
the original election.”

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

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

(a) Affiliated group election. A taxpayer may elect,
without the consent of the commissioner, to treat as its
combined group all corporations that are members of its
affiliated group. The corporations referred to above shall
include members of such affiliated group that are subject to
tax or that would be subject to tax if doing business in the
state under Section 40-18-2, but not including members that
are or would be exempt pursuant to Section 40-18-32. Such
affiliated group shall calculate taxable income in accordance
with Section 40-18-36, provided that all income of all group
members, whether or not such income would otherwise be subject
to apportionment or would be allocable to a particular state
in the absence of an election under this section, shall be
treated as apportionable income for purposes of returns filed
pursuant to an election under this section.
(b) Initiation and withdrawal of election.

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

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

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


(a) Except as provided in subsection (c), e Every corporation, joint stock company, or association subject to income tax under this chapter shall file a return with the Department of Revenue for each taxable year, stating specifically the items of its gross income and the deductions
and credits allowed by this chapter. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall file returns for such corporations in the same manner and form as corporations are required to file returns. Any tax due on the basis of such returns filed by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control. Returns filed on the basis of the calendar year shall be filed on or before March 15 following the close of the calendar year. Returns filed on the basis of a fiscal year shall be filed on or before the fifteenth day of the third month following the close of the fiscal year. The Department of Revenue may grant a reasonable extension of time for filing returns under such rules and regulations as it shall prescribe. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

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

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

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

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

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

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

f. Combines and reports taxable income or loss computed in accordance with paragraphs c through e of this subsection on a single return for the Alabama affiliated group; and which includes all members of the affiliated group included on the federal consolidated income tax return that are eligible under this section to be included in the Alabama affiliated group; but shall not include corporations subject to the insurance premium license tax imposed by Section 27-4A-1 et seq. or the financial institution excise tax imposed by Section 40-16-1 et seq.

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

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

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

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

(b) Designation of Surety. As a filing convenience, and without changing the respective liability of the group members, members of a combined reporting group may annually elect to designate one taxpayer member of the combined group to file a single return in the form and manner prescribed by the department, in lieu of filing their own respective returns, provided that the taxpayer designated to file the single return consents to act as surety with respect to the tax liability of all other taxpayers properly included in the combined report, and agrees to act as agent on behalf of those taxpayers for the year of the election for tax matters relating to the combined report for that year. If for any reason the surety is unwilling or unable to perform its responsibilities, tax liability may be assessed against the taxpayer members.
(c)(1) An Alabama affiliated group filing or required to file a federal consolidated income tax return may elect to file an Alabama consolidated return for the same taxable year. However, under no circumstances may the Department of Revenue compel a taxpayer to file an Alabama consolidated return if the taxpayer has not so elected.

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

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

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

(5) Each member of the Alabama affiliated group
shall determine and allocate and apportion its separate income
and loss under Chapter 27 before consolidation. For purposes
of allocation and apportionment, each member of the Alabama
affiliated group shall be considered a separate taxpayer. Any
taxable loss of a member of the Alabama affiliated group shall
be deductible against the taxable income of any other member
of the Alabama affiliated group only if and to the extent such
loss is apportioned and allocated to Alabama.

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

(7) Any election to file an Alabama consolidated return pursuant to this subsection shall be binding on both the Department of Revenue and the Alabama affiliated group for a period beginning with the first month of the first taxable year for which the election is made and ending with the conclusion of the taxable year in which the one hundred twentieth consecutive calendar month expires, except that the election shall terminate automatically upon the revocation or termination of its federal consolidated return election. If an election made pursuant to this subsection is terminated by an Alabama affiliated group by virtue of the revocation or termination of its federal or Alabama consolidated return election, no member of the Alabama affiliated group may be included in an Alabama consolidated return filed by the Alabama affiliated group, or by another Alabama affiliated group with the same common parent or a successor to the same common parent, before the sixty-first month beginning after the first taxable year for which the election was revoked; provided, however, that the Department of Revenue may waive application of this provision to any corporation or Alabama affiliated group for any period, consistent with the provisions of 26 U.S.C. § 1504.
An Alabama affiliated group that has made an Alabama consolidated return election under this subsection shall be assessed an annual fee for the privilege of filing an Alabama consolidated return, which shall be assessed, collected, and distributed as an income tax but shall be due and payable at the time the return is due, including any extensions thereof. The annual fee shall be a graduated fee based upon the aggregate amount of total assets, determined in accordance with Treasury Department Form 1120 or any successor form, of the Alabama affiliated group for the taxable year to which the fee relates, as set out below:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 to $2,500,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>$2,500,001 to $5,000,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>$5,000,001 to $7,500,000</td>
<td>$15,000</td>
</tr>
<tr>
<td>$7,500,001 to $10,000,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>$10,000,001 and over</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

Each corporation included as part of an Alabama affiliated group filing an Alabama consolidated return shall be jointly and severally liable for the Alabama income tax liability of the Alabama affiliated group with respect to the taxable year, and the fee prescribed above, except that any corporation which was not a member of the Alabama affiliated
group for the entire taxable year shall be jointly and severally liable only for the portion of the Alabama consolidated income tax liability attributable to that portion of the year during which the corporation was a member of the Alabama affiliated group, prorated on a daily basis.

(e) Every corporation return or report required by this chapter shall be executed by one of the following officers of the corporation: The president, vice president, secretary, treasurer, assistant secretary, assistant treasurer, or chief accounting or financial officer, except that in the case of an Alabama affiliated group filing an Alabama consolidated return, one of the above-described officers of the common parent of the Alabama affiliated group may execute the return on behalf of the Alabama affiliated group. The Department of Revenue may require a further or supplemental report of information and data necessary for computation of the tax.

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

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

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

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

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

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

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

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

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

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