

1 SB263
2 173987-3
3 By Senator Ross
4 RFD: Finance and Taxation Education
5 First Read: 17-FEB-16

1 SB263

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4 ENROLLED, An Act,

5 To amend Sections 40-18-27, 40-18-39, and 40-18-42
6 of the Code of Alabama 1975; to further provide for the due
7 dates of certain state income tax returns to correspond to the
8 due dates of federal income tax returns and to further provide
9 for a payment to be made on the due date of a return.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 40-18-27, 40-18-39, and 40-18-42
12 of the Code of Alabama 1975, are amended to read as follows:

13 "§40-18-27.

14 "(a) Effective for tax years beginning after
15 December 31, 1997, every taxpayer having an adjusted gross
16 income for the taxable year of more than one thousand eight
17 hundred seventy-five dollars (\$1,875) if single or if married
18 and not living with spouse, and of more than three thousand
19 seven hundred fifty dollars (\$3,750) if married and living
20 with spouse, shall each year file with the Department of
21 Revenue a return stating specifically the items of gross
22 income, the deductions and credits allowed by this chapter,
23 the place of residence, and post office address. If a husband
24 and wife living together have an adjusted gross income of more
25 than three thousand seven hundred fifty dollars (\$3,750), each

1 shall file a return unless the income of each is included in a
2 single joint return. If the taxpayer is unable to file a
3 return, the return shall be filed by a duly authorized agent,
4 a guardian, or other person charged with the care of the
5 person or property of the taxpayer.

6 "(b) A taxpayer other than a resident shall not be
7 entitled to the deductions authorized by Sections 40-18-15 and
8 40-18-15.2 unless the taxpayer files a complete return showing
9 the gross income of the taxpayer both from within and outside
10 the state. Included on every income tax return shall be the
11 name, address, and Social Security number or preparer taxpayer
12 identification number of the person who prepared the return.
13 The taxpayer shall be held liable for any statement made by an
14 agent of the taxpayer with reference to any information
15 required by law to be furnished in connection with that tax
16 return.

17 ~~"(c) Returns filed on the basis of the calendar year~~
18 ~~shall be filed on or before April 15 following the close of~~
19 ~~the calendar year. Returns filed on the basis of a fiscal year~~
20 ~~shall be filed on or before the fifteenth day of the fourth~~
21 ~~month following the close of the fiscal year Returns shall be~~
22 ~~filed by the same date as the corresponding federal income tax~~
23 ~~returns are required to be filed as provided under federal~~
24 ~~law.~~ The department may grant a reasonable extension of time
25 for filing returns, under rules and regulations as it shall

1 prescribe. Except in the case of taxpayers who are abroad, no
2 extension shall be for more than six months. If the taxpayer
3 has requested an extension of time for the filing of a return,
4 the period during which the return will be considered timely
5 filed shall not expire until 10 days after the Department of
6 Revenue mails to the taxpayer a rejection of the request for
7 an extension of time for filing the return. The return must be
8 signed or otherwise validated by both the taxpayer(s) and, if
9 applicable, the tax return preparer under rules or regulations
10 of the Department of Revenue and must contain a printed
11 declaration that the return is filed under the penalties of
12 perjury.

13 "(d) Every individual who willfully files and signs
14 or otherwise validates under rules or regulations of the
15 Department of Revenue a return which the individual does not
16 believe to be true and correct as to every material particular
17 shall be guilty of perjury and, upon conviction thereof, shall
18 be imprisoned in the penitentiary for not less than one, nor
19 more than five years.

20 "(e) In the event a husband and wife file a joint
21 return, the husband and wife shall be jointly and severally
22 liable for the income tax shown on the return or as may be
23 determined by the Department of Revenue to be due by them to
24 the State of Alabama. Notwithstanding the foregoing, a husband
25 or wife shall be relieved of certain liabilities to the same

1 extent and in the same manner as allowed by the Internal
2 Revenue Code for federal income tax purposes, including Title
3 26 U.S.C. §§ 6015(b), 6015(c), and 6015(f), as amended from
4 time to time.

5 "§40-18-39.

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

1 returns are required to be filed as provided under federal
2 law. The Department of Revenue may grant a reasonable
3 extension of time for filing returns under such rules and
4 regulations as it shall prescribe. Except in the case of
5 taxpayers who are abroad, no such extension shall be for more
6 than six months.

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

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

16 "a. Has the same taxable year;

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

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

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

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

7 "f. Combines and reports taxable income or loss
8 computed in accordance with paragraphs c through e of this
9 subsection on a single return for the Alabama affiliated
10 group;

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

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

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

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

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

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

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

22 "(3) All transactions between and among members of
23 the Alabama affiliated group shall be reported on an arm's
24 length basis consistent with subsection (j) in determining the
25 property, payroll, and sales factors of each member of the

1 Alabama affiliated group, in determining the separate
2 allocation and apportionment of income and loss by each member
3 of the Alabama affiliated group, and in computing taxable
4 income in accordance with Section 40-18-33.

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

18 "(5) Each member of the Alabama affiliated group
19 shall determine and allocate and apportion its separate income
20 and loss under Chapter 27 before consolidation. For purposes
21 of allocation and apportionment, each member of the Alabama
22 affiliated group shall be considered a separate taxpayer. Any
23 taxable loss of a member of the Alabama affiliated group shall
24 be deductible against the taxable income of any other member

1 of the Alabama affiliated group only if and to the extent such
2 loss is apportioned and allocated to Alabama.

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

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

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

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

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

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

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

1 Alabama consolidated return, one of the above-described
2 officers of the common parent of the Alabama affiliated group
3 may execute the return on behalf of the Alabama affiliated
4 group. The Department of Revenue may require a further or
5 supplemental report of information and data necessary for
6 computation of the tax.

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

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

1 election of any member of an Alabama affiliated group, in
2 order to fairly represent the tax base attributable to this
3 state.

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

1 return under this section, as amended, including a new
2 120-calendar month election period under subdivision (c)(7).

3 "§40-18-42.

4 "(a) Time of payment for individuals. In the case of
5 individuals, ~~the~~ the total balance of the tax owed after credits
6 for taxes paid through withholding as provided in Section
7 40-18-78, or through estimated payments as provided in
8 Sections 40-18-82 and 40-18-83, shall be due and payable ~~on~~
9 ~~April 15 following the close of the calendar year or, if the~~
10 ~~return should be made on the basis of a fiscal year, then on~~
11 ~~the fifteenth day of the fourth month following the close of~~
12 ~~the fiscal year~~ at the same time as the due date of an
13 original return.

14 "(b) Time of payment for fiduciaries. In the case of
15 fiduciaries, the total amount of the tax imposed by this
16 chapter shall be paid on April 15 following the close of the
17 calendar year or, if the return should be made on the basis of
18 a fiscal year, then on the fifteenth day of the fourth month
19 following the close of the fiscal year.

20 "(c) Time of payment for corporations. In the case
21 of corporations, the balance of the tax owed after credits for
22 taxes paid through estimated payments as provided in Section
23 40-18-80.1 shall be due and paid ~~on March 15 following the~~
24 ~~close of the calendar year or, if the return should be made on~~
25 ~~the basis of the fiscal year, then on the fifteenth day of the~~

1 ~~third month following the close of the fiscal year~~ at the same
2 time as the due date of an original return.

3 "(d) Voluntary advance payment. The tax imposed by
4 this chapter or any estimated tax payment thereof may be paid,
5 at the election of the taxpayer, prior to the date prescribed
6 for its payment."

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

9 Section 3. This act shall become effective for the
10 taxable years beginning on or after January 1, 2016, and
11 following its passage and approval by the Governor, or its
12 otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB263

Senate 15-MAR-16

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 04-MAY-16

By: Senator Ross