

1 SB342
2 191079-1
3 By Senators Smitherman and Orr
4 RFD: Finance and Taxation Education
5 First Read: 22-FEB-18

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8 SYNOPSIS: Under current law, Alabama individual
9 residents are entitled to an income tax credit for
10 taxes paid directly or on their behalf to other
11 states and territories.

12 This bill provides that the income tax
13 credit on income derived from sources outside of
14 the state only offset the portion of the taxpayer's
15 income tax liability that is attributable to income
16 derived from non-Alabama sources.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

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22 To amend Section 40-18-21, Code of Alabama 1975,
23 relating to the income tax credit for taxes paid on income
24 from sources outside the state; and to provide that the income
25 tax credit for taxes paid on income from sources outside the
26 state only offset the portion of the taxpayer's income tax

1 liability that is attributable to income derived from
2 non-Alabama sources.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-18-21, Code of Alabama 1975,
5 is amended to read as follows:

6 "§40-18-21.

7 "(a) (1) For the purpose of ascertaining the income
8 tax due under the provisions of this chapter by individual
9 residents of Alabama whose gross income, as defined herein, is
10 derived from sources both within and outside the State of
11 Alabama, there shall be allowed a credit against the amount of
12 tax found to be due by such resident, on account of income
13 derived from outside the State of Alabama, the amount of
14 income tax actually paid by such resident to any state or
15 territory on account of business transacted or property held,
16 directly or indirectly, outside the State of Alabama. Resident
17 individual owners of Subchapter K entities, Alabama S
18 corporations, and beneficiaries of estates or trusts who
19 include their proportionate share of the income arising from
20 one or more of these entities in their Alabama gross income
21 shall be allowed a credit for their proportionate share of the
22 income tax actually paid by the entity to any state or
23 territory on account of business transacted or property held
24 outside the State of Alabama, whether the payment was made on
25 behalf of the resident individual owner or because the entity
26 was not recognized by such state or territory as a non-taxable
27 pass-through entity. For purposes of this subsection, income

1 tax shall be defined to include, but not be limited to, any
2 tax based in whole or in part on the entity's net income, net
3 profits, or gross profits; provided, however, that the term
4 income tax shall not include any tax based on the entity's net
5 worth, capital, or asset values, and shall not include any tax
6 for which an exclusion or deduction is claimed in the
7 calculation of taxable income reported on the Alabama income
8 tax return.

9 "(2) In case the amount of income tax actually paid
10 by or on behalf of an individual resident of Alabama, or by
11 one of the entities described in subdivision (a)(1) above, to
12 another state or territory is in excess of the amount of tax
13 that would be due on the same income computed using the
14 applicable Alabama income tax rates, then only such amount as
15 would be due in this state on such taxable income shall be
16 allowed as a credit. In no event shall the credit for income
17 taxes paid to another state or territory exceed the amount of
18 tax that would be due on the same taxable income computed
19 using the applicable Alabama income tax rates.

20 "(3) As a further limitation, the credit for taxes
21 paid to another state or territory shall only be utilized
22 against that portion of a taxpayer's Alabama income tax
23 liability that is attributable to income from other states or
24 territories to which income taxes were paid with respect to
25 that tax year, which shall be determined by multiplying the
26 taxpayer's Alabama income tax liability before consideration
27 of any credit described in subdivision (a)(1) by a fraction,

1 the numerator of which is the taxpayer's Alabama adjusted
2 gross income attributable to other states or territories to
3 which income taxes or the equivalent thereof were paid by or
4 on behalf of an individual resident of Alabama, or by one of
5 the entities described in subdivision (a) (1), and the
6 denominator of which is total Alabama adjusted gross income.

7 "~~(3)~~ (4) If the amount of income tax actually paid
8 by or on behalf of an individual resident of Alabama to any
9 other state or territory on account of business transacted or
10 property held is less than the amount of tax that would be
11 due, as computed using the applicable Alabama income tax
12 rates, then the income tax levied herein shall be computed on
13 the entire taxable income from sources from both within and
14 outside the state as defined herein, and the tax shall be paid
15 less the credit allowed in this section for tax paid on income
16 derived, directly or indirectly, from outside the state.

17 "~~(4)~~ (5) Before a resident of Alabama may claim the
18 credit allowed under this subsection (a), he or she shall file
19 with his or her Alabama income tax return a certificate
20 showing the amount of gross and net income derived, directly
21 or indirectly, from sources outside this state, together with
22 the amount of tax paid or to be paid on such income.

23 "(b) Any taxpayer described in Section 40-18-2(1) or
24 Section 40-18-2(6), who, during any year, has been assessed a
25 job development fee as described in Section 41-10-44.8(b),
26 shall be allowed a credit against the amount of income tax due
27 under the provisions of this chapter in such year in an amount

1 equal to the job development fee withheld from the taxpayer's
2 wages during the year.

3 "(c) (1) A resident individual taxpayer, who is
4 either a partner or member of a Subchapter K entity, a
5 shareholder of an Alabama S corporation, or a beneficiary of
6 an estate or trust, during all or part of a year, shall be
7 allowed a credit equal to fifty percent (50%) of his or her
8 proportionate share of the income taxes paid or accrued,
9 including a payment recognized by 26 U.S.C. §901, to a foreign
10 country with respect to the trade or business or investment
11 income of such business, including related operations and
12 affiliates.

13 "(2) Notwithstanding the foregoing, the credit
14 allowed in this subsection shall not exceed the amount of
15 income tax that would otherwise be imposed by Alabama on the
16 individual's income derived from the foreign country."

17 Section 2. Timely filed petitions for refund of
18 overpaid income tax for the 2013 through 2017 tax years shall
19 be granted, as otherwise appropriate, without consideration of
20 the additional limitation provided in Section 40-18-21(a) (3)
21 of this act or the limitation contained in the version of Ala.
22 Admin. Code r. 810-3-21-.03 as of the effective date of this
23 act; provided, however, that refund petitions for overpayment
24 of income tax paid for tax years prior to 2017 related to the
25 credit for taxes paid to other states or territories must be
26 filed with the department by the earlier of (1) the expiration
27 of the period in which to file refund petitions set forth in

1 section 40-2A-7, or (2) Saturday, June 30, 2018. No
2 adjustments included in or portions of any preliminary
3 assessment or final assessment, or proposed adjustments or
4 portions of proposed adjustments of income tax attributable to
5 the application of the additional limitation provided in
6 Section 40-18-21(a) (3) of this act or the limitation contained
7 in the version of Ala. Admin. Code r. 810-3-21-.03 as of the
8 effective date of this act may be entered or issued with
9 respect to tax years ending on or before December 31, 2017,
10 and any such assessment, adjustment, or portion thereof
11 entered in violation of this provision shall be void and
12 unenforceable and shall promptly be withdrawn, revised, or
13 dismissed with prejudice by the department.

14 Section 3. The provisions of this act are severable.
15 If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 4. All laws or parts of laws which conflict
19 with this act are repealed.

20 Section 5. The department may promulgate rules to
21 assist with the administration of this act.

22 Section 6. This act shall become effective for tax
23 years beginning on or after January 1, 2018.