

1 HB455  
2 164979-1  
3 By Representatives Lindsey and Scott  
4 RFD: Ways and Means Education  
5 First Read: 09-APR-15

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill defines unitary business and  
9 requires taxpayers who are part of a unitary  
10 business to use a combined report to determine  
11 their Alabama taxable income.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT

16  
17 To amend Section 40-18-1, Code of Alabama 1975, to  
18 provide for additional definitions and Sections 40-2A-17 and  
19 40-18-39, Code of Alabama 1975, to require taxpayers who are  
20 part of a unitary business to use a combined report to  
21 determine their Alabama taxable income.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-2A-17, 40-18-1 and 40-18-39,  
24 Code of Alabama 1975, are hereby amended to read as follows:

25 "§40-2A-17.

26 "For purposes of the tax imposed in Chapter 18 of  
27 this title, the following rules shall apply:

1           "(a) In any case of two or more organizations,  
2 trades, or businesses (whether or not affiliated within the  
3 meaning of 26 U.S.C. § 1504) owned or controlled directly or  
4 indirectly by the same interests, the Commissioner of the  
5 Alabama Department of Revenue may distribute, apportion, or  
6 allocate gross income, deductions, credits, or allowances, if  
7 the commissioner determines that such distribution,  
8 apportionment, or allocation is necessary in order to prevent  
9 evasion of Alabama income taxes or to clearly reflect the  
10 income of any such organization, trade, or business.

11           "(b) (1) When an Alabama taxpayer is part of a  
12 unitary business consisting of multiple business entities, the  
13 Commissioner of the Department of Revenue shall require the  
14 taxpayer to use a combined report to determine its Alabama  
15 taxable income.

16           "(2) The combined report shall include all members  
17 of the unitary business doing business in the United States or  
18 commercially domiciled in a non-U.S. jurisdiction designated a  
19 tax haven by the Organization for Economic Cooperation and  
20 Development (OECD). Together these members shall be recognized  
21 as the taxpayer's combined group. In the combined report, the  
22 taxpayer will calculate its Alabama taxable income by  
23 apportioning the combined group's income to Alabama using a  
24 formula that measures the taxpayer's Alabama source  
25 apportionment data relative to the combined group's  
26 apportionment data from all sources.

1           "(3) The commissioner shall promulgate regulations  
2           as necessary to provide details of the combined report  
3           calculations required by this subsection and as needed to  
4           further enforce these provisions.

5           "~~(b)~~ (c) Any transaction based upon tax planning  
6           advice, tax return preparation advice, or tax return  
7           preparation services with respect to which an improper  
8           contingent fee is directly or indirectly paid by the taxpayer  
9           shall be evidence of the evasion of Alabama income taxes.

10           "~~(c)~~ (d) Any paid tax return preparer or tax planner  
11           who provides to a taxpayer tax planning advice, tax return  
12           preparation advice, or tax return preparation services in  
13           consideration for an improper contingent fee shall be subject  
14           to a penalty as if such paid tax return preparer or tax  
15           planner was subject to the penalties imposed by 26 U.S.C. §  
16           6701.

17           "~~(d)~~ (e) "Improper contingent fee" shall mean  
18           compensation received by a person or entity that is subject to  
19           the Code of Professional Conduct of the American Institute of  
20           Certified Public Accountants (or the applicable state version  
21           of such code) for tax planning advice or tax return advice or  
22           preparation that would be improper under the terms of the code  
23           rendered after December 31, 2001. With respect to any person  
24           or entity that renders tax planning advice, tax return advice,  
25           or tax return preparations, but is not a certified public  
26           accountant, an improper contingent fee shall be defined in  
27           regulations prescribed by the Alabama Department of Revenue on

1 a basis consistent with the Code of Professional Conduct of  
2 the American Institute of Certified Public Accountants.

3 "~~(e)~~ (f) Subsections ~~(b)~~ (c), ~~(c)~~ (d), and ~~(d)~~ (e)  
4 shall not apply to any contingent fee contract executed prior  
5 to January 1, 2002.

6 "~~(f)~~ (g) The Commissioner of the Alabama Department  
7 of Revenue shall exercise such authority in a manner  
8 consistent with Act 2001-1088 and, to the extent applicable,  
9 26 U.S.C. § 482 and the rulings and regulations issued  
10 thereunder. The commissioner is authorized and directed to  
11 promulgate such additional regulations as are necessary to  
12 enforce the provisions of Act 2001-1088."

13 "§40-18-1.

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

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

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

26 "(3) BIOMASS. Animals and plants, and the waste,  
27 by-products, or derivatives of either, including, but not

1 limited to, the materials described in 26 U.S.C. §§ 45(c)(2),  
2 45(c)(3), 45K(c)(3), or 48B(c)(4).

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

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

1           "(6) CASH. Any legal tender, negotiable paper, or  
2 solvent credit.

3           "(7) COAL GASIFICATION OR LIQUEFACTION. Liquid or  
4 gaseous fuels which are produced from coal, including lignite  
5 and including but not limited to fuels described in 26 U.S.C.  
6 §§ 45(c)(7)(A)(i), 45K(c)(1)(C), 48A(c)(7), or 48B(c)(2) as to  
7 coal, as such provisions existed on December 31, 2007.

8           "(8) CORPORATION. The term includes associations,  
9 joint stock companies, and any other entity classified as an  
10 association taxable as a corporation for federal income tax  
11 purposes.

12           "(9) DISREGARDED ENTITY. Any entity which is  
13 disregarded for federal income tax purposes.

14           "(10) DOMESTIC. When applied to a corporation or  
15 subchapter K entity means created or organized under the laws  
16 of the State of Alabama.

17           "(11) FIDUCIARY. A guardian, trustee, executor,  
18 administrator, personal representative, receiver, conservator,  
19 or any person acting in any fiduciary capacity for any person.

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

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

25           "(14) GEOTHERMAL. Any geothermal reservoir in  
26 Alabama consisting of natural heat which is stored in rocks or  
27 in an aqueous liquid or vapor, whether or not under pressure.

1           "(15) HEAD OF FAMILY. As used in this chapter, the  
2 term head of family has the same meaning as the term head of  
3 household as defined in 26 U.S.C. §2(b).

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

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

23           "(18) INTANGIBLE PROPERTY. Patents, patent  
24 applications, trade names, trademarks, service marks,  
25 franchises, know-how, formulas, designs, patterns, processes,  
26 formats, copyrights and similar types of intangible assets,  
27 choses in action, and accounts receivable.



1           "(19) INTEREST EXPENSES AND COSTS. Amounts directly  
2 or indirectly allowed as deductions under 26 U.S.C. §163 for  
3 purposes of determining taxable income under the Internal  
4 Revenue Code. Interest expenses and costs paid to a related  
5 member by a subchapter K entity or a corporation, to the  
6 extent apportioned to Alabama by the payor, are to the  
7 recipient related member income derived from sources within  
8 Alabama.

9           "(20) MUNICIPAL SOLID WASTE. The definition given in  
10 26 U.S.C. § 45(c) (6), if located in Alabama.

11           "(21) NONRESIDENT ESTATE. An estate other than a  
12 resident estate of this state.

13           "(22) NONRESIDENT TRUST. A trust other than a  
14 resident trust of this state.

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

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

1           "(25) PERSON. Any individual, trust, estate,  
2 corporation, association, disregarded entity, or subchapter K  
3 entity.

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

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

14           "(28) RELATED ENTITY. A stockholder who is an  
15 individual, or a member of the stockholder's family enumerated  
16 in 26 U.S.C. §318, if the stockholder and the members of the  
17 stockholder's family own, directly, indirectly, beneficially,  
18 or constructively, in the aggregate, at least 50 percent of  
19 the value of the taxpayer's outstanding stock; a stockholder,  
20 or a stockholder's partnership, limited liability company,  
21 estate, trust or corporation, if the stockholder and the  
22 stockholder's partnerships, limited liability companies,  
23 estates, trusts, and corporations own directly, indirectly,  
24 beneficially, or constructively, in the aggregate, at least 50  
25 percent of the value of the taxpayer's outstanding stock; or a  
26 corporation, or a party related to the corporation in a manner  
27 that would require an attribution of stock from the

1 corporation to the party or from the party to the corporation  
2 under the attribution rules of 26 U.S.C. §318, if the taxpayer  
3 owns, directly, indirectly, beneficially, or constructively,  
4 at least 50 percent of the value of the corporation's  
5 outstanding stock. The attribution rules of 26 U.S.C. §318  
6 shall apply for purposes of determining whether the ownership  
7 requirements of this subdivision have been met.

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

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

21 "(31) REPORT FROM SOURCE. All individuals,  
22 corporations, associations, and partnerships, in whatever  
23 capacity acting, including lessees or mortgagors of real or  
24 personal property, fiduciaries, employers, and all other  
25 officers and employees of the state or of any municipal  
26 corporation or political subdivision of the state having  
27 control, receipt, custody, or payment of interest, rent,

1 salaries, wages, premiums, annuities, compensation,  
2 remunerations, emoluments, barter income, or other fixed or  
3 determinable annual or periodical gains, profits, and income  
4 taxable under this chapter.

5 "(32) RESIDENT ESTATE. The estate of any person who  
6 was a resident of Alabama at the time of his or her death.

7 "(33) RESIDENT TRUST. A trust is a resident trust  
8 for a taxable year if it is a trust which meets both a. and  
9 b.:

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

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

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

23 "(35) SUBCHAPTER K ENTITY. A partnership, including  
24 a limited partnership or limited liability partnership,  
25 limited liability company, or any other entity subject to  
26 subchapter K of the Internal Revenue Code, 26 U.S.C. §§701 to

1 761, for federal income tax purposes, not including a single  
2 member limited liability company.

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

8 "(37) TAXPAYER. Any person subject to a tax imposed  
9 by this chapter, or whose income is, in whole or in part,  
10 subject to a tax imposed by this chapter.

11 "(38) TRUST. Any entity which is a trust for federal  
12 income tax purposes.

13 "(39) UNITARY BUSINESS. A single economic enterprise  
14 that is made up either of separate parts of a single business  
15 entity or of a commonly controlled group of business entities  
16 that are sufficiently interdependent, integrated, and  
17 interrelated through their activities so as to provide a  
18 synergy and mutual benefit that produces a sharing or exchange  
19 of value among them and a significant flow of value to the  
20 separate parts. For Alabama income tax purposes, the term  
21 unitary business shall be interpreted broadly, limited only by  
22 the boundaries imposed by the U.S. Constitution.

23 "§40-18-39.

24 "(a) Except as provided in subsection (c), every  
25 corporation, joint stock company, or association subject to  
26 income tax under this chapter shall file a return with the  
27 Department of Revenue for each taxable year, stating

1 specifically the items of its gross income and the deductions  
2 and credits allowed by this chapter. In cases where receivers,  
3 trustees in bankruptcy, or assignees are operating the  
4 property or business of corporations, such receivers,  
5 trustees, or assignees shall file returns for such  
6 corporations in the same manner and form as corporations are  
7 required to file returns. Any tax due on the basis of such  
8 returns filed by receivers, trustees, or assignees shall be  
9 collected in the same manner as if collected from the  
10 corporations of whose business or property they have custody  
11 and control. Returns filed on the basis of the calendar year  
12 shall be filed on or before March 15 following the close of  
13 the calendar year. Returns filed on the basis of a fiscal year  
14 shall be filed on or before the fifteenth day of the third  
15 month following the close of the fiscal year. The Department  
16 of Revenue may grant a reasonable extension of time for filing  
17 returns under such rules and regulations as it shall  
18 prescribe. Except in the case of taxpayers who are abroad, no  
19 such extension shall be for more than six months.

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

22 "(1) "Alabama affiliated group" means a group of  
23 corporations, each member of which is subject to tax under  
24 Section 40-18-31 and Public Law 86-272 (15 U.S.C. §§ 381-384),  
25 which are members of an affiliated group as defined in 26  
26 U.S.C. § 1504 and which affiliated group files a federal

1 consolidated corporate income tax return, each member of  
2 which:

3 "a. Has the same taxable year;

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

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

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

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

17 "f. Combines and reports taxable income or loss  
18 computed in accordance with paragraphs c through e of this  
19 subsection on a single return for the Alabama affiliated  
20 group;

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

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

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

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

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

16           "(c) (1) An Alabama affiliated group filing or  
17 required to file a federal consolidated income tax return may  
18 elect to file an Alabama consolidated return for the same  
19 taxable year. However, under no circumstances may the  
20 Department of Revenue compel a taxpayer to file an Alabama  
21 consolidated return if the taxpayer has not so elected.

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



1 member of an Alabama affiliated group filing an Alabama  
2 consolidated return.

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

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

24 "(5) Each member of the Alabama affiliated group  
25 shall determine and allocate and apportion its separate income  
26 and loss under Chapter 27 before consolidation. For purposes  
27 of allocation and apportionment, each member of the Alabama

1 affiliated group shall be considered a separate taxpayer. Any  
2 taxable loss of a member of the Alabama affiliated group shall  
3 be deductible against the taxable income of any other member  
4 of the Alabama affiliated group only if and to the extent such  
5 loss is apportioned and allocated to Alabama.

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

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

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

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

1	Total Assets	Annual Fee
2	\$0 to \$2,500,000	\$5,000
3	\$2,500,001 to	\$10,000
4	\$5,000,000	
5	\$5,000,001 to	\$15,000
6	\$7,500,000	
7	\$7,500,001 to	\$20,000
8	\$10,000,000	
9	\$10,000,001 and over	\$25,000

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

21           "(e) Every corporation return or report required by  
22 this chapter shall be executed by one of the following  
23 officers of the corporation: The president, vice-president,  
24 secretary, treasurer, assistant secretary, assistant

1 treasurer, or chief accounting or financial officer, except  
2 that in the case of an Alabama affiliated group filing an  
3 Alabama consolidated return, one of the above-described  
4 officers of the common parent of the Alabama affiliated group  
5 may execute the return on behalf of the Alabama affiliated  
6 group. The Department of Revenue may require a further or  
7 supplemental report of information and data necessary for  
8 computation of the tax.

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

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

1 order to fairly represent the tax base attributable to this  
2 state.

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

1                   Section 2. This act shall become effective for all  
2 tax years beginning after December 31, 2014, following its  
3 passage and approval by the Governor, or its otherwise  
4 becoming law.