

1 HB347
2 127973-1
3 By Representative McCampbell
4 RFD: Ways and Means Education
5 First Read: 24-MAR-11

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8 SYNOPSIS: Under existing law, Alabama levies an income
9 tax on corporations. Alabama corporate income tax
10 law is linked to federal corporate income tax law,
11 which generally provides that an acquiring
12 corporation succeeds to the net operating loss
13 (NOL) carryover of a loss corporation when the
14 assets of the loss corporation are acquired.

15 This bill would provide that a net operating
16 loss (NOL) may be carried forward and allowed as a
17 deduction only by the corporation that sustained
18 the loss.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To amend Section 40-18-35.1, Code of Alabama 1975,
25 relating to corporate income taxes, to provide that net
26 operating losses may be used and carried forward only by the
27 corporation that generated the loss.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 40-18-35.1, Code of Alabama 1975,
3 is hereby amended as follows:

4 "§40-18-35.1.

5 In computing the taxable income of corporations
6 subject to income tax as outlined in Section 40-18-35, there
7 shall be allowed, in addition to the deductions specified
8 therein, a deduction for the sum of the net operating losses
9 which may be carried forward to the taxable year for which the
10 net income of the corporation is being computed.

11 (1) The term "net operating loss" for the purposes
12 of this section means the excess of the deductions (other than
13 the deduction allowed by this subdivision) allowed by this
14 chapter during a taxable year of the corporation over the
15 corporation's gross income during that taxable year. For
16 purposes of this paragraph, the corporation's gross income and
17 allowable deductions shall be determined under the provisions
18 of this chapter applicable to the year in which the net
19 operating loss arises.

20 (2) A net operating loss shall be carried forward to
21 the earliest subsequent taxable year in which the corporation
22 has taxable income (determined without taking into account the
23 deduction allowed by this subdivision). The amount of a net
24 operating loss which may be carried to any later taxable year
25 shall be the excess of the net operating loss over the sum of
26 the amounts thereof deductible under this subdivision in all
27 the taxable years preceding this taxable year.

1 (3) If net operating losses arising in more than one
2 taxable year can be carried forward to a taxable year of the
3 corporation, the net operating loss arising from the earliest
4 of those years shall be deducted first.

5 (4) The net operating loss deduction allowed by this
6 section shall be limited to sources attributable to Alabama.

7 (5) A net operating loss may be carried forward and
8 deducted only during the 15 consecutive year period
9 immediately following the taxable year in which it arose.

10 (6) (a) In the case of an acquiring corporation
11 subject to the rules of 26 U.S.C. § 381, or in the case of a
12 new loss corporation within the meaning of 26 U.S.C. § 382, or
13 in the case of the recognized built-in gains of a gain
14 corporation within the meaning of 26 U.S.C. § 384, only the
15 net operating losses as are allowable in accordance with 26
16 U.S.C. §§ 381, 382, and 384 shall be allowed as a deduction
17 under this section.

18 (b) Notwithstanding any other provisions of this
19 subdivision (6), for tax years beginning on or after January
20 1, 2011, a net operating loss may be carried forward and
21 allowed as a deduction only by the corporation that sustained
22 the loss; provided however, that in the case of a merger of
23 two or more corporations pursuant to the laws of this state or
24 any other jurisdiction, the net operating loss may be carried
25 forward only by the corporation that sustained the loss and is
26 also the surviving corporation following the merger. The net
27 operating loss may not be carried forward by a taxpayer that

1 changes its state of incorporation. No net operating loss
2 shall be allowed as a deduction by a corporation resulting
3 from a consolidation pursuant to laws of this state or any
4 other jurisdiction.

5 (c) This subdivision shall be applied before the
6 limitations in the preceding subdivisions are applied.

7 (7) Notwithstanding the foregoing provisions of this
8 section, for a taxpayer's taxable year beginning during
9 calendar year 2001 no deduction for any net operating loss
10 shall be allowed or allowable. If and only to the extent that
11 any net operating loss deduction is disallowed by reason of
12 this subdivision, the date on which the amount of the
13 disallowed net operating loss deduction would otherwise expire
14 will be extended by one year. A corporation dissolved and
15 completely liquidated within calendar year 2001 may use its
16 net operating loss without the restrictions provided in this
17 subdivision.

18 Section 2. The provisions of this act are severable.
19 If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

22 Section 3. This act shall be effective the first day
23 of the third month after its passage and approval by the
24 Governor, or its otherwise becoming law.