

1 HB548
2 130499-5
3 By Representative Love
4 RFD: Ways and Means Education
5 First Read: 21-APR-11

1 whatever kind, or in whatever form paid, including the
2 salaries, income, fees, and other compensation of state,
3 county, and municipal officers and employees, or from
4 professions, vocations, trades, business, commerce or sales,
5 or dealings in property whether real or personal, growing out
6 of ownership or use of or interest in such property; also from
7 interest, royalties, rents, dividends, securities, or
8 transactions of any business carried on for gain or profit and
9 the income derived from any source whatever, including any
10 income not exempted under this chapter and against which
11 income there is no provision for a tax. The term "gross
12 income" as used herein also includes alimony and separate
13 maintenance payments to the extent they are includable in
14 gross income for federal income tax purposes under 26 U.S.C. §
15 71 (relating to alimony and separate maintenance payments).
16 The term "gross income" as used herein also includes any
17 amount included in gross income under 26 U.S.C. § 83 at the
18 time it is so included under 26 U.S.C. § 83.

19 "(2) For purposes of this chapter, the reductions in
20 tax attributes required by 26 U.S.C. § 108 shall be applied
21 only to the net operating losses determined under this chapter
22 and the basis of depreciable property. The basis reductions
23 of depreciable property shall not exceed the basis reductions
24 for federal income tax purposes. All other tax attribute
25 reductions required by 26 U.S.C. § 108 shall not be
26 recognized.

1 "(3) Gross income does not include the following
2 items which shall be exempt from income tax under this
3 chapter:

4 "a. Amounts received under life insurance policies
5 and contracts paid by reason of the death of the insured in
6 accordance with 26 U.S.C. § 101;

7 "b. Amounts received, other than amounts paid by
8 reason of the death of the insured, under life insurance,
9 endowment or annuity contracts, determined in accordance with
10 26 U.S.C. § 72;

11 "c. The value of property acquired by gift, bequest,
12 devise, or descent, but the income from such property shall be
13 included in the gross income, in accordance with 26 U.S.C. §
14 102;

15 "d. Interest upon obligations of the United States
16 or its possessions; or securities issued under provisions of
17 the Federal Farm Loan Act of July 18, 1916;

18 "e. Any amounts received by an individual which are
19 excludable from gross income under 26 U.S.C. § 104 (relating
20 to compensation for injuries or sickness) or 26 U.S.C. § 105
21 (relating to amounts received under accident or health plans);

22 "f. Interest on obligations of the State of Alabama
23 and any county, municipality, or other political subdivision
24 thereof;

25 "g. The rental value of a parsonage provided to a
26 minister of the gospel to the extent excludable under 26
27 U.S.C. § 107;

1 "h. Income from discharge of indebtedness to the
2 extent allowed by 26 U.S.C. § 108;

3 i. For each individual resident taxpayer, or each
4 husband and wife filing a joint income tax return, as the case
5 may be, any gain realized from the sale of a personal
6 residence of the taxpayer shall be excluded to the extent
7 excludable for federal income tax purposes under 26 U.S.C. §
8 121;

9 "j. Contributions made by an employer on behalf of
10 an employee to a trust which is part of a qualified cash or
11 deferred arrangement (as defined in 26 U.S.C. § 401(k)(2), or
12 5 U.S.C. § 8437) under which the employee has an election
13 whether the contribution will be made to the trust or received
14 by the employee in cash and contributions made by an employer
15 for an employee for an annuity contract, which contributions
16 would be excludable from the gross income (for federal income
17 tax purposes) of the employee in accordance with the
18 provisions of 26 U.S.C. § 403(b). The limitations imposed by
19 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

20 "k. Amounts that an employee is allowed to exclude
21 from gross income for federal income tax purposes pursuant to
22 26 U.S.C. § 125 (relating to cafeteria plans) and 26 U.S.C. §
23 132 (relating to certain fringe benefits); and

24 "l. Amounts paid or incurred by an employer on
25 behalf of an employee if the amounts may be excluded from
26 gross income for federal income tax purposes by an employee

1 pursuant to 26 U.S.C. § 129 (relating to dependent care
2 expenses).

3 "(4) The term "gross income," in the case of a
4 resident individual, includes income from sources within and
5 outside Alabama, ~~and~~ including without limitation, the
6 resident's proportionate share of any income arising from a
7 Subchapter K entity, Alabama S corporation, or estate or
8 trust, regardless of the geographic source of the income. The
9 term gross income, in the case of a nonresident individual,
10 includes only income from property owned or business
11 transacted in Alabama. For purposes of this article,
12 proportionate share shall be defined by reference to (i) the
13 status of the individual owner as a partner or member of a
14 Subchapter K entity, shareholder of an Alabama S corporation,
15 or beneficiary of an estate or trust, and (ii) the allocable
16 interest in that entity owned by the individual.

17 "§40-18-21.

18 "(a) (1) For the purpose of ascertaining the income
19 tax due under the provisions of this chapter by individual
20 residents of Alabama whose gross income, as defined herein, is
21 derived from sources both within and ~~without~~ outside the State
22 of Alabama, there shall be allowed a credit against the amount
23 of tax found to be due by such resident, on account of income
24 derived from ~~without~~ outside the State of Alabama, the amount
25 of income tax actually paid by such resident to any state or
26 territory on account of business transacted or property held
27 ~~without,~~ directly or indirectly, outside the State of Alabama.

1 Resident individual owners of Subchapter K entities, Alabama S
2 corporations, and beneficiaries of estates or trusts who
3 include their proportionate share of the income arising from
4 one or more of these entities in their Alabama gross income
5 shall be allowed a credit for their proportionate share of the
6 income tax actually paid by the entity to any state or
7 territory on account of business transacted or property held
8 outside the State of Alabama, whether the payment was made on
9 behalf of the resident individual owner or because the entity
10 was not recognized by such state or territory as a non-taxable
11 pass-through entity. For purposes of this subsection, income
12 tax shall be defined to include, but not be limited to, any
13 tax based in whole or in part on the entity's net income, net
14 profits, or gross profits; provided, however, that the term
15 income tax shall not include any tax based on the entity's net
16 worth, capital, or asset values, and shall not include any tax
17 for which an exclusion or deduction is claimed in the
18 calculation of taxable income reported on the Alabama income
19 tax return.

20 " (2) In case the amount of income tax actually paid
21 by or on behalf of an individual resident of Alabama, or by
22 one of the entities described in subdivision (a)(1) above, to
23 another state or territory is in excess of the amount of tax
24 that would be due on the same income computed ~~on the~~ using the
25 applicable Alabama income tax ~~rate in Alabama~~ rates, then only
26 such amount as would be due in this state on such taxable
27 income shall be allowed as a credit. In no event shall the

1 credit for income taxes paid to another state exceed the
2 amount of tax that would be due on the same taxable income
3 computed using the applicable Alabama income tax rates.

4 "(3) If the amount of income tax actually paid by or
5 on behalf of an individual resident of ~~this state~~ Alabama to
6 any other state or territory on account of business transacted
7 or property held is less than the amount of tax that would be
8 due, as computed ~~on~~ using the applicable Alabama income tax
9 rates, then the income tax levied herein shall be computed on
10 the entire taxable income from sources from both within and
11 ~~without~~ outside the state as defined herein, and the tax shall
12 be paid less the credit allowed in this section for tax paid
13 on income derived, directly or indirectly, from ~~without~~
14 outside the state.

15 "(4) Before a resident of Alabama may claim the
16 credit allowed under this subsection (a), he or she shall file
17 with his or her tax Alabama income return a certificate
18 showing the amount of gross and net income derived, directly
19 or indirectly, from sources ~~without~~ outside this state,
20 together with the amount of tax paid or to be paid on such
21 income.

22 "(b) Any taxpayer described in Section 40-18-2(1) or
23 Section 40-18-2(6), who, during any year, has been assessed a
24 job development fee as described in Section 41-10-44.8(b),
25 shall be allowed a credit against the amount of income tax due
26 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 his or her proportionate share of
8 the income taxes paid or accrued, including a payment
9 recognized by 26 U.S.C. §901, to a foreign country with
10 respect to the trade or business or investment income of such
11 business, including related operations and affiliates, ~~whose~~
12 ~~income in the foreign country is all principally related to~~
13 ~~the following 2002 North American Industry Classification~~
14 ~~System Sectors and Subsectors in all of the following manners:~~

15 ~~"a. The income must be related to Sector 21.~~

16 ~~"b. The income must be related to at least two of~~
17 ~~the following Subsectors: 324, 325, 482, 483, and 486.~~

18 ~~"c. The income must be attributable to the foreign~~
19 ~~country.~~

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

24 Section 2. The provisions of this act are severable.
25 If any part of this act is declared invalid or
26 unconstitutional, that declaration shall not affect the part
27 which remains.

1 Section 3. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 4. This act shall become effective upon its
4 passage and approval by the Governor or its otherwise becoming
5 law, and shall thereupon be effective for all tax years
6 beginning after December 31, 2010, provided that no penalty,
7 including any payment otherwise required under Section
8 40-18-80, Code of Alabama 1975, shall be due or assessed for
9 any underpayment of or failure to pay estimated income tax
10 resulting from the retroactive application of the amendments
11 contained herein.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 21-APR-11

Read for the second time and placed
on the calendar with 1 substitute
and..... 03-MAY-11

Read for the third time and passed
as amended..... 04-MAY-11

Greg Pappas
Clerk