

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

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8 SYNOPSIS: Under existing law, individual state income
9 tax returns are generally due on or before April 15
10 following the close of the calendar year. Corporate
11 state income tax returns are generally due on or
12 before March 15 following the close of the calendar
13 year or on or before the fifteenth day of third
14 month following the close of the fiscal year for
15 corporations that filed on a fiscal year basis.
16 Recently, the federal government has changed
17 certain filing dates for federal income tax
18 returns.

19 This bill would provide for the due dates of
20 state income tax returns to correspond to the due
21 dates for federal returns. The bill would also
22 further provide for a payment to be made on the due
23 date of a return.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-18-27.

"(a) Effective for tax years beginning after December 31, 1997, every taxpayer having an adjusted gross income for the taxable year of more than one thousand eight hundred seventy-five dollars (\$1,875) if single or if married and not living with spouse, and of more than three thousand seven hundred fifty dollars (\$3,750) if married and living with spouse, shall each year file with the Department of Revenue a return stating specifically the items of gross income, the deductions and credits allowed by this chapter, the place of residence, and post office address. If a husband and wife living together have an adjusted gross income of more than three thousand seven hundred fifty dollars (\$3,750), each shall file a return unless the income of each is included in a single joint return. If the taxpayer is unable to file a return, the return shall be filed by a duly authorized agent, a guardian, or other person charged with the care of the person or property of the taxpayer.

1 "(b) A taxpayer other than a resident shall not be
2 entitled to the deductions authorized by Sections 40-18-15 and
3 40-18-15.2 unless the taxpayer files a complete return showing
4 the gross income of the taxpayer both from within and outside
5 the state. Included on every income tax return shall be the
6 name, address, and Social Security number or preparer taxpayer
7 identification number of the person who prepared the return.
8 The taxpayer shall be held liable for any statement made by an
9 agent of the taxpayer with reference to any information
10 required by law to be furnished in connection with that tax
11 return.

12 "~~returns filed on the basis of the calendar year~~
13 ~~shall be filed on or before April 15 following the close of~~
14 ~~the calendar year. Returns filed on the basis of a fiscal year~~
15 ~~shall be filed on or before the fifteenth day of the fourth~~
16 ~~month following the close of the fiscal year~~ Returns shall be
17 filed by the same date as the corresponding federal income tax
18 returns are required to be filed as provided under federal
19 law. The department may grant a reasonable extension of time
20 for filing returns, under rules and regulations as it shall
21 prescribe. Except in the case of taxpayers who are abroad, no
22 extension shall be for more than six months. If the taxpayer
23 has requested an extension of time for the filing of a return,
24 the period during which the return will be considered timely
25 filed shall not expire until 10 days after the Department of
26 Revenue mails to the taxpayer a rejection of the request for
27 an extension of time for filing the return. The return must be

1 signed or otherwise validated by both the taxpayer(s) and, if
2 applicable, the tax return preparer under rules or regulations
3 of the Department of Revenue and must contain a printed
4 declaration that the return is filed under the penalties of
5 perjury.

6 "(d) Every individual who willfully files and signs
7 or otherwise validates under rules or regulations of the
8 Department of Revenue a return which the individual does not
9 believe to be true and correct as to every material particular
10 shall be guilty of perjury and, upon conviction thereof, shall
11 be imprisoned in the penitentiary for not less than one, nor
12 more than five years.

13 "(e) In the event a husband and wife file a joint
14 return, the husband and wife shall be jointly and severally
15 liable for the income tax shown on the return or as may be
16 determined by the Department of Revenue to be due by them to
17 the State of Alabama. Notwithstanding the foregoing, a husband
18 or wife shall be relieved of certain liabilities to the same
19 extent and in the same manner as allowed by the Internal
20 Revenue Code for federal income tax purposes, including Title
21 26 U.S.C. §§ 6015(b), 6015(c), and 6015(f), as amended from
22 time to time.

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~~ Returns shall be
16 filed by the same date as the corresponding federal income tax
17 returns are required to be filed as provided under federal
18 law. The Department of Revenue may grant a reasonable
19 extension of time for filing returns under such rules and
20 regulations as it shall prescribe. Except in the case of
21 taxpayers who are abroad, no such extension shall be for more
22 than six months.

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

25 " (1) "Alabama affiliated group" means a group of
26 corporations, each member of which is subject to tax under
27 Section 40-18-31 and Public Law 86-272 (15 U.S.C. §§ 381-384),

1 which are members of an affiliated group as defined in 26
2 U.S.C. § 1504 and which affiliated group files a federal
3 consolidated corporate income tax return, each member of
4 which:

5 "a. Has the same taxable year;

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

11 "c. Apportions Alabama taxable income or loss
12 separately for each corporation;

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

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

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

23 "and which includes all members of the affiliated
24 group included on the federal consolidated income tax return
25 that are eligible under this section to be included in the
26 Alabama affiliated group; but shall not include corporations
27 subject to the insurance premium license tax imposed by

1 Section 27-4A-1 et seq. or the financial institution excise
2 tax imposed by Section 40-16-1 et seq.

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

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

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

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

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

24 "(2) Notwithstanding any provision in this section
25 to the contrary, foreign corporations that are members of an
26 Alabama affiliated group electing to file an Alabama
27 consolidated return and not otherwise subject to the business

1 privilege tax levied by Section 40-14A-22 shall not become
2 subject to the business privilege tax by virtue of being a
3 member of an Alabama affiliated group filing an Alabama
4 consolidated return.

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

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

26 "(5) Each member of the Alabama affiliated group
27 shall determine and allocate and apportion its separate income

1 and loss under Chapter 27 before consolidation. For purposes
2 of allocation and apportionment, each member of the Alabama
3 affiliated group shall be considered a separate taxpayer. Any
4 taxable loss of a member of the Alabama affiliated group shall
5 be deductible against the taxable income of any other member
6 of the Alabama affiliated group only if and to the extent such
7 loss is apportioned and allocated to Alabama.

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

23 "(7) Any election to file an Alabama consolidated
24 return pursuant to this subsection shall be binding on both
25 the Department of Revenue and the Alabama affiliated group for
26 a period beginning with the first month of the first taxable
27 year for which the election is made and ending with the

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

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

1 form, of the Alabama affiliated group for the taxable year to
2 which the fee relates, as set out below:

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

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

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

27 "§40-18-42.

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

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

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

25 "(d) Voluntary advance payment. The tax imposed by
26 this chapter or any estimated tax payment thereof may be paid,

1 at the election of the taxpayer, prior to the date prescribed
2 for its payment."

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

5 Section 3. This act shall become effective for the
6 taxable years beginning on or after January 1, 2016, and
7 following its passage and approval by the Governor, or its
8 otherwise becoming law.