

State and Local Tax Bulletin

May 26, 2009



Legislative Summary of Alabama's 2009 Regular Session

By Bruce P. Ely and James E. Long, Jr.

Upcoming Seminars Involving Members Of Our SALT Practice Group

June 1, 2009

Institute for Professionals in Taxation (IPT), Basic State Income Tax School, College of William and Mary, Williamsburg, Virginia. Chris Grissom will be speaking on the state taxation of pass-through and disregarded entities. For more information, please visit IPT's website at www.ipt.com.

June 2, 2009

Matt Houser, Jimmy Long and Bruce Ely will serve as speakers at the annual "Alabama Sales and Use Tax" seminar sponsored by Lorman Education Services. The 8 hour presentation will be held on June 2 at the Doubletree Hotel in downtown Birmingham. For more information, please visit Lorman's website at www.lorman.com.

July 27, 2009

Alabama Society of CPA's, Sandestin Annual Conference, Hilton Sandestin Golf & Beach Resort. Bruce Ely will be speaking on "Recent SALT Developments in the Southeast, including Alabama, and Predictions for the Near Future." For more information, please visit the ASCPA's website at www.ascpa.com.

The 2009 regular session of the Alabama Legislature ended peacefully Friday, May 15, concluding what many legislators referred to as one of the most productive sessions in recent memory. The \$6.2 billion Education Trust Fund budget and the \$2.5 billion General Fund budget were passed by the Legislature before the final week, which cleared the way for a key tax incentive measure to pass on the final day of the session. The House deadlocked over the choice between removing the four percent sales tax on food and repealing the individual federal income tax deduction, a proposal that failed to pass a procedural vote four times this session. We expect this legislation, however, along with a proposal to require unitary combined (income tax) reporting, to be reintroduced next January in the 2010 regular session.

The following is a summary of the tax bills of **statewide importance** that passed the Legislature this session and have been signed into law by Governor Bob Riley. These bills, along with other tax-related bills introduced this session, are posted on our firm's [website](#).

HB 568 (Act 2009-722): as an incentive to the growth of the "white collar" service economy in Alabama, this Act makes the full range of incentives (e.g., income tax credits and the abatement of certain property and sales and uses taxes) offered to new and expanding businesses available on an equal basis to corporate headquarters and data processing centers, provided that at least 50 new jobs are located at the facility. In addition, this Act makes the full range of incentives available to research and development facilities and producers of electricity or natural gas from biomass and bio-fuel producers, i.e., "renewable energy facilities."

The Act includes several substantive changes to Alabama's Capital Credit Act for projects that file their Form INT after May 26, 2009. The Act increases the base wage requirement to the lesser of (a) \$15 per hour (indexed for inflation) or (b) the average hourly wage of the county where the project is located, both excluding benefits. However, for projects located in a "favored geographic area," the minimum wage requirement is reduced to \$12 per hour under the two prong test above.

Additionally, the Act also imposes a **claw-back provision** in the event that an investing company fails to meet the continuing employment and wage requirements after the project is placed in service. The claw-back can result in the recognition of up to 100% of the capital credit claimed in the year immediately preceding the first year in which the project fails to meet the wage and employment requirements. Finally, the bill expands the capital credit to apply to financial institution excise taxes ("FIET") for data processing, corporate headquarters and telemarketing and other contact center facilities.

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HB 69 (Act 2009-144): exempts “qualified investment partnerships” (“QIP”) and publicly-traded partnerships (“PTP”) from the current income tax withholding regime and their non-resident investors from Alabama income tax. However, retroactively effective January 1, 2009, other partnerships or LLCs doing business in Alabama will be required to file an annual composite tax return and remit Alabama income tax on the annual distributive share of Alabama source income due to their non-resident owners. In addition, and certainly more touted, the Act promotes in-state film/entertainment productions. The Act’s film incentive provisions include an income tax rebate of 25% of preproduction, production, and postproduction expenditures (other than for marketing) if those expenditures exceed \$500,000. Other film incentives include sales, use, and lodgings tax exemptions for qualified projects that report expenditures in excess of \$150,000.

The Alabama Department of Revenue (“ADOR”) and Department of Tourism are working on draft regulations to implement these incentives, and our firm has been asked to review the proposed regulations. The joining of the QIP bill and film incentives bill into one this session was designed to make the bill revenue neutral by offsetting the revenue loss that the film incentives are expected to generate in the short-run. As an added, last-minute revenue offset requested by the ADOR, the bill also reinstates a “failure to pay” penalty that can equal up to 25% of the amount of tax assessed by the ADOR.

HB 382 (Act 2009-147): converts the oil and gas severance tax on *offshore* (only) oil and gas producers to a gross proceeds-based tax and supersedes the ADOR’s so-called “workback method” of computing the tax base. The only deductions allowed from gross proceeds are certain transportation costs. The rates on the production tax are reduced to 1.66% and the privilege tax rate is fixed at 3.65%.

HB 497 (Act 2009-223): provides that the fee charged by the U.S. Treasury Department for Alabama’s participation in the federal refund offset program of income tax refunds shall be paid by the taxpayer-refund recipient, effective April 7, 2009. The ADOR advocated this proposal and similar proposals introduced during prior legislative sessions.

HB 242 (Act 2009-286): proposes an amendment to the Alabama Constitution that would limit the prohibition in Amendment 778 against the payment of any fees, charges, or commissions for the assessment and collection of any special ad valorem tax levied by county commissions pursuant to Amendment 778 to only those ad valorem taxes first levied and collected pursuant to Amendment 778 for the tax year commencing October 1, 2006. The prohibition would not apply to any prior or future levy. The proposed amendment must be approved by a majority of the voters.

HB 222 (Act 2009-513): enacts the Alabama Law Institute’s (“ALI”) comprehensive Alabama Business and Nonprofit Entities Code, effective January 1, 2011, while also preserving limited liability companies’ conformity to the IRS’ Check-the-Box (“CTB”) regulations for all Alabama taxes administered by the ADOR, except the business privilege tax. It does not affect the tax classification of other business entities, however. This 800+ page bill is designed to rearrange the business and non-business organizational codes into a more logical order, provide a smooth transition when a business converts from one entity to another, and eliminate ineffective and duplicative provisions.

SB 87 (Act 2009-621): enacts the ALI’s Alabama Uniform Limited Partnership Act of 2010, including language limiting state tax conformity with the IRS’ CTB entity classification regulations to only income taxes with respect to limited partnerships, thereby leaving the issue of federal conformity uncertain regarding sales, use, rental, lodging, excise and property taxes.

SB 142 (Act 2009-508): amends the definition of “residential property” for Class III valuation to include property sold at tax sales where the owner resides on the property and remains in possession of the property after the sale. However, the property will be reclassified and taxed less favorably as Class II commercial property for any period following the tax sale during which the property is not used as an owner-occupied residence. The Act also contains several procedural changes to tax sales, including an unlimited redemption period in cases where the original owner retains possession of the land after the tax sale or where the subject land is not occupied. In short, purchasers of property at tax sales need to occupy the land in order to start the three year redemption period against the former owner.

HB 868 (Act 2009-549): although narrow in scope, this Act will affect most privately-operated Alabama hospitals by imposing on them a surcharge, also known as an “assessment,” equal to 5.38% of the hospital’s “net patient revenue,” for the fiscal years ending September 30, 2010 and 2011. That assessment in turn will be used to generate larger Medicaid funding. The ADOR will be the assessing and collecting agent on behalf of the state Medicaid Agency. The bill is contingent upon approval by the Centers for Medicare and Medicaid Services, the federal agency that administers the Medicaid Program.

HB 700 (Act 2009-561): imposes a “fee” on general and sub-contractors performing commercial construction jobs in the state, based on in-state wages paid to their employees (broadly defined). The tax, advocated by both the construction industry and organized labor, will be collected by the ADOR and will fund a new program providing for

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recruitment and training of skilled workers in the state. The tax will equal .009% of Alabama wages per quarter for the first five quarters, beginning July 1, and then will be adjusted so that net collections will equal \$1.75 million. A last minute amendment, however, sunsets the Act four years after its effective date.

Legislation Failing to Pass but Likely to Be Reintroduced Next Session:

We expect the following bills, or similar proposals, to be reintroduced next session:

HB 865: would require a group of two or more corporations to file a combined report (income tax return) that includes the income and apportionment factors of all corporations that are members of a “unitary” business, and repeals Alabama’s existing consolidated reporting regime, for tax years beginning after December 31, 2009. Only one corporation in the group must be doing business in Alabama in order for the new taxing system to apply to the entire unitary group. The bill partially adopts the Multistate Tax Commission’s broad definition of a “unitary” business contained in its model combined reporting act, and provides that “unitary” should be construed to the “broadest extent possible under the U.S. Constitution.” Despite requiring a combined report, however, the bill places several restrictions on the sharing of tax attributes (e.g., NOLs and capital credits) among members of a unitary group. This proposal, backed by the powerful Alabama Education Association, received swift opposition from the 34-member Business Associations’ Tax Coalition, the Council On State Taxation and the Organization for International Investment.

HB 116: the so-called “Alabama Arise bill,” introduced by the influential Rep. John Knight, proposes a constitutional amendment to exempt food from the 4% state sales tax and, as the funding mechanism, to phase-out the individual deduction for federal income taxes. The bill caused extensive filibustering this session and on four separate occasions narrowly failed to pass a procedural vote that requires at least three-fifths’ support in order for the bill to be debated by the full House. Several opponents object to the bill’s combined revenue effect, which would increase annual tax revenues by approximately \$62 million on a net basis, while repealing the federal income tax deduction for many individual taxpayers.

HB 862: would provide for a refundable income tax credit or rebate to certain low-income Alabama taxpayers (those having an AGI of \$22,000 or less, which is the national poverty level for a family of four) to offset the estimated amount of state sales tax they pay on groceries during the year, provided that they file an income tax return or application for the refundable tax credit on forms prescribed by the ADOR. Qualified individuals may also adjust their

weekly wage withholdings or quarterly estimated tax liability in order to receive the benefit of the credit earlier than year-end. Limitations on who qualifies for the credit or rebate include those individuals who are only part-year residents, who are eligible for food stamps, or who are in the United States illegally. In contrast to the Alabama Arise/Knight bill (HB 116, discussed above), this bill does **not** call for the repeal of the federal income tax deduction. The House Republican Caucus endorsed this bill.

SB 488: would ratify and reinstate Jefferson County’s occupational license tax, in response to the Jefferson County Circuit Court’s recent decision in *Alarm One, Inc. v. Jefferson County Commission*, which held the license tax had been repealed by the Legislature back in 1999. Notably, this proposal would preserve the exemptions for licensed professionals under the former license tax scheme. A competing proposal, **HB 811**, would also reinstate Jefferson County’s occupational license tax, *but* would also expand the tax base by removing the exemption for licensed professionals. Governor Riley stated that he would be willing to call a special session to debate the occupational tax, provided he “was asked by the county and could assume that there would be adequate support from the legislative body for the bill. ... If they don’t get together, Jefferson County’s got a real problem.”

SB 460: would extend unemployment benefits to cover employees who have been employed two out of the four most recent quarters, those seeking part-time (e.g., at least 20 hours per week) rather than full-time employment, people in certain job-training programs that have exhausted their normal benefits, and employees who leave their jobs due to domestic violence, in order to qualify Alabama for \$100.5 million in federal stimulus funds that would cover the extended benefits through 2013. In order to receive the full amount of funds from the federal economic stimulus plan, the state must decide whether it will expand its unemployment compensation benefits by September 20, 2011.

SB 201 / HB 412: would provide for the registration and regulation of individual tax return preparers, with specific guidelines for registrants to facilitate refund anticipation loans or checks. CPAs and other licensed professionals are exempted from the Act. Despite passing unanimously out of the Senate during week two of the session, SB 201 passed the House Boards and Commissions Committee but was never brought up for debate by the full House. The proposal faced opposition from the newly-formed National Independent Tax Preparers Association and their lobbyists, and perhaps other non-CPA tax preparers who do not want increased regulation of their industry.

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