

State and Local Tax Bulletin

May 12, 2010
Alabama Edition



Upcoming Seminars Involving Members Of Our SALT Practice Group

May 13-14, 2010

Alabama Society of CPAs Annual Business and Industry Conference, Hyundai Motor Manufacturing Plant, Montgomery, Alabama. Jimmy Long and Will Thistle will be making a presentation on *Recent Alabama Tax Developments*. For more information, please visit the ASCPA website: www.ascpa.org.

May 13, 2010

Alabama State Bar, Section of Taxation Annual Meeting, Montgomery, Alabama. Bruce Ely will be providing his annual *Alabama Tax Legislative Update: 2010 Regular Session*, and Jimmy Long will be serving as a co-panelist on the topic, *Disharmony in Alabama's Conformity to Federal Tax Classification for Business Entities*. For more information, please visit the Alabama State Bar's website, www.alabar.org.

June 6 – 11, 2010

The Institute for Professionals in Taxation ("IPT") will be presenting its annual Basic State Income Tax School at Purdue University-Indianapolis, in Indianapolis, Indiana. Chris Grissom will be co-teaching with Linda A. Klang of Lehman Brothers Holdings on the topic, *State Taxation of Pass-Through and Disregarded Entities*. This school is open to members of IPT. Information on this school and IPT can be found on its website: www.ipt.org.

Alabama Tax Legislative Summary: 2010 Regular Session Ends Quietly

By Bruce P. Ely, James E. Long, Jr. and William T. Thistle

The Alabama Legislature adjourned *sine die* on Thursday, April 22, concluding a *relatively* productive, though often contentious, 2010 Regular Session. Both budgets passed relatively early this year and *without any tax increases*, primarily as a result of federal stimulus funds and significant belt-tightening. While the Legislature passed over **300 bills** during this last session of the 2006-2010 quadrennium, many critical measures such as ethics reform, constitutional reform and restrictions on PAC-to-PAC transfers were not addressed this session, and only a handful of tax bills made it across the finish line. Next session, however, promises to be more dicey. Unless the revenue forecasts improve dramatically, we expect to see a variety of revenue raisers (or so they say), such as mandatory unitary combined reporting, introduced next Spring.

The following is a summary of the tax bills of statewide importance that passed the Legislature this session and were signed into law by Governor Bob Riley. These bills are posted on our firm's [website](#), as well as other tax-related bills introduced this session that didn't cross the finish line.

Act 2010-557 – Reemployment Act of 2010: provides an income tax deduction for Alabama employers that create jobs for unemployed persons; the incentives provided by this act can pair well with the federal incentives offered by the new HIRE Act. For more information, please [click here](#).

Act 2010-568: generally conforms Alabama estimated income tax payment thresholds for individuals and corporations to federal law, IRC sections 6654 and 6655. This Act is retroactively effective for *all tax years beginning after December 31, 2009*. The authors and several business groups requested assurances from the Commissioner of Revenue's Office and the Governor's Office that unsuspecting corporate taxpayers would not be zapped with penalties for the first quarter. As one of his last acts as Commissioner, the well-respected Tim Russell signed and issued a helpful revenue procedure (Rev. Proc. 2010-01) on April 30, providing transitional relief to certain taxpayers that are now required to make estimate payments under the Act. That included waiving the underestimation penalty for the first installment payment that was otherwise due on April 15.

Act 2010-254: provides a six-month transition period, delaying the recently increased base wage threshold in order to qualify for Alabama's capital income tax credit, otherwise known as the Capital Credit. An investing company that

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filed its statement of intent with the ADOR on or before November 21, 2009 is only required to satisfy the base wage requirements in effect prior to May 21, 2009 (the effective date of Act 2009-722), *i.e.*, \$8 per hour (or \$10 per hour, including benefits).

Act 2010-219: reinstates a tax exemption for the renowned Hudson-Alpha Institute for Biotechnology in Huntsville by reenacting Ala. Code § 40-9-34, retroactively effective to October 1, 2008, to clarify that the section was not affected by Section 12 of Acts of Alabama 2009-144.

Act 2010-520: increases the annual privilege tax rate on nursing facilities from \$999.96 to an annual rate of \$1,899.96.

Act 2010-514: clarifies, effective July 1, 2010, the sales and use tax exemption for commercial fishing vessels and other watercraft, so that the exemption applies *at any time* equipment becomes a part of certain watercraft and commercial fishing vessels.

Act 2010-511: prescribes the form of exemption certificate to be used when claiming the statutory exemption clarified by Act 2010-514, discussed above.

Act 2010-36: extends the sunset date by five years for capital credits allowed in connection with a qualifying project related to the Alabama State Port Authority infrastructure in Mobile, *i.e.*, until December 31, 2015.

Act 2010-184 – Enhanced Use Lease Area Act of 2010: provides for financing improvements to certain real and personal property located within a military installation through the creation of tax increment districts (translated, Redstone Arsenal or Fort McClellan).

Act 2010-220: makes certain technical corrections to Act 2009-561, which imposes a “fee” on general and sub-contractors performing commercial construction jobs in the state, based on in-state wages paid to their employees (as broadly defined).

Act 2010-715: provides the Alabama Incentives Financing Authority with additional funding flexibility by increasing the cap on the Authority’s bonds to \$300 million and creating a reserve and maintenance fund to pay certain costs of acquiring, operating and maintaining the Authority’s economic development projects.

Proposed Constitutional Amendments Prohibiting Various County Occupational License Taxes: Likely in response to the ongoing litigation and debate over the Jefferson County occupational license tax, voters in Cullman, Lawrence, Limestone, Madison and Morgan County will consider constitutional amendments this November to prohibit their county from imposing an occupational license tax on the gross receipts of any natural person, while not affecting the county’s ability to levy a business license.

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COST Southeast Regional State Tax Update

On Tuesday, May 25, 2010, the Council On State Taxation (COST) and Bradley Arant Boult Cummings LLP will present our sixth annual update on significant state tax issues for Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee.

This half-day seminar will be held at Energen Corporation's headquarters in its auditorium located at 605 Richard Arrington Jr. Blvd. North, Birmingham, Alabama. The agenda includes:

8:00 a.m. – 8:30 a.m. – Registration and Continental Breakfast

8:30 a.m. – 12:30 p.m. – Program and Discussion

- *Recent Developments in the Southeastern States*
- *State Tax Policy Update: 2010 & Beyond Including Proposed Federal Legislation*
- *Discussion of Latest & Greatest State Tax Litigation*
- *Q&A Panel/Audit Discussion – States Under Fiscal Stress – Dealing with the State Tax Challenges from the Increased Need for More Revenues*

12:30 p.m. – 1:45 p.m. – Lunch

Tell it to the Judge & Other Alabama Revenuers
 - An update on what's going on at the Alabama Department of Revenue and the Administrative Law Division. You will have a chance to have a Q&A with Chief Administrative Law Judge Bill Thompson, the Department of Revenue's Deputy Commissioner, Mike Mason, and Tax Policy Administrator, Joe Garrett.

You may register on line at www.cost.org – go to May 25 on the COST calendar and click on the program title.

For questions about this seminar, you can contact the following members of our SALT Team – Bruce Ely (bely@babarc.com), Chris Grissom (cgrissom@babarc.com), Sherry Barber (sbarber@babarc.com), or Sarah Heaton (sheaton@babarc.com).

We look forward to seeing you at Energen headquarters on Tuesday, May 25.

This newsletter is sent to our friends as a courtesy of Bradley Arant Boult Cummings LLP. If you would prefer not to receive future emailings of this type, please email our practice group assistant, Sherry Barber, at sbarber@babarc.com.

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult your own lawyer or other tax advisor concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our practice group.

The Alabama State Bar requires the following disclosure: "No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers."

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