

PUBLICATION

Spotlight on Alabama – Recent Legislation

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The Alabama Legislature's recent special session produced several significant pieces of tax legislation affecting businesses and individuals subject to taxation in Alabama.

Alabama Does Not Adopt the Incentives in the Federal Economic Stimulus Act of 2008

In addition to providing tax rebates to individuals, the federal Economic Stimulus Act of 2008 adopted enhanced Section 179 business expensing benefits for depreciable personal property and a 50 percent first year bonus depreciation incentive for qualifying business property.

While Alabama's depreciation rules generally follow the federal rules, Alabama House Bill 56A, which excludes the federal tax rebates from Alabama taxable income for individuals, specifically excludes these enhanced business deductions from the calculation of Alabama taxable income for any tax year.

Small Business Health Insurance Premium Deduction Enhancement Bill Increases Health Insurance Deductions for Qualified Employers and Employees

Under the Small Business Health Insurance Premium Deduction Enhancement Act, Alabama House Bill 61, qualifying employers will be permitted to deduct from Alabama income tax one hundred fifty percent (150 %) of the amount paid for employee health insurance premiums. In addition, the law allows qualifying employees to deduct from Alabama income tax one hundred fifty percent (150%) of the amount paid for health insurance.

A qualified employer is defined as any small business with fewer than twenty-five (25) employees. A qualified employee is defined as any employee of a qualified employer that is an Alabama resident earning wages of \$50,000 or less, and reporting an adjusted gross income of \$75,000 or less (\$150,000 if married filing jointly). The qualifications for an employee are in addition to the existing requirement that medical costs exceed four percent (4%) of his or her gross income before a deduction is permissible. The new law is effective as of January 1, 2009.

Captive REIT and Intangible Expense Add-Back Statute Issues Addressed

The Legislature addressed two perceived corporate tax loopholes by amending the Alabama "add-back" statute, Alabama Code § 40-18-35.

First, "captive REITs" are now required to add back to taxable income any dividends paid to a related party that such party deducted pursuant to the regular dividends received deduction statute. The amendment eliminates the ability for a captive REIT to get the benefit of a dividends paid deduction while the payee obtains the benefit of a dividends received deduction.

Second, the legislature amended Section 40-18-35(b) which provides that a corporation must add back to its taxable income otherwise deductible interest and intangible expenses paid to a related party. Section 40-18-35(b) provides an exception if the corresponding item of income of the related party is "subject to tax" based on the related party's income in Alabama or another state. The amendment seeks to clarify that statute by stating

that the determination of whether income is subject to tax is to be made after applying the taxing jurisdiction's allocation and apportionment methodology. This amendment is intended to address an argument presented by the taxpayers in the VFJ Ventures case presently pending before the Alabama Supreme Court.