

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-3-35-01

Rule Title: Federal Income Tax Deduction

XX New; Amend; XX Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

 No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

 Yes

Is there another, less restrictive method of regulation available that could adequately protect the public?

 No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

 No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

 N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

 Yes

Does the proposed rule have any economic impact?

 No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Michael D. Bell*

Date 1/12/16

APA-6
10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-3-35-.01

Rule Title: Federal Income Tax Deduction

X New Amend X Repeal Adopt by Reference

NO
 YES

This rule has no economic impact.
This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE
BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

APA-2
11/96

**ALABAMA DEPARTMENT OF REVENUE
Individual and Corporate Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-3-35-.01 Federal Income Tax Deduction

INTENDED ACTION: Repeal and New rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to repeal the above rule and replace it with a new rule to provide a simplification of the Federal Income Tax Deduction (FIT) and to allow Alternative Minimum Tax (AMT) to be deducted as well based on a ALJ ruling.

RULE NO. & TITLE

810-3-34-.01 Gross Income of Corporations

INTENDED ACTION: Repeal rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to repeal the above rule due to it being obsolete.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 1:30 p.m. on Thursday, April 7, 2016, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://revenue.alabama.gov/analysis/upcoming-rule-hearings.cfm>

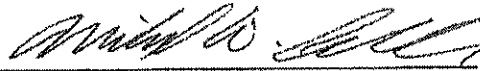
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, April 7, 2016

CONTACT PERSON AT AGENCY:

Timothy Sanders
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132



Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-3-35-.01 Federal Income Tax Deduction (NEW RULE)

(1) Corporations may deduct federal income taxes (FIT) paid or accrued during the taxable year and attributable to their Alabama income. The amount and method of deduction to be allowed for state income tax purposes is determined by Alabama Department of Revenue rules. See *Standard Oil Co. v. State*, 55 Ala. App. 103, 313 So. 2d 532, cert. denied, 313 So. 2d 540 (1975).

(a) The FIT attributable to Alabama may be deducted in the year paid or accrued and subsequently paid, according to the method of accounting used in computing taxable income.

1. For a cash basis taxpayer federal income tax should be deducted in the year paid. See Paragraph (4).

2. An accrual basis taxpayer should deduct federal income tax:

(i) In the year for which the tax was imposed if the tax is not contested: that is, in the absence of some objective act of protest, affirmative evidence of protest, or affirmative evidence of denial of liability by the taxpayer, or

(ii) If the tax is contested it shall be accrued and subsequently paid and deducted during the year in which the liability becomes fixed and certain, but in no case later than the date the tax was actually paid.

(b) For purposes of this rule, FIT is the amount of federal income taxes paid or accrued and subsequently paid by the taxpayer for a tax period. This amount includes adjustments for refundable and nonrefundable credits, special deductions, net operating loss deduction, alternative minimum tax (and minimum tax credit) and similar adjustments. For taxpayers that file as part of a federal consolidated group, alternative minimum tax (AMT) and the minimum tax credit (MTC) are allocated using the method described in subparagraph (3)(e) and subparagraph (3)(f).

(2) **For an accrual basis taxpayer that does not file as a member of a federal consolidated income tax return and who apportions and/or allocates income within and outside of Alabama:** The amount of FIT attributable to Alabama is determined by multiplying the FIT times a fraction, of which the numerator is the taxpayer's income apportioned and/or allocated to Alabama, and the denominator is the taxpayer's total income earned both within and outside Alabama, computed under applicable Alabama law. To the extent a net loss is allocated and/or apportioned to Alabama (the numerator of the fraction is negative), no FIT will be attributed to Alabama.

Example: Company A is an Alabama taxpayer who apportions a percentage of its income within and outside of Alabama. Company A had Federal Taxable income of \$200,000 and \$40,000 in FIT for the tax year. Company A's income apportioned to Alabama is \$50,000. Company 'A' is apportioned 25% or \$10,000 of the net federal income tax liability. ($\$50,000/\$200,000 = 25\% * \$40,000 = \$10,000$).

(3) For an accrual basis taxpayer that files as a member of a federal consolidated income tax return: The taxpayer shall apportion the consolidated FIT liability only among the members of the group that individually report positive federal taxable income. Each member is apportioned a share of the consolidated FIT based on a fraction, the numerator of which is the member's positive federal taxable income and the denominator of which is the sum total federal taxable income of all members separately reporting positive federal taxable income.

(a) Example: Company A, Company B, and Company C file as part of a consolidated income tax return for federal income tax purposes. Company A is the only member of the affiliated group that files an income tax return in Alabama. The companies have Federal Taxable Incomes of \$150,000, \$50,000, and \$100,000 (totaling \$300,000), respectively. The affiliated group accrued and subsequently paid \$60,000 in net federal income tax during this tax year. Company A is apportioned 50% or \$30,000 of the federal income tax liability of the group. ($\$150,000/\$300,000 = 50\% * 60,000 = \$30,000$).

(b) Example: Company A, Company B, and Company C file as part of a consolidated income tax return for federal income tax purposes. Company A is the only member of the affiliated group that files an income tax return in Alabama. The companies have Federal Taxable Incomes of \$150,000, -\$25,000, and \$350,000 (positive entities totaling \$500,000), respectively. The affiliated group accrued and subsequently paid \$150,000 in federal income tax during this tax year. Company A is apportioned 30% or \$45,000 of the federal income tax liability of the group. ($\$150,000/\$500,000 = 30\% * \$150,000 = \$45,000$).

(c) To the extent the consolidated FIT liability for tax period is zero or the federal consolidated group earned a net operating loss for the tax period, the Alabama taxpayer will be apportioned no FIT liability even if the AL taxpayer separately computed positive federal taxable income for the tax period.

Example: Company A, Company B, and Company C file as part of a consolidated income tax return for federal income tax purposes. Company A is the only member of the consolidated group that files an income tax return in Alabama. The companies have Federal Taxable Incomes of \$150,000, -\$25,000, and -

\$350,000, respectively. The consolidated group earned a -\$225,000 net loss and paid \$0 in FIT for this tax year. Even though Company A earned positive taxable income, no FIT was due on a consolidated basis to be apportioned to Company A and Company A will receive no FIT deduction for the tax period.

(d) If the taxpayer allocates and/or apportions its income both within and outside of Alabama, the taxpayer shall compute the portion of FIT attributable to Alabama consistent with Paragraph (2).

(e) **Alternative Minimum Tax:** For a taxpayer that files as a member of a federal consolidated group, the consolidated alternative minimum tax (AMT) liability shall be apportioned only among the members of the group that individually report positive alternative minimum taxable income (AMTI). The apportioned amount is determined by multiplying AMT, as accrued and subsequently paid by the federal consolidated group, times a fraction. The numerator of which is the taxpayer's positive AMTI and the denominator is the aggregate amount of positive AMTI of the component members of such group.

Example: Company A, Company B, and Company C filed a consolidated income tax return for federal income tax purposes. The following federal consolidated group paid no regular income tax during the tax year but paid \$75,000 in AMT. Company A, Company B, and Company C computed AMTI of \$150,000, \$125,000 and \$100,000 (totaling \$375,000), respectively. Company A is apportioned 40% or \$30,000 of the AMT liability of the group ($150,000/375,000 = 40\% * \$75,000 = \$30,000$).

(f) If a federal consolidated group is allowed to reduce its FIT liability by applying a Minimum Tax Credit (MTC), then the MTC must be attributed to the members of the group consistent with AMT previously allocated pursuant to subparagraph (e) above. In no case shall the cumulative MTC attributed to a taxpayer exceed the cumulative AMT attributed to a taxpayer.

(4) **For Cash basis taxpayers:** To the extent the taxpayer does business within and without Alabama, follow the general provisions provided in Paragraph (2) to determine the portion of the taxpayer's FIT that is attributed to Alabama. If the taxpayer files as part of a federal consolidated income tax return, follow the general provisions in Paragraph (3) to calculate the portion of consolidated FIT attributed to the taxpayer. The amount of consolidated FIT allocated to the taxpayer pursuant to Paragraph (3) and/or the amount attributed to Alabama pursuant to Paragraph (2) is based on the actual amount of federal income taxes paid during the tax period. The taxpayer is entitled to a federal income tax deduction, even if the taxpayer earned a net operating loss for the tax period, if actual federal income tax payments were made during the tax period.

Author: Holly H. Coon
Authority: Sections 40-2A-7(a)(5) and 40-18-35, Code of Alabama 1975
History:

810-3-35-.01. Deductions Allowed Corporations. (REPEAL)

(1) The regulations under §§ 40-18-15 and 40-18-16, Code of Alabama 1975, apply to corporations with the same force and effect as they apply to individuals with the following exceptions:

(a) Expenses designated as personal expenses are generally personal expenses only to an individual.

(b) Legislative Act 82-667 revised §40-18-15(a)(3) in relation to taxes allowable as deductions for individuals but no comparable change to §40-18-35 was made, therefore, deductions as now allowed individuals for taxes are not applicable to corporations.

1. Taxes, excluding state and local income taxes, imposed from time to time upon the taxpayer by the United States or any of its possessions, territories, or constituent states, or by any county, school district, municipality, or other taxing subdivision thereof may be deducted for the taxable year in which paid or accrued, according to the method of accounting used in computing taxable income.

(i) Possessions and territories of the United States are: American Samoa, Guam, Puerto Rico, and the Virgin Islands. These do not include the Trust Territory of the Pacific Islands: Mariana Islands, Marshall Islands, Palau, Ponape, Truk, and Yap.

(ii) Taxes levied by or paid to a foreign country are not deductible.

(iii) The windfall profits tax imposed by I.R.C. § 4986 is deductible.

(iv) Accrual basis taxpayers may deduct taxes only in the year in which the tax accrues, while cash basis taxpayers deduct taxes actually paid during the tax year. A penalty for non-payment of a tax may not be deducted.

(v) No deduction is allowed for taxes (such as sales and use taxes) imposed on the acquisition of property required to be capitalized pursuant to §40-18-17. Such taxes may be included in the basis of such property as provided in §40-18-6 and recovered through allowable deductions for depreciation and/or depletion as provided in §§40-18-15 and -16.

2. Net federal income tax may be deducted in the year paid or accrued, according to the method of accounting used in computing taxable income. The federal income tax allowable as a deduction or allocated in paragraph (5) is the net tax liability as accrued and subsequently paid, that is, the amount after subtracting all deductible and/or refundable credits. The federal alternative minimum tax ("AMT") is a prepayment of federal income tax and is not deductible in computing Alabama taxable income. As a consequence, the AMT credit is not considered in relation to Alabama taxable income.

Federal Income Tax		\$55,000.00
Less: Foreign Tax Credit	\$15,000.00	
Investment Credit	7,000.00	22,000.00
Net Apportionable Federal Income Tax		<u>\$33,000.00</u>

(i) For a cash basis taxpayer federal income tax should be deducted in the year paid.

(ii) An accrual basis taxpayer should deduct federal income tax:

(I) in the year for which the tax was imposed if the tax is not contested; that is, in the absence of some objective act of protest, affirmative evidence of protest, or affirmative evidence of denial of liability by the taxpayer, or

(II) if the tax is contested it shall be accrued and deducted during the year in which the liability becomes fixed and certain, but in no case later than the date the tax was actually paid.

3. The annual federal income tax deduction for members of an affiliated group filing a consolidated federal income tax return shall be determined according to the method elected under 26 U.S.C. §1552 (without regard to any election under 26 U.S.C. §1502) for the group's consolidated federal return filed for such taxable year which corresponds to the following methods:

(i) The federal tax liability shall be apportioned among the members of the group according to the ratio which that portion of the consolidated federal taxable income attributable to each member of the group (after taking into account any applicable consolidating eliminations, allowances, limitations and deductions) having taxable income bears to the consolidated federal taxable income.

(I) If the computation of the federal taxable income of a member results in an excess of deductions over gross income, then for the purposes of this computation such member's federal taxable income shall be zero. If the computation of the separate return tax liability of a member in this computation does not result in a positive federal income tax liability, then for the purposes of this computation such member's separate return federal tax liability shall be zero.

(II) This method corresponds to the method described in 26 U.S.C. § 1552(a)(1).

(ii) The consolidated federal tax liability shall be apportioned among the several members of the group on the basis of the percentage of the total federal tax, which the tax of such member, if computed on a separate return (after taking into account any applicable consolidating eliminations, allowances, limitations and

deductions), would bear to the total amount of federal tax for all members of the group so computed.

(I) If the computation of the separate return tax liability of a member in this computation does not result in a positive number, such member's separate return federal tax liability shall be zero.

(II) This method corresponds to the method described in 26 U.S.C. § 1552(a)(2).

(iii) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be apportioned on the basis of the contribution of each member of the group (after taking into account any applicable consolidating eliminations, allowances, limitations and deductions) to the consolidated federal taxable income of the group; provided such amount does not exceed the liability of such member on a separate return basis, in which case the member's deduction is limited to the amount it would have paid on a separate return basis. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in federal tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their federal tax liabilities determined on a separate return basis and their federal tax liabilities based on their contributions to the consolidated federal taxable income.

(I) If the computation of the federal taxable income of a member results in an excess of deductions over gross income, then for the purposes of this computation such member's federal taxable income shall be zero. If the computation of the separate return tax liability of a member in this computation does not result in a positive federal income tax liability, then for the purposes of this computation such member's separate return federal tax liability shall be zero.

(II) This method corresponds to the method described in 26 U.S.C. §1552(a)(3).

(iv) (I) When no election has been made for any taxable year in which a consolidated federal return is filed, the method described in (i) above shall apply.

(II) Any method other than those described in (i), (ii), or (iii) above must be requested from and approved by the Department. If approval has not been granted by the Department for the use of any method other than those described in (i), (ii) or (iii) above, the method described in (i) shall be used.

(v) If either the numerator, denominator, or both, in the ratios described in (i), (ii), (iii), or (iv) above are zero or less than zero, then no federal income tax will be apportioned to the members involved from the consolidated federal return.

(vi) If a corporation is a member of more than one affiliated group filing a consolidated federal return during a tax year, such corporation shall compute its share of the consolidated federal tax of each group using a method described in (i), (ii), (iii) or

(iv) above which was in effect for each such group during the time the corporation was a member of such group.

4. If an accrual basis taxpayer has a federal carryback that produces a refund, the tax refunded accrues to the year from which the item is carried.

(i) EXAMPLE: A taxpayer has more investment tax credit available in 1979 than can be utilized in 1979 and carries this excess back to 1976 and 1977. The 1976 and 1977 federal income taxes will be reduced and refunded, but the refund is negative federal income tax in 1979. These refunds are accomplished by filing a federal Form 1139 or amended federal returns.

(ii) If the taxpayer is a member of a group filing a consolidated federal return, the refund will be apportioned to each corporation in the same ratio that the tax deduction being refunded was originally apportioned.

(iii) If the taxpayer is a foreign corporation the refund will be apportioned to Alabama income at the same rate the tax deduction was originally apportioned to Alabama income.

(iv) The net refund attributed to Alabama will be used to reduce the current federal income tax deduction, if any. If the refund results in a negative deduction (the refund is larger than the current deduction), the result will increase taxable income.

(c) The provisions of Sec. 40-18-15(a)(13), (15), (16), and 40-18-15(b) and regulations thereunder do not apply to corporations. Medical expenses, to be deductible by a corporation, must be business expenses. No standard deduction is available to corporations.

(d) Under Sec. 40-18-35(2), a corporation is not permitted to deduct interest paid on an indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), if the interest income from the obligations or securities is exempt from Alabama income tax.

(e) Section 40-18-15(a)(6), which allows a deduction for casualty and theft losses, has no counterpart for corporations. However, such losses to a corporation normally would be business losses.

(f) Mutual insurance companies (other than mutual life or mutual marine insurance companies) and marine insurance companies are entitled to special deductions as provided in Secs. 40-18-35(8) and 40-18-35(9).

(g) 1. Charitable contributions: For taxable years beginning before January 1, 1985, the limitation on contributions, in the case of a corporation, is five percent of the corporation's net income computed without the benefit of the deduction for contributions. Reg. 810-3-15-.17 should be modified to this extent when it is applied to a corporation.

Actual payment of the contribution must be made to a recognized charitable institution to be deductible.

2. For taxable years beginning after December 31, 1984, and before January 1, 1990: charitable contributions by corporations are allowed in the same manner and subject to the same limitations as provided by 26 U.S.C. §170 as in effect on January 1, 1985.

3. For taxable years beginning after December 31, 1989, charitable contributions are allowed in the same manner and subject to the same limitations as provided by 26 U.S.C. § 170 as in effect from time to time.

(i) For the purpose of this section the limitation is 10% of total income computed under Alabama law, after taking into account all other allowable deductions (except the net operating loss carryforward), but without the benefit of this deduction.

(ii) For accrual basis taxpayers, actual payment of the contribution must be made not later than the 15th day of the third month following the close of the tax year.

(iii) If the total contributions available for deduction in the year exceed the 10% limitation in subsection (i) above, the excess may be carried over to the next five succeeding years in chronological order. The amount to be carried over in succeeding years is the excess, if any, of the limitation for the succeeding year over the current contributions for that year.

(iv) The amount of any deduction allowable under this section for a contribution of property must be determined by the amount the fair market value of the property exceeds the taxpayer's basis in the property. In the case of a charitable contribution of less than the taxpayer's entire interest in the property contributed, the taxpayer's adjusted basis in such property shall be apportioned between the interest contributed and any interest not contributed.

(h) For tax years beginning after December 31, 1989, the deduction for expenses of travel, entertainment and meals incurred by corporations shall be determined according to and subject to the same limitations as provided in 26 U.S.C. § 274. See regulation 810-3-15.02.

(i) For tax years beginning after December 31, 1989, if a personal service corporation has in effect an election under 26 U.S.C. § 444 (relating to the use of a taxable year other than the required taxable year) and does not satisfy the minimum distribution requirements as defined in 26 U.S.C. § 280H, the minimum deduction otherwise allowable under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the minimum deductible amount as defined in 26 U.S.C. § 280H.

1. If any amount is not allowed as a deduction for a taxable year under part (i) above, such amount shall be treated as paid or incurred in the succeeding taxable year.

2. For the purposes of this part, the terms "minimum distribution requirements", "maximum deductible amount", "employee-owner", and "applicable amount" shall have the same meaning as defined in 26 U.S.C. § 280H.

(2) Dividends (including liquidating dividends) are deductible if received from a corporation or any subsidiary corporation taxable under this title whether received in cash or property or both, if at the time of the receipt of such dividends the receiving corporation owns stock of the distributing corporation:

(a) possessing at least 50% of the total combined voting power of all classes of stock entitled to vote and

(b) constituting at least 50% of the total number of shares of all classes of stock other than classes of stock which are limited and preferred as to dividends.

NOTE: Ownership of stock under this paragraph must be direct ownership. Alabama law has no provision regarding indirect ownership (attribution rules).

(3) Losses from bad debts

(a) For tax years beginning before January 1, 1985, a deduction is allowed for all debts which became worthless during the taxable year if sustained in the conduct of the taxpayer's regular trade or business. Only actual write-offs may be deducted. The reserve method may not be used for these years.

(b) For all taxable years beginning after December 31, 1984, and beginning before January 1, 1990, either actual write-offs of bad debts or a reasonable addition to a reserve for bad debts may be used. Bad debts are deductible to the extent allowed by 26 U.S.C. §166 as in effect on January 1, 1985.

1. If a taxpayer changes from actual write-offs to a reserve method, or from a reserve method to actual write-offs, proper adjustments must be made so that no deduction is taken more than once for the same bad debt and so that no allowable deduction will not be deducted due to the change in method for deducting bad debts.

2. Any reserve method and the computation thereof allowed by the U.S. Secretary of the Treasury pursuant to 26 U.S.C. §166(c) and U. S. Treasury Regulation §1.166-4, as in effect January 1, 1985, will be allowed by this regulation.

3. The Alabama law has no provision for the establishment of an initial reserve, only for a reasonable addition to a reserve. Therefore, the provisions of 26 U.S.C. §481 and U.S. Treasury Regulation §1.481-1, et seq., are not applicable in computing the allowable addition to the bad debt reserve under Alabama law.

(c) For all taxable years beginning after December 31, 1989, a deduction is allowed in accordance with 26 U.S.C. 166 for all debts which become worthless during the taxable year, if sustained in the conduct of the taxpayer's regular trade or business.

(4) A deduction is allowed for all amounts invested during the taxable year in devices, parts of devices, systems or facilities used or placed in operation in the state of Alabama or to be used or placed in operation in the state of Alabama primarily for the protection of the public and the public interest through the control, reduction, or elimination of air or water pollution; provided, however, that in lieu of deducting such amounts, the corporation may elect to amortize all such amounts over such period (not exceeding the useful life of devices, parts, systems or facilities for which such amounts were expended) as it specifies in its tax return for the taxable year during which such amounts were expended, in which case it shall be entitled to appropriate deductions for the taxable years so specified; and provided further:

(a) that the taking of any deductions authorized by subsection (12) shall be optional with the corporation; and

(b) that if any such deduction is taken with respect to any such devices, parts of devices, systems or facilities, such corporation shall not be permitted any allowance for depreciation or obsolescence thereof otherwise allowable under this Sec. 40-18-35.

(c) The election to expense qualified pollution control capital expenditures must be made in the return for the taxable year in which the expenditures are incurred and the election may not be made, revoked or modified after the return is filed.

(d) Definitions:

1. "Water Pollution" means the discharge or deposit of sewage, industrial wastes, or other wastes in such condition, manner or quantity as may cause ground or surface water to be contaminated, unclean, or impure to such an extent as to make said waters detrimental to the public health or to the health of animals, wildlife, fish, marine life or aquatic life; unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses.

2. "Air Pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such characteristics, location and duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property or to the conduct of business within such areas of the state as shall be affected thereby.

3. "Air Contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

4. "Air Cleaning Device" means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(e) The Department will recognize as subject to deduction or amortization any devices, parts of devices, systems or facilities used or placed in operation in the state of Alabama and approved for the control, reduction, or elimination of air or water pollution by the Water Improvement Commission, the Air Pollution Control Commission or by the Alabama Department of Environmental Management.

(f) The deduction allowed by this section is for expenditures in the nature of capital items and does not include expenses for maintenance, operation or supplies.

(5) Corporate employers' deduction for contribution to an employees' trust or annuity plan or compensation under a deferred-payment plan and bond purchase plan are allowed as follows:

(a) For tax years beginning before January 1, 1984, corporations may deduct their contributions to stock bonus, pension, profit sharing, annuity, deferred compensation, and bond purchase plans as they qualify and are allowed by I.R.C. 404 and 405, as in effect from time to time.

(b) For tax years beginning after December 31, 1983, and before January 1, 1990, corporations may not deduct their contributions to bond purchase plans since I.R.C. §405 was repealed for all years after January 1, 1984.

(c) For tax years beginning after December 31, 1989, corporations are allowed to continue to deduct their contributions to a qualified employees' stock bonus, pension, profit-sharing or annuity plan, or deferred compensation plan within the same limitations as allowed by I.R.C. § 404.

(6) For qualified expenditures made on or after May 17, 1985, a corporation which incurs expenses during the taxable year for the removal of architectural or transportation barriers to the handicapped may elect to deduct such expenditures, even if the expenditures are capital in nature. The maximum amount of the deduction is \$35,000. If the election is made to deduct such expenses, no depreciation may be taken in connection with such expenditures. The election may not be made, changed or revoked after the return is filed.

(7) (a) For taxable years beginning after December 31, 1984, a corporation may amortize organizational expenditures over any period of not less than sixty (60) months. To qualify for amortization, the expenditures must have been:

1. incidental to the creation of the corporation,
2. chargeable to its capital account, and

3. of a character, which if expended incident to the creation of a corporation with a limited life, would be amortizable over such life.

(b) The taxpayer shall elect the amortization period in the return for the first taxable year in which the corporation engages in business. The election may not be made, changed, or modified after the due date (with extensions) for filing the return for such first taxable year.

(8) See Reg. 810-3-35-.02 for apportionment and allocation of allowable deductions of foreign corporations.

(9) The Internal Revenue Code contains provisions similar to those in this section. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section.

Author: Cindy D. Norwood, Verlon R. Frost
Authority: Sections 40-2A-7(a)(5) and 40-18-35, Code of Alabama, 1975
History: Adopted September 30, 1982.
Amended March 20, 1989.
Amended June 19, 1992.
Amended March 26, 1998, effective date April 30, 1998.