

Alabama Tax Legislative Update: 2010 Regular Session

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The Alabama Legislature adjourned *sine die* on Thursday, April 22, concluding a relatively productive, though often contentious, 2010 Regular Session. Unlike most years, when the session ends amidst a last-minute rush to pass the two main operating budgets, the budgets passed relatively early this year and *without any tax increases*, primarily as a result of federal stimulus funds and significant belt-tightening. Without budgets to debate during its last two meeting days, the Legislature passed the proposed \$1 billion road and bridge construction constitutional amendment and the Prepaid Affordable College Tuition (PACT) bail-out plan during its final days.

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 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 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 income tax deduction is an amount *up to* 50% of the gross wages paid to each person hired – the 50% deduction is permitted for wage rates of \$14 per hour and above; a 40% deduction is granted for wage rates between \$12 and \$14 per hour; and a 35% deduction is granted for wages rates between \$10 and \$12 per hour. No deduction is available if the job pays less than \$10 per hour or if the employee works less than 37.5 hours per week, regardless of the employee's wage rate.

To qualify for the deduction, when the new employee is hired, he or she either must have been drawing state unemployment compensation benefits or his or her unemployment benefits must have expired. In addition, the employer must *retain* the new employee for at least one year to receive the income tax deduction. Although it appears that the one year testing period started immediately upon enactment, the income tax deduction is only effective for either tax year 2011 or 2012. The Act *should* allow employers the option to choose which year to apply the deduction, although the language of the Act is unclear. The deduction will flow-through to

owners of qualified employers that are taxed as S corporations or partnerships for Alabama and federal income tax purposes.

Act 2010-568: generally conforms Alabama estimated income tax payment thresholds for both individuals and corporations to federal law, IRC sections 6654 and 6655, thereby relieving approximately 25,000 individual Alabama taxpayers from this requirement, while subjecting an additional 4,000 corporations to quarterly payment obligations. This proposal 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) last week, 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 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 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. As our readers may recall, Acts of Alabama 2009-144 was the legislation that provided the new composite return requirements for Subchapter K entities and also provided certain tax incentives for entertainment productions.

Act 2010-520: increases the annual privilege tax rate on nursing facilities from \$999.96 to an annual rate of \$1,899.96. This Act also increases the supplemental tax from \$900 to \$1,063.08 for the period September 1, 2010 through August 31, 2011.

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 to the sale, use, storage, or consumption of materials, equipment, or machinery that, *at any time*, enter into or become a part of ships, vessels, towing vessels or barges, or drilling ships, rigs or barges, or seismic or geophysical vessels, as well as certain other watercraft and commercial fishing vessels. Life boats, personal floatation devices, ring life buoys, distress signals, and certain other items are all made specifically exempt.

Act 2010-511: prescribes the form of exemption certificate to be used when claiming the statutory exemption for purchases of material, equipment, or machinery for commercial fishing vessels under revised Ala. Code § 40-23-4(a)(13). The seller must provide the buyer with a copy of the certificate, with the receipt attached, and retain the original certificate for examination by the Department of Revenue for at least one year from the date of the certificate.

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. Thus, capital credits will be available for new projects that qualify on or prior to December 31, 2015, rather than December 31, 2010.

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” (broadly defined). For example, the bill would clarify that in order for an “employer” to be subject to the act, it must receive at least 5% of its gross revenue from business described in North American Industry Classification System (NAICS) Code 236, 237 and/or 238.

Act 2010-715: provides the Alabama Incentives Financing Authority with additional funding flexibility by increasing the cap of 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: 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.

We thank your indefatigable President, Jeannine Birmingham, and our readers for the opportunity to be of service and hope these weekly columns were helpful in your practice.