HB476

166499-1

By Representatives Knight, Scott, Robinson and Rogers

RFD: Ways and Means Education

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SYNOPSIS: Under current law, the state levies an income tax upon all residents of the state and upon all nonresidents who receive income from Alabama sources. Taxpayers are allowed standard deductions and personal exemptions in computing income subject to the tax.

This bill proposes the Alabama Individual Income Tax Reform Act of 2015. This bill, which would be contingent upon the ratification of a constitutional amendment to repeal the deduction of federal income tax payments on Alabama income tax returns, would increase the standard deductions and personal exemptions allowed for Alabama income tax purposes to the amounts allowed for federal income tax purposes.

This bill also creates a state earned income tax credit.

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 40-18-15 and 40-18-19, Code of Alabama 1975, relating to income tax deductions and exemptions, to allow standard deductions equal to those allowed under federal income tax law; to allow personal exemptions equal to those allowed under federal income tax law; to create a state earned income tax credit; and to provide that this act shall become effective only upon ratification of a constitutional amendment to repeal the deduction of federal income tax payments on Alabama income tax returns.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the "Alabama Individual Income Tax Reform Act of 2015."

Section 2. Sections 40-18-15 and 40-18-19, Code of Alabama 1975, are hereby amended to read as follows:

"§40-18-15.

"(a) No deduction shall be allowed for any losses, expenses, or interest deferred or disallowed pursuant to 26 U.S.C. § 267 or for any cost required to be capitalized in accordance with 26 U.S.C. § 263A; otherwise, there shall be allowed as deductions:

"(1) All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, as determined in accordance with 26 U.S.C. § 162.

"(2) Interest paid or accrued within the taxable year on indebtedness, limited to the amount allowable as an interest deduction for federal income tax purposes in the corresponding tax year or period pursuant to the provisions of 26 U.S.C. §§ 163, 264, and 265.

"(3) The following taxes paid or accrued within the taxable year:

"a. ~~Income taxes,~~ Federal Insurance Contribution Act taxes, taxes on self-employment income and estate and gift taxes imposed by authority of the United States or any possession of the United States.

"b. State and local, and foreign, occupational license taxes, and contributions to state unemployment funds.

"c. State and local, and foreign, real property taxes.

"d. State and local personal property taxes.

"e. The generation-skipping transfer (GST) tax imposed on income distributions by 26 U.S.C. § 2601.

"f. The taxes described in paragraphs c., d., and e. shall be deductible only to the extent that the taxes are deductible for federal income tax purposes under 26 U.S.C. § 164 (relating to taxes).

"g. In addition, there shall be allowed as a deduction, state and local, and foreign taxes, except income taxes, and taxes imposed by authority of the United States or any possession of the United States, which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in 26 U.S.C. § 212 (relating to expenses for the production of income).

"h. Notwithstanding paragraph g., any tax described in any paragraph preceding paragraph g. that is paid or accrued in connection with an acquisition or disposition of property shall be treated as part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition of that property.

"(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise if incurred in a trade or business, in accordance with 26 U.S.C. § 165(c)(1).

"(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business in accordance with 26 U.S.C. § 165(c)(2); but, in the case of a taxpayer other than a resident of the state, only as to those transactions within the state.

"(6) Casualty and theft losses sustained during the taxable year of property not connected with the conduct of a trade or business or a transaction entered into for profit as determined in accordance with subsections (c)(3) and (h) of 26 U.S.C. § 165. In the case of a nonresident, the deduction shall be allowed only for the losses arising from property located within the State of Alabama and the limitations in 26 U.S.C. § 165 shall be applied with regard only to the taxpayer's Alabama adjusted gross income. No loss shall be allowed if at the time of filing the return, the loss has been claimed on a federal estate tax return.

"(7) Losses from debts ascertained to be worthless and charged off during the taxable year of ascertainment, if sustained in the conduct of the regular trade or business of the taxpayer.

"(8) A reasonable allowance for the exhaustion, wear and tear of property from which any income is derived, including a reasonable allowance for obsolescence, in accordance with 26 U.S.C. §§ 167 and 168, and an allowance for the amortization of intangibles determined in accordance with 26 U.S.C. § 197.

"(9) In the case of mines, oil, and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar condition in each case based upon the cost, including the cost of development not otherwise deducted, such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Department of Revenue; and, in the case of leasehold interests, the deduction allowed by this section shall be equitably apportioned between the lessor and the lessee.

"(10) Charitable contributions to the extent allowed for federal income tax purposes under 26 U.S.C. § 170 (relating to charitable contributions and gifts).

"(11) The deduction allowed to the individual for federal income tax purposes by 26 U.S.C. § 219 (relating to retirement savings).

"(12) The deduction allowed for federal income tax purposes by 26 U.S.C. § 404 (relating to qualified pension, profit sharing, stock bonus, and annuity plans).

"(13) For each individual income taxpayer, medical and dental expenses, including amounts paid for medicine and drugs and amounts paid for accident and health insurance, as determined in accordance with 26 U.S.C. § 213; provided, however, that the limitation of the deduction to the excess of those expenses over 7.5 percent of adjusted gross income as provided in 26 U.S.C. § 213 shall instead be limited to the excess of those expenses over 4.0 percent of adjusted gross income.

"(14) For each individual income taxpayer, the deduction determined in accordance with 26 U.S.C. § 212 for all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income, or in connection with the determination, collection, or refund of any tax.

"(15) Any expense not exceeding $1,000 actually incurred during the taxable year in constructing on his or her property a family radioactive fallout shelter, as approved and certified by the State Department of Emergency Management, and any amount not exceeding $1,000 which he or she contributed during the taxable year toward the construction of a community radioactive fallout shelter.

"(16) A deduction from the taxpayer's adjusted gross income for state income tax purposes of the total cost of installation for conversion from gas or electricity to wood as the primary energy source for heating their individual domestic homes for the taxable year during which a conversion was completed.

"(17) Alimony and separate maintenance payments, the amount deductible to be the same as the amount deductible for federal income tax purposes under 26 U.S.C. § 215 (relating to alimony payments).

"(18) Moving expenses paid or incurred during the taxable year as allowed under 26 U.S.C. § 217 (relating to moving expenses). However, in applying 26 U.S.C. § 217, the term "new principal place of work" means only places of work located within the State of Alabama.

"(19) Any expense not exceeding $35,000 actually incurred during the taxable year in removing from his or her property any architectural or transportation barriers to handicapped persons with nonambulatory and semiambulatory disabilities; provided, however, that any improvements resulting from that expense shall not be eligible to be capitalized for depreciation.

"(20) Notwithstanding subdivision (1), the deduction for expenses of travel, entertainment, and meals shall be determined in accordance with 26 U.S.C. § 274.

"(21) The deduction allowed by 26 U.S.C. § 179 (relating to expensing certain depreciable property), provided that no deduction shall be allowed under subdivision (8) for any amount allowed as a deduction under this subdivision.

"(22) The deduction allowed by 26 U.S.C. § 195 (relating to amortization of start-up expenditures), but in the case of a nonresident, only if the principal place of business of the business investigated, created, or acquired is located in the State of Alabama.

"(23) The deduction allowed by subdivision (1), to the extent that it consists of unreimbursed employee business expenses, and the deduction allowed by subdivision (14) shall be allowed only to the extent that the aggregate of the deductions exceeds 2 percent of adjusted gross income.

"(24) The reasonable medical and legal expenses paid or incurred by the taxpayer in connection with the adoption of a minor. For purposes of this subdivision, medical expenses shall include any medical and hospital expenses of the adoptee and the adoptee's biological mother which are incident to the adoptee's birth and subsequent medical care and which, in the case of the adoptee, are paid or incurred before the petition is granted.

"(25) The amount of any aid or assistance, whether in the form of property, services, or monies, provided to the State Industrial Development Authority pursuant to Section 41-10-44.8(d) in order to induce an approved company to undertake a major project within the state.

"(26) The amount of premiums paid pursuant to a qualifying insurance contract for qualified long-term care coverage.

"(27) The amount deductible by the taxpayer in accordance with 26 U.S.C. § 162(h).

"(28) The amount, up to five thousand dollars ($5,000) per annum, contributed subsequent to December 31, 2007, to the Alabama Prepaid Affordable College Tuition Program or the Alabama College Education Savings Program as defined in Chapter 33C of Title 16. If the taxpayer makes a nonqualified withdrawal as defined by Section 529 of the Internal Revenue Code (26 U.S.C. 529), the amount of the nonqualified withdrawal, plus 10 percent of the amount withdrawn, shall be added back to the income of the contributing taxpayer in the year the nonqualified withdrawal was distributed.

"(b)(1) In lieu of the deductions allowable to individual taxpayers, as provided in subdivision (1) of subsection (a) to the extent of unreimbursed employee business expenses, and as provided in subdivisions (2), (3), (5), (6), (10), (13), (14), (15), (16), (19), (22), and (26) of subsection (a), the taxpayer may elect to take ~~the~~ an optional standard deduction equal to the amount allowed under 26 U.S.C. §63. ~~of 20 percent of the adjusted gross income or $2,000, whichever is the lesser. Taxpayers filing jointly as defined in Section 40-18-27 may elect to take the optional standard~~

~~deduction of 20 percent of the adjusted gross income or $4,000, whichever is the lesser.~~

~~"(2) For tax years beginning after December 31, 2006, the optional standard deduction shall be determined as follows:~~

~~"a. The standard deduction for married taxpayers filing jointly with adjusted gross income of $20,000 or less shall be $7,500. For married taxpayers filing jointly with adjusted gross income of greater than $20,000, the standard deduction shall be reduced by $175 for each $500 of adjusted gross income in excess of $20,000. Notwithstanding the preceding sentence, the standard deduction shall not be less that $4,000 for married taxpayers filing jointly.~~

~~"b. The standard deduction for married taxpayers filing separate returns with adjusted gross income of $10,000 or less shall be $3,750. For married taxpayers filing separate returns with adjusted gross income of greater than $10,000, the standard deduction shall be reduced by $88 for each $250 of adjusted gross income in excess of $10,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for married taxpayers filing separate returns.~~

~~"c. The standard deduction for head of family taxpayers with adjusted gross income of $20,000 or less shall be $4,700. For head of family taxpayers with adjusted gross income of greater than $20,000, the standard deduction shall be reduced by $135 for each $500 of adjusted gross income in~~

~~excess of $20,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for head of family taxpayers.~~

~~"d. The standard deduction for single taxpayers with adjusted gross income of $20,000 or less shall be $2,500. For single taxpayers with adjusted gross income of greater than $20,000, the standard deduction shall be reduced by $25 for each $500 of adjusted gross income in excess of $20,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for single taxpayers.~~

~~"(c) A deduction is allowable for the amount of federal income tax paid or accrued within the taxable year. In the case of a nonresident taxpayer, the amount of federal income tax deductible to Alabama shall be determined by the ratio that the amount of adjusted gross income received from sources within the State of Alabama bears to the amount of adjusted gross income received from sources within and outside the State of Alabama.~~

"~~(d)~~ (c) If separate returns are filed by husband and wife and one spouse elects to claim the optional standard deduction, the other spouse must also claim the optional standard deduction, unless, for the tax returns filed for the 2014 and subsequent tax years, the spouses have lived apart for the entire year. In this case, each spouse may claim either the optional standard deduction or itemized deductions. Neither spouse may claim a deduction for expenses paid by the other spouse.

"~~(c)~~ (d) In the case of a nonresident individual:

"(1) The deductions allowed in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (11), (12), (19), (21), (23), and (25) of subsection (a) shall be allowed only to the extent that they are paid or incurred in carrying on a trade or business within the State of Alabama and the deduction allowed by Section 40-18-15.2 shall be allowed only to the extent it arose from a trade or business carried on in Alabama.

"(2) The deductions allowed by subdivisions (2), (3), (5), (8), (9), (14), and (19) of subsection (a) shall be allowed only to the extent arising from property located in Alabama or transactions producing income that is subject to tax in the State of Alabama.

"(3) The amount of the deductions allowed by subdivisions (2), (3), (6), (10), (13), (15), (16), (17), (19), (24), and (26) of subsection (a) (and not allowed by subdivisions (1) or (2) of this subsection), or by subsection (b) if the taxpayer elects the standard deduction, shall be limited to the amount determined by multiplying the total of such deductions by a fraction, the numerator of which is the taxpayer's adjusted gross income determined using the rules provided in subdivisions (1) and (2) of this subsection and the denominator of which is the taxpayer's adjusted gross income determined under Section 40-18-14.2. The deduction allowed in subdivision (17) of subsection (a) shall not be subtracted in calculating either the numerator or denominator in the previous sentence.

"~~(f)~~ (e) Nothing in this section shall allow any item to be deducted more than once."

"§40-18-19.

"(a) The following exemptions from income taxation shall be allowed to every individual resident taxpayer:

"(1) Retirement allowances, pensions and annuities, or optional allowances, approved by the Board of Control of the Teachers' Retirement System of Alabama, which exempt status is set out in Section 16-25-23.

"(2) Retirement allowances, pensions and annuities or optional allowances, approved by the Board of Control of the Employees' Retirement System of Alabama, which exempt status is set out in Section 36-27-28.

"(3) The first eight thousand dollars ($8,000) of any retirement compensation, retirement allowances, pensions and annuities, or optional allowances, received by any eligible firefighter, as defined in Sections 36-32-1 and 36-32-2, or his or her designated beneficiary, from any firefighting agency established in the State of Alabama, but only if such retirement compensation, retirement allowances, pensions and annuities, or optional allowances as are awarded as a result of fire protection services rendered. This subdivision shall become effective for the taxable years beginning January 1, 1987, and thereafter following its passage and approval by the Governor, or upon its otherwise becoming a law; provided, that for the taxable years beginning on or after January 1, 1991, all of the pension and retirement payments shall be exempt from taxation.

"(4) The first eight thousand dollars ($8,000) of any retirement compensation, retirement allowances, pensions and annuities, or optional allowances received by any eligible peace officer, as defined in subsection (11) of Section 36-21-60, or his or her designated beneficiary, from any police retirement system established in the State of Alabama, but only if the retirement compensation, retirement allowances, pensions and annuities, or optional allowances are awarded as a result of police services rendered. This subdivision shall become effective for taxable years beginning January 1, 1984, and thereafter; provided, that for the taxable years beginning on or after January 1, 1991, all of the pension and retirement payments shall be exempt from taxation.

"(5) Income received as annuities under the United States Retirement System from the United States Government Civil Service Retirement and Disability Fund including income received from the Tennessee Valley Authority's pension system, income received as annuities under the United States Foreign Service Retirement and Disability Fund or income received from any other United States government retirement and disability fund.

"(6) Beginning January 1, 1991, all payments made on or after such date to a retiree or his designated beneficiary under a "defined benefit plan," as defined under Section 414(j) of the Internal Revenue Code of 1986, as amended from time to time, to the extent such payment would be taxable for federal income tax purposes.

"(7) Net income realized by individuals and partnerships from time to time in the business of conducting a financial business employing moneyed capital coming into competition with the business of national banks, but only if such individuals and partnerships are subject to an excise tax imposed by this state on or with respect to such income.

"(8) ~~In the case of a single person or a married person not living with husband or wife, a personal exemption of one thousand five hundred dollars ($1,500) or, in the case of a head of a family or a married person living with husband or wife, a personal exemption of three thousand dollars ($3,000), but a husband and wife living together shall receive only one personal exemption of three thousand dollars ($3,000) against their aggregate income, and in case they make separate returns each must claim a personal exemption of one thousand five hundred dollars ($1,500).~~ Personal exemptions to the extent allowed for federal income tax purposes under 26 U.S.C §151 and §152; and

"~~(9) a. Three hundred dollars ($300) for each person, other than husband or wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.~~

"~~b. For tax years beginning after December 31, 2006, for taxpayers with adjusted gross income equal to or less than $20,000, one thousand dollars for each person other than husband or wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.~~

"~~c. For tax years beginning after December 31, 2006, for taxpayers with adjusted gross income in excess of $20,000 and equal to or less than $100,000, five hundred dollars for each person other than husband and wife, dependent upon the taxpayer, and over half of whose support, for the calendar year in which the taxable year for the taxpayer begins, was received from the taxpayer.~~

"~~For the purposes of this section, "dependent" shall mean: A son or daughter of the taxpayer or a descendant of either; a stepson or stepdaughter of the taxpayer; a brother, sister, stepbrother, or stepsister of the taxpayer; the father or mother of the taxpayer or an ancestor of either; a stepfather or stepmother of the taxpayer; a son or daughter of a brother or sister of the taxpayer; a brother or sister of the father or mother of the taxpayer; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer. As used in this paragraph the terms "brother" and "sister" include a brother or sister by the half blood. For the purpose of determining whether any of the foregoing relationships exist, a legally adopted child~~

~~of a person shall be considered a child of such a person by blood.~~

"~~(10)~~ (9) Beginning January 1, 1998, all income, interest, dividends, gains, or benefits of any kind received from savings accounts or prepaid tuition contracts administered under Title 16, Chapter 33C, are exempt from all income taxation by the state and by all of its political subdivisions to the extent that the amounts remain on deposit in the PACT Trust Fund or the ACES Trust Fund, or are used to pay the designated beneficiary's qualified higher education expenses as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or are refunded under such terms as would not carry a penalty under Section 529 of the Internal Revenue Code of 1986, as amended.

"(b) Of the ~~following~~ personal exemptions allowed resident taxpayers, each nonresident individual taxpayer shall be allowed that proportion thereof that the adjusted gross income received by said nonresident individual taxpayer from sources within the State of Alabama bears to his or her adjusted gross income received from sources within and without the State of Alabama~~:~~. ~~In the case of a single person or a married person not living with husband or wife, a personal exemption of one thousand five hundred dollars ($1,500) or, in the case of a head of a family or a married person living with husband or wife, a personal exemption of three thousand dollars ($3,000), a husband and wife living together shall receive but one personal exemption of three thousand dollars~~

~~($3,000) against their aggregate income; and, in case they make separate returns, each must claim a personal exemption of one thousand five hundred dollars ($1,500); and the amount in subdivision (9) of subsection (a) for each person, other than husband or wife, dependent upon and receiving his chief support from the taxpayer.~~

Section 3. For the purposes of Sections 3 and 4 of this act, the following terms have the following meanings:

(1) EARNED INCOME TAX CREDIT. The same definition as provided in Section 32 of the Internal Revenue Code.

(2) QUALIFIED TAXPAYER. A taxpayer with federal adjusted gross income for the tax year that does not exceed 200 percent of the federal poverty level and who does not have more than the maximum amount of disqualified income under Section 32 (i) of the Internal Revenue code which is allowed to a taxpayer entitled to the earned income tax credit for federal income tax purposes.

Section 4. (a) In addition to any other income tax credit available to individuals, a qualified taxpayer shall be allowed an earned income tax credit against the income tax otherwise due for the tax year. The earned income tax credit shall be equal to ten percent of the earned income tax credit allowable to the individual for the same tax year under Section 32 of the Internal Revenue Code.

(b) If the tax credit available in this section exceeds the amount of the taxpayer's income tax liability for the tax year as computed without regard to this section, then the excess credit shall be refunded to the taxpayer.

Section 5. The Department of Revenue shall promulgate and adopt rules regarding the implementation and administration of this act.

Section 6. The provisions of this act shall become effective for all taxable years beginning after December 31, 2016, if the constitutional amendment proposed by House Bill __ of the 2015 Regular Session is ratified by the qualified electors of the State and proclaimed by the Governor as provided in Sections 284 and 285 of the Constitution of Alabama of 1901.