810-3-39-.04 Incentives Rules for Alabama Affiliated Groups Filing Consolidated Alabama Income Tax Returns.

(1) **Scope:** Alabama provides various business incentives in the form of tax credits and exemptions to specific taxpayers who register and qualify for specific programs. The rules and examples presented herein are to facilitate the computation of incentives for an Alabama affiliated group filing a consolidated Alabama income tax return.

(2)(a) **Consolidated Filing Fee:** Incentives in the form of credits may not be used to reduce the Alabama affiliated group's consolidated filing fee, however, estimated tax payments exceeding the current year's net tax liability may be applied to the yearly consolidated filing fee.

(b) EXAMPLE: The consolidated income tax return indicates a tax liability of $50,000 after accounting for any net operating loss (NOL). The separate filing fee is $2,500. The available incentives from various programs total $55,000. Because the available tax credit exceeds the tax liability, the usable tax credit is limited to $50,000. The taxpayer must remit the $2,500 filing fee when the return is filed.

(3) **Separation from the Affiliated Group:** An incentive for which a member has qualified continues exclusively with such member upon separation from an Alabama affiliated group.

(4) **Applicability of Incentives:** Several members in an Alabama affiliated group may qualify for one or more of the various incentives provided by the state. Each qualifying member within the Alabama affiliated group must compute its incentives separately each year.

(a) Generally. The various usable incentives, as computed separately by each eligible member of the group, shall be added and that total shall be made available to reduce the consolidated income tax liability reflected on the consolidated income tax return. The use of incentives to reduce consolidated income of an Alabama affiliated group is limited by both the availability of allowable incentives to the qualifying member of the Alabama affiliated group and the consolidated income of the Alabama affiliated group.

(b) Records Retention. For each tax period for which a member qualifies for an incentive, the member must first compute its separate Alabama income tax liability as if it were filing a separate return using the format of Form 20C. Each member's separate income tax liability and incentives computations shall be retained by both the member and Common Parent corporation for a period of seven years. These records shall be made available to the Department in their entirety (including details pertaining to any tax credit, job development fees, or other incentives for each tax period) upon written request by the Department. The Department will disallow incentives for failure to retain the required detailed documentation.

(c) Carryovers. No incentive shall be available for carryover by the member to the following tax period of that member unless permitted by the code section providing the credit or incentive.

(d) Incentives Non-Refundable. No incentive may produce a refund of tax not paid by the member nor be carried over unless specifically permitted by the section of the Code of Alabama 1975 which grants the incentive. An NOL will therefore reduce the amount of available tax credit which each member computes. The resulting credit will be the usable credit.

(e) Net Operating Losses. The total amount of usable incentives from each member's calculation will be available for use on the consolidated return. The usability of such amount shall be further restricted by all NOLs used to reduce the consolidated income tax liability.

(5) **EXAMPLE:** Consolidated Group A has elected to file an Alabama consolidated income tax return for tax period ending December 31, 1999. Group A has Common Parent Y and Subsidiary Z. Common Parent Y is a coal producer and has qualified for the coal income tax credit pursuant to § 40-18-220, Code of Alabama 1975. Subsidiary Z is a manufacturer and has qualified for an income tax credit and job development fees under the State Industrial Development Authority program pursuant to §§ 41-10-44.8 and 40-18-200.

(a) Common Parent Y will compute its Alabama income tax liability and available coal credit as if filing a separate income tax return. In this instance Common Parent Y has computed its Alabama taxable income as $10,000 before any NOL and its available coal credit as $5,000. Common Parent Y has an NOL of $9,000 attributable to Alabama operations. Common Parent Y's usable coal credit is computed as ($10,000 less $9,000 NOL) x 5% = $50. The credit may not exceed the liability of the Alabama affiliated group.

(b) Subsidiary Z will compute its Alabama income tax liability and available income tax credit as if filing a separate income tax return. Subsidiary Z has computed its Alabama taxable income as $10,000,000 and income attributable to the project as $5,000,000 (under a written agreement with the Department). Subsidiary Z withheld $200,000 in job development fees (JDF) during this tax period. Subsidiary Z made principal and interest payments during this tax period of $2,000,000 to satisfy its project obligations. Subsidiary Z has an available income tax credit of $250,000 ($5,000,000 income from project x 5% tax rate =$250,000). Note: § 41-10-44.8(a)(1) provides that the income tax credit shall be the lesser of the income tax due from project income or the payments made to satisfy project obligations and § 41-10-44.8(a)(2) provides for JDF retention only to the extent that payments made to satisfy project obligations exceed the income tax credit permitted in § 41-10-44.8(a)(1) ($2,000,000 debt payments - $250,000 income tax credit = 1,750,000 maximum job development fees, limited to Subsidiary Z's $200,000 actual job development fees withheld.) The credit for

the Alabama affiliated group would be limited to $200,000 for the incentive relating to Subsidiary Z and the ability of the Alabama affiliated group to utilize this incentive is further limited by the consolidated tax liability of the Alabama affiliated group.

(c) Group A has consolidated taxable income attributable to Alabama of $15,000,000 before any NOLs. Group A has a consolidated NOL of $9,000 attributable to Alabama. Group A has an adjusted Alabama consolidated taxable income of $14,991,000 ($15,000,000 less $9,000 NOL). Group A has an Alabama consolidated income tax liability of $749,550 ($14,991,000 consolidated taxable income x 5% tax rate). Group A has a credit available of $250,050 ($50 coal credit from Common Parent Y plus $250,000 income tax credit from Subsidiary Z). Group A's net Alabama income tax liability is $499,500 ($749,550 income tax liability less $250,050 usable credits).

(6) **EXAMPLE:** Consolidated Group G has Common Parent P and Subsidiaries A, B, C and D. Consolidated Group G has elected to file an Alabama consolidated income tax return for tax period ending December 31, 1999. Common Parent P and Subsidiary D do not qualify for any incentives in this state. Subsidiary A is a small business located in an Enterprise Zone and has qualified for certain tax incentives pursuant to § 41-23-30. Subsidiary B is a manufacturer and has qualified for the capital credit pursuant to § 40-18-194. Subsidiary C is qualified for the Basic Skills Education Program (BSEP) credit pursuant to § 40-18-136, and is also located in an Enterprise Zone and has qualified for tax credits pursuant to § 41-23-22.

(a) Subsidiary A computes its Alabama taxable income as $100,000. Subsidiary A has a 50% income tax exemption (per agreement with the Alabama Department of Economic and Community Affairs). The income tax exemption is $2,500 ($100,000 taxable income x 5% = $5,000 income tax x 50% exemption). The tax exemption is available as a $2,500 credit.

(b) Subsidiary B computes its Alabama taxable income as $10,000,000. Income from the project is computed at $1,000,000 (per written agreement with Alabama Department of Revenue). Subsidiary B's available capital credit is $75,000 (determined by total investment of project x 5% as computed on Form INT-2). Subsidiary B's tax liability generated from the project is $50,000 ($1,000,000 project income x 5% tax rate). The credit may not exceed the subsidiary's separately calculated Alabama tax liability; therefore, the credit is limited to $50,000.

(c) Subsidiary C computes its Alabama taxable income as $150,000. Subsidiary C computes its BSEP credit as $800 and its Enterprise Zone Credit as $3,000. Subsidiary C uses $2,000 of the Enterprise Zone Credit to satisfy its Alabama franchise tax liability. Subsidiary C has available a potential income tax credit of $1,800 ($3,000 Enterprise Zone credit less $2,000 used for franchise tax plus $800 BSEP credit).

(d) Group G computes its consolidated Alabama taxable income as $25,000,000. The group has no NOL available. Group G has an income tax liability of

$1,250,000 (taxable income x 5% tax rate). Group G has income tax credits available of $54,300 ($2,500 from Subsidiary A, $50,000 from Subsidiary B, and $1,800 from Subsidiary C). Group G utilizes these income tax credits and has an adjusted Alabama income tax liability of $1,195,700 ($1,250,000 less income tax credits of $54,300). Group G has made estimated income tax payments of $1,200,000 using Form 20CD. Group G has an overpayment of $4,300 (estimated payments of $1,200,000 less adjusted income tax liability of $1,195,600). Group G has a consolidated filing fee due of $5,000. Group G may apply the overpayment of $4,300 to the consolidated filing fee and remit $700 at the time the return is filed.

(7) This rule is effective for all tax periods beginning after December 31, 1998.

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Authority: §§ 40-2A-7(a)(5), 40-18-39 and 40-18-57, Code of Alabama 1975.
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