

SUMMARY OF ALABAMA FILM INCENTIVES

SUMMARY

In order to promote the development of the entertainment industry in Alabama, the Alabama Film Office is authorized to award up to **\$10 million** each year in incentives to production companies that produce certain projects in Alabama. This legislation, which was passed in 2009, is currently codified as Article 3, Chapter 7A, Title 41, Code of Alabama 1975. Available incentives include an income tax rebate and an exemption from the state portion of sales, use, and lodgings taxes, if the production project meets certain conditions.

TYPES OF PROJECTS ELIGIBLE TO QUALIFY FOR INCENTIVES

Incentives are available to entities that produce a Qualified Production. Qualified Productions include a wide variety of entertainment content as long as some portion of the project is produced in Alabama. Qualified Productions include motion pictures; soundtracks for motion pictures; documentaries; most television programming (except those exclusively for news, weather, sports or financial market reports); sound recordings; videos and music videos; commercials; and video games.

AVAILABLE INCENTIVES

Rebate

A Qualified Production Company may be eligible to receive a Rebate of a portion of the expenditures incurred to produce a Qualified Production. The amount of the Rebate equals 25% of certain Production Expenditures (discussed below) on the project that are incurred in Alabama plus 35% of the payroll paid to Alabama residents.

The Rebate may be used to offset any Alabama income tax liability of the Qualified Production Company for the tax year during which such expenditures were paid or incurred. If the amount of the Rebate exceeds the Qualified Production Company's Alabama income tax liability, that excess will be refunded to the Qualified Production Company.

State Sales, Use, and Lodging Tax Exemption

In addition to the Rebate, a Qualified Production Company approved to receive incentives may receive an exemption of certain state sales, use, and lodging taxes. By presenting an Alabama Department of Revenue exemption certificate to Alabama vendors, the Qualified Production Company will be exempt from the state portion of sales, use, and lodgings taxes. The exemption only applies to the state portion, however, not to the local portion of those taxes. Thus, the Qualified Production Company would still be liable for the local portion of any applicable sales, use, or lodgings taxes on its expenditures in Alabama, even if it is approved to receive incentives. The exemption is effective on the date the exemption certificate is issued by the Department of Revenue.

REQUIREMENTS FOR INCENTIVES

Production Expenditure Requirement

In order to be eligible to receive incentives, a Qualified Production Company must incur a minimum amount of Production Expenditures. The required amount of Production Expenditures varies based on the type of production.

- **Soundtracks:** A Qualified Production Company must incur total Production Expenditures of at least \$50,000, but no Rebate shall be available for Production Expenditures in excess of \$300,000.
- **All Other Qualified Productions:** A Qualified Production Company must incur total Production Expenditures of at least \$500,000, but no Rebate shall be available for Production Expenditures in excess of \$10,000,000.

To be exempt from state sales, use, and lodgings taxes, a Qualified Production Company must spend, in the aggregate, \$150,000 or more in connection with one or more approved projects within a consecutive 12-month period.

Production Expenditures include most preproduction, production, and postproduction expenditures incurred by a Qualified Production Company in Alabama after the Film Office approves a project. Expenditures incurred before a Qualified Production Company receives approval for incentives are not qualified Production Expenditures eligible for incentives.

In addition, for an expenditure to qualify as a “Production Expenditure,” it must be directly related to the production of the approved project. Examples of Production Expenditures include: payroll; set construction and operation; wardrobe; makeup; set accessories and related services; costs associated with photography and sound synchronization; lighting; and related services and materials. A list of qualifying Production Expenditures is available [here](#).

Selection by Film Office

To receive any incentives, a production company must submit an application for approval to the Film Office, along with a non-refundable \$100 application fee. Generally, applications must be received at least 30 days prior to the commencement of production activities within Alabama. Applications for incentives are available [here](#).

The Film Office shall review each application submitted for consideration. The Qualified Production Company must meet the Production Expenditure requirements of any incentives for which it applied. In approving applications, the Film Office shall consider, among other things, the following criteria:

- The project’s economic impact upon the State of Alabama;
- The project’s affect upon workforce development in the State of Alabama; and

- The educational opportunities for the people of the State of Alabama that are created by the project.

The Film Office retains the sole discretion to determine the projects that are selected and the amount of incentives available to each. Upon review of the application, the Film Office shall determine the amount of total incentives assigned to the Qualified Production Company. Such amount shall be determined based on the project's estimated Production Expenditures and the amount of incentives available at the time the application is approved.

Within 10 days of approval, the Film Office shall issue a letter to the Qualified Production Company and to the Department of Revenue notifying both that the Qualified Production has been approved. That approval letter shall also include notification of the maximum amount of total incentives for which the project has been approved. Upon receipt of the letter of approval, the Department of Revenue will issue a state sales, use, and lodgings tax exemption certificate to the Qualified Production Company.

Amended Applications

If a Qualified Production Company exceeds or anticipates exceeding its estimated Production Expenditures and desires to receive additional incentives, it may amend its application. An amended application, which is submitted by a previously approved Qualified Production Company with respect to the same project, shall include the total Production Expenditures associated with the project rather than just those additional expenditures for which additional incentives are requested.

Ongoing Requirements

In addition to meeting the Production Expenditure requirements, a Qualified Production Company receiving incentives must also meet certain ongoing requirements.

- **Compliance with the Laws of Alabama:** Within 60 days of commencing operations in Alabama, a Qualified Production Company must register with the Alabama Secretary of State, comply with all requirements of doing business within the State, and must provide written evidence of doing so to the Film Office before completion of production activities within Alabama on the project.
- **Filing Alabama Tax Returns:** A Qualified Production Company must file any and all tax returns required by the laws of the State of Alabama (e.g., an initial business privilege tax return, as provided by Ala. Code § 40-14A-29, or a composite income tax return as provided by Ala. Code § 40-18-24.2, which requires a Qualified Production Company taxed under Subchapter K of the Internal Revenue Code to file a composite income tax return and make a composite income tax payment on behalf of its nonresident owners at the highest marginal tax rate).
- **Biannual Review.** Once production activities on an approved project have commenced, the Film Office shall review the Qualified Production Company's progress towards completion of the project at least twice every 12 months. If the Film Office

determines that the Qualified Production Company has not made reasonable progress towards completion of the project, it may revoke, or suspend any incentives for which the Qualified Production Company was approved until reasonable progress is demonstrated.

- **Completion of Production Activities in Alabama.** Within 60 days of completion of production activities within Alabama on the project, the Qualified Production Company shall return the state sales, use, and lodgings tax exemption certificate to the Department of Revenue. Within 60 days of completion of the project, the Qualified Production Company must provide the Film Office with a complete list of crew, cast, and vendors employed in the project.

Final Incentive Audit and the Audit Report

A Final Incentive Audit is an audit, by a CPA, of the books and records of a Qualified Production Company performed upon completion of the production activities in Alabama associated with the project. Such audit shall verify each Production Expenditure claimed by a Qualified Production Company.

The Qualified Production Company shall submit the audit report to both the Film Office and to the Department of Revenue within 120 days of completion of production activities in Alabama on the project, unless an extension is granted. If the Qualified Production Company does not timely submit the audit report, the Qualified Production Company may:

- Become liable for the state sales, use, and lodgings taxes that would otherwise have been paid had the incentives not been granted; and
- Forfeit any incentives otherwise awarded to and/or set aside for the Qualified Production Company's Rebate.

Noncompliance Provisions

If the Qualified Production Company incurs Production Expenditures in excess of \$500,000 (or \$50,000 if producing a motion picture soundtrack), but less than the amount of Production Expenditures estimated in its application, then the Film Office may reduce the amount of the Rebate available to the Qualified Production Company based on the difference between the total estimated Production Expenditures and the actual Production Expenditures.

If the Qualified Production Company incurs Production Expenditures in excess of \$150,000, but less than \$500,000, then the Qualified Production Company shall not be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted, but the Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it.

If the Qualified Production Company incurs Production Expenditures in an amount less than \$150,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted. However, if the Qualified Production Company pays the state sales, use, and lodgings

taxes due within 60 days of the date on which the audit report was submitted, the Qualified Production Company shall incur no penalties. The Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it, unless it was producing a motion picture soundtrack and incurred Production Expenditures in excess of \$50,000.

If the Qualified Production Company that is producing a soundtrack to be used in a motion picture incurs Production Expenditures in an amount less than \$50,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption from the same such taxes not been granted. However, if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of the date on which the audit report was submitted, the Qualified Production Company shall incur no penalties. The Qualified Production Company shall not be entitled to any Rebate otherwise awarded to and/or set aside for it.

CONTACT US

Questions regarding the applicability of the incentives and how to qualify should be directed to:

Alabama Film Office

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1 HB69
2 107049-3
3 By Representatives Lindsey, Irons, Hilliard, Black, Newton
4 (D), Warren, Coleman, Dukes, Ward, Morrow, Gipson, Davis,
5 McMillan, Ford, Galliher, Baker (A), Collier, Ison, Bridges,
6 Sanderford, Todd, Hammon, McClurkin, McCampbell, Fincher,
7 Hill, Mask, Grimes, Wood, Ball, Laird, Spicer, Faust, Martin,
8 Drake, Robinson (J), Curtis, McLaughlin, Shiver, Keahey, Hall,
9 Clouse, Millican, Bentley, Gaston, Barton, Scott, Thigpen,
10 Vance, McCutcheon and Boyd
11 RFD: Education Appropriations
12 First Read: 03-FEB-09
13 PFD: 01/05/2009

1
2 ENROLLED, An Act,

3 Relating to the development in Alabama of the
4 entertainment industry; to attract investment for qualified
5 productions and qualified production companies; to help
6 encourage increased employment opportunities within the state
7 for the entertainment industry and increased global
8 competition with other states in fully developing economic
9 development options in Alabama within the industry; to provide
10 rebates for qualified production projects; to provide
11 exemptions from certain sales, use, and lodging taxes for
12 production companies working in Alabama; to add new provisions
13 to the Code of Alabama 1975, relating to income taxes and
14 investment partnerships and limited liability companies; to
15 require filing composite returns and remittance of taxes on
16 certain nonresident partners or members; to provide for
17 exemptions; to provide an offset for lost revenues resulting
18 from the incentives offered; to specifically repeal inactive
19 statutes providing exemptions which have expired by repealing
20 Act 2001-975, 2001 Regular Session, as amended by Act
21 2005-305, 2005 Special Session, and to specifically repeal
22 Section 40-18-24.1, Code of Alabama 1975; and to amend Section
23 40-2A-11, Code of Alabama 1975, to provide further for
24 penalties for failure to pay tax.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act may be cited as the
2 "Entertainment Industry Incentive Act of ~~2008~~ 2009.

3 Section 2. The following is hereby found and
4 declared by the Legislature of Alabama:

5 (1) Although Alabama is filled with attractive
6 natural resources, a growing workforce, and other resources
7 attractive to the entertainment industry, Alabama has not
8 developed its potential in terms of attracting the
9 entertainment industry to the state by offering production
10 incentives for qualified productions not previously offered in
11 Alabama.

12 (2) Entertainment industry incentives offered by
13 other states attract valuable projects to their states which
14 stimulate local economies, use local manpower, offer other
15 employment and entrepreneurial opportunities for state
16 residents, and provide public awareness of the natural
17 resources available in their states.

18 (3) Because Alabama does not currently offer a
19 viable incentive package to the industry, Alabama cannot
20 effectively compete with other states for attracting industry
21 projects and those projects locate elsewhere.

22 (4) For Alabama to compete nationally or
23 internationally for the location and production of more
24 projects in Alabama and to foster a growing entertainment

1 industry in Alabama, industry specific production incentives
2 are immediately necessary.

3 (5) The Legislature recognizes and confirms the
4 planning and promotion of the entertainment industry are of
5 vital importance to the economic development of Alabama as are
6 the recruitment, expansion, and retention of industrial
7 development within the state, and the promotion of the
8 entertainment industry should be included as an integral part
9 of any comprehensive economic development strategy plan
10 promoted by the state and state agencies.

11 Section 3. For purposes of this act, the following
12 terms shall have the following meanings:

13 (1) COMPANY. A corporation, partnership, limited
14 liability company, or any other business entity.

15 (2) DEPARTMENT. The Alabama Department of Revenue.

16 (3) ENTERTAINMENT INDUSTRY. Those persons or
17 entities engaged in the production of entertainment content as
18 herein defined under paragraph a. of subdivision (8).

19 (4) EXPENDED IN ALABAMA. In the case of tangible
20 property, property which is acquired or leased from a source
21 within the State of Alabama; in the case of services, services
22 performed for a qualified production project in the State of
23 Alabama.

24 (5) OFFICE. The Alabama Film Office.

1 (6) PAYROLL. All salary, wages, and other
2 compensation, including related benefits, including
3 specifically, but not limited to, compensation and benefits
4 provided to resident and nonresident producers, directors,
5 writers, actors, and other personnel involved in qualified
6 production projects in Alabama.

7 (7) PRODUCTION EXPENDITURES.

8 a. The term includes preproduction, production, and
9 postproduction expenditures incurred in the State of Alabama
10 that are directly used in a state-certified production,
11 including, but not limited to, the following: Set construction
12 and operation, wardrobe, makeup, set accessories, and related
13 services; costs associated with photography and sound
14 synchronization, lighting, and related services and materials;
15 editing and related services; rental of facilities and
16 equipment; leasing of vehicles; costs of food and lodging;
17 cost of catering; digital or tape editing, film processing,
18 transfer of film to tape or digital format; transfer direct to
19 DVD, cable, or satellite for distribution; sound mixing,
20 special and visual effects including duplication, film
21 processing digital, DVD, music composition, and satellite
22 distribution; total aggregate payroll; music; airfare;
23 insurance costs of bonding; or other similar production
24 expenditures as determined by rule or regulation.

1 b. The term includes financial contributions or
2 educational or workforce development in partnership with
3 related educational institutions, or local industry
4 organizations, or both, contributed toward the furtherance of
5 the local entertainment media industries.

6 c. The term does not include postproduction
7 expenditures for marketing or any amounts that are paid to
8 persons or entities as a result of their participation in
9 profits from the exploitation of a motion picture production.

10 (8) QUALIFIED PRODUCTION.

11 a. The term means entertainment content created in
12 whole or in part within the state, including motion pictures;
13 soundtracks for motion pictures; documentaries; long-form,
14 specials, miniseries, series, sound recordings, videos and
15 music videos, and interstitials television programming;
16 interactive television; interactive games; video games;
17 commercials; infomercials; any format of digital media,
18 including an interactive website that is intended for national
19 or international distribution or exhibition to the general
20 public; and any trailer, pilot, video teaser, or demo created
21 primarily to stimulate the sale, marketing, promotion, or
22 exploitation of future investment in either a product or a
23 qualified production via any means and media in any digital
24 media format, film, or videotape, provided such program meets
25 all the underlying criteria of a qualified production.

1 b. The term does not include any ongoing television
2 program created primarily as news, weather, or financial
3 market reports, a production featuring current events,
4 sporting events, an awards show or other gala event, a
5 production whose sole purpose is fund-raising, a long-form
6 production that primarily markets a product or service, a
7 production used for corporate training or in-house corporate
8 advertising or other similar productions; nor does the term
9 include any production for which records are required to be
10 maintained under 18 U.S.C. §2257 with respect to sexually
11 explicit content; nor does the term mean or include any form
12 of gambling, gaming, wagering, or pari-mutuel wagering
13 activity or enterprise.

14 (9) QUALIFIED PRODUCTION COMPANY.

15 a. The term means a company engaged in the business
16 of producing a Qualified Production, as that term is defined.

17 b. The term does not mean or include any company
18 owned, affiliated, or controlled, in whole or in part, by any
19 company or person which is in default on a loan.

20 (10) RESIDENT OF ALABAMA. A natural person and, for
21 the purpose of determining eligibility for the incentives
22 provided by this act, any person domiciled in the State of
23 Alabama and any other person who maintains a permanent place
24 of abode within the state and spends in the aggregate more
25 than six months of each year within the State of Alabama.

1 (11) STATE-CERTIFIED PRODUCTION. A Qualified
2 Production approved by the office, produced by a Qualified
3 Production Company.

4 Section 4. (a) Beginning January 1, ~~2008~~ 2009, a
5 Qualified Production Company shall be entitled to a rebate for
6 Production Expenditures, as defined in this act, related to a
7 State-Certified Production. The rebate shall be equal to 25
8 percent of the State-Certified Production's Production
9 Expenditures excluding payroll paid to residents of Alabama
10 plus 35 percent of all payroll paid to residents of Alabama
11 for the State-Certified Production, provided the total
12 Production Expenditures for a project must equal or exceed at
13 least five hundred thousand dollars (\$500,000), but must not
14 exceed ten million dollars (\$10,000,000). A single episode in
15 a television series shall be considered a single production
16 project for purposes of this section.

17 (b) A qualified production company shall be entitled
18 to the rebate for production expenditures as provided in
19 subsection (a) for a qualified project that is limited only to
20 the production of a soundtrack used in a motion picture,
21 provided that the production expenditures for the soundtrack
22 project must equal or exceed at least fifty thousand dollars
23 (\$50,000), but must not exceed three hundred thousand dollars
24 (\$300,000).

1 (c) The rebate described in this section may be
2 applied to any income tax liability applicable to a Qualified
3 Production Company.

4 (d) If the rebate under this section exceeds a
5 Qualified Production Company's Alabama income tax liability,
6 the excess of rebate over liability shall be rebated to the
7 Qualified Production Company.

8 (e) The Commissioner of the Department of Revenue
9 shall promulgate rules necessary to administer this section.

10 Section 5. Commercial or financial information given
11 in confidence that is not required to be disclosed pursuant to
12 this act or any other state statute, and trade secrets,
13 including, but not limited to, information relating to
14 formulas, patterns, compilations, programs, devices, methods,
15 techniques, processes, drawings, cost data, customer lists,
16 film or television scripts, or detailed production budgets
17 shall be treated by the Office and the Department as
18 proprietary and confidential.

19 Section 6. A Qualified Production Company that
20 intends to expend in the aggregate one hundred fifty thousand
21 dollars (\$150,000) or more in connection with one or more
22 Qualified Productions in the State of Alabama within a
23 consecutive 12-month period, upon making application for,
24 meeting the requirements of, and receiving written
25 certification of that designation from the Office, shall be

1 exempted from the payment of state sales, use, and lodging
2 taxes levied pursuant to Sections 40-23-2, 40-23-61, and
3 40-26-1, respectively, of the Code of Alabama 1975, on funds
4 expended in Alabama in connection with the Qualified
5 Productions.

6 Section 7. (a) A Qualified Production Company that
7 intends to produce all or any part of a Qualified Production
8 project in Alabama and desires to be exempted from the payment
9 of state sales, use, and lodging taxes levied pursuant to
10 Sections 40-23-2, 40-23-61, and 40-26-1, respectively, of the
11 Code of Alabama 1975, shall provide an estimate of total
12 expenditures expected to be made in Alabama in connection with
13 the production project. The estimate of expenditures shall be
14 filed with the Office before the commencement of the project
15 in Alabama.

16 (b) At the time the Qualified Production Company
17 provides the estimate of expenditures to the Department, it
18 also shall designate a member or representative of the company
19 to work with the Office and the Department on reporting of
20 expenditures and other information necessary to take advantage
21 of the sales, use, and lodging tax exemptions afforded by this
22 act.

23 (c) (1) An application for the sales, use, and
24 lodging tax exemptions provided herein may be accepted only
25 from those Qualified Production Companies that report

1 anticipated expenditures in the State of Alabama in the
2 aggregate equal to or exceeding one hundred fifty thousand
3 dollars (\$150,000) in connection with the production of one or
4 more Qualified Production projects in the State of Alabama
5 within a consecutive 12-month period.

6 (2) The application shall be approved by the Office.

7 (3) Once the application is approved by the Office,
8 the Department shall issue sales, use, and lodging tax
9 exemption certificates to the Qualified Production Company as
10 evidence of the exemptions. The exemptions are effective on
11 the date the certificate is issued by the Department.

12 (d) A Qualified Production Company that is approved
13 and receives sales, use, and lodging tax exemption
14 certificates, but fails to expend one hundred fifty thousand
15 dollars (\$150,000) within a consecutive 12-month period, is
16 liable for the sales, use, and lodging taxes that would have
17 been paid had the approval not been granted; except that the
18 company must be given a 60-day period in which to pay the
19 sales, use, and lodging taxes without incurring penalties. The
20 sales, use, and lodging taxes are considered due as of the
21 date the tangible personal property was purchased in or
22 brought into Alabama for use, storage, or consumption for
23 purposes of state sales and use taxes and due as of the date
24 that lodgings occur for purposes of state lodging taxes.

1 (e) Upon completion of a Qualified Production, the
2 company shall return the sales, use, and lodging tax exemption
3 certificates to the Department and submit a report to the
4 Office of the actual expenditures made in Alabama in
5 connection with the Qualified Production.

6 (f) Notwithstanding any provision of Act 98-192 of
7 the 1998 Regular Session (Acts 1998, p. 310), the sales and
8 use tax exemption provided for herein shall only apply to the
9 state sales and use tax.

10 Section 8. The Department and the Office may
11 collectively promulgate rules as are necessary to implement
12 and administer this act.

13 Section 9. For fiscal years ending September 30,
14 ~~2008~~ 2009, the aggregate cap of incentives granted under the
15 provisions of this bill shall not exceed five million dollars
16 (\$5,000,000) for all Qualified Production Companies. For
17 fiscal years ending September 30, ~~2009~~ 2010, the aggregate cap
18 of incentives granted under the provisions of this bill shall
19 not exceed seven million five hundred thousand dollars
20 (\$7,500,000) for all Qualified Production Companies. For
21 fiscal years ending September 30, ~~2010~~ 2011, and for all
22 subsequent fiscal years thereafter, the aggregate cap of
23 incentives granted under the provisions of this bill shall not
24 exceed ten million dollars (\$10,000,000) for all Qualified
25 Production Companies.

1 Section 10. The following new sections are added to
2 the Code of Alabama 1975, to read as follows:

3 §40-18-24.2.

4 (a) For purposes of this section and Section
5 40-18-24.3, the following terms shall have the following
6 meanings:

7 (1) MEMBER. An individual, estate, trust, business
8 trust as defined in Section 40-18-1, a corporation as defined
9 in Section 40-18-1, or Subchapter K entity as defined in
10 Section 40-18-1, that is a partner in a general, limited,
11 limited liability, or limited liability limited partnership,
12 or a member of a limited liability company.

13 (2) NONRESIDENT. a. An individual who is not a
14 resident of or domiciled in this state during the applicable
15 tax year; b. a nonresident trust as defined in Section
16 40-18-1; c. a nonresident estate as defined in Section
17 40-18-1; d. a foreign corporation as defined in Section
18 40-18-1, not commercially domiciled in this state during the
19 applicable tax year; and e. a Subchapter K entity or business
20 trust that is created or organized under the laws of a
21 jurisdiction other than this state and that is not
22 commercially domiciled in this state.

23 (3) PASS-THROUGH ENTITY. A partnership or other
24 entity classified as a Subchapter K entity under Section
25 40-18-1. Neither estates nor trusts, including business

1 trusts, are included in this definition or subject to this
2 section except in their capacity as a nonresident member, as
3 herein defined, of a pass-through entity or lower-tier
4 pass-through entity.

5 (4) QUALIFIED INVESTMENT PARTNERSHIP. A partnership
6 or other entity classified as a Subchapter K entity, or a
7 business trust as defined in Section 40-18-1, that meets all
8 of the following requirements for the applicable tax period:

9 a. No less than 90 percent of the cost of the
10 entity's total assets consists of qualifying investment
11 securities and office facilities and tangible personal
12 property reasonably necessary to carry on its activities in
13 this state as an investment partnership.

14 b. No less than 90 percent of its gross income
15 consists of interest, dividends, distributions, and gains and
16 losses from the sale or exchange of qualifying investment
17 securities, and management fees paid by its members.

18 c. An authorized officer, partner, member, or
19 manager of the entity files on behalf of the entity a
20 certification that it meets the above two criteria with
21 respect to the tax period covered by the certification, in a
22 form and at the time prescribed by the Department of Revenue.

23 (5) QUALIFYING INVESTMENT SECURITIES. Except as
24 provided in Section 40-18-24.3, includes all of the following:

1 a. Common stock, including preferred or debt
2 securities convertible into common stock; and preferred stock,
3 including debt securities convertible into preferred stock.

4 b. Bonds, debentures, and other debt securities.

5 c. Deposits and any other obligations of banks and
6 other financial institutions.

7 d. Stock and bond index securities, future
8 contracts, derivative securities, warrants or options on
9 securities, and other similar financial securities and
10 instruments.

11 e. Interests in a Subchapter K entity that itself
12 qualifies as a qualified investment partnership.

13 f. Other similar or related financial or investments
14 contracts, instruments, or securities.

15 (b) (1) Except as provided in subsection (c), a
16 pass-through entity shall file with the Department of Revenue,
17 at the time the entity's annual return is required to be filed
18 with the Department of Revenue for each taxable year, a
19 composite income tax return on behalf of its nonresident
20 members and shall report and pay the income tax imposed by
21 this chapter at the highest applicable marginal rate provided
22 in Section 40-18-5 on the nonresident members' distributive
23 shares of the income of the pass-through entity apportioned
24 and allocated at the entity level to this state under Chapter
25 27 of this title.

1 (2) A nonresident member that has been included in a
2 composite income tax return filed pursuant to this section may
3 file its own Alabama income tax return and shall receive
4 credit for Alabama income tax paid on the member's behalf by
5 the pass-through entity.

6 (3) The Department of Revenue may enter into
7 agreements to permit the filing of annual composite income tax
8 returns on behalf of one or more nonresident owners of
9 pass-through entities who are not defined as nonresident
10 members above, or of other forms of business entities the
11 income of which is taxable at the owner level.

12 (c) (1) The pass-through entity shall be liable to
13 the State of Alabama for the payment of the tax required to be
14 remitted under this section, together with applicable interest
15 and penalties, but shall not be liable to any such member for
16 any amount withheld from distributions to or the distributive
17 share of such member and remitted in compliance with this
18 section. A member of a pass-through entity that is itself a
19 pass-through entity (a "lower-tier pass-through entity") shall
20 be subject to the same requirement to file a composite income
21 tax return with respect to the distributive share of the
22 apportioned and allocated income of the lower-tier
23 pass-through entity. The Department of Revenue shall apply the
24 Alabama income tax remitted by a pass-through entity on behalf
25 of the lower-tier pass-through entity to the remittance

1 obligation imposed by this subsection on the lower-tier
2 pass-through entity.

3 (2) A pass-through entity shall, at the time of
4 payment pursuant to this section, deliver to the Department of
5 Revenue a return on a form prescribed by the department
6 showing the total amounts paid or credited to its nonresident
7 members, the amounts of income tax remitted in accordance with
8 this section, if any, and any other information the department
9 may reasonably require. A pass-through entity shall furnish to
10 its nonresident members annually, but not later than the 15th
11 day of the third month after the end of its taxable year, a
12 record of the amount of Alabama income tax remitted on behalf
13 of such member, on a form prescribed by the department.

14 (3) Notwithstanding subsection (b), a pass-through
15 entity shall not be required to remit Alabama income tax on
16 behalf of a nonresident member if any of the following
17 applies:

18 a. The Department of Revenue determines by
19 regulation or ruling that the nonresident member's income
20 should not be subject to composite return reporting, such as a
21 member that is exempt from Alabama Income Tax.

22 b. The pass-through entity is a qualified investment
23 partnership, or a publicly traded partnership as defined by 26
24 U.S.C. §7704(b) that is treated as a partnership for federal
25 income tax purposes, which provides for inspection by the

1 Department of Revenue upon reasonable notice a list of the
2 names of each of its nonresident owners or unit holders
3 together with their addresses, taxpayer identification
4 numbers, and other information reasonably requested by the
5 department.

6 §40-18-24.3.

7 (a) Notwithstanding any other provision of this
8 chapter to the contrary, including Sections 40-18-2 and
9 40-18-24.2, no income tax shall be due the State of Alabama
10 from a nonresident member of a qualified investment
11 partnership, or from the qualified investment partnership
12 itself, with respect to the nonresident member's distributive
13 share of interest, dividends, distributions, or gains and
14 losses from qualifying investment securities owned by the
15 entity, as long as the nonresident member does not actively
16 participate in the day-to-day management of the entity.
17 Provided, however, that in the event a qualified investment
18 partnership invests in the qualifying investment securities of
19 an entity that is majority owned by a nonresident member of
20 the qualified investment partnership, income tax shall be due
21 by such nonresident member with respect to the member's
22 distributive share of any interest, dividends, distributions,
23 or gains and losses from the qualifying investment securities
24 of the other entity. For purposes of this section and Section
25 40-18-24.2, "majority owned" means ownership of more than 50

1 percent of the issued and outstanding voting stock of the
2 other entity, applying the attribution rules of 26 U.S.C.
3 §318.

4 (b) The terms "nonresident," "member," "qualified
5 investment partnership," and "qualifying investment
6 securities" shall have the same meanings ascribed to them in
7 Section 40-18-24.2.

8 (c) The Department of Revenue shall promulgate
9 reasonable rules to effectuate the intent of this section,
10 including rules permitting certain corporate members of
11 qualified investment partnerships to be eligible for the
12 provisions of this section. Further, if the Commissioner of
13 Revenue determines that this section is being used in an
14 abusive fashion principally to avoid Alabama income tax
15 liability, the commissioner shall have the authority to
16 promulgate rules to distribute, apportion, or allocate gross
17 income in order to clearly reflect the income of any such
18 entity engaged in such tax avoidance.

19 Section 11. Section 40-2A-11, Code of Alabama 1975,
20 is amended to read as follows:

21 "§40-2A-11.

22 (a) Failure to timely file return. If a taxpayer
23 fails to file any return required to be filed with the
24 department on or before the date prescribed therefor,
25 determined with regard to any extension of time for filing,

1 there shall be assessed as a penalty the greater of 10 percent
2 of any additional tax required to be paid with the return or
3 fifty dollars (\$50).

4 (b) Failure to timely pay tax.

5 (1) If a taxpayer fails to pay to the department the
6 amount of tax shown as due on a return required to be filed on
7 or before the date prescribed for payment of the tax,
8 determined with regard to any extension of time for payment,
9 there shall be added as a penalty one percent of the amount of
10 the tax due if the failure to pay is for not more than one
11 month, with an additional one percent for each additional
12 month or fraction thereof during which failure to pay
13 continues, not exceeding 25 percent in the aggregate. In lieu
14 of the penalty provided in the immediately preceding sentence,
15 for any tax for which a monthly or quarterly return is
16 required, or for which no return is required, the department
17 shall add a failure to timely pay penalty of 10 percent of the
18 unpaid amount shown as tax due on the return or the amount
19 stated in the notice and demand.

20 (2) If a taxpayer fails to pay to the department any
21 amount of any tax required to be shown on any return, which is
22 not so shown, within 30 calendar days from the date of the
23 first notice and demand therefore, there shall be added as a
24 penalty one percent of the amount of the tax due if the
25 failure to pay is for not more than one month, with an

1 additional one percent for each additional month or fraction
2 thereof during which failure to pay continues, not exceeding
3 25 percent in the aggregate. In lieu of the penalty provided
4 in the immediately preceding sentence, for any tax for which a
5 monthly or quarterly return is required, or for which no
6 return is required, the department shall add a failure to
7 timely pay penalty of 10 percent of the unpaid amount stated
8 in the notice and demand unless payment is received within 30
9 calendar days from the date of the first notice and demand.

10 (c) Underpayment due to negligence. If any part of
11 any underpayment of tax is due to negligence or disregard of
12 rules or regulations, there shall be added to the tax an
13 amount equal to five percent of that part of the tax
14 attributable to negligence or disregard of rules or
15 regulations.

16 For purposes of this subsection, the term
17 "negligence" includes any failure to make a reasonable attempt
18 to comply with Title 40, and the term "disregard" includes any
19 careless, reckless or intentional disregard.

20 (d) Underpayment due to fraud. If any part of any
21 underpayment of tax required to be shown on a return is due to
22 fraud, there shall be added to the tax an amount equal to 50
23 percent of that portion of the underpayment which is
24 attributable to fraud.

1 For purposes of this section, the term "fraud" shall
2 have the same meaning as ascribed to the term under 26 U.S.C.
3 Section 6663, as in effect from time to time.

4 (e) Frivolous return penalty. If a taxpayer files a
5 "frivolous return," as that term is used in 26 U.S.C. Section
6 6702, that taxpayer may be liable for a penalty of up to two
7 hundred fifty dollars (\$250).

8 (f) Frivolous appeal penalty. If any appeal to the
9 administrative law division or circuit court is determined to
10 be frivolous or primarily for the purpose of delay or to
11 impede collection of any tax, a penalty of two hundred fifty
12 dollars (\$250) or 25 percent of the tax in question, whichever
13 is greater, shall be assessed in addition to any tax due.

14 (g) Penalties not exclusive. The penalties provided
15 in this section for failure to timely file a return, failure
16 to timely pay tax, filing a frivolous return, filing a
17 frivolous appeal, or negligence may be asserted against the
18 same taxpayer for the same tax period. If the fraud penalty is
19 asserted, no other penalties shall be asserted.

20 (h) Waiver of penalties. Notwithstanding the
21 foregoing, no penalty under this title or Section 10-2B-15.02
22 shall be assessed, or if assessed, shall be waived upon a
23 determination of reasonable cause. Reasonable cause shall
24 include, but not be limited to, those instances in which the

1 taxpayer has acted in good faith. The burden of proving
2 reasonable cause shall be on the taxpayer.

3 (i) Discount sustained for just causes. All other
4 provisions of tax laws notwithstanding, the Commissioner of
5 the Department of Revenue, upon review of the circumstances
6 involved, may authorize continuance of a statute-allowable
7 discount when timely payment is made, but filing is delayed
8 for just causes.

9 (j) Penalty and interest assessed as tax. All
10 penalties and interest administered by the department shall be
11 assessed and collected in the same manner as taxes.

12 (k) Penalty not to apply to registration and titling
13 of motor vehicles. The penalties provided herein shall not
14 apply to the registration or titling of motor vehicles.

15 Section 12. All laws or parts of laws which conflict
16 with this act are repealed, including, but not limited to, Act
17 2001-975, 2001 Regular Session, as amended by Act 2005-305,
18 2005 Special Session, and Section 40-18-24.1, Code of Alabama
19 1975.

20 Section 13. It is the express intent of the new
21 Sections 40-18-24.2 and 40-18-24.3 of the Code of Alabama
22 1975, added by Section 10 to provide an offset for lost
23 revenues provided by the incentives, rebates, and exemptions
24 provided to the entertainment industry in this act.

1 Section 14. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 15. (a) Except as provided in subsection
6 (b), this act shall become effective immediately following its
7 passage and approval by the Governor, or its otherwise
8 becoming law, and shall apply retroactively to January 1, ~~2008~~
9 2009, for purposes of qualifying for rebates, and sales, use,
10 and lodging tax exemptions provided in this act.

11 (b) Section 40-18-24.2 and Section 40-18-24.3, Code
12 of Alabama 1975, added by Section 10 of this act shall become
13 effective for all tax years beginning after December 31, 2008,
14 following its passage and approval by the Governor, or its
15 otherwise becoming law.

