

MEMORANDUM

TO Members, Tax Section of the Alabama State Bar

FROM Bruce P. Ely, Chair, State Legislative Review Committee

DATE May 21, 2008

SUBJECT Legislative Wrap-Up

The 2008 regular session ended with a whimper as the powerful forces of K-12 (including the AEA) did battle with the equally powerful forces of higher education, with Governor Riley caught in the middle as mediator. Unfortunately, neither side blinked. The session died late Monday night without the Senate ever getting past the first item on its lengthy special order calendar—the proposed education trust fund budget for FY 2008-2009. Thus, none of the tax-related bills that we predicted last week at the annual meeting of the Tax Section as having at least a “reasonable chance” of passage *even made it out of the starting gate* for their final race.

Following is a list of tax bills of statewide importance that crossed the finish line before Monday and have already been signed into law by the Governor. These bills, together with the other tax-related bills of statewide interest that were introduced but did not pass, are posted on our firm’s website: www.bradleyarant.com/pg_tax_bills.cfm. There were also several bills granting tax exemptions to specified charitable organizations that passed, but those are not within the scope of this report.

HB 234 (Act 2008-275) by Rep’s William Thigpen et al. – enacts the Alternative and Renewable Energy Act of 2008 and grants property tax abatements to any plant, property or facility that meets both of the following: (a) it produces electricity from alternative energy resources and has capital costs of at least \$100 million or hydropower production and has capital costs of at least \$5 million, AND (b) all or a portion of the plant, property or facility is owned by a regulated utility or similar cooperative or quasi-governmental authority. Abatements of ad valorem taxes only apply to qualifying projects filing statements of intent after 2011.

Capital (income tax) credits can also be earned by these entities for either of these projects, but only after 2011. Alabama Power Company was, as one would expect after reading the bill, a major proponent thereof.

HB 43 (Act 2008-377) by Rep. Richard Lindsey – authorizes an income tax deduction of up to \$5,000 annually to individuals for contributions post-2007 to the Alabama Prepaid Affordable College Tuition (PACT) Program or the Alabama College Education Savings (ACES) Program. Recapture provisions for “nonqualified withdrawals” are also included.

SB 213 (Act 2008-174) by Sen. Arthur Orr – amends the Morgan County privilege license (sales and use) tax act to retroactively “clarify” (*to May 13, 1993!*) that sales tax, not use tax, is due on any sales transaction closing within specified areas of the County, “regardless of where the seller is located.” Any vendor selling goods into the County—by whatever means and wherever located—is automatically considered to be doing business in the County and therefore subject to County sales tax. The act further states that its provisions override any inconsistent Alabama DOR regulation or rule. Apparently, the Morgan County Commission hasn’t read the U.S. Supreme Court’s 1992 landmark ruling in *Quill Corp. v. North Dakota*...

Why discuss a local act here? Because this act will likely disqualify Alabama from becoming a full/voting member of the Streamlined Sales and Use Tax (“SST”) implementing states, since SST membership requires uniformity of all local sales/use tax levies of member-states. A recent University of Tennessee study projected that Alabama was losing over *\$300 million annually* in foregone use taxes due to Internet and other cross-border sales into the State.

SB 147 by Sen. Roger Bedford (Act 2008-396) – and companion HB 40 by Rep. Frank McDaniel – brings Alabama into compliance with U.S. Department of Labor regulations and avoids some \$700 million annually in additional FUTA taxes. If the bill had not passed this time, Alabama employers were facing an increase from \$56 to \$434 in tax per employee. The Alabama Department of Industrial Relations had received a one year waiver from the US DOL, which expired at the end of this session.

What’s Next? The Governor must call a special session, and he indicated yesterday that he expects that to occur within the next 10 days or so. The most likely candidate, tax-wise, to be included in his “call” for the session is HB 350, amending the so-called “add-back” statute and which endured several iterations but finally reached a point that the Governor, the Business Associations’ Tax Coalition (BATC), AEA, and a number of multistate companies could agree on. The final version of that bill is also posted on our firm’s website (above) for your review. We certainly hope that several other tax bills that we predicted last week might survive the final cut will be re-considered.

cc: Keith B. Norman, Esq.