STATE OF ALABAMA

PROCLAMATION

BY THE GOVERNOR

WHEREAS, on March 13, 2020, I declared the existence of a state public health emergency based on the appearance of the 2019 novel coronavirus known as COVID-19 in the State of Alabama;

WHEREAS that initial proclamation included provisions designed to assist in preventing the spread of COVID-19 and in mitigating the consequences of COVID-19;

WHEREAS I have issued supplemental proclamations to further address the occurrence of COVID-19 in the State of Alabama on March 18, 20, 23, and 26, April 2, 3, and 13, May 8 and 21, June 9 and 30, July 2, 15, and 29, August 21 and 27, September 30, November 5, and December 9 of 2020;

WHEREAS new implications of COVID-19 come to light on a continual basis, requiring flexibility and adaptability by all levels of government within the State of Alabama;

WHEREAS the COVID-19 pandemic severely curtailed the Legislature's 2020 regular session, causing the Legislature to miss nine—or thirty percent—of the thirty legislative days available for the consideration of legislation, *see* Ala. Const. art. IV, § 76;

WHEREAS the abbreviated 2020 regular session prevented the Legislature from safely, fully, and fairly considering the taxation, under Alabama law, of certain financial stimulus and relief measures provided to Alabama individuals and businesses by Congress in the federal Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136;

WHEREAS the abbreviated 2020 regular session also prevented the Legislature from safely, fully, and fairly considering the extension of the Alabama Jobs Act and the Alabama Renewal Act's Growing Alabama tax-credit programs, which were and are set to expire on previously established "sunset" dates; and

WHEREAS state government must deploy every reasonable means to address the pandemic's economic implications as well as its health-and-safety implications;

NOW THEREFORE, I, Kay Ivey, Governor of the State of Alabama, pursuant to the relevant provisions of the Alabama Emergency Management Act of 1955, as amended, Ala. Code §§ 31-9-1, *et seq.*, do hereby proclaim the existence of conditions that warrant implementation of additional extraordinary measures and relief during the state public health emergency now in effect in order to guard public health and protect human life. By the powers conferred on me in the Emergency Management Act and any other relevant powers conferred on me by the Constitution and laws of the State of Alabama, I therefore proclaim and direct all of the following:

I. Exclusion of federal CARES Act benefits from taxation under Alabama law

A. **Findings.**

1. Through the CARES Act, Congress provided emergency federal tax credits, advance refunds, loan forgiveness and certain other benefits to help individuals and businesses—and thus the national economy—survive the impact of business closures and economic losses resulting from the COVID-19 pandemic. According to the Alabama Department of Revenue, Alabama citizens and businesses have received more than $7.2 billion in such benefits under the CARES Act; some 70,000 Alabama businesses received loans under the CARES Act's Paycheck Protection Program, and some 2.5 million Alabama citizens received CARES Act stimulus payments.

2. Although Congress excluded these CARES Act benefits from taxation at the federal level, these benefits could become taxable for some Alabama taxpayers under existing Alabama tax law. Taxation of these benefits under Alabama law, however, would deny the full value of the benefits to the citizens and businesses Congress intended to help, thereby reducing the benefits' full effectiveness as a COVID-19 relief measure.

3. Just as it did nationally, the COVID-19 pandemic has caused a significant slowdown in economic activity in Alabama. Based on my consultation with Alabama business leaders and legislators, I find that excluding CARES Act benefits from taxation under Alabama law is necessary to promote, protect, and secure the economy of the State of Alabama—especially now, when Alabama taxpayers need clear guidance before 2021 tax-return filing deadlines—because doing so will put money back into taxpayers' hands and thereby further assist Alabama's recovery from the economic crisis precipitated by COVID-19.

B. **CARES Act direct benefits.** For the reasons set forth in subsection I.A, any tax credits, advance refund amounts, or other direct benefits a taxpayer receives under the federal CARES Act, as it now exists, are hereby deemed excluded from:

1. Alabama income taxation, and

2. All calculations in determining a taxpayer's federal income-tax deduction for Alabama income-tax purposes under Chapter 18 of Title 40 of the Alabama Code.

The Commissioner of Revenue shall use all available legal authorities to revise those portions of the applicable tax return forms and instructions in any way necessary to effectuate the relief afforded by this subsection.

C. **CARES Act loan forgiveness.**

1. For the reasons set forth in subsection I.A, any amount of cancellation-of-indebtedness income resulting from a loan forgiven pursuant to section 1106 of the CARES Act, as it now exists, is hereby deemed excluded from:

   a. The calculation of income taxes imposed by Chapter 18 of Title 40 of the Alabama Code, and from the calculation of financial institution excise taxes imposed by Chapter 16 of Title 40 of the Alabama Code, to the same extent as such amount is exempted from federal income taxes by provisions of the CARES Act, and

b. All calculations in determining a taxpayer's federal income-tax deduction under Chapter 18 or Chapter 16 of Title 40 of the Alabama Code.

The Commissioner of Revenue shall use all available legal authorities to revise those portions of the applicable tax return forms and instructions in any way necessary to effectuate the relief afforded by this subsection.

2. Any amount of cancellation-of-indebtedness income resulting from a loan forgiven pursuant to section 1106 of the CARES Act, as it now exists, shall only be considered for Alabama tax purposes in determining the deductibility of otherwise deductible expenses—such as payroll, utilities, mortgage interest, and rent—allowed to be paid with exempt funds to the same extent as such expenses are deductible in calculating federal income tax.

II. Extension of the Alabama Jobs Act and Growing Alabama tax-credit programs

A. **Findings**

1. In this time of economic challenge precipitated by the COVID-19 pandemic, encouraging businesses to expand in Alabama will both improve public health and preserve the economic well-being of the citizens of Alabama by reducing unemployment and increasing wages.

2. Two Alabama tax-credit programs—one found in the Alabama Jobs Act, Ala. Code §§ 40-18-370 *et seq.*, and another found in the Alabama Renewal Act, *id.* §§ 40-18-410 *et seq.*, known as the Growing Alabama tax credit—have proven particularly effective in encouraging business expansion in Alabama.

   a. The Alabama Jobs Act's tax credits incentivize companies to hire workers and pay them well and to undertake construction projects. Since that Act's effective date in July 2015, these tax credits have played a vital role in securing 171 projects in 44 different counties. These projects, in turn, have resulted in new capital investment in the State totaling $16.65 billion and the creation of 29,249 new jobs.

   b. The Growing Alabama tax credit incentivizes taxpayers to finance site-preparation work and other projects undertaken by state and local economic development organizations. Since the Alabama Renewal Act's effective date in July 2016, the Growing Alabama tax credit has funded 17 projects—including four tech accelerators, one STEM marketing program, and twelve site-preparation and public-infrastructure improvement projects. The site-preparation and infrastructure-improvement projects, in turn, have resulted in 2,361 new direct jobs with an annual new payroll of $93 million and 3,609 new indirect jobs with a new annual payroll of $119.2 million.

3. Despite these tax-credit programs' effectiveness, the Alabama Jobs Act contains a sunset date of December 31, 2020, *see* Ala. Code § 40-18-382, and the Alabama Renewal Act contains a similar provision for the Growing Alabama tax credit set for the "close of fiscal year 2020," or September 30, 2020, *see id.* § 40-1-416. The Legislature did not have the opportunity to safely, fully, and fairly consider extending these sunset dates during its most recent regular session, which was abbreviated as a result of the COVID-19 pandemic.

4. Failing to extend the Alabama Jobs Act and Growing Alabama tax credits now could jeopardize potential jobs and investments in Alabama.

a. As of December 1, 2020, the Alabama Department of Commerce was actively negotiating thirty-seven economic-development projects in which Alabama Jobs Act tax credits had been offered. Affecting 17 counties, these projects—which are still pending and will be placed at risk without extension of the Alabama Jobs Act tax credits—involve $1.9 billion in likely direct capital investment and 6,039 likely new direct jobs.

b. As of December 1, 2020, the Alabama Department of Commerce was actively negotiating one project involving the Growing Alabama tax credit which is still pending and will be placed at risk without extension of the Growing Alabama tax credit. The project involves over $1 billion in likely direct capital investment and 1,000 likely new direct jobs.

c. Cumulatively, without the extension of the Alabama Jobs Act and Growing Alabama tax credits, the State is at risk of losing almost $3 billion in likely direct capital investment and over 7,000 likely new direct jobs.

5. Based on my consultation with Alabama business leaders and legislators, I find that extending the sunset dates for the Alabama Jobs Act and Growing Alabama tax credits is necessary to promote, protect, and secure the economy of the State of Alabama because it will promote job growth, higher wages, business expansion, new investment, and economic diversification at a time when Alabama most needs each of these things as a result of the COVID-19 pandemic.

6. Based upon current COVID-19 guidelines from the U.S. Centers for Disease Control and Prevention and the Alabama Department of Public Health, it may not be safe or prudent at this time to call the Legislature into special session to consider extending these tax-credit programs.

7. Extending the relevant sunset dates now will thus restore to the Legislature a full, fair, and safe opportunity to consider the future of these highly successful economic-development programs without loss of the substantial economic benefits that the State can expect to receive from them.

B. **Alabama Jobs Act tax-credit sunset date.** For the reasons set forth in subsection II.A, the Alabama Jobs Act's current sunset date, as set forth in Ala. Code § 40-18-382, shall be extended from December 31, 2020, to the earlier of (i) the enactment of a bill to extend the Alabama Job's Act tax credits or (ii) the last day of the first regular session of the Legislature following the issuance of this proclamation.

C. **Growing Alabama tax-credit sunset date.** For the reasons set forth in subsection II.A, the Growing Alabama tax credit's current sunset date, as set forth in Ala. Code § 40-18-416, shall be the earlier of (i) the enactment of a bill to extend the Growing Alabama tax credit or (ii) the last day of the first regular session of the Legislature following the issuance of this proclamation.

D. **Administrative action.** The relevant executive branch agencies and officials shall use all available legal authorities to effectuate the relief afforded by subsections II.B and II.C. In addition, these agencies and officials shall continue to work collaboratively with members of the Legislature to expedite consideration of legislation extending the Alabama Jobs Act and Growing Alabama tax credit's sunset dates as soon as possible at the next session of the Legislature following the issuance of this proclamation.

FURTHER, to the extent a provision in this supplemental proclamation conflicts with any provision of state law, that law is hereby suspended for the duration of this state of emergency, and this proclamation shall control.

FURTHER, I declare that this proclamation and all subsequent orders, laws, rules, or regulations issued pursuant hereto shall remain in full force and effect for the duration of the public health emergency unless rescinded or extended by proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal to be affixed by the Secretary of State at the State Capitol in the City of Montgomery on this 11th day of December 2020.

Kay Ivey
Governor

ATTEST:

John H. Merrill
Secretary of State