ACT #2021 - 1

HB170

209328-4

By Representatives Garrett and Whitt

RFD: Ways and Means Education

First Read: 02-FEB-21

PFD: 01/28/2021

ENROLLED, An Act,

Relating to corporate income tax; to provide for an exclusion from Alabama individual income tax for federal tax credits, advance refunds, qualified disaster relief payments, Small Business Administration subsidy payments, Emergency EIDL grants, Targeted EIDL advances, student loans, or loan forgiveness resulting from the federal Coronavirus Aid, Relief, and Economic Security Act, Taxpayer Certainty and Disaster Relief Tax Act, or COVID-related Tax Relief Act; to provide an income and financial institution excise tax exemption for any amounts received from the Coronavirus Relief Fund; to amend Section 40-27-1, Code of Alabama 1975, to change the apportionment factor to a single sales factor; to retroactively decouple from the new federal law 26 U.S.C. § 951A relating to Global Intangible Low-Taxed Income and 26 U.S.C. § 118(b)(2); to change how a corporation limits its business interest expense deduction; and to provide that an Electing Pass-Through Entity shall be taxed at the entity level instead of its owners, members, partners, or shareholders.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 2 through 4 of this act shall be known and may be cited as the "Alabama Taxpayer Stimulus Freedom Act of 2021."

Section 2. (a) Any tax credits or advance refund amounts received as a result of the federal Coronavirus Aid, Relief, and Economic Security Act, as provided in I.R.C. § 6428, or as a result of Section 272 of the COVID-related Tax Relief Act of 2020 (RELIEF Act), Pub. L. 116-260, as provided in I.R.C. § 6428A, or as a result of other similiar COVID-related relief measures for individuals enacted by the United States Congress, as applicable to the 2021 tax year, shall be excluded from Alabama individual income taxation.

(b) Any tax credits or advance refund amounts received as a result of the federal Coronavirus Aid, Relief, and Economic Security Act, as provided in I.R.C. § 6428, or as a result of Section 272 of the RELIEF Act, Pub. L. 116-260, as provided in I.R.C. § 6428A, or as a result of other similar COVID-related relief measures for individuals enacted by the United States Congress shall also be excluded from any and all calculations in determining a taxpayer's federal income tax deduction pursuant to Section 40-18-15, Code of Alabama 1975.

(c) Principal or interest payments incurred by an employer on any qualified education loan that is excluded from the employee's federal gross income pursuant to I.R.C. § 127(c)(1)(B), under the provisions of Section 2206(a) of the Coronavirus Aid, Relief, and Economic Security Act, as amended by Section 120 of the Taxpayer Certainty and Disaster Relief Tax Act of 2020, Pub. L. 116-260, shall be excluded from the

gross income of an employee for income taxes imposed by Chapter 18 of Title 40, to the same extent as the amount is excluded from the federal gross income.

(d) Any amount received from a Qualifed Emergency Federal Aid Grant shall be excluded from the gross income of the grant recipient for income taxes imposed by Chapter 18 of Title 40, Code of Alabama 1975, to the same extent as the amount is excluded from the federal gross income under Section 277 of the RELIEF Act.

(e) Any Alabama taxpayer subject to the tax imposed by Chapter 16 or Chapter 18 of Title 40, Code of Alabama 1975, shall be exempt from recognizing as income any amount received from the state Coronavirus Relief Fund provided by the Congress of the United States to the State of Alabama from the Coronavirus Aid, Relief, and Economic Security Act.

(f) Any qualifying disaster relief payment received by an Alabama taxpayer that would be excluded from federal income taxation pursuant to I.R.C. § 139 as a result of the Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak shall be excluded from the gross income of the taxpayer for income taxes imposed by Chapter 18 of Title 40, Code of Alabama 1975, to the same extent as the amount is excluded from federal gross income.

Section 3. Any amount of cancellation of indebtedness income resulting from a loan forgiven under Section 1106 or Section 1109 of the federal Coronavirus Aid, Relief, and Economic Security Act as redesignated or amended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. 116-260, or under Section 311 thereof:

(1) Shall be exempt from the financial institution excise tax imposed by Chapter 16 of Title 40, Code of Alabama 1975, and the income taxes imposed by Chapter 18 of Title 40, Code of Alabama 1975, to the same extent as the amount is exempt from the federal income tax under Sections 276 or 278 of the RELIEF Act.

(2) Shall not be considered in determining the deductibility of otherwise deductible expenses, such as payroll, utilities, mortgage interest, and rent, allowed to be paid with the exempt funds, to the same extent as the expenses remain deductible in calculating federal income tax under Sections 276 or 278 of the RELIEF Act.

(3) Shall also be excluded from any and all calculations in determining a taxpayer's federal income tax deduction pursuant to Chapter 16 or Chapter 18 of Title 40, Code of Alabama 1975.

Section 4. Any subsidy payment for covered loans as described in Section 1112(c) of the federal Coronavirus Aid, Relief, and Economic Security Act; any amounts received as

Emergency EIDL Grants under Section 1110 of the federal Coronavirus Aid, Relief, and Economic Security Act, as amended by Section 332 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act; and any amounts received as Grants to Shuttered Venues or as Targeted EIDL Advances under Sections 324 or 331, respectively, of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act:

(1) Shall be exempt from financial institution excise tax imposed by Chapter 16 of Title 40, Code of Alabama 1975, and the income taxes imposed by Chapter 18 of Title 40, Code of Alabama 1975, to the same extent as the amount is exempt from federal income tax under Section 278 of the RELIEF Act.

(2) Shall not be considered in determining deductibility of otherwise deductible expenses, such as payroll, utilities, mortgage interest, and rent, allowed to be paid with the exempt funds, to the same extent as the expenses remain deductible in calculating federal income tax under Section 278 of the RELIEF Act.

(3) Shall also be excluded from any and all calculations in determining a taxpayer's federal income tax deduction pursuant to Chapter 16 or Chapter 18 of Title 40, Code of Alabama 1975.

Section 5. Sections 6 through 7 of this act shall be known and may be cited as, "The Alabama Business Tax Competitiveness Act."

Section 6. Section 40-27-1, Code of Alabama 1975, is amended to read as follows:

"§40-27-1.

"The following Multistate Tax Compact is hereby approved, adopted, and enacted into law by the State of Alabama:

Multistate Tax Compact

Article I. Purposes.

"The purposes of this compact are to:

"1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

"2. Promote uniformity or compatibility in significant components of tax systems.

"3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

"4. Avoid duplicative taxation.

Article II. Definitions.

"As used in this compact:

"1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"2. "Subdivision" means any governmental unit or special district of a state.

"3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency, or other person acting as a business entity in more than one state, but does not include any individual.

"4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

"5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

"6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

"7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property, or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

"8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

"9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of articles III, IV, and V of this compact shall apply only to the taxes specifically designated therein and the provisions

of article IX of this compact shall apply only in respect to determinations pursuant to article IV.

Article III. Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

"1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his or her income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportion-

ment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

"2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

"3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division of Income.

"1. As used in this article, unless the context otherwise requires:

"(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

"(c) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

"(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association,

credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

"(e) "Nonbusiness income" means all income other than business income.

"(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water, or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government, or governmental agency.

"(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

"(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

"(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

"2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or an individual, shall allocate and apportion his or her or its net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his or her or its income from activities subject to this article, the taxpayer may elect to allocate and apportion his or her or its entire net income as provided in this article.

"3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he or she or it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

"4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

"5. (a) Net rents and royalties from real property located in this state are allocable to this state.

"(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

"(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

"6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

"(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and

the taxpayer is not taxable in the state in which the property had a situs.

"(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

"7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

"8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

"(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

"(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting

procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

"9. All business income shall be apportioned to this state by multiplying the income by ~~a fraction, the numerator of which is the property factor plus the payroll factor plus twice~~ the sales factor~~, and the denominator of which is four~~.

"~~10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.~~

"~~11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.~~

"~~12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.~~

~~"13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.~~

~~"14. Compensation is paid in this state if:~~

~~"(a) The individual's service is performed entirely within the state;~~

~~"(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or~~

~~"(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.~~

" ~~15.~~ 10. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

"~~16.~~ 11. Sales of tangible personal property are in this state if~~:~~

"~~(a)~~ ~~T~~the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale~~; or~~.

~~"(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.~~

"~~17.~~ 12. Sales, other than sales described in Section ~~16~~ 11, are in this State if the taxpayer's market for the sale is in this state.

"(a) The taxpayer's market for a sale is in this state:

"(1) In the case of sale, rental, lease, or license of real property, if and to the extent the property is located in this state;

"(2) In the case of rental, lease, or license of tangible personal property, if and to the extent the property is located in this state;

(3) In the case of sale of a service, if and to the extent the service is delivered to a location in this state;

"(4) In the case of lease or license of intangible property; or sale or other exchange of intangible property if

the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in this state; provided that intangible property used in marketing a good or service to a consumer is used in this state if the good or service that is marketed using the intangible property is purchased by a consumer who is in this state; and

"(5) In the case of sale of intangible property other than that referenced in subdivision (4) above; where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area; if and to the extent the intangible property is used in or otherwise associated with this state, provided that any sale of intangible property not otherwise described in this subdivision or subdivision (4) above shall be excluded from the numerator and the denominator of the sales factor.

"(b) If the state of assignment cannot be determined under subsection (a), it shall be reasonably approximated.

"(c) If the taxpayer is not taxable in a state to which a sale is assigned under subsection (a), or if the state of assignment cannot be determined under subsection (a) or reasonably approximated under subsection (b), the sale shall be excluded from the denominator of the sales factor.

~~10.~~ 13. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

"(a) Separate accounting;

"(b) The exclusion of any one or more of the factors;

"(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

"(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

"1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him or her with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state,

and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

"2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

"1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission

written notification of the designation and identity of the alternate. The Attorney General of each party state or his or her designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such Attorneys General, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

"(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

"(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

"(d) The commission shall adopt an official seal to be used as it may provide.

"(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

"(f) The commission shall elect annually, from among its members, a chair, a vice-chair, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his or her duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

"(g) Irrespective of the civil service, personnel, or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

"(h) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

"(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

"(j) The commission may establish one or more offices for the transacting of its business.

"(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

"(l) The commission annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant or services, borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

"2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chair, vice-chair, treasurer, and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

"(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

"(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

"3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

"(a) Study state and local tax systems and particular types of state and local taxes.

"(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

"(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

"(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

"4. (a) The commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

"(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in

obtaining information employed in applying the formula contained in this paragraph.

"(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1(i) of this article: Provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

"(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

"(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

"(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

"1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of article IV of this compact.

"2. Prior to the adoption of any regulation, the commission shall:

"(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

"(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit

relevant written data and views, which shall be considered fully by the commission.

"3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

"1. This article shall be in force only in those party states that specifically provide therefor by statute.

"2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records, or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records and other documents, and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it

in order to reimburse itself for the actual costs incurred in making the audit.

"3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property, or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he or she may be required to attend for such purpose at any time and place fixed by the commission within the state of which he or she is a resident: Provided that such state has adopted this article.

"4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order

being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

"5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

"6. Information obtained by an audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

"7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party

states or any of their subdivisions are not superseded or invalidated by this article.

"8. In no event shall the commission make any charge against a taxpayer for an audit.

"9. As used in this article, "tax," in addition to the meaning ascribed to it in article II, means any tax or license fee imposed in whole or in part for revenue purposes.

## Article IX. Arbitration.

"1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of article VII.

"2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

"3. Whenever a taxpayer who has elected to employ article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure

arbitration of an apportionment or allocation, if he or she is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him or her to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

"4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he or she is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

"5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

"6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

"7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

"8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and

allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he or she is required on account of his or her service to forego the regular compensation attaching to his or her public employment, but any such board member shall be entitled to expenses.

"9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

"10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

"11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

"12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

"13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X. Entry Into Force and Withdrawal.

"1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

"2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

"3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the

board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

"Nothing in this compact shall be construed to:

"(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement article III 2. of this compact.

"(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: Provided that the definition of "tax" in article VIII 9. may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI 3. may apply.

"(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity, or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

"(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

Section 7. Section 40-18-35.2 is added to the Code of Alabama 1975, to read as follows:

§40-18-35.2.

All amounts included in income under 26 U.S.C. § 951A shall be deducted from federal taxable income for purposes of computing taxable income under this chapter. However, any amount subtracted under this section is allowed only to the extent such amount is not deductible in determining federal taxable income. As to any amount

subtracted under this section, there shall be added to such taxable income all expenses deducted under any section of 26 U.S.C. on the taxpayer's return for the taxable year which are attributable, directly or indirectly, to such subtracted amount. The deduction provided by 26 U.S.C. § 250 shall apply only to the extent the same income was included in Alabama taxable income under this chapter.

Section 8. Section 40-18-35.3 is added to the Code of Alabama 1975, to read as follows:

§40-18-35.3.

The amount of any contribution by the State of Alabama or any political subdivision thereof computed in accordance with 26 U.S.C. § 118(b)(2), to the extent that the amount is included in the corporation's federal taxable income pursuant to 26 U.S.C. § 118(b)(2) shall be deducted from federal taxable income for purposes of computing taxable income under this chapter.

Section 9. Section 40-18-39.1 is added to the Code of Alabama to read as follows:

§40-18-39.1.

(a) For a tax year in which the business interest expense deduction of the taxpayer, or of any federal consolidated return group of which the taxpayer is a member, is not limited pursuant to 26 U.S.C. § 163(j) on the federal income tax return for the tax year, the taxpayer shall not be

subject to a limitation on the taxpayer's business interest expense deduction other than the limitation provided in Section 40-18-35(b) for interest expense with a related member.

(b)(1) For a tax year in which the business interest expense deduction of the taxpayer, or of any federal consolidated return group of which the taxpayer is a member, is limited pursuant to 26 U.S.C. § 163(j) on the federal income tax return for the tax year, the taxpayer shall calculate the business interest expense deduction limitation under 26 U.S.C. § 163(j), for purposes of computing Alabama taxable income, on a separate-entity basis, or in the case of the members of an Alabama affiliated group, as defined in Section 40-18-39(b)(1), which files an Alabama consolidated return as defined in Section 40-18-39(b)(2), on the basis of the Alabama consolidated return group.

(2) The gross receipts test under 26 U.S.C. § 163(j)(3) shall apply to each separate entity which is subject to Alabama income tax, or in the case of an Alabama affiliated group, as defined in Section 40-18-39(b)(1), which files an Alabama consolidated return as defined in Section 40-18-39(b)(2), to the Alabama consolidated return group.

(3) The limitation provided in subsection (a) will apply before the application of the limitation provided in Section 40-18-35(b) for interest expense with a related

member. For purposes of the limitation provided in Section 40-18-35(b), the net interest deduction limitation calculated under the provisions of this subsection shall be allocated on a pro rata basis to the interest income recipients. Any resulting interest expense carryforward shall also be allocated on a pro rata basis to the interest income recipients. In any tax year in which a taxpayer deducts business interest expense on its federal tax return, or the tax return of the federal consolidated group of which it is a member, which was carried forward from a previous tax year and which is also subject to the add back provisions for interest expense with a related member under Section 40-18-35(b), the taxpayer shall apply the provisions of Section 40-18-35(b) to the amount of the interest expense carried forward in addition to the amount accrued or incurred in the current tax year. Taxpayers which determine their business interest expense deduction pursuant to the provisions of this subsection shall submit to the Department of Revenue the appropriate forms, schedules, and statements needed in order to confirm the business interest expense deduction was calculated correctly.

(4) A taxpayer with nonbusiness income and/or nonbusiness interest expense shall allocate nonbusiness interest expense to nonbusiness income and shall calculate a limit on the business interest expense deduction associated with nonbusiness income and nonbusiness interest expense on a

pro rata basis. Nonbusiness interest expense shall be assigned to nonbusiness income and shall only be allowed to reduce nonbusiness income.

Section 10. (a) This section shall be known and may be cited as the, "Alabama Electing Pass-Through Entity Tax Act."

(b) For the purposes of this act, the following term shall have the following meaning:

(1) ELECTING PASS-THROUGH ENTITY. Any Alabama S corporation, as is defined by Section 40-18-160, Code of Alabama 1975, and any Subchapter K Entity, as is defined by Section 40-18-1, Code of Alabama 1975, that has made an election pursuant to subsection (d) to pay Alabama income tax at the rate prescribed in subsection (e).

(c) For tax years beginning on or after January 1, 2021, any Alabama S corporation, as is defined by Section 40-18-160, Code of Alabama 1975, and any Subchapter K Entity, as is defined by Section 40-18-1, Code of Alabama 1975, may elect to be taxed as an Electing Pass-Through Entity.

(d) An Electing Pass-Through Entity shall submit the appropriate form to the Department of Revenue at any time during the tax year or on or before the fifteenth day of the third month following the close of that tax year for which the entity elects to be taxed as an Electing Pass-Through Entity. This election shall be binding for that year and all

subsequent tax years and shall not be revoked unless the Electing Pass-Through Entity submits the appropriate form to the Department of Revenue at any time during a subsequent tax year or on or before the fifteenth day of the third month following the close of that tax year for which the entity elects to no longer be taxed as an Electing Pass-Through Entity. Both the election to become an Electing Pass-Through Entity and the revocation of that election shall be accomplished by a vote by or written consent of the members of the governing body of the entity as well as a vote by or written consent of the owners, members, partners, or shareholders holding greater than 50 percent of the voting control of the entity, within the time prescribed above.

(e) An Electing Pass-Through Entity shall pay a tax at the highest marginal rate provided in Section 40-18-5, Code of Alabama 1975, calculated in accordance with the provisions of Section 40-18-24 or Section 40-18-161 and Section 40-18-162, Code of Alabama 1975, as appropriate, and apportioned in accordance with the provisions of Chapter 27 of Title 40, Code of Alabama 1975. An Electing Pass-Through Entity shall be subject to the provisions of Section 40-18-80.1 Code of Alabama 1975, (estimated tax for corporations). In calculating taxable income for the purposes of this subsection, Alabama tax paid under the provisions of

this subsection shall not be deducted in calculating Alabama taxable income.

(f) The owners, members, partners, or shareholders shall not be liable for the tax otherwise imposed by Chapters 16 and 18 of Title 40, Code of Alabama 1975, on their pro rata or distributive shares of the Electing Pass-Through Entity's income.

(g) The adjusted basis of the owners, members, partners, or shareholders of an Electing Pass-Through Entity in their stock or other ownership interests in the entity shall be calculated without regard to the election under this section.

(h) Notwithstanding anything in Chapter 18 of Title 40, Code of Alabama 1975, to the contrary, neither the election by an Electing Pass-Through Entity under this section nor its revocation of the election shall be considered a liquidation or termination of the entity or an otherwise taxable event.

Section 11. No refunds shall be granted or paid for tax years ending before January 1, 2020, related to the provisions of this act.

Section 12. The Department of Revenue may adopt rules for the implementation and administration of this act.

Section 13. Sections 2 through 4 of this act shall be effective for tax years ending after the enactment of the

federal Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136. Section 7 of this act shall apply retroactively for tax years beginning after December 31, 2017. Section 8 shall apply to contributions made on or after December 23, 2017. Sections 6, 9, and 10 of this act shall become effective for tax years beginning on or after January 1, 2021. All other sections of this act shall be effective immediately, following its passage and approval by the Governor, or its otherwise becoming law.

Mac McCutcheon

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 04-FEB-21, as amended.

Jeff Woodard
Clerk

Senate 10-FEB-21 Passed

APPROVED 2-12-2021

TIME 8:32 AM

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2021-1
Bill Num...: H-170

Recv'd 02/12/21 09:29amSLF

SOR

Garrett

PONSORS

Whitt

## HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 170

YEAS 95 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

**CONFERENCE COMMITTEE**

House Conferees _____

_____

_____

## SENATE ACTION

| | |
|---|---|
| DATE: 2-4 | 2021 |
| RD 1 RFD F+TE | |

This Bill was referred to the Standing Committee of the Senate on F+TE and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) ____ w/sub ____ by a vote of yeas 10 nays 0 abstain 0 this 9th day of February 2021

_____, Chairperson

| | |
|---|---|
| DATE: 2-9-21 | 20__ |
| RF FAU | RD 2 CAL |

DATE: 20__

RE-REFERRED ☐ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 170.

YEAS 27 NAYS 0

PATRICK HARRIS, Secretary

FURTHER SENATE ACTION (OVER)