

1 SB98
2 209328-1
3 By Senators Roberts, Gudger, Barfoot, Elliott, Givhan,
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5 RFD: Finance and Taxation Education
6 First Read: 02-FEB-21
7 PFD: 01/27/2021

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8 SYNOPSIS: Under the current provisions of the Code of
9 Alabama 1975, amounts received as a result of
10 federal tax credits or advance refunds and other
11 economic relief payments provided under the federal
12 Coronavirus Aid, Relief, and Economic Security
13 (CARES) Act and subsequent federal COVID relief
14 legislation are not excluded from Alabama
15 individual income taxation.

16 Under the current provisions of the Code of
17 Alabama 1975, cancellation of indebtedness income
18 resulting from the forgiveness of small business
19 loans forgiven under Sections 1106 and 1109 of the
20 federal Coronavirus Aid, Relief, and Economic
21 Security (CARES) Act and the federal Economic Aid
22 for Hard-Hit Businesses, Nonprofits, and Venues Act
23 is not excluded from Alabama individual income
24 taxation and may not be excluded from Alabama
25 corporate income taxation and financial institution
26 excise taxation.

1 Under the current provisions of the Code of
2 Alabama 1975, the apportionment factor for most
3 corporate income taxpayers is calculated using a
4 three-factor apportionment formula, with the sales
5 factor double weighted.

6 Under the current provisions of the Code of
7 Alabama 1975, taxable income for corporate income
8 tax is defined as federal taxable income with
9 certain additions and deductions. Alabama's
10 corporate income tax law automatically conforms to
11 federal corporate income tax laws, including
12 changes imposed by the federal Tax Cuts and Jobs
13 Act (TCJA) and the Coronavirus Aid, Relief, and
14 Economic Security (CARES) Act.

15 Under the current provisions of the Code of
16 Alabama 1975, any amount received from the state
17 Coronavirus Relief Fund is treated as taxable
18 income for purposes of Alabama income and financial
19 institution excise taxation.

20 This bill would provide for an exclusion
21 from Alabama individual income taxation for any
22 federal tax credits, advance refunds, Small
23 Business Administration subsidy payments, Emergency
24 EIDL grants, Targeted EIDL advances, student loan
25 payments, or qualified disaster relief payments,
26 resulting from the federal Coronavirus Aid, Relief,
27 and Economic Security Act, Taxpayer Certainty and

1 Disaster Relief Tax Act, or COVID-related Tax
2 Relief Act.

3 This bill would provide an income and
4 financial institution excise tax exemption for any
5 amounts received from the Coronavirus Relief Fund.

6 This bill would provide for an exclusion
7 from Alabama income taxation and financial
8 institution excise taxation for small business
9 loans forgiven under the Paycheck Protection
10 Program established by the federal Coronavirus Aid,
11 Relief, and Economic Security (CARES) Act.

12 This bill would change the apportionment
13 factor for most corporate income taxpayers from a
14 three-factor apportionment formula, with the sales
15 factor double weighted, to a single sales factor
16 formula.

17 This bill would decouple Alabama from the
18 new federal law 26 U.S.C. § 951A relating to Global
19 Intangible Low-Taxed Income.

20 This bill would provide that any
21 contribution by the State of Alabama or any
22 political subdivision computed under 26 U.S.C. §
23 118(b)(2) shall be deducted from federal taxable
24 income for purposes of computing taxable income.

25 This bill would provide that for a tax year
26 in which the business interest expense deduction of
27 a corporate taxpayer, or of any federal

1 consolidated return group of which the taxpayer is
2 a member, is not limited pursuant to 26 U.S.C. §
3 163(j) on the federal income tax return, the
4 taxpayer will not be subject to this limitation at
5 the state level.

6 This bill would also provide that a
7 Pass-Through Entity may elect to be taxed at the
8 entity level instead of its owners, members,
9 partners, or shareholders.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 Relating to corporate income tax; to provide for an
16 exclusion from Alabama individual income tax for federal tax
17 credits, advance refunds, qualified disaster relief payments,
18 Small Business Administration subsidy payments, Emergency EIDL
19 grants, Targeted EIDL advances, student loans, or loan
20 forgiveness resulting from the federal Coronavirus Aid,
21 Relief, and Economic Security Act, Taxpayer Certainty and
22 Disaster Relief Tax Act, or COVID-related Tax Relief Act; to
23 provide an income and financial institution excise tax
24 exemption for any amounts received from the Coronavirus Relief
25 Fund; to amend Section 40-27-1, Code of Alabama 1975, to
26 change the apportionment factor to a single sales factor; to
27 retroactively decouple from the new federal law 26 U.S.C. §

1 951A relating to Global Intangible Low-Taxed Income and 26
2 U.S.C. § 118(b)(2); to change how a corporation limits its
3 business interest expense deduction; and to provide that an
4 Electing Pass-Through Entity shall be taxed at the entity
5 level instead of its owners, members, partners, or
6 shareholders.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

11 Section 2. (a) Any tax credits or advance refund
12 amounts received as a result of the federal Coronavirus Aid,
13 Relief, and Economic Security Act, as provided in I.R.C. §
14 6428, or as a result of Section 272 of the COVID-related Tax
15 Relief Act of 2020 (RELIEF Act), Pub. L. 116-260, as provided
16 in I.R.C. § 6428A, or as a result of other similiar
17 COVID-related relief measures for individuals enacted by the
18 United States Congress shall be excluded from Alabama
19 individual income taxation.

20 (b) Any tax credits or advance refund amounts
21 received as a result of the federal Coronavirus Aid, Relief,
22 and Economic Security Act, as provided in I.R.C. § 6428, or as
23 a result of Section 272 of the RELIEF Act, Pub. L. 116-260, as
24 provided in I.R.C. § 6428A, or as a result of other similar
25 COVID-related relief measures for individuals enacted by the
26 United States Congress shall also be excluded from any and all

1 calculations in determining a taxpayer's federal income tax
2 deduction pursuant to Section 40-18-15, Code of Alabama 1975.

3 (c) Principal or interest payments incurred by an
4 employer on any qualified education loan that is excluded from
5 the employee's federal gross income pursuant to I.R.C. §
6 127(c)(1)(B), under the provisions of Section 2206(a) of the
7 Coronavirus Aid, Relief, and Economic Security Act, as amended
8 by Section 120 of the Taxpayer Certainty and Disaster Relief
9 Tax Act of 2020, Pub. L. 116-260, shall be excluded from the
10 gross income of an employee for income taxes imposed by
11 Chapter 18 of Title 40, to the same extent as the amount is
12 excluded from the federal gross income.

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

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

25 (f) Any qualifying disaster relief payment received
26 by an Alabama taxpayer that would be excluded from federal
27 income taxation pursuant to I.R.C. § 139 as a result of the

1 Presidential Proclamation on Declaring a National Emergency
2 Concerning the Novel Coronavirus Disease (COVID-19) Outbreak
3 shall be excluded from the gross income of the taxpayer for
4 income taxes imposed by Chapter 18 of Title 40, Code of
5 Alabama 1975, to the same extent as the amount is excluded
6 from federal gross income.

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

13 (1) Shall be exempt from the financial institution
14 excise tax imposed by Chapter 16 of Title 40, Code of Alabama
15 1975, and the income taxes imposed by Chapter 18 of Title 40,
16 Code of Alabama 1975, to the same extent as the amount is
17 exempt from the federal income tax under Sections 276 or 278
18 of the RELIEF Act.

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

25 (3) Shall also be excluded from any and all
26 calculations in determining a taxpayer's federal income tax

1 deduction pursuant to Chapter 16 or Chapter 18 of Title 40,
2 Code of Alabama 1975.

3 Section 4. Any subsidy payment for covered loans as
4 described in Section 1112(c) of the federal Coronavirus Aid,
5 Relief, and Economic Security Act; any amounts received as
6 Emergency EIDL Grants under Section 1110 of the federal
7 Coronavirus Aid, Relief, and Economic Security Act, as amended
8 by Section 332 of the Economic Aid to Hard-Hit Small
9 Businesses, Nonprofits, and Venues Act; and any amounts
10 received as Grants to Shuttered Venues or as Targeted EIDL
11 Advances under Sections 324 or 331, respectively, of the
12 Economic Aid to Hard-Hit Small Businesses, Nonprofits, and
13 Venues Act:

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

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

26 (3) Shall also be excluded from any and all
27 calculations in determining a taxpayer's federal income tax

1 deduction pursuant to Chapter 16 or Chapter 18 of Title 40,
2 Code of Alabama 1975.

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

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

8 "§40-27-1.

9 "The following Multistate Tax Compact is hereby ap-
10 proved, adopted, and enacted into law by the State of Alabama:

11 Multistate Tax Compact

12 Article I. Purposes.

13 "The purposes of this compact are to:

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

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

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

23 "4. Avoid duplicative taxation.

1 Article II. Definitions.

2 "As used in this compact:

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

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

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

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

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

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

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

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

20 "9. "Tax" means an income tax, capital stock tax,
21 gross receipts tax, sales tax, use tax, and any other tax
22 which has a multistate impact, except that the provisions of
23 articles III, IV, and V of this compact shall apply only to
24 the taxes specifically designated therein and the provisions
25 of article IX of this compact shall apply only in respect to
26 determinations pursuant to article IV.

1 Article III. Elements of Income Tax Laws.

2 Taxpayer Option, State and Local Taxes.

3 "1. Any taxpayer subject to an income tax whose in-
4 come is subject to apportionment and allocation for tax pur-
5 poses pursuant to the laws of a party state or pursuant to the
6 laws of subdivisions in two or more party states may elect to
7 apportion and allocate his or her income in the manner pro-
8 vided by the laws of such state or by the laws of such states
9 and subdivisions without reference to this compact, or may
10 elect to apportion and allocate in accordance with article IV.
11 This election for any tax year may be made in all party states
12 or subdivisions thereof or in any one or more of the party
13 states or subdivisions thereof without reference to the elec-
14 tion made in the others. For the purposes of this paragraph,
15 taxes imposed by subdivisions shall be considered separately
16 from state taxes and the apportionment and allocation also may
17 be applied to the entire tax base. In no instance wherein ar-
18 ticle IV is employed for all subdivisions of a state may the
19 sum of all apportionments and allocations to subdivisions
20 within a state be greater than the apportionment and alloca-
21 tion that would be assignable to that state if the apportion-
22 ment or allocation were being made with respect to a state in-
23 come tax.

1 Taxpayer Option, Short Form.

2 "2. Each party state or any subdivision thereof
3 which imposes an income tax shall provide by law that any tax-
4 payer required to file a return, whose only activities within
5 the taxing jurisdiction consist of sales and do not include
6 owning or renting real estate or tangible personal property,
7 and whose dollar volume of gross sales made during the tax
8 year within the state or subdivision, as the case may be, is
9 not in excess of \$100,000 may elect to report and pay any tax
10 due on the basis of a percentage of such volume, and shall
11 adopt rates which shall produce a tax which reasonably approx-
12 imates the tax otherwise due. The Multistate Tax Commission,
13 not more than once in five years, may adjust the \$100,000 fig-
14 ure in order to reflect such changes as may occur in the real
15 value of the dollar, and such adjusted figure, upon adoption
16 by the commission, shall replace the \$100,000 figure specifi-
17 cally provided herein. Each party state and subdivision
18 thereof may make the same election available to taxpayers ad-
19 ditional to those specified in this paragraph.

20 Coverage.

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

1 Article IV. Division of Income.

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

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

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

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

16 "(d) "Financial organization" means any bank, trust
17 company, savings bank, industrial bank, land bank, safe
18 deposit company, private banker, savings and loan association,
19 credit union, cooperative bank, small loan company, sales
20 finance company, investment company, or any type of insurance
21 company.

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

24 "(f) "Public utility" means any business entity (1)
25 which owns or operates any plant, equipment, property,

1 franchise, or license for the transmission of communications,
2 transportation of goods or persons, except by pipeline, or the
3 production, transmission, sale, delivery, or furnishing of
4 electricity, water, or steam; and (2) whose rates of charges
5 for goods or services have been established or approved by a
6 federal, state or local government, or governmental agency.

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

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

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

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

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

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

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

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

22 "(c) The extent of utilization of tangible personal
23 property in a state is determined by multiplying the rents and
24 royalties by a fraction, the numerator of which is the number
25 of days of physical location of the property in the state
26 during the rental or royalty period in the taxable year and
27 the denominator of which is the number of days of physical

1 location of the property everywhere during all rental or
2 royalty periods in the taxable year. If the physical location
3 of the property during the rental or royalty period is unknown
4 or unascertainable by the taxpayer, tangible personal property
5 is utilized in the state in which the property was located at
6 the time the rental or royalty payer obtained possession.

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

9 "(b) Capital gains and losses from sales of tangible
10 personal property are allocable to this state if (1) the
11 property had a situs in this state at the time of the sale, or
12 (2) the taxpayer's commercial domicile is in this state and
13 the taxpayer is not taxable in the state in which the property
14 had a situs.

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

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

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

26 "(b) A patent is utilized in a state to the extent
27 that it is employed in production, fabrication, manufacturing,

1 or other processing in the state or to the extent that a
2 patented product is produced in the state. If the basis of
3 receipts from patent royalties does not permit allocation to
4 states or if the accounting procedures do not reflect states
5 of utilization, the patent is utilized in the state in which
6 the taxpayer's commercial domicile is located.

7 "(c) A copyright is utilized in a state to the
8 extent that printing or other publication originates in the
9 state. If the basis of receipts from copyright royalties does
10 not permit allocation to states or if the accounting
11 procedures do not reflect states of utilization, the copyright
12 is utilized in the state in which the taxpayer's commercial
13 domicile is located.

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

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

25 ~~"11. Property owned by the taxpayer is valued at its~~
26 ~~original cost. Property rented by the taxpayer is valued at~~
27 ~~eight times the net annual rental rate. Net annual rental rate~~

1 ~~is the annual rental rate paid by the taxpayer less any annual~~
2 ~~rental rate received by the taxpayer from subrentals.~~

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

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

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

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

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

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

1 " ~~15.~~ 10. The sales factor is a fraction, the
2 numerator of which is the total sales of the taxpayer in this
3 state during the tax period, and the denominator of which is
4 the total sales of the taxpayer everywhere during the tax
5 period.

6 "~~16.~~ 11. Sales of tangible personal property are in
7 this state if:

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

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

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

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

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

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

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

3 "(4) In the case of lease or license of intangible
4 property; or sale or other exchange of intangible property if
5 the receipts from the sale or exchange derive from payments
6 that are contingent on the productivity, use, or disposition
7 of the property, if and to the extent the intangible property
8 is used in this state; provided that intangible property used
9 in marketing a good or service to a consumer is used in this
10 state if the good or service that is marketed using the
11 intangible property is purchased by a consumer who is in this
12 state; and

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

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

25 "(c) If the taxpayer is not taxable in a state to
26 which a sale is assigned under subsection (a), or if the state
27 of assignment cannot be determined under subsection (a) or

1 reasonably approximated under subsection (b), the sale shall
2 be excluded from the denominator of the sales factor.

3 ~~18.~~ 13. If the allocation and apportionment
4 provisions of this article do not fairly represent the extent
5 of the taxpayer's business activity in this state, the
6 taxpayer may petition for or the tax administrator may
7 require, in respect to all or any part of the taxpayer's
8 business activity, if reasonable:

9 "(a) Separate accounting;

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

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

15 "(d) The employment of any other method to effectuate
16 an equitable allocation and apportionment of the tax-
17 payer's income.

18 Article V. Elements of Sales and Use Tax Laws.

19 Tax Credit.

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

1 applied first against the amount of any use tax due the state,
2 and any unused portion of the credit shall then be applied
3 against the amount of any use tax due a subdivision.

4 Exemption Certificates, Vendors May Rely.

5 "2. Whenever a vendor receives and accepts in good
6 faith from a purchaser a resale or other exemption certificate
7 or other written evidence of exemption authorized by the ap-
8 propriate state or subdivision taxing authority, the vendor
9 shall be relieved of liability for a sales or use tax with re-
10 spect to the transaction.

11 Article VI. The Commission.

12 Organization and Management.

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

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

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

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

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

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

25 "(f) The commission shall elect annually, from among
26 its members, a chair, a vice-chair, and a treasurer. The
27 commission shall appoint an executive director who shall serve

1 at its pleasure, and it shall fix his or her duties and
2 compensation. The executive director shall be secretary of the
3 commission. The commission shall make provision for the
4 bonding of such of its officers and employees as it may deem
5 appropriate.

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

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

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

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

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

1 "(1) The commission annually shall make to the Gov-
2 ernor and legislature of each party state a report covering
3 its activities for the preceding year. Any donation or grant
4 accepted by the commission or services borrowed shall be re-
5 ported in the annual report of the commission, and shall in-
6 clude the nature, amount, and conditions, if any, of the dona-
7 tion, gift, grant or services, borrowed and the identity of
8 the donor or lender. The commission may make additional re-
9 ports as it may deem desirable.

10 Committees.

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

19 "(b) The commission may establish advisory and
20 technical committees, membership on which may include private
21 persons and public officials, in furthering any of its
22 activities. Such committees may consider any matter of concern
23 to the commission, including problems of special interest to

1 any party state and problems dealing with particular types of
2 taxes.

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

5 Powers.

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

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

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

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

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

20 Finance.

21 "4. (a) The commission shall submit to the Governor
22 or designated officer or officers of each party state a budget

1 of its estimated expenditures for such period as may be
2 required by the laws of that state for presentation to the
3 legislature thereof.

4 "(b) Each of the commission's budgets of estimated
5 expenditures shall contain specific recommendations of the
6 amounts to be appropriated by each of the party states. The
7 total amount of appropriations requested under any such budget
8 shall be apportioned among the party states as follows: one
9 tenth in equal shares; and the remainder in proportion to the
10 amount of revenue collected by each party state and its
11 subdivisions from income taxes, capital stock taxes, gross
12 receipts taxes, sales and use taxes. In determining such
13 amounts, the commission shall employ such available public
14 sources of information as, in its judgment, present the most
15 equitable and accurate comparisons among the party states.
16 Each of the commission's budgets of estimated expenditures and
17 requests for appropriations shall indicate the sources used in
18 obtaining information employed in applying the formula
19 contained in this paragraph.

20 "(c) The commission shall not pledge the credit of
21 any party state. The commission may meet any of its
22 obligations in whole or in part with funds available to it
23 under paragraph 1(i) of this article: Provided that the
24 commission takes specific action setting aside such funds
25 prior to incurring any obligation to be met in whole or in
26 part in such manner. Except where the commission makes use of
27 funds available to it under paragraph 1(i), the commission

1 shall not incur any obligation prior to the allotment of funds
2 by the party states adequate to meet the same.

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

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

15 "(f) Nothing contained in this article shall be con-
16 strued to prevent commission compliance with laws relating to
17 audit or inspection of accounts by or on behalf of any govern-
18 ment contributing to the support of the commission.

19 Article VII. Uniform Regulations and Forms.

20 "1. Whenever any two or more party states, or
21 subdivisions of party states, have uniform or similar
22 provisions of law relating to an income tax, capital stock
23 tax, gross receipts tax, sales or use tax, the commission may
24 adopt uniform regulations for any phase of the administration

1 of such law, including assertion of jurisdiction to tax, or
2 prescribing uniform tax forms. The commission may also act
3 with respect to the provisions of article IV of this compact.

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

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

11 "(b) Afford all affected party states and
12 subdivisions and interested persons an opportunity to submit
13 relevant written data and views, which shall be considered
14 fully by the commission.

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

20 Article VIII. Interstate Audits.

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

23 "2. Any party state or subdivision thereof desiring
24 to make or participate in an audit of any accounts, books,

1 papers, records, or other documents may request the commission
2 to perform the audit on its behalf. In responding to the
3 request, the commission shall have access to and may examine,
4 at any reasonable time, such accounts, books, papers, records
5 and other documents, and any relevant property or stock of
6 merchandise. The commission may enter into agreements with
7 party states or their subdivisions for assistance in
8 performance of the audit. The commission shall make charges,
9 to be paid by the state or local government or governments for
10 which it performs the service, for any audits performed by it
11 in order to reimburse itself for the actual costs incurred in
12 making the audit.

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

24 "4. The commission may apply to any court having
25 power to issue compulsory process for orders in aid of its
26 powers and responsibilities pursuant to this article and any
27 and all such courts shall have jurisdiction to issue such

1 orders. Failure of any person to obey any such order shall be
2 punishable as contempt of the issuing court. If the party or
3 subject matter on account of which the commission seeks an
4 order is within the jurisdiction of the court to which
5 application is made, such application may be to a court in the
6 state or subdivision on behalf of which the audit is being
7 made or a court in the state in which the object of the order
8 being sought is situated. The provisions of this paragraph
9 apply only to courts in a state that has adopted this article.

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

21 "6. Information obtained by an audit pursuant to
22 this article shall be confidential and available only for tax
23 purposes to party states, their subdivisions or the United
24 States. Availability of information shall be in accordance
25 with the laws of the states or subdivisions on whose account
26 the commission performs the audit, and only through the
27 appropriate agencies or officers of such states or

1 subdivisions. Nothing in this article shall be construed to
2 require any taxpayer to keep records for any period not
3 otherwise required by law.

4 "7. Other arrangements made or authorized pursuant
5 to law for cooperative audit by or on behalf of the party
6 states or any of their subdivisions are not superseded or
7 invalidated by this article.

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

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

13 Article IX. Arbitration.

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

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

23 "3. Whenever a taxpayer who has elected to employ
24 article IV, or whenever the laws of the party state or

1 subdivision thereof are substantially identical with the
2 relevant provisions of article IV, the taxpayer, by written
3 notice to the commission and to each party state or
4 subdivision thereof that would be affected, may secure
5 arbitration of an apportionment or allocation, if he or she is
6 dissatisfied with the final administrative determination of
7 the tax agency of the state or subdivision with respect
8 thereto on the ground that it would subject him or her to
9 double or multiple taxation by two or more party states or
10 subdivisions thereof. Each party state and subdivision thereof
11 hereby consents to the arbitration as provided herein, and
12 agrees to be bound thereby.

13 "4. The arbitration board shall be composed of one
14 person selected by the taxpayer, one by the agency or agencies
15 involved, and one member of the commission's arbitration
16 panel. If the agencies involved are unable to agree on the
17 person to be selected by them, such person shall be selected
18 by lot from the total membership of the arbitration panel. The
19 two persons selected for the board in the manner provided by
20 the foregoing provisions of this paragraph shall jointly
21 select the third member of the board. If they are unable to
22 agree on the selection, the third member shall be selected by
23 lot from among the total membership of the arbitration panel.
24 No member of a board selected by lot shall be qualified to
25 serve if he or she is an officer or employee or is otherwise
26 affiliated with any party to the arbitration proceeding.
27 Residence within the jurisdiction of a party to the

1 arbitration proceeding shall not constitute affiliation within
2 the meaning of this paragraph.

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

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

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

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

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

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

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

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

25 "12. The commission shall adopt and publish rules of
26 procedure and practice and shall file a copy of such rules and

1 of any amendment thereto with the appropriate agency or
2 officer in each of the party states.

3 "13. Nothing contained herein shall prevent at any
4 time a written compromise of any matter or matters in dispute,
5 if otherwise lawful, by the parties to the arbitration pro-
6 ceeding.

7 Article X. Entry Into Force and Withdrawal.

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

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

17 "3. No proceeding commenced before an arbitration
18 board prior to the withdrawal of a state and to which the
19 withdrawing state or any subdivision thereof is a party shall
20 be discontinued or terminated by the withdrawal, nor shall the
21 board thereby lose jurisdiction over any of the parties to the
22 proceeding necessary to make a binding determination therein.

1 Article XI. Effect on Other Laws and Jurisdiction.

2 "Nothing in this compact shall be construed to:

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

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

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

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

21 Article XII. Construction and Severability.

22 "This compact shall be liberally construed so as to
23 effectuate the purposes thereof. The provisions of this

1 compact shall be severable and if any phrase, clause,
2 sentence, or provision of this compact is declared to be
3 contrary to the constitution of any state or of the United
4 States or the applicability thereof to any government, agency,
5 person, or circumstance is held invalid, the validity of the
6 remainder of this compact and the applicability thereof to any
7 government, agency, person, or circumstance shall not be
8 affected thereby. If this compact shall be held contrary to
9 the constitution of any state participating therein, the
10 compact shall remain in full force and effect as to the
11 remaining party states and in full force and effect as to the
12 state affected as to all severable matters."

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

15 §40-18-35.2.

16 All amounts included in income under 26 U.S.C. §
17 951A shall be deducted from federal taxable income for
18 purposes of computing taxable income under this chapter.
19 However, any amount subtracted under this section is allowed
20 only to the extent such amount is not deductible in
21 determining federal taxable income. As to any amount
22 subtracted under this section, there shall be added to such
23 taxable income all expenses deducted under any section of 26
24 U.S.C. on the taxpayer's return for the taxable year which are
25 attributable, directly or indirectly, to such subtracted
26 amount. The deduction provided by 26 U.S.C. § 250 shall apply

1 only to the extent the same income was included in Alabama
2 taxable income under this chapter.

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

5 §40-18-35.3.

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

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

15 §40-18-39.1.

16 (a) For a tax year in which the business interest
17 expense deduction of the taxpayer, or of any federal
18 consolidated return group of which the taxpayer is a member,
19 is not limited pursuant to 26 U.S.C. § 163(j) on the federal
20 income tax return for the tax year, the taxpayer shall not be
21 subject to a limitation on the taxpayer's business interest
22 expense deduction other than the limitation provided in
23 Section 40-18-35(b) for interest expense with a related
24 member.

25 (b) (1) For a tax year in which the business interest
26 expense deduction of the taxpayer, or of any federal
27 consolidated return group of which the taxpayer is a member,

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

10 (2) The gross receipts test under 26 U.S.C. §
11 163(j) (3) shall apply to each separate entity which is subject
12 to Alabama income tax, or in the case of an Alabama affiliated
13 group, as defined in Section 40-18-39(b) (1), which files an
14 Alabama consolidated return as defined in Section
15 40-18-39(b) (2), to the Alabama consolidated return group.

16 (3) The limitation provided in subsection (a) will
17 apply before the application of the limitation provided in
18 Section 40-18-35(b) for interest expense with a related
19 member. For purposes of the limitation provided in Section
20 40-18-35(b), the net interest deduction limitation calculated
21 under the provisions of this subsection shall be allocated on
22 a pro rata basis to the interest income recipients. Any
23 resulting interest expense carryforward shall also be
24 allocated on a pro rata basis to the interest income
25 recipients. In any tax year in which a taxpayer deducts
26 business interest expense on its federal tax return, or the
27 tax return of the federal consolidated group of which it is a

1 member, which was carried forward from a previous tax year and
2 which is also subject to the add back provisions for interest
3 expense with a related member under Section 40-18-35(b), the
4 taxpayer shall apply the provisions of Section 40-18-35(b) to
5 the amount of the interest expense carried forward in addition
6 to the amount accrued or incurred in the current tax year.
7 Taxpayers which determine their business interest expense
8 deduction pursuant to the provisions of this subsection shall
9 submit to the Department of Revenue the appropriate forms,
10 schedules, and statements needed in order to confirm the
11 business interest expense deduction was calculated correctly.

12 (4) A taxpayer with nonbusiness income and/or
13 nonbusiness interest expense shall allocate nonbusiness
14 interest expense to nonbusiness income and shall calculate a
15 limit on the business interest expense deduction associated
16 with nonbusiness income and nonbusiness interest expense on a
17 pro rata basis. Nonbusiness interest expense shall be assigned
18 to nonbusiness income and shall only be allowed to reduce
19 nonbusiness income.

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

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

25 (1) ELECTING PASS-THROUGH ENTITY. Any Alabama S
26 corporation, as is defined by Section 40-18-160, Code of
27 Alabama 1975, and any Subchapter K Entity, as is defined by

1 Section 40-18-1, Code of Alabama 1975, that has made an
2 election pursuant to subsection (d) to pay Alabama income tax
3 at the rate prescribed in subsection (e).

4 (c) For tax years beginning on or after January 1,
5 2021, any Alabama S corporation, as is defined by Section
6 40-18-160, Code of Alabama 1975, and any Subchapter K Entity,
7 as is defined by Section 40-18-1, Code of Alabama 1975, may
8 elect to be taxed as an Electing Pass-Through Entity.

9 (d) An Electing Pass-Through Entity shall submit the
10 appropriate form to the Department of Revenue at any time
11 during the tax year or on or before the fifteenth day of the
12 third month following the close of that tax year for which the
13 entity elects to be taxed as an Electing Pass-Through Entity.
14 This election shall be binding for that year and all
15 subsequent tax years and shall not be revoked unless the
16 Electing Pass-Through Entity submits the appropriate form to
17 the Department of Revenue at any time during a subsequent tax
18 year or on or before the fifteenth day of the third month
19 following the close of that tax year for which the entity
20 elects to no longer be taxed as an Electing Pass-Through
21 Entity. Both the election to become an Electing Pass-Through
22 Entity and the revocation of that election shall be
23 accomplished by a vote by or written consent of the members of
24 the governing body of the entity as well as a vote by or
25 written consent of the owners, members, partners, or
26 shareholders holding greater than 50 percent of the voting
27 control of the entity, within the time prescribed above.

1 (e) An Electing Pass-Through Entity shall pay a tax
2 at the highest marginal rate provided in Section 40-18-5, Code
3 of Alabama 1975, calculated in accordance with the provisions
4 of Section 40-18-24 or Section 40-18-161 and Section
5 40-18-162, Code of Alabama 1975, as appropriate, and
6 apportioned in accordance with the provisions of Chapter 27 of
7 Title 40, Code of Alabama 1975. An Electing Pass-Through
8 Entity shall be subject to the provisions of Section
9 40-18-80.1 Code of Alabama 1975, (estimated tax for
10 corporations). In calculating taxable income for the purposes
11 of this subsection, Alabama tax paid under the provisions of
12 this subsection shall not be deducted in calculating Alabama
13 taxable income.

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

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

24 (h) Notwithstanding anything in Chapter 18 of Title
25 40, Code of Alabama 1975, to the contrary, neither the
26 election by an Electing Pass-Through Entity under this section
27 nor its revocation of the election shall be considered a

1 liquidation or termination of the entity or an otherwise
2 taxable event.

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

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

8 Section 13. Sections 2 through 4 of this act shall
9 be effective for tax years ending after the enactment of the
10 federal Coronavirus Aid, Relief, and Economic Security Act,
11 Pub. L. 116-136. Section 7 of this act shall apply
12 retroactively for tax years beginning after December 31, 2017.
13 Section 8 shall apply to contributions made on or after
14 December 23, 2017. Sections 6, 9, and 10 of this act shall
15 become effective for tax years beginning on or after January
16 1, 2021. All other sections of this act shall be effective
17 immediately, following its passage and approval by the
18 Governor, or its otherwise becoming law.