

1 HB353
2 205816-1
3 By Representative Garrett
4 RFD: Ways and Means Education
5 First Read: 27-FEB-20

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8 SYNOPSIS: Under existing law, financial institutions
9 are taxed at a rate of six and one-half percent of
10 net income and allowed to deduct federal income
11 taxes paid or accrued during the taxpayer's tax
12 year.

13 Under existing law, corporate income
14 taxpayers are taxed at a rate equal to six and
15 one-half percent of taxable income and allowed to
16 deduct federal income taxes paid or accrued within
17 the year.

18 Under existing law, the apportionment factor
19 for most corporate income taxpayers is calculated
20 using a three-factor apportionment formula, with
21 the sales factor double-weighted.

22 The 2017 federal Tax Cuts and Jobs Act
23 eliminated or limited business deductions and
24 created new classes of income for corporate income
25 taxpayers. Since Alabama is a rolling conformity
26 state, Alabama automatically conforms to many of
27 the federal tax changes without new legislation.

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to corporate income tax and financial
5 institution excise tax; to amend Sections 40-16-1.2, 40-16-4,
6 40-18-31, 40-18-34, 40-18-35, and 40-27-1, Code of Alabama
7 1975; to decrease the financial institution excise tax rate
8 and the corporate income tax rate, to repeal the deduction for
9 federal income taxes paid or accrued during the taxpayer's tax
10 year for financial institution excise taxpayers and corporate
11 income taxpayers, and to change the apportionment factor for
12 most corporate income taxpayers from a three-factor
13 apportionment formula with a double-weighted sales factor to
14 an apportionment formula based on a single sales factor; to
15 decouple Alabama income tax from provisions of the federal Tax
16 Cuts and Job Act related to contributions to the capital of a
17 corporation attributable to state economic development grants
18 and incentives and global intangible low-tax income and to
19 change how a corporation limits its business interest expense
20 deduction; to provide that an Electing Pass-Through Entity
21 shall be taxed at the entity level instead of its owners,
22 members, partners, or shareholders; and to provide an
23 effective date.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known and may be cited
26 as, "The Alabama Business Tax Competitiveness Act."

1 Section 2. Sections 40-16-1.2, 40-16-4, 40-18-31,
2 40-18-34, 40-18-35, and 40-27-1, Code of Alabama 1975, are
3 amended to read as follows:

4 "§40-16-1.2.

5 "(a) The following items shall be added to federal
6 taxable income for purposes of computing net income under this
7 chapter:

8 "(1) The tax due under this chapter that is deducted
9 in computing federal taxable income.

10 "(2) State and local taxes that are deducted for
11 purposes of calculating federal taxable income for which a
12 credit is claimed under Section 40-16-8, to the extent the
13 credit is utilized to reduce the tax owed under this chapter.

14 "(3) Refunds of federal income taxes deducted in
15 prior tax periods for purposes of computing the tax due under
16 this chapter.

17 "(4) Dividends received from a corporation in which
18 the taxpayer owns less than 20 percent of the stock, by vote
19 and value, but only to the extent the dividends are properly
20 deducted in computing taxable income for federal income tax
21 purposes.

22 "(5) State, county, and municipal interest income
23 from loans and securities that is exempt for federal income
24 tax purposes.

25 "(6) Any interest that was treated as paid or
26 incurred in the current taxable year under 26 U.S.C. §
27 163(j) (2).

1 "(7) The amount of foreign-derived intangible income
2 and global intangible low-taxed income that was deducted under
3 26 U.S.C. § 250.

4 "(8) The amount of any capital loss carryback or
5 carryforward deducted for federal income tax purposes.

6 "(b) The following items shall be deducted from
7 federal taxable income for purposes of computing net income
8 under this chapter:

9 "(1) Refunds of the tax due under this chapter that
10 are included in computing federal taxable income.

11 "~~(2) Federal income taxes paid or accrued during the~~
12 ~~taxpayer's taxable year in accordance with the taxpayer's~~
13 ~~method of accounting.~~

14 "~~(3)~~ (2) If the taxpayer owns 20 percent or more of
15 the stock, by vote or value, of the distributing corporation,
16 dividend income, including amounts described in 26 U.S.C. §
17 951, from non-U.S. corporations to the same extent such
18 dividend income would be deductible under 26 U.S.C. § 243 if
19 received from U.S. corporations.

20 "~~(4)~~ (3) Federal Deposit Insurance Corporation
21 (FDIC) insurance premiums not deductible for federal income
22 tax purposes under 26 U.S.C. § 162(r).

23 "~~(5)~~ (4) Interest not deductible for federal income
24 tax purposes under 26 U.S.C. § 163(j)(1).

25 "~~(6)~~ (5) Interest not deductible for federal income
26 tax purposes under 26 U.S.C. §§ 265 or 291 related to
27 tax-exempt securities.

1 "~~(7)~~ (6) The amount of global intangible low-taxed
2 income that is included in the gross income of such financial
3 institution under 26 U.S.C. § 951A.

4 "~~(8)~~ (7) The amount treated as dividends under 26
5 U.S.C. § 78.

6 "~~(9)~~ (8) Expenses otherwise deductible that were not
7 deducted for federal income tax purposes as a result of an
8 election to claim a federal income tax credit for those
9 expenses.

10 "~~(10)~~ (9) Solely with respect to credit unions, the
11 amount paid out as dividends on the withdrawable shares of
12 such credit union.

13 "~~(11)~~ (10) The amount of otherwise deductible
14 capital losses incurred during the taxable year that were not
15 deducted for federal income tax purposes.

16 "(c) Nothing in this section shall be construed to
17 allow any item to be deducted more than once or to allow a
18 deduction for any item that is excluded from income or to
19 allow any item to be included in the Alabama net income of
20 more than one taxpayer.

21 "§40-16-4.

22 "(a) (1) Every such financial institution engaging in
23 any of the following businesses:

24 "(i) Banking;

25 "(ii) Conducting the business of a financial
26 institution as defined in this chapter;

1 "(iii) Conducting a credit card business through the
2 issuance of credit cards to Alabama residents or businesses;
3 or

4 "(iv) Conducting a business employing moneyed
5 capital coming into competition with the business of national
6 banks shall pay to the state annually for each taxable year an
7 excise tax measured by its net income allocated and
8 apportioned for the taxable year at the rate of ~~six and~~
9 ~~one-half~~ 4.75 percent of the net income.

10 "(2) For purposes of the excise tax imposed by this
11 chapter, any financial institution which has income from
12 business activity that is taxable both within and without this
13 state shall allocate and apportion its net income as provided
14 in rules which shall be prescribed by the Department of
15 Revenue, provided that such rules shall not conflict with any
16 provision of this chapter and provided further that if such
17 rules allocate and apportion the net income of the financial
18 institution based, at least in part, on its property in the
19 state, loans and credit card receivables shall be considered
20 part of the financial institution's property in the state and
21 shall be sourced to the state using the same sourcing methods
22 as the department uses to allocate and apportion a financial
23 institution's interest receipts from related loans and credit
24 card receivables.

25 "(3) The amount of the excise tax shall not be in
26 excess of any limit fixed thereon by any present or future
27 federal statute relating to the taxation of national banks by

1 this state. Under no circumstances will any dividends paid
2 from a financial institution to the common parent corporation
3 of a controlled group of corporations, as defined in Section
4 40-16-3, be subject to excise tax.

5 "(b) The excise tax provided in this chapter shall
6 be reported in the form to be prescribed by the Department of
7 Revenue. The amount shown to be due by the taxpayer's return
8 shall constitute and create a prima facie liability for the
9 amount on which taxes shall be paid. Where the Department of
10 Revenue determines that the amount due is different from that
11 shown by the taxpayer's return or where no return is filed,
12 the department may determine the correct amount due pursuant
13 to the procedures set forth in Chapter 2A of this title.

14 "(c) (1) The Department of Revenue shall have 120
15 days from April 20, 2017 to promulgate rules consistent with
16 this section. Such rules shall be promulgated in accordance
17 with the Alabama Administrative Procedure Act and shall be
18 effective for all tax years beginning on or after January 1,
19 2017.

20 "(2) If, on or before December 31, 2030, the Alabama
21 Department of Revenue certifies to the Legislature (1) that
22 the applicable law in a majority of the states, including two
23 states contiguous to Alabama, requires a financial institution
24 to allocate and apportion its net income based at least in
25 part on the institution's property in that state, and (2) that
26 the related definition of property in each of those states
27 excludes a financial institution's loans and credit card

1 receivables, then the Alabama Department of Revenue shall
2 promulgate a rule consistent with the applicable law in those
3 states. Any rule promulgated in accordance with the foregoing
4 sentence shall be promulgated in accordance with the Alabama
5 Administrative Procedure Act and shall be effective for all
6 tax years beginning on or after 120 days from the effective
7 date of the rule.

8 "§40-18-31.

9 "(a) A corporation subject to the tax imposed by
10 Section 40-18-2 shall pay a tax equal to ~~six and one-half~~ 4.75
11 percent of the taxable income of the corporation, as defined
12 in this chapter.

13 "(b) If the taxpayer elects to file an Alabama
14 consolidated return under Section 40-18-39, the tax shall be
15 assessed, collected, and paid annually for each taxable year
16 at the rate specified in subsection (a), upon and with respect
17 to the taxable income of the Alabama affiliated group.

18 "§40-18-34.

19 "The following items shall be added to federal
20 taxable income for purposes of computing taxable income under
21 this chapter:

22 "(a) State and local income taxes that are
23 deductible in computing federal taxable income.

24 "(b) Interest on obligations of state or local
25 governments other than Alabama that is excludable from gross
26 income for federal income tax purposes.

1 "(c) Refunds of federal income taxes deducted in
2 prior tax years.

3 "~~(d)~~ (c) Dividends received from a corporation in
4 which the taxpayer owns less than 20% of the stock (by vote
5 and value), but only to the extent such dividends are properly
6 deducted in computing taxable income for federal income tax
7 purposes.

8 "(d) (1) For a tax year in which the business
9 interest expense deduction of the taxpayer, or of any federal
10 consolidated return group of which the taxpayer is a member,
11 is not limited pursuant to 26 U.S.C. § 163(j) on the federal
12 income tax return for the tax year, the taxpayer shall not be
13 subject to a limitation on the taxpayer's business interest
14 expense deduction other than the limitation provided in
15 Section 40-18-35(b) for interest expense with a related
16 member.

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

1 return as defined in Section 40-18-39(b) (2), on the basis of
2 the Alabama consolidated return group.

3 "b. The gross receipts test per 26 U.S.C. §
4 163(j) (3) shall apply to each separate entity which is subject
5 to Alabama income tax, or in the case of an Alabama affiliated
6 group, as defined in Section 40-18-39(b) (1), which files an
7 Alabama consolidated return as defined in Section
8 40-18-39(b) (2), to the Alabama consolidated return group.

9 "c. The limitation provided in paragraph a. will
10 apply before the application of the limitation provided in
11 Section 40-18-35(b) for interest expense with a related
12 member. For purposes of the limitation provided in Section
13 40-18-35(b), the net interest deduction limitation calculated
14 under the provisions of this subsection shall be allocated on
15 a pro-rata basis to the interest income recipients. Any
16 resulting interest expense carryforward shall also be
17 allocated on a pro-rata basis to the interest income
18 recipients. In any tax year in which a taxpayer deducts
19 business interest expense on its federal tax return, or the
20 tax return of the federal consolidated group of which it is a
21 member, which was carried forward from a previous tax year and
22 which is also subject to the add back provisions for interest
23 expense with a related member under Section 40-18-35(b), the
24 taxpayer shall apply the provisions of Section 40-18-35(b) to
25 the amount of the interest expense carried forward in addition
26 to the amount accrued or incurred in the current tax year.
27 Taxpayers which determine their business interest expense

1 deduction pursuant to the provisions of this subsection shall
2 submit to the Alabama Department of Revenue the appropriate
3 forms, schedules and statements needed in order to confirm the
4 business interest expense deduction was calculated correctly.

5 "d. A taxpayer with nonbusiness income and/or
6 nonbusiness interest expense shall allocate nonbusiness
7 interest expense to nonbusiness income and shall calculate a
8 limit on the business interest expense deduction associated
9 with nonbusiness income and nonbusiness interest expense on a
10 pro-rata basis. Nonbusiness interest expense shall be assigned
11 to nonbusiness income and shall only be allowed to reduce
12 nonbusiness income.

13 "§40-18-35.

14 "(a) The following items shall be deducted from
15 federal taxable income for purposes of computing taxable
16 income under this chapter:

17 "(1) Refunds of state and local income taxes.

18 ~~"(2) Federal income tax paid or accrued during the~~
19 ~~taxpayer's taxable year. The portion of federal income tax~~
20 ~~deductible by a corporation earning income from sources both~~
21 ~~inside and outside of Alabama shall be determined by the ratio~~
22 ~~that the corporation's taxable income, computed without the~~
23 ~~deduction for federal income tax, apportioned and allocated to~~
24 ~~Alabama bears to the corporation's taxable income, computed~~
25 ~~without the deduction for federal income tax, apportioned and~~
26 ~~allocated everywhere.~~

1 "~~(3)~~ (2) Interest income earned on obligations of
2 the United States.

3 "~~(4)a.~~ (3)a. Interest income earned on obligations
4 of the State of Alabama or its subdivisions or
5 instrumentalities thereof to the extent included in gross
6 income for the purposes of federal income taxation.

7 "b. Interest income earned on obligations of the
8 State of Alabama or its subdivisions or instrumentalities
9 thereof to the extent included in gross income for the
10 purposes of federal income taxation if such obligations were
11 issued prior to January 1, 1995, to pay the cost of assets to
12 which subsections (c) through (e) of Section 40-9B-7 apply.

13 "~~(5)~~ (4) The amount of any aid or assistance,
14 whether in the form of property, services or monies, provided
15 to the State Industrial Development Authority pursuant to
16 Section 41-10-44.8(d) in order to induce an approved company
17 to undertake a major project within the state.

18 "~~(6)~~ (5) Expenses otherwise deductible that were not
19 deducted on the federal income tax return as a result of an
20 election to claim a credit for those expenses.

21 "~~(7)~~ (6) If the taxpayer owns greater than 20
22 percent of the stock, by vote or value, of the distributing
23 corporation the following deductions are allowed:

24 "a. Amounts described in 26 U.S.C. § 78;

25 "b. Dividend income, including amounts described in
26 26 U.S.C. § 951, from non-U.S. corporations to the same extent

1 such dividend income would be deductible under 26 U.S.C. § 243
2 if received from U.S. corporations; and

3 "c. Dividends received from foreign sales
4 corporations as defined in 26 U.S.C. § 922.

5 "d. Dividend income from a Captive REIT to the same
6 extent such dividend income would be deductible under 26
7 U.S.C. §243 if received from an entity that is not a REIT.

8 "~~(8)~~ (7) The portion of total deductible interest
9 expense classified as nonbusiness interest expense not
10 deductible at arriving at apportioned income, but instead
11 allocated to the situs of the related nonbusiness income
12 producing assets, shall be based upon the ratio of the average
13 cost of the corporation's nonbusiness assets to the average
14 cost of the corporation's total assets.

15 "~~(9)~~ (8) The interest portion of rent paid under
16 lease agreements entered into prior to January 1, 1995,
17 relating to obligations issued by the State of Alabama or
18 subdivisions or instrumentalities thereof, to the extent that
19 such obligations were issued to pay the cost of assets to
20 which subsections (c) through (e) of Section 40-9B-7 apply.

21 "~~(10)~~ (9) The amount by which the depletion
22 allowance specified in Section 40-18-16(b) exceeds the
23 depletion allowance deducted in calculating federal taxable
24 income.

25 "(10) All amounts included in income under 26 U.S.C.
26 § 951A. However, any amount subtracted under this subdivision
27 is allowed only to the extent such amount is not deductible in

1 determining federal taxable income. As to any amount
2 subtracted under this subdivision, there shall be added to
3 such taxable income all expenses deducted under any section of
4 26 U.S.C. on the taxpayer's return for the taxable year which
5 are attributable, directly or indirectly, to such subtracted
6 amount. The deduction provided by 26 U.S.C. § 250 shall apply
7 only to the extent the same income was included in Alabama
8 taxable income under this chapter.

9 "(11) The amount of any contribution made on or
10 after December 23, 2017 by the state of Alabama or any
11 political subdivision thereof, to the extent that the amount
12 is included in the corporation's federal taxable income
13 pursuant to 26 U.S.C. § 118(b)(2).

14 "(b) Restrictions on the deductibility of certain
15 intangible expenses and interest expenses with a related
16 member.

17 "(1) For purposes of computing its taxable income, a
18 corporation shall add back otherwise deductible interest
19 expenses and costs and intangible expenses and costs directly
20 or indirectly paid, accrued, or incurred to, or in connection
21 directly or indirectly with one or more direct or indirect
22 transactions, with one or more related members, except to the
23 extent the corporation shows, upon request by the
24 commissioner, that the corresponding item of income was in the
25 same taxable year: a. Subject to a tax based on or measured by
26 the related member's net income in Alabama or any other state
27 of the United States, or b. subject to a tax based on or

1 measured by the related member's net income by a foreign
2 nation which has in force an income tax treaty with the United
3 States, if the recipient was a "resident" (as defined in the
4 income tax treaty) of the foreign nation. For purposes of this
5 section, subject to a tax based on or measured by the related
6 member's net income means that the receipt of the payment by
7 the recipient related member is reported and included in
8 income for purposes of a tax on net income, and not offset or
9 eliminated in a combined or consolidated return which includes
10 the payor. Any portion of an item of income that is not
11 attributed to the taxing jurisdiction, as determined by that
12 jurisdiction's allocation and apportionment methodology or
13 other sourcing methodology, is not included in income for
14 purposes of a tax on net income and, therefore, shall not be
15 considered subject to a tax. That portion of an item of income
16 which is attributed to a taxing jurisdiction having a tax on
17 net income shall be considered subject to a tax even if no
18 actual taxes are paid on such item of income in the taxing
19 jurisdiction by reason of deductions or otherwise.

20 "(2) The corporation shall make the adjustments
21 required in subdivision (1) unless the corporation establishes
22 that the adjustments are unreasonable, or the corporation and
23 the Commissioner of Revenue agree in writing to the
24 application or use of alternative adjustments and
25 computations. Nothing in this section shall be construed to
26 limit or negate the commissioner's authority to otherwise

1 enter into agreements and compromises otherwise allowed by
2 law.

3 "(3) The adjustments required in subdivision (1)
4 shall not apply to that portion of interest expenses and costs
5 and intangible expenses and costs if the corporation can
6 establish that the transaction giving rise to the interest
7 expenses and costs or the intangible expenses and costs
8 between the corporation and the related member did not have as
9 a principal purpose the avoidance of any Alabama tax and the
10 related member is not primarily engaged in the acquisition,
11 use, licensing, maintenance, management, ownership, sale,
12 exchange, or any other disposition of intangible property, or
13 in the financing of related entities. If the transaction
14 giving rise to the interest expenses and costs or intangible
15 expenses and costs, as the case may be, has a substantial
16 business purpose and economic substance and contains terms and
17 conditions comparable to a similar arm's length transaction
18 between unrelated parties, the transaction will be presumed to
19 not have as its principal purpose tax avoidance, subject to
20 rebuttal by the Commissioner of the Department of Revenue.

21 "(4) The adjustments required in subdivision (b)(1)
22 shall not apply to that portion of interest expenses and costs
23 and intangible expenses and costs that the corporation can
24 establish was paid, accrued or incurred, directly or
25 indirectly, by the related member during the same taxable year
26 to a person that is not a related member.

1 "(5) Nothing in this section shall require a
2 corporation to add to its taxable income more than once any
3 amount of interest expenses and costs or intangible expenses
4 and costs that the corporation pays, accrues or incurs to a
5 related member described in subdivision (1).

6 "(6) Nothing in this section shall be construed to
7 limit or negate the commissioner's authority to make
8 adjustments under this chapter.

9 "(7) This subsection shall not limit the deduction
10 of the interest portion of rent paid under lease agreements
11 described in subsection ~~(a)(9)~~ (a)(8).

12 "(c) Restrictions on the deductibility of Captive
13 REIT dividends. For purposes of computing its taxable income,
14 a Captive REIT shall add back any dividend paid to a related
15 member that it deducted pursuant to Section 10-13-21 and/or 26
16 U.S.C. §§561 and 857.

17 "(d) Except with regard to payments described in
18 subsections ~~(a)(4)b~~ (a)(3)b. and ~~(a)(9)~~ (a)(8), nothing in
19 this section shall be construed to allow any item to be
20 deducted more than once or to allow a deduction for any item
21 that is excluded from income or to allow any item to be
22 included in the Alabama taxable income of more than one
23 taxpayer.

24 "(e) The following credits shall be allowed against
25 the tax levied by Section 40-18-31:

1 "(1) the amount provided to an approved company
2 pursuant to Section 41-10-44.8(a)(1), subject however, to the
3 limitations contained in Section 41-10-44.8(c); and

4 "(2) the amount provided in Section 41-10-44.9 to an
5 approved company for a payment by such company into a tax
6 increment fund.

7 "§40-27-1.

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

10 Multistate Tax Compact

11 Article I. Purposes.

12 "The purposes of this compact are to:

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

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

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

22 "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 person
10 acting as a business entity in more than one state, but does
11 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 other
18 use of tangible personal property and (b) is complementary to
19 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 which
22 has a multistate impact, except that the provisions of arti-
23 cles III, IV and V of this compact shall apply only to the
24 taxes specifically designated therein and the provisions of
25 article IX of this compact shall apply only in respect to de-
26 terminations 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 or
7 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 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, sentence
2 or provision of this compact is declared to be contrary to the
3 constitution of any state or of the United States or the
4 applicability thereof to any government, agency, person or
5 circumstance is held invalid, the validity of the remainder of
6 this compact and the applicability thereof to any government,
7 agency, person or circumstance shall not be affected thereby.
8 If this compact shall be held contrary to the constitution of
9 any state participating therein, the compact shall remain in
10 full force and effect as to the remaining party states and in
11 full force and effect as to the state affected as to all
12 severable matters."

13 Section 3. (a) This section shall be known and may
14 be cited as the, "Alabama Electing Pass-Through Entity Tax
15 Act."

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

18 ELECTING PASS-THROUGH ENTITY. Any Alabama S
19 corporation, as is defined by Section 40-18-160, and any
20 Subchapter K Entity, as is defined by Section 40-18-1, that
21 has made an election pursuant to Subsection (d) of Section 3
22 of this act to pay Alabama income tax at the rate prescribed
23 in subsection (e) below.

24 (c) For tax years beginning on or after January 1,
25 2021, any Alabama S corporation, as is defined by Section
26 40-18-160, and any Subchapter K Entity, as is defined by

1 Section 40-18-1, may elect to be taxed as an Electing
2 Pass-Through Entity.

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

1 (e) An Electing Pass-Through Entity shall be deemed
2 an Alabama C Corporation for purposes of Chapter 18 of Title
3 40 and shall pay a tax equal to 3.95 percent of the taxable
4 income, calculated in accordance with the provisions of
5 Section 40-18-24 or Section 40-18-161 and Section 40-18-162,
6 as appropriate, of the Electing Pass-Through Entity. An
7 Electing Pass-Through Entity shall be subject to the
8 provisions of Section 40-18-80.1 (estimated tax for
9 corporations). In calculating taxable income for the purposes
10 of this subsection, tax paid under the provisions of this
11 subsection shall not be deducted in calculating Alabama
12 taxable income.

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

17 (g) An Electing Pass-Through Entity shall be
18 entitled to a credit under Section 40-18-21 for taxes paid by
19 the entity or its owners, members, partners, or shareholders
20 to any other state or territory with respect to the entity's
21 income.

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

1 (i) Notwithstanding anything in Chapter 18 of Title
2 40 to the contrary, neither the election by an Electing
3 Pass-Through Entity under this section nor its revocation of
4 the election shall be considered a liquidation or termination
5 of the entity or an otherwise taxable event.

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

9 Section 5. Section 3 of this act and the provisions
10 of this act regarding the corporate income and financial
11 institution excise tax rates and the deduction of federal
12 income taxes paid from corporate income and financial
13 institution excise taxes become effective for tax years
14 beginning on or after the January 1, 2021, following the
15 ratification of the amendment to the Constitution of Alabama
16 of 1901, authorizing the Legislature to reduce the income tax
17 rate for corporations and repeal the federal income tax
18 deduction for corporations, proposed by House Bill __ of the
19 2020 Regular Session. All remaining provisions of this act
20 shall become effective for tax years beginning on or after
21 January 1, 2020, following its passage and approval by the
22 Governor, or its otherwise becoming law.