

1 HB44
2 171080-1
3 By Representative Faulkner
4 RFD: Ways and Means Education
5 First Read: 03-AUG-15

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8 SYNOPSIS: This bill would establish a factor presence
9 nexus standard for business activity for purposes
10 of income tax.

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12 A BILL
13 TO BE ENTITLED
14 AN ACT

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16 To add a new Section 40-18-31.2 to the Code of
17 Alabama of 1975, to establish a factor presence nexus standard
18 for business activity for purposes of income tax.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 40-18-31.2 is added to the Code
21 of Alabama 1975, to read as follows:

22 §40-18-31.2

23 (a) (1) Individuals who are residents or
24 domiciliaries of this state and business entities that are
25 organized or commercially domiciled in this state have
26 substantial nexus with this state.

1 (2) Nonresident individuals and business entities
2 organized outside of the state that are doing business in this
3 state have substantial nexus and are subject to the taxes
4 provided for in Chapters 14A, 18, and 16 of this title, when
5 in any tax period the property, payroll, or sales of the
6 individual or business in the state, as they are defined in
7 subsection (d), exceeds the thresholds set forth in subsection
8 (b).

9 (b) Substantial nexus is established if any of the
10 following thresholds are exceeded during the tax period:

11 (1) A dollar amount of fifty thousand dollars
12 (\$50,000) of property.

13 (2) A dollar amount of fifty thousand dollars
14 (\$50,000) of payroll.

15 (3) A dollar amount of five hundred thousand dollars
16 (\$500,000) of sales, as defined in subdivision (3) of
17 subsection (d).

18 (4) Twenty-five percent of total property, total
19 payroll, or total sales.

20 (c) At the end of each year, the commissioner shall
21 review the cumulative percentage change in the Consumer Price
22 Index. The commissioner shall adjust the thresholds set forth
23 in subsection (b) if the Consumer Price Index has changed by
24 any of the following:

25 (1) Five percent or more since January 1, 2015, or
26 since the date that the thresholds were last adjusted under
27 this subsection. The thresholds shall be adjusted under this

1 subsection. The thresholds shall be adjusted to reflect that
2 cumulative percentage change in the Consumer Price Index. The
3 adjusted thresholds shall be rounded to the nearest one
4 thousand dollars (\$1,000). As used in this subsection,
5 Consumer Price Index means the Consumer Price Index for All
6 Urban Consumers (CPI-U) available from the Bureau of Labor
7 Statistics of the United States Department of Labor.

8 (2) Any adjustment shall apply to tax periods that
9 begin after the adjustment is made.

10 (d) Property, payroll, and sales are defined as
11 follows:

12 (1) Property counting toward the threshold is the
13 average value of the taxpayer's real property and tangible
14 personal property owned or rented and used in this state
15 during the tax period. Property owned by the taxpayer is
16 valued at its original cost basis. Property rented by the
17 taxpayer is valued at eight times the net annual rental rate.
18 Net annual rental rate is the annual rental rate paid by the
19 taxpayer less any annual rental rate received by the taxpayer
20 from sub-rentals. The average value of property shall be
21 determined by averaging the values at the beginning and ending
22 of the tax period; but the tax administrator may require the
23 averaging of monthly values during the tax period if
24 reasonably required to reflect properly the average value of
25 the taxpayer's property.

26 (2) Payroll counting toward the threshold is the
27 total amount paid by the taxpayer for compensation in this

1 state during the tax period. Compensation means wages,
2 salaries, commissions, and any other form of remuneration paid
3 to employees and defined as gross income under the Internal
4 Revenue Code §61. Compensation is paid in this state if a. the
5 individual's service is performed entirely within the state;
6 b. the individual's service is performed both within and
7 without the state, but the service performed without the state
8 is incidental to the individual's service within the state; c.
9 some of the service is performed in the state and 1. the base
10 of operations or, if there is no base of operations, the place
11 from which the service is directed or controlled is in the
12 state, or 2. the base of operations or the place from which
13 the service is directed or controlled is not in any state in
14 which some part of the service is performed, but the
15 individual's residence is in this state.

16 (3) Sales counting toward the threshold include the
17 total dollar value of the taxpayer's gross receipts from
18 transactions in the current period, from a. the sale, lease,
19 or license of real property located in this state; b. the
20 lease or license of tangible personal property located in this
21 state; c. the sale of tangible personal property received in
22 this state as indicated by receipt at a business location of
23 the seller in this state or by instructions, known to the
24 seller, for delivery or shipment to a purchaser, or to another
25 at the direction of the purchaser, in this state; and d. the
26 sale, lease, or license of services, intangibles, and digital
27 products for primary use by a purchaser known to the seller to

1 be in this state. If the seller knows that a service,
2 intangible, or digital product will be used in multiple states
3 because of separate charges levied for, or measured by, the
4 use at different locations, because of other contractual
5 provisions measuring use, or because of other information
6 provided to the seller, the seller shall apportion the
7 receipts according to usage in each state; e. if the seller
8 does not know where a service, intangible, or digital product
9 will be used or where a tangible will be received, the
10 receipts shall count toward the threshold of the state
11 indicated by an address for the purchaser that is available
12 from the business records of the seller maintained in the
13 ordinary course of business when such use does not constitute
14 bad faith. If that is not known, then the receipts shall count
15 toward the threshold of the state indicated by an address for
16 the purchaser that is obtained during the consummation of the
17 sale, including the address of the purchaser's payment
18 instrument, if no other address is available, when the use of
19 this address does not constitute bad faith.

20 (4) Notwithstanding the other provisions of this
21 subsection, for a taxpayer subject to special apportionment
22 methods, the property, payroll, and sales for measuring
23 against the nexus thresholds shall be defined as they are for
24 apportionment purposes under those special apportionment
25 methods or regulations associated with that special
26 apportionment method. Financial institutions subject to an
27 apportioned income tax shall determine property, payroll, and

1 sales for nexus threshold purposes the same as for
2 apportionment purposes under Chapter 16 of this title.
3 Pass-through entities, including, but not limited to,
4 partnerships, limited liability companies, S corporations, and
5 trusts shall determine threshold amounts at the entity level.
6 If property, payroll, or sales of an entity in this state
7 exceeds the nexus threshold, members, partners, owners,
8 shareholders, or beneficiaries of that pass-through entity are
9 subject to tax on the portion of income earned in this state
10 and passed through to them.

11 (e) A state without jurisdiction to impose tax on or
12 measured by net income on a particular taxpayer because that
13 taxpayer comes within the protection of Public Law 86-272, 15
14 U.S.C. § 381, does not gain jurisdiction to impose such a tax
15 even if the taxpayer's property, payroll, or sales in the
16 state exceeds a threshold in subsection (b). Public Law 86-272
17 preempts the state's authority to tax and will therefore cause
18 sales of each protected taxpayer to customers in the state to
19 be thrown back to those sending states that require throwback.
20 If Congress repeals the application of Public Law 86-272 to
21 this state, an out-of-state business shall not have
22 substantial nexus in this state unless its property, payroll,
23 or sales exceeds a threshold in this section.

24 Section 2. This act shall become effective for tax
25 years beginning after December 31, 2014, following its passage
26 and approval by the Governor, or its otherwise becoming law.