

Ala. Seeks Bank Tax Revamp, Research And Development Credit

By **Paul Williams**

Law360 (April 15, 2019, 8:33 PM EDT) -- Alabama would update its financial institution excise tax to decouple from certain federal code provisions and establish the state's first research and development tax credit under two bills introduced in the House of Representatives.

Both bills were filed Thursday. H.B. 419 would decouple the financial institution excise tax from Internal Revenue Code **Section 162(r)** regarding the deduction limitation on Federal Deposit Insurance Corp. premiums, IRC **Section 951A** involving global intangible low-taxed income and IRC **Section 163(j)**'s treatment of disallowed interest deductions. H.B. 424 would award up to \$2 million in annual research and development credits for financial institutions and corporations.

H.B. 419 was referred to the House Ways and Means General Fund Committee, and H.B. 424 was referred to the House Ways and Means Education Committee.

The financial institution excise tax is separate from the state's corporate income tax, and is imposed on banks, trusts and building and loan companies. While the bill decouples from the federal treatment of GILTI and the disallowed interest deduction, the Alabama Department of Revenue has already taken the stance that those IRC sections **don't apply** to the excise tax but do apply to the corporate income tax code.

H.B. 419 also specifies that IRC references would mean the code of 1986, a clarification that some thought was needed because the statute never officially adopted the code past 1964, Bruce Ely, a partner with Bradley Arant Boult Cummings LLP who helped author the bill, said Monday.

Ely said the bill should appease the state's banking community, which has been clamoring for consistency and simplification of the financial institution excise tax through the modernizing of the statute.

"Although the bill strives to be revenue-neutral, I think over time it may be somewhat of a tax increase, but the banks are generally OK with that because of the trade-off for simplicity and just knowing what the rules are," said Ely, who is also an adjunct professor in the University of Alabama's graduate tax accounting program in Tuscaloosa.

In exchange for decoupling from the FDIC premium deduction limitation, the bill would phase out a deduction for dividends paid from captive real estate investment trusts, which are controlled by a single company, by tax years that begin after Dec. 31, 2024.

Karl Frieden, general counsel of the Council on State Taxation, said the business group was hopeful that the decoupling of GILTI from the excise tax signals that Alabama has an appetite to decouple from it for corporate income tax purposes. COST has joined practitioners in **casting doubts** on the validity of states to tax GILTI under the commerce clause.

"GILTI covers all different industries," Frieden said. "I think that decoupling here could be a positive sign that perhaps the Alabama Legislature would consider doing the same with corporate income tax."

Members of the Alabama Banking Association helped craft the legislation during conversations with

the department over the previous year, according to Scott Latham, the association's president and CEO. He added that the association is particularly pleased that the base calculation for the tax will be switched to federal taxable income for the first time.

"While revenue-neutral overall, this bill simplifies every facet of the tax — computation, preparation, filing, and distribution — and will make it easier for financial institutions, tax practitioners, and the Department of Revenue to better understand and enforce the law," Latham said in an email.

The tax credits offered under H.B. 424 would be limited to \$25 million per year, with individual taxpayers eligible for up to \$2 million. The credit would be 25 percent of expenses for new research conducted at universities, two-year public colleges and publicly owned hospitals in the state, and 10 percent of expenses for all other research.

While previous iterations of the bill failed to gain traction over budgetary concerns, Ely said he was optimistic that the state's general fund was on solid enough footing to absorb the costs of offering the credits. He added that Alabama was an outlier, as it is one of the few states in the Southeast that does not offer a research and development credit.

"The hope is this will be an economic tool to incentivize companies to move their research folks into Alabama," he said.

H.B. 419 sponsor Rep. Kyle South, R-Tuscaloosa, did not immediately respond to questions.

An email to H.B. 424 sponsor Rep. Joe Lovvorn, R-Auburn, did not get a response.

House Minority Leader Rep. Anthony Daniels, D-Huntsville, was not immediately available for comment.

--Editing by Neil Cohen.

Update: This story has been updated with a comment from the Alabama Banking Association.