

1 HB419
2 198717-3
3 By Representative South
4 RFD: Ways and Means General Fund
5 First Read: 11-APR-19

ACT #2019- 284



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2 ENROLLED, An Act,

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BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. This act shall be known and cited as the Financial Institution Excise Tax Reform Act of 2019.

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Section 2. Section 40-16-1, 40-16-3, and 40-16-6, Code of Alabama 1975, are amended to read as follows:

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"§40-16-1.

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"For the purpose of this chapter, the following terms shall have the respective meanings ascribed to them by this section:

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"(1) FINANCIAL INSTITUTION. Any person, firm, corporation and any legal entity whatsoever doing business in this state as a national banking association, bank, banking association, trust company, industrial or other loan company or building and loan association, and such term shall likewise include any other institution or person employing moneyed capital coming into competition with the business of national

1 banks, and shall apply to such person or institution
2 regardless of what business form and whether or not
3 incorporated, whether of issue or not, and by whatsoever
4 authority existing. The common parent corporation of a
5 controlled group of corporations eligible to elect to file a
6 consolidated excise tax return, in accordance with Section
7 40-16-3, shall be considered a financial institution if such
8 parent corporation is a registered bank holding company as
9 defined by the Bank Holding Company Act of 1956, as amended.
10 As a financial institution, the common parent corporation will
11 be governed by Sections 40-16-1 through 40-16-~~811~~ and exempt
12 from all income taxes under chapter 18 of this title ~~Sections~~
13 ~~40-18-1 through 40-18-85~~, with the exception that the credit
14 for licenses or taxes as provided by Section 40-16-8 and the
15 ~~regulations issued~~ rules adopted ~~or promulgated~~ pursuant
16 thereto by the Department of Revenue will not apply to amounts
17 of excise tax on financial institutions imposed hereby and
18 paid by such parent corporation. Financial institution shall
19 not mean or include individual citizens and fiduciaries acting
20 in a representative capacity for individual citizens, not
21 engaged in a banking, loan, investment or similar business,
22 but merely making personal investments of personal or
23 fiduciary funds in bonds, notes or other evidences of
24 indebtedness and not made in competition with the business of
25 national banks, nor shall such term apply to insurance

1 companies or insurance associations merely making investments
2 of reserves in bonds, notes or other evidences of indebtedness
3 and not made in competition with the business of national
4 banks.

5 "(2) INTERNAL REVENUE CODE AND U.S.C. All
6 references in this chapter to the Internal Revenue Code or to
7 26 U.S.C. shall mean the applicable section of the Internal
8 Revenue Code of 1986, as in effect from time to time, as
9 codified in Title 26 of the United States Code, as in effect
10 from time to time. The Department of Revenue may adopt
11 reasonable rules under the Alabama Administrative Procedure
12 Act prescribing operating rules with respect to the adoption
13 by this state for its financial institution excise tax of
14 certain provisions of the laws of the United States relating
15 to the determination of taxable income for federal income tax
16 purposes, similar to those contained in Section 40-18-1.1 to
17 the extent consistent with this chapter.

18 ~~"(2) NET INCOME: The net income for the taxable~~
19 ~~year, as in this title defined, arising from the business the~~
20 ~~privilege to engage in which is hereby taxed, computed by~~
21 ~~deducting from the gross income arising from such business,~~
22 ~~without any exclusions from or credit to such gross income,~~
23 ~~the total amount of the following deductions:~~

24 ~~"a. All the ordinary and necessary expenses paid or~~
25 ~~incurred during the year the income is received which is made~~

1 ~~the basis of the tax in carrying on the business, the~~
2 ~~privilege to engage in which is hereby taxed, including a~~
3 ~~reasonable allowance for salaries or other compensation for~~
4 ~~personal service actually rendered; also all contributions~~
5 ~~paid by a financial institution as employer to or under a~~
6 ~~stock bonus, pension, profit-sharing or annuity plan, or if~~
7 ~~compensation is paid or accrued on account of any employee of~~
8 ~~any financial institution under the plan deferring the receipt~~
9 ~~of such compensation, such contributions or compensation shall~~
10 ~~be deductible, but only to the following extent:~~

11 ~~"1. In the taxable year when paid, if the~~
12 ~~contributions are paid into a pension trust and if such~~
13 ~~taxable year ends within or with a taxable year of the trust~~
14 ~~for which the trust is exempt under Section 40-18-25 in an~~
15 ~~amount determined as follows: (i) An amount not in excess of~~
16 ~~five percent of the compensation otherwise paid or accrued~~
17 ~~during the taxable year to all the employees under the trust,~~
18 ~~but such amount may be reduced for future years if found by~~
19 ~~the Commissioner of Revenue upon periodical examinations at~~
20 ~~not less than five year intervals to be more than the amount~~
21 ~~reasonably necessary to provide the remaining unfunded cost of~~
22 ~~past and current service credits of all employees under the~~
23 ~~plan, plus (ii) any excess over the amount allowable under~~
24 ~~clause (i) necessary to provide with respect to all of the~~
25 ~~employees under the trust the remaining unfunded cost of their~~

1 ~~past and current service credits distributed as a level~~
2 ~~amount, or a level percentage of compensation, over the~~
3 ~~remaining future service of each such employee, as determined~~
4 ~~under regulations prescribed by the Commissioner of Revenue,~~
5 ~~but if such remaining unfunded cost with respect to any three~~
6 ~~individuals is more than 50 percent of such remaining unfunded~~
7 ~~cost, the amount of such unfunded cost attributable to such~~
8 ~~individuals shall be distributed over a period of at least~~
9 ~~five taxable years, or (iii) in lieu of the amounts allowable~~
10 ~~under (i) and (ii) above, an amount equal to the normal cost~~
11 ~~of the plan, as determined under regulations prescribed by the~~
12 ~~Commissioner of Revenue plus, if past service or other~~
13 ~~supplementary pension or annuity credits are provided by the~~
14 ~~plan, an amount not in excess of 10 percent of the cost which~~
15 ~~would be required to completely fund or purchase such pension~~
16 ~~or annuity credits as of the date when they are included in~~
17 ~~the plan, as determined under regulations prescribed by the~~
18 ~~Commissioner of Revenue, except, that in no case shall a~~
19 ~~deduction be allowed for any amount (other than the normal~~
20 ~~cost) paid in after such pension or annuity credits are~~
21 ~~completely funded or purchased, (iv) any amount paid in a~~
22 ~~taxable year in excess of the amount deductible in such year~~
23 ~~under the foregoing limitations shall be deductible in the~~
24 ~~succeeding taxable years in order of time to the extent of the~~
25 ~~difference between the amount paid and deductible in each such~~

1 ~~succeeding year and the maximum amount deductible for such~~
2 ~~year in accordance with the foregoing limitations.~~

3 ~~"2. In the taxable year when paid, in an amount~~
4 ~~determined in accordance with subparagraph 1 of this~~
5 ~~paragraph, if the contributions are paid toward the purchase~~
6 ~~of retirement annuities and such purchase is a part of a plan~~
7 ~~which meets the requirements of subsection (e) of Section~~
8 ~~40-18-25, and if refunds of premiums, if any, are applied~~
9 ~~within the current taxable year or next succeeding taxable~~
10 ~~year towards the purchase of such retirement annuities.~~

11 ~~"3. In the taxable year when paid, if the~~
12 ~~contributions are paid into a stock bonus or profit-sharing~~
13 ~~trust, and if such taxable year ends within or with a taxable~~
14 ~~year of the trust with respect to which the trust is exempt~~
15 ~~under subsection (e) of Section 40-18-25, in an amount not in~~
16 ~~excess of 15 percent of the compensation otherwise paid or~~
17 ~~accrued during the taxable year to all employees under the~~
18 ~~stock bonus or profit-sharing plan. If in any taxable year~~
19 ~~beginning after the approval of this chapter by the Governor~~
20 ~~there is paid into the trust, or a similar trust then in~~
21 ~~effect, amounts less than the amounts deductible under the~~
22 ~~preceding sentence, the excess or, if no amount is paid, the~~
23 ~~amounts deductible shall be carried forward and be deductible~~
24 ~~when paid in the succeeding taxable years in order of time,~~
25 ~~but the amount so deductible under this sentence in any such~~

1 ~~succeeding taxable year shall not exceed 15 percent of the~~
2 ~~compensation otherwise paid or accrued during such succeeding~~
3 ~~taxable year to the beneficiaries under the plan. In addition,~~
4 ~~any amount paid into the trust in a taxable year beginning~~
5 ~~after the approval of this chapter by the Governor in excess~~
6 ~~of the amount allowable with respect to such year under the~~
7 ~~preceding provisions of this subparagraph shall be deductible~~
8 ~~in the succeeding taxable years in order of time, but the~~
9 ~~amount so deductible under this sentence in any one such~~
10 ~~succeeding taxable year together with the amount allowable~~
11 ~~under the first sentence of this subparagraph shall not exceed~~
12 ~~15 percent of the compensation otherwise paid or accrued~~
13 ~~during such taxable year to the beneficiaries under the plan.~~
14 ~~The term stock bonus or profit-sharing trust, as used in this~~
15 ~~subparagraph, shall not include any trust designed to provide~~
16 ~~benefits upon retirement and covering a period of years, if~~
17 ~~under the plan the amounts to be contributed by the employer~~
18 ~~can be determined actuarially as provided in subparagraph 1.~~
19 ~~If the contributions are made to two or more stock bonus or~~
20 ~~profit-sharing trusts, such trusts shall be considered a~~
21 ~~single trust for the purposes of applying the limitations of~~
22 ~~this subparagraph.~~

23 ~~"4. In the taxable year when paid, if the plan is~~
24 ~~not one included in subparagraphs 1, 2 or 3, if the employees'~~
25 ~~rights to or derived from such employer's contribution or such~~

1 ~~compensation are nonforfeitable at the time the contribution~~
2 ~~or compensation is paid.~~

3 ~~"5. For the purposes of subparagraphs 1, 2 and 3, a~~
4 ~~taxpayer on the accrual basis shall be deemed to have made a~~
5 ~~payment on the last day of the year of accrual if the payment~~
6 ~~is on account of such taxable year and is made within 60 days~~
7 ~~after the close of the taxable year of accrual.~~

8 ~~"6. If amounts are deductible under subparagraphs 1~~
9 ~~and 3, or 2 and 3, or 1, 2 and 3, in connection with the two~~
10 ~~or more trusts, or one or more trusts and an annuity plan, the~~
11 ~~total amount deductible in a taxable year under such trusts~~
12 ~~and plans shall not exceed 25 percent of the compensation~~
13 ~~otherwise paid or accrued during the taxable year to the~~
14 ~~persons who are the beneficiaries of the trusts or plans. In~~
15 ~~addition, any amount paid into such trust or under such~~
16 ~~annuity plans in any taxable year in excess of the amount~~
17 ~~allowable with respect to such year under the preceding~~
18 ~~provisions of this subparagraph shall be deductible in the~~
19 ~~succeeding taxable years in order of time, but the amount so~~
20 ~~deductible under this sentence in any one such succeeding~~
21 ~~taxable year, together with the amount allowable under the~~
22 ~~first sentence of this subparagraph, shall not exceed 30~~
23 ~~percent of the compensation otherwise paid or accrued during~~
24 ~~such taxable years to the beneficiaries under the trusts or~~
25 ~~plans. This subparagraph shall not have the effect of reducing~~

1 ~~the amount otherwise deductible under subparagraphs 1, 2 and~~
2 ~~3, if no employee is a beneficiary under more than one trust,~~
3 ~~or a trust and an annuity plan. If there is no plan but a~~
4 ~~method of employer contributions or compensation has the~~
5 ~~effect of a stock bonus, pension, profit-sharing, or annuity~~
6 ~~plan, or similar plan deferring the receipt of compensation,~~
7 ~~this paragraph shall apply as if there were such a plan. Also,~~
8 ~~all contributions or gifts made by financial institutions to a~~
9 ~~community chest or to recognized religious, charitable,~~
10 ~~scientific or educational institutions or agencies, or to~~
11 ~~institutions or agencies for the prevention of cruelty to~~
12 ~~children or animals, which are not operated for profit and no~~
13 ~~part of the net earnings of which inures to the benefit of any~~
14 ~~private stockholder or individual or contributions or gifts~~
15 ~~for vocational rehabilitation authorized by the United States~~
16 ~~Vocational Rehabilitation Act. The amount of such deduction~~
17 ~~shall not be, however, in excess of five percent of the~~
18 ~~financial institution's net income as computed without the~~
19 ~~benefit of this subsection. Such contributions or gifts shall~~
20 ~~be allowable as deductions only where made to a community~~
21 ~~chest or institution or agency recognized as such for the~~
22 ~~above purposes under rules and regulations prescribed by the~~
23 ~~Department of Revenue. Traveling expenses, including a~~
24 ~~reasonable amount expended for meals and lodgings while away~~
25 ~~from home in the necessary business of such institutions,~~

1 ~~rentals or other payments required to be made as the condition~~
2 ~~to the continued use or possession for the purposes of such~~
3 ~~business, or property to which the taxpayer has not taken or~~
4 ~~is not taking title or in which the taxpayer has no equity,~~
5 ~~provided the amount and the reasonableness of all such~~
6 ~~expenditures shall be approved by the state Department of~~
7 ~~Revenue.~~

8 ~~"b. All interest paid or accrued within the taxable~~
9 ~~year on the indebtedness of said business. Also, all dividends~~
10 ~~paid or accrued within the taxable year on the shares of~~
11 ~~preferred stock held or owned by a reconstruction finance~~
12 ~~corporation or any other governmental agency;~~

13 ~~"c. Taxes actually paid within the year in which the~~
14 ~~income on which the tax is based was received, except the~~
15 ~~excise tax imposed by this chapter and taxes assessed against~~
16 ~~local benefits of a kind tending to increase the value of the~~
17 ~~property assessed;~~

18 ~~"d. Losses sustained and determined during the~~
19 ~~taxable year by the business and not compensated for by~~
20 ~~insurance or otherwise;~~

21 ~~"1. The basis for determining the amount of any loss~~
22 ~~or gain shall be the cost to the financial institution of the~~
23 ~~asset disposed of less the actual depreciation sustained on~~
24 ~~physical asset and any reduction charged as an expense upon~~
25 ~~stocks, bonds or other securities in previous years.~~

1 ~~"2. No loss shall be allowable unless the property~~
2 ~~is actually disposed of and the loss thereby determined or an~~
3 ~~appraisal of the loss is made and allowed under the~~
4 ~~supervision of the Department of Revenue, except as~~
5 ~~hereinafter provided.~~

6 ~~"e. Debts ascertained to be worthless and charged~~
7 ~~off within the taxable year, provided, that a schedule of such~~
8 ~~debts shall be filed and the reasons supporting such claim for~~
9 ~~deduction be filed with the return; provided, further, that~~
10 ~~bad debts shall not include losses on stocks and bonds or a~~
11 ~~reduction in the market value of such stocks and bonds except~~
12 ~~where loss is determined by the sale of such securities,~~
13 ~~provided, that in the case of any financial institution~~
14 ~~required by law to be examined by state, federal or federal~~
15 ~~reserve bank examiners, such debts can be charged off and to~~
16 ~~such an amount or extent as required to be charged off by~~
17 ~~state, federal or federal reserve bank examiners. Any~~
18 ~~reduction in the book value of any stocks or bonds carried on~~
19 ~~the books of any such financial institution required by any~~
20 ~~state, federal or federal reserve bank examiners shall be~~
21 ~~allowed as proper deductions by the state Department of~~
22 ~~Revenue. On the sale of any securities, the book value of~~
23 ~~which has been reduced on the requirement of such examiners,~~
24 ~~and the reduction so made claimed as a deduction,~~
25 ~~accomplishing a reduction of the tax paid, any excess of the~~

1 ~~sale price over said book value of such securities shall be~~
2 ~~reflected as income and subject to the excise tax levied by~~
3 ~~this chapter. When in the opinion of state, federal or federal~~
4 ~~reserve bank examiners a debt is recoverable only in part and~~
5 ~~when a part of such debt is charged off by requirement of~~
6 ~~state, federal or federal reserve bank examiners, the~~
7 ~~Department of Revenue shall allow a deduction in an amount~~
8 ~~equal to the amount of such charge off;~~

9 ~~"f. A reasonable allowance for the exhaustion, wear~~
10 ~~and tear of property used in the business, including a~~
11 ~~reasonable allowance for obsolescence. The basis for~~
12 ~~determining the amount of such depreciation deduction shall be~~
13 ~~the cost of such property, or, if acquired prior to October~~
14 ~~15, 1935, the basis shall be the depreciated cost as of~~
15 ~~October 1, 1935;~~

16 ~~"g. The amount received as dividends from a~~
17 ~~corporation organized and existing under the laws of the State~~
18 ~~of Alabama and the amount received as dividends in liquidation~~
19 ~~paid from capital;~~

20 ~~"h. In the discretion of the Department of Revenue,~~
21 ~~in lieu of such deductions for losses or bad debts, a~~
22 ~~reasonable addition to reserves therefor and for extraordinary~~
23 ~~expenses;~~

1 ~~"i. In the case of savings and loan associations the~~
2 ~~amount paid out as dividends on the withdrawable shares~~
3 ~~thereof;~~

4 ~~"j. In computing the net income of credit unions for~~
5 ~~the purpose of the excise tax levied by this chapter, there~~
6 ~~shall, in addition to all other deductions allowed by law, be~~
7 ~~deducted the amount paid out as dividends on the withdrawable~~
8 ~~shares of such credit union; and~~

9 ~~"k. All financial institutions shall be allowed to~~
10 ~~carry back their net operating losses to apply as a deduction~~
11 ~~against prior income, and to deduct from succeeding years'~~
12 ~~income the excess loss, if any, that is not absorbed thereby.~~
13 ~~For purposes of this subdivision, the term net operating loss~~
14 ~~means the excess of allowable deductions over gross income. No~~
15 ~~net operating loss deduction (arising out of a net loss in an~~
16 ~~earlier or later year) shall be allowed in computing a net~~
17 ~~operating loss. Casualty losses and losses arising from theft,~~
18 ~~fraud and embezzlement, however, shall be deductible in~~
19 ~~computing the net operating loss. A net operating loss for a~~
20 ~~taxable year ending after the year 1952 may be carried back~~
21 ~~two years, then forward to the eight succeeding taxable years~~
22 ~~in chronological order; provided, that no part of the net~~
23 ~~operating loss which has been previously applied against~~
24 ~~income for one taxable year may be applied as a carryback or~~
25 ~~carryover to another taxable year. The net operating loss~~

1 ~~deduction allowed herein shall be the sum of the carrybacks~~
2 ~~and carryovers applicable to the taxable years. A successor~~
3 ~~financial institution shall be allowed to carry over and~~
4 ~~deduct from succeeding years' income, in the manner prescribed~~
5 ~~herein, the net operating loss of its predecessor. Refunds~~
6 ~~under the provisions of this subdivision shall be paid from~~
7 ~~the current year's receipts.~~

8 ~~"1. The amount of any aid or assistance, whether in~~
9 ~~the form of property, services or monies, provided to the~~
10 ~~State Industrial Development Authority pursuant to subsection~~
11 ~~(d) of Section 41-10-44.8 in order to induce an approved~~
12 ~~company to undertake a major project within the state.~~

13 "(3) NET INCOME. In the case of a financial
14 institution subject to the tax imposed by this chapter, the
15 term "net income" means federal taxable income without the
16 benefit of federal net operating losses, plus the additions
17 prescribed and less the deductions and adjustments allowed by
18 this chapter, as allocated and apportioned to Alabama
19 according to rules adopted by the Department of Revenue
20 pursuant to Section 40-16-4.

21 Financial institutions not subject to the federal
22 income tax shall begin the calculation of net income by
23 performing a pro forma calculation of federal taxable income.

24 "(3)(4) TAX YEAR OR TAXABLE YEAR. A full period of
25 12 consecutive months constituting the fiscal year or calendar

1 year of each financial institution subject to the tax imposed
2 by this chapter ended last prior to April 1, 1935, and
3 thereafter ended last prior to April 1 of each year in which
4 such tax is to be assessed. In the case of any financial
5 institution taxable under this chapter whose business hereby
6 taxed was conducted only during a fractional period of any
7 year, or a period of less than 12 months resulting from a
8 change in accounting period permitted by applicable federal
9 authorities, a return shall be made as herein provided and the
10 tax computed as herein provided, and such tax as assessed
11 shall be an excise tax for the privilege of doing business in
12 this state for such fractional year.

13 ~~(4)~~ (5) STATE TAX YEAR. The calendar year.

14 "(6) TRUST. Any entity which is classified as a
15 trust for federal income tax purposes."

16 "§40-16-3.

17 "(a) Every financial institution, as in this chapter
18 defined, shall ~~within the first 15 days of April in each year,~~
19 no later than the due date, including applicable extensions,
20 for its corresponding federal income tax or federal
21 information return, make and file with the Department of
22 Revenue a return, signed under the penalties of perjury by its
23 cashier, treasurer or other authorized officer or employee, if
24 a corporation, or by a person or authorized employee in charge
25 of the conduct of the business to be taxed if an individual,

1 firm, association or other legal entity, in such form as may
2 be prescribed by the Department of Revenue, giving such
3 detailed information as the Department of Revenue may in its
4 opinion require to determine the net income of such financial
5 institution for the taxable year, by the net income of which
6 said excise tax is to be measured.

7 "(b) Qualified corporate groups, as in this chapter
8 defined, shall have the option to file one excise tax return
9 on a consolidated basis or to file separate returns. Qualified
10 corporate groups electing to file one excise tax return on a
11 consolidated basis shall be assessed a no fee ~~of \$6,000~~ for
12 the privilege of filing on a consolidated basis. Newly
13 acquired corporations which have a potential separate return
14 year as well as a consolidated year ~~would~~ shall have the
15 option of filing a separate return including all of their
16 income for that year or filing as part of the consolidated
17 group for the entire taxable year. Newly created, controlled
18 corporations ~~would either file~~ shall have the option of filing
19 a separate return or including all of their income for that
20 year or filing as part of the consolidated return group for
21 the entire taxable year, as determined by the election of the
22 corporate group for that year.

23 "(c) In order for financial institution members of a
24 controlled group to be eligible to elect to file on a

1 consolidated basis, the members ~~would have to~~ must meet the
2 following two tests:

3 "(1) OWNERSHIP TEST. Includable financial
4 institutions ~~will be~~ connected through stock ownership with a
5 common parent corporation, ~~which financial institutions~~ are
6 includable corporations if:

7 "a. Stock possessing at least 80 percent of the
8 voting power of all classes of stock and at least 80 percent
9 of each class of the nonvoting stock of each of the includable
10 corporations (except the common parent corporation) is owned
11 directly or indirectly applying the attribution rules of 26
12 U.S.C. § 318 by one or more of the other includable
13 corporations; and

14 "b. The common parent owns directly or indirectly
15 applying the attribution rules of 26 U.S.C. § 318 stock
16 possessing at least 80 percent of the voting power of all
17 classes of stock and at least 80 percent of each class of the
18 nonvoting stock of at least one of the other includable
19 corporations.

20 "(2) FILING TEST. In order to be eligible for this
21 election, each member must be a financial institution as
22 defined in Section 40-16-1 and be required to file an excise
23 tax return under this chapter.

24 "(d) To the extent operating rules are required for
25 the filing of a consolidated excise tax return, the

1 consolidated return regulations of the Internal Revenue Code
2 and the principles contained therein ~~would~~ shall be used as a
3 guideline in the absence of clarifying ~~regulations issued~~
4 rules adopted by the Department of Revenue.

5 "(e) Any election to file an Alabama consolidated
6 excise tax return pursuant to this section shall be binding on
7 both the Department of Revenue and the Alabama qualified
8 corporate group for a period of not less than ten (10) taxable
9 years, except that the election shall terminate automatically
10 upon the revocation or termination of its federal consolidated
11 return election.

12 "(f) Returns filed inconsistent with this election
13 shall be considered delinquent and subject to the penalties
14 imposed by Section 40-2A-11.

15 "~~(e)~~ (g) The Department of Revenue may ~~make~~ adopt
16 such reasonable rules ~~and regulations~~ as it may deem necessary
17 to determine ~~the whether businesses~~ business conducted ~~and in~~
18 ~~the~~ this state is properly classified as a financial
19 institution under this chapter which are subject to said
20 excise tax and to determine the net income of such ~~businesses~~
21 business by which said tax is to be measured; ~~provided, that~~
22 ~~any financial institution conducting a business both within~~
23 ~~and without the State of Alabama and coming within the~~
24 ~~provisions of this chapter shall be required to make a report~~
25 ~~to the Department of Revenue showing the amount of its income~~

1 ~~received from the business conducted by it within the State of~~
2 ~~Alabama and the expenses incurred by it in the conduct of its~~
3 ~~business within the State of Alabama. Failure to file any such~~
4 ~~return on or before the due date thereof in the absence of~~
5 ~~extension of time in writing for the filing thereof granted by~~
6 ~~the Department of Revenue shall subject the financial~~
7 ~~institution so failing to a penalty of 15 percent of the~~
8 ~~amount of tax assessed, which amount shall be assessed and~~
9 ~~collected as a part of the tax, and a like penalty of \$5 per~~
10 ~~day for each day's failure to file such return, which penalty~~
11 ~~shall be collected by civil action.~~

12 "§40-16-6.

13 "(a) The remittance of the excise tax required due
14 under this chapter shall be made to the Department of Revenue
15 at Montgomery, Alabama, with checks payable to the State
16 Treasurer of Alabama Department of Revenue.

17 "~~(b) The proceeds of the excise tax herein imposed~~
18 ~~by this chapter shall be, without delay, deposited into the~~
19 ~~State Treasury to the credit of the Financial Institution~~
20 ~~Excise Tax Fund. The amount of money appropriated for each~~
21 ~~fiscal year by the Legislature to the Department of Revenue~~
22 ~~with which to pay the salaries, the cost of operation, and the~~
23 ~~management of the department shall be deducted, as a first~~
24 ~~charge, from the taxes collected pursuant to Section 40-16-4,~~
25 ~~provided, that the expenditure of money so appropriated shall~~

1 ~~be budgeted and allotted pursuant to Article 4 of Chapter 4 of~~
2 ~~Title 41 and limited only to the amount appropriated with~~
3 ~~which to defray the expenses of operating the department for~~
4 ~~each fiscal year.~~

5 ~~"(c) The excess of the tax levied by this chapter~~
6 ~~computed using a rate of six and one half percent and the tax~~
7 ~~computed using a rate of six percent shall be deposited in the~~
8 ~~General Fund. The balance of the tax collected, after the~~
9 ~~payment of refunds, pursuant to Section 40-16-4, shall, on~~
10 ~~September 1 in each year, be distributed as follows. On~~
11 ~~certificate of the Department of Revenue the Comptroller shall~~
12 ~~draw a warrant on the State Treasurer payable to the county~~
13 ~~treasurer of each of the counties in which the financial~~
14 ~~institutions are located for an amount equal to one fourth of~~
15 ~~the tax received from the institutions located in that county,~~
16 ~~after deducting the proportionate part of the expenses~~
17 ~~incurred in the administration of this chapter. On similar~~
18 ~~certificate the Comptroller shall draw a warrant on the State~~
19 ~~Treasurer in favor of the treasurer of each of the~~
20 ~~municipalities in which the financial institutions are located~~
21 ~~for an amount equal to one half of the tax received from the~~
22 ~~institutions located in those municipalities, after deducting~~
23 ~~the proportionate part of the expenses incurred in the~~
24 ~~administration of this chapter. The amount remaining in the~~
25 ~~Financial Institution Excise Tax Fund, after the payment of~~

1 ~~the expenses as heretofore in this chapter provided, and after~~
2 ~~the distribution to the counties and municipalities of their~~
3 ~~proportionate part of the tax, shall be deposited into the~~
4 ~~General Fund of the State of Alabama.~~

5 ~~"(d) Any financial institution which conducts its~~
6 ~~business in more than one municipality or in more than one~~
7 ~~county in this state shall, in making the return required by~~
8 ~~this chapter, report in detail the percentage of its total~~
9 ~~business in the state conducted in each municipality and in~~
10 ~~such county, and the portions of tax paid by each such~~
11 ~~financial institution due to be distributed to the~~
12 ~~municipality and county shall be distributed pro rata~~
13 ~~according to the percentage reported to the municipalities and~~
14 ~~counties where a business is conducted instead of solely to~~
15 ~~the one where the principal place of business of a financial~~
16 ~~institution is located in this state.~~

17 ~~"(e) A financial institution that does not maintain~~
18 ~~an office in Alabama, but is subject to the tax imposed by~~
19 ~~Section 40-16-4, is deemed not to be located in any particular~~
20 ~~county or municipality of the state. Any taxes collected from~~
21 ~~that institution, after payment of refunds, and after~~
22 ~~deduction for a proportionate part of the expense incurred in~~
23 ~~the administration of this chapter, shall be deposited into~~
24 ~~the State General Fund on or before September 1 of each year.~~

1 "(b) The Department of Revenue shall promptly
2 distribute the balance of financial institution excise tax
3 revenue, net of refunds, as of the close of each calendar
4 quarter, with fifty percent (50%) of the revenue distributed
5 to the general fund, thirty three and three tenths percent
6 (33.3%) distributed to municipalities and the remaining
7 sixteen and seven tenths percent (16.7%) distributed to
8 counties.

9 ~~"(c) Total municipal financial institution excise~~
10 ~~tax revenue shall be distributed among the municipalities~~
11 ~~based on each municipality's share of total Alabama municipal~~
12 ~~population as determined in the most recent federal census~~
13 ~~prior to the distribution.~~

14 "(c) Beginning with the 2019 municipal financial
15 institution excise tax distribution, each municipality shall
16 receive a percentage share of the total municipal financial
17 institution excise tax revenue equal to its average percentage
18 share of the total municipal financial institution revenue
19 distribution over the five years ending in 2018.

20 "(d) The first twenty percent (20%) of total county
21 financial institution excise tax revenue shall be distributed
22 equally among all counties. The remaining eighty percent (80%)
23 of county financial institution excise tax revenue shall be
24 distributed among the counties based on each county's share of

1 total Alabama population as determined in the most recent
2 federal census prior to the distribution.

3 "~~(f)~~(e) No municipality or county within the state
4 may levy or assess any excise tax for the privilege of
5 engaging in a business in addition to that levied and
6 distributed to it as herein provided, except license taxes.
7 However, license taxes on banks shall not be levied in excess
8 of those which may be legally levied pursuant to Section
9 11-51-130, provided however, that the license authorized by
10 subdivisions (1) to (12), inclusive, of subsection (a) of
11 Section 11-51-130 may be levied only by the municipality where
12 the bank has its principal place of business."

13 Section 3. The following sections are hereby added
14 to the Code of Alabama 1975, to read as follows:

15 §40-16-1.2.

16 (a) The following items shall be added to federal
17 taxable income for purposes of computing net income under this
18 chapter:

19 (1) The tax due under this chapter that is deducted
20 in computing federal taxable income.

21 (2) State and local taxes that are deducted for
22 purposes of calculating federal taxable income for which a
23 credit is claimed under Section 40-16-8, to the extent such
24 credit is utilized to reduce the tax owed under this chapter.

1 (3) Refunds of federal income taxes deducted in
2 prior tax periods for purposes of computing the tax due under
3 this chapter.

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

9 (5) State, county, and municipal interest income
10 from loans and securities that is exempt for federal income
11 tax purposes.

12 (6) Any interest that was treated as paid or
13 incurred in the current taxable year under 26 U.S.C. §
14 163(j)(2).

15 (7) The amount of foreign-derived intangible income
16 and global intangible low-taxed income that was deducted under
17 26 U.S.C. § 250.

18 (8) The amount of any capital loss carryback or
19 carryforward deducted for federal income tax purposes.

20 (b) The following items shall be deducted from
21 federal taxable income for purposes of computing net income
22 under this chapter:

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

1 (2) Federal income taxes paid or accrued during the
2 taxpayer's taxable year in accordance with the taxpayer's
3 method of accounting.

4 (3) If the taxpayer owns twenty percent (20%) or
5 more of the stock, by vote or value, of the distributing
6 corporation, dividend income, including amounts described in
7 26 U.S.C. § 951, from non-U.S. corporations to the same extent
8 such dividend income would be deductible under 26 U.S.C. § 243
9 if received from U.S. corporations.

10 (4) Federal Deposit Insurance Corporation (FDIC)
11 insurance premiums not deductible for federal income tax
12 purposes under 26 U.S.C. § 162(r).

13 (5) Interest not deductible for federal income tax
14 purposes under 26 U.S.C. § 163(j)(1).

15 (6) Interest not deductible for federal income tax
16 purposes under 26 U.S.C. §§ 265 or 291 related to tax-exempt
17 securities.

18 (7) The amount of global intangible low-taxed income
19 that is included in the gross income of such financial
20 institution under 26 U.S.C. § 951A.

21 (8) The amount treated as dividends under 26 U.S.C.
22 § 78.

23 (9) Expenses otherwise deductible that were not
24 deducted for federal income tax purposes as a result of an

1 election to claim a federal income tax credit for those
2 expenses.

3 (10) Solely with respect to credit unions, the
4 amount paid out as dividends on the withdrawable shares of
5 such credit union.

6 (11) The amount of otherwise deductible capital
7 losses incurred during the taxable year that were not deducted
8 for federal income tax purposes.

9 (c) Nothing in this section shall be construed to
10 allow any item to be deducted more than once or to allow a
11 deduction for any item that is excluded from income or to
12 allow any item to be included in the Alabama net income of
13 more than one taxpayer.

14 §40-16-1.3

15 (a) With respect to credit unions only, net income
16 means financial statement income which is the final net income
17 amount (total revenue less total expenses) calculated for
18 financial statement purposes and reported to the Internal
19 Revenue Service as a tax exempt organization and to the
20 Alabama Credit Union Administration or other government
21 regulatory authority as appropriate, less the subtractions
22 specified below and as allocated and apportioned to Alabama
23 according to rules adopted by the Department of Revenue
24 pursuant to Section 40-16-4.

1 (1) Subtractions. The following items shall be
2 subtracted from financial statement income for purposes of
3 computing the net income of a credit union under this chapter.

4 a. Dividends received from other credit unions and
5 credit union service organizations as defined by federal law
6 and the regulations of the National Credit Union
7 Administration.

8 b. In lieu of deductions for losses or bad debts,
9 reasonable additions to reserves therefor and for
10 extraordinary expenses.

11 \$40-16-5.1.

12 (a) Financial institutions shall pay estimated
13 financial institution excise tax in accordance with 26 U.S.C.
14 § 6655, except the provisions of 26 U.S.C. § 6655(g)(1)(A)(ii)
15 through (iii) shall not apply. The balance of the tax owed,
16 after reduction by the credits allowed by this chapter, and by
17 prior payments including estimated payments as provided in
18 this section, shall be due and paid at the same time as the
19 due date of an original return.

20 (b) For the purposes of this section:

21 (1) Section 40-16-4 shall be substituted when 26
22 U.S.C. § 6655 refers to chapter 1;

23 (2) Section 40-16-4 shall be substituted when 26
24 U.S.C. § 6655 refers to section 11;

1 (3) The terms section 1201(a) and subchapter L of
 2 chapter 1 referred to in 26 U.S.C. § 6655(g)(1)(A)(i) shall be
 3 ignored for Alabama excise tax purposes;

4 (4) Section 40-16-8 shall be substituted when 26
 5 U.S.C. § 6655(g)(1)(B) refers to part IV of subchapter A of
 6 chapter 1;

7 (5) The term carrybacks referred to in 26 U.S.C. §
 8 6655(g)(2)(B)(iii) shall be ignored for Alabama excise tax
 9 purposes;

10 (6) Commissioner shall be substituted when 26 U.S.C.
 11 § 6655 refers to Secretary.

12 §40-16-10.

13 (a) In computing the net income of financial
 14 institutions subject to the tax imposed by this chapter, there
 15 shall be allowed, in addition to the deductions specified
 16 therein, a deduction for the sum of the net operating losses
 17 which may be carried forward to the taxable year for which the
 18 net income of the financial institution is being computed.

19 (1) The term "net operating loss" for the purposes
 20 of this chapter means the amount by which net income of the
 21 financial institution (before the deduction allowed by this
 22 section) with respect to a taxable year is less than zero. For
 23 purposes of this section, the financial institution's net
 24 income shall be determined under the provisions of this

1 chapter applicable to the year in which the net operating loss
2 arises.

3 (2) A net operating loss shall be carried forward to
4 the earliest subsequent taxable year in which the financial
5 institution has net income greater than zero (determined
6 without taking into account the deduction allowed by this
7 subsection). The amount of a net operating loss which may be
8 carried to any later taxable year shall be the excess of the
9 net operating loss over the sum of the amounts thereof
10 deductible under this subsection in all the taxable years
11 preceding this taxable year.

12 (3) If net operating losses arising in more than one
13 taxable year can be carried forward to a taxable year of the
14 financial institution, the net operating loss arising from the
15 earliest of those years shall be deducted first.

16 (4) The net operating loss allowed by this section
17 shall be limited to sources attributable to Alabama, as
18 determined by applying the allocation and apportionment
19 methodology in the year in which the loss arose pursuant to
20 Section 40-16-4.

21 (5) A net operating loss may be carried forward and
22 deducted only during the 15 consecutive tax years immediately
23 following the tax year in which it arose.

24 (b) In the case of a financial institution
25 classified as an acquiring corporation within the meaning of

1 26 U.S.C. § 381, or in the case of a financial institution
2 classified as a new loss corporation within the meaning of 26
3 U.S.C. § 382, or in the case of the recognized built-in gains
4 of a financial institution classified as a gain corporation
5 within the meaning of 26 U.S.C. § 384, only the net operating
6 losses as are allowable in accordance with 26 U.S.C. §§ 381,
7 382, and 384 shall be allowed as a deduction under this
8 section. This subsection shall be applied before the
9 limitations in the preceding subsection are applied.

10 (c) Net operating losses incurred by members of a
11 qualified corporate group, as defined in Section 40-16-3(c),
12 (including those net operating losses described in subsection
13 (b)) shall be deducted in the following order:

14 (1) Net operating losses shall be carried forward
15 only on account of the member which incurs the loss (including
16 any prior year net operating losses allocated from the parent
17 under subparagraph (c) (2), which subsequently became part of
18 the member's loss carryforward) and shall be deducted prior to
19 consolidating any resulting taxable income with the other
20 members' income on the consolidated return under Section
21 40-16-3(b). Any remaining net operating losses of the member
22 shall be carried forward in accordance with this section.

23 (2) Any current year net operating losses of the
24 parent of a qualified corporate group, as defined in Section
25 40-16-3(c), shall be allocated among the other members of the

1 qualified corporate group based on the percentage which the
2 gross assets of each member of the qualified corporate group
3 bears to the total gross assets of all members of the
4 qualified corporate group (excluding the parent of a qualified
5 corporate group), and shall be deducted prior to consolidating
6 any resulting taxable income with the other members' income on
7 the consolidated return under Section 40-16-3(b). To the
8 extent this loss described in the preceding sentence creates
9 or increases a loss for a member, such loss becomes part of
10 that member's net operating loss carryforward from the year of
11 such allocation.

12 §40-16-11.

13 This section provides for transition rules for the
14 implementation of the Financial Institution Excise Tax Reform
15 Act.

16 (a) This Act imposes for the first time a system of
17 prepaid estimated tax payments patterned after the federal
18 system and transitions the Financial Institution Excise Tax
19 from the current post-payment system. To account for this
20 transition, the Department of Revenue shall waive both
21 penalties and interest attributable to underpayments of
22 estimated tax payments occurring within the first two
23 applicable tax years and not attributable to an intentional
24 disregard of the law.

1 (b) This act's conformity of the depreciation
2 deduction allowed in the calculation of the tax due under this
3 chapter with the corollary deduction allowed for federal
4 income tax purposes, as well as this act's express rejection
5 of the federal Tax Cuts and Jobs Act of 2017's (i) limitations
6 on the deductibility of Federal Deposit Insurance Corporation
7 premiums under 26 U.S.C. § 162(r), (ii) limitations on the
8 deductibility of certain interest under 26 U.S.C. § 163(j),
9 and (iii) inclusion of global intangible low-taxed income
10 (GILTI) under 26 U.S.C. § 951A and deduction of
11 foreign-derived intangible income and GILTI under 26 U.S.C. §
12 250, are merely a clarification of existing law and shall
13 apply retroactively to all open tax years.

14 (c) The enactment of Section 40-16-10 extends the
15 carryforward period for net operating losses to a maximum of
16 fifteen tax years, while eliminating the financial
17 institution's ability to carry back net operating losses to
18 the prior two tax years. The fifteen tax year carryforward
19 period shall only apply to net operating losses incurred in
20 tax years beginning after December 31, 2019. The clarification
21 of the ordering rules applicable to net operating losses
22 provided by Section 40-16-10(c) shall apply to all open tax
23 years.

24 (d) In addition to the deductions from federal
25 taxable income provided by Section 40-16-1.2(b), subject to

1 the limitation provided by Section 40-16-1.2(c), a financial
2 institution may deduct the applicable percentage of dividend
3 income from a Captive REIT if such dividend income would be
4 deductible under 26 U.S.C. § 243 if received from an entity
5 that is not a REIT, as defined in Section 40-18-1(27). For
6 purposes of this subsection (d), a "Captive REIT" shall
7 include any REIT, as defined in Section 40-18-1(27), whose
8 shares or certificates of beneficial interest are not
9 regularly traded on an established securities market and are
10 owned or controlled, at any time during the last half of the
11 tax year, by an association taxable as a corporation that is
12 not exempt from tax under 26 U.S.C. § 501(a) or a REIT, as
13 defined in Section 40-18-1(27). For purposes of the definition
14 of Captive REIT in this subsection (d), own or control means
15 to own or control directly, indirectly, beneficially, or
16 constructively more than fifty percent (50%) of the voting
17 power or value of an entity, applying the attribution rules of
18 26 U.S.C. § 318, as modified by 26 U.S.C. § 856(d)(5), in
19 determining ownership and control. For purposes of this
20 subsection (d), the "applicable percentage" shall be (i) one
21 hundred percent (100%) for tax years beginning after December
22 31, 2019 and before January 1, 2021, (ii) eighty percent (80%)
23 for tax years beginning after December 31, 2020 and before
24 January 1, 2022, (iii) sixty percent (60%) for tax years
25 beginning after December 31, 2021 and before January 1, 2023,

1 (iv) forty percent (40%) for tax years beginning after
2 December 31, 2022 and before January 1, 2024, (v) twenty
3 percent (20%) for tax years beginning after December 31, 2023
4 and before January 1, 2025; (vi) and zero percent (0%) for tax
5 years beginning after December 31, 2024.

6 ~~(e) Notwithstanding the distribution formula~~
7 ~~provided for in 40-16-6 (c), municipal financial institution~~
8 ~~excise tax distributions made in 2019-2023 shall be~~
9 ~~distributed as follows:~~

10 ~~(1) For the financial institution excise tax~~
11 ~~distribution made in 2019, each municipality shall receive a~~
12 ~~percentage share of the total municipal financial institution~~
13 ~~excise tax revenue equal to its percentage share of total~~
14 ~~municipal financial institution revenue distributed over the~~
15 ~~five years ending in 2018.~~

16 ~~(2) For the quarterly financial institution excise~~
17 ~~tax distributions made in 2020, seventy five percent (75%) of~~
18 ~~the municipal financial institution excise tax revenue shall~~
19 ~~be distributed based on each municipality's percentage share~~
20 ~~of total municipal financial institution revenue distributed~~
21 ~~over the five years ending in 2018. The remaining twenty five~~
22 ~~percent (25%) shall be distributed based on the population~~
23 ~~formula in Section 40-16-6(c).~~

24 ~~(3) For the quarterly financial institution excise~~
25 ~~tax distributions made in 2021, fifty percent (50%) of the~~

1 ~~municipal financial institution excise tax revenue shall be~~
2 ~~distributed based on each municipality's percentage share of~~
3 ~~total municipal financial institution revenue distributed over~~
4 ~~the five years ending in 2018. The remaining fifty percent~~
5 ~~(50%) shall be distributed based on the population formula in~~
6 ~~Section 40-16-6 (c).~~

7 ~~(4) For the quarterly financial institution excise~~
8 ~~tax distributions made in 2022, twenty five percent (25%) of~~
9 ~~the municipal financial institution excise tax revenue shall~~
10 ~~be distributed based on each municipality's percentage share~~
11 ~~of total municipal financial institution revenue distributed~~
12 ~~over the five years ending in 2018. The remaining seventy five~~
13 ~~percent (75%) shall be distributed based on the population~~
14 ~~formula in Section 40-16-6(c).~~

15 ~~(5) Beginning with the first quarter of 2023, and~~
16 ~~for all future quarterly financial institution excise tax~~
17 ~~distributions, one hundred percent (100%) of the municipal~~
18 ~~financial institution excise tax revenue shall be distributed~~
19 ~~based on the population formula in Section 40-16-6(c).~~

20 (e) This act's distribution formula percentages, as
21 stated in § 40-16-6, shall apply to the annual 2019 financial
22 institution excise tax distribution.

23 Section 4. Section 40-16-5, Code of Alabama 1975, is
24 hereby repealed in its entirety.

1 Section 5. This act shall become effective January
2 1, 2020, following its passage and approval by the Governor,
3 or upon its otherwise becoming law. This act shall become
4 operative for tax years beginning after December 31, 2019,
5 except as provided in the new Section 40-16-11.

1

2

3

Mac McClatchey

4

Speaker of the House of Representatives

5

[Signature]

6

President and Presiding Officer of the Senate

7

House of Representatives

8

I hereby certify that the within Act originated in
and was passed by the House 08-MAY-19, as amended.

10

11

Jeff Woodard
Clerk

12

13

14

15

16

Senate

21-MAY-19

Passed

17

APPROVED

5/28/19

TIME

6:30 pm

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num.....: 2019-284
Bill Num....: H-419

Recv'd 05/29/19 11:27amSL

ISOR

South
PONSORS

414

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 414

YEAS 96 NAYS 0

JEFF WOODARD, Clerk

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

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees

SENATE ACTION

DATE: _____ 20__

RD 1 RFD

This Bill was referred to the Standing Committee of the Senate on BB

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) _____ w/sub _____ by a vote of

yeas 11 nays 0 abstain _____

this 11th day of July 2019
Jeff Woodard, Chairperson

DATE: _____

RF

RD 2 CAL

DATE: _____

RE-REFERRED

Committee _____

RE-COMMITTED

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 414

YEAS _____ NAYS _____

PATRICK HARRIS,
Secretary