

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

ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

Relating to financial institution excise tax; to establish the Financial Institution Excise Tax Reform Act of 2019; to provide for an estimated payment system; to provide for an alternate distribution formula to pay the counties and municipalities on a quarterly basis as opposed to a yearly basis; to update existing law to provide clarification and reflect current policies and procedures.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

"§40-16-1.

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

"(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

1 or building and loan association, and such term shall likewise
2 include any other institution or person employing moneyed
3 capital coming into competition with the business of national
4 banks, and shall apply to such person or institution
5 regardless of what business form and whether or not
6 incorporated, whether of issue or not, and by whatsoever
7 authority existing. The common parent corporation of a
8 controlled group of corporations eligible to elect to file a
9 consolidated excise tax return, in accordance with Section
10 40-16-3, shall be considered a financial institution if such
11 parent corporation is a registered bank holding company as
12 defined by the Bank Holding Company Act of 1956, as amended.
13 As a financial institution, the common parent corporation will
14 be governed by Sections 40-16-1 through 40-16-811 and exempt
15 from all income taxes under chapter 18 of this title Sections
16 ~~40-18-1 through 40-18-85~~, with the exception that the credit
17 for licenses or taxes as provided by Section 40-16-8 and the
18 ~~regulations issued rules adopted or promulgated~~ pursuant
19 thereto by the Department of Revenue will not apply to amounts
20 of excise tax on financial institutions imposed hereby and
21 paid by such parent corporation. Financial institution shall
22 not mean or include individual citizens and fiduciaries acting
23 in a representative capacity for individual citizens, not
24 engaged in a banking, loan, investment or similar business,
25 but merely making personal investments of personal or
26 fiduciary funds in bonds, notes or other evidences of
27 indebtedness and not made in competition with the business of

1 national banks, nor shall such term apply to insurance
2 companies or insurance associations merely making investments
3 of reserves in bonds, notes or other evidences of indebtedness
4 and not made in competition with the business of national
5 banks.

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

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

25 "a. All the ordinary and necessary expenses paid or
26 incurred during the year the income is received which is made
27 the basis of the tax in carrying on the business, the

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

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

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

25 "2. In the taxable year when paid, in an amount
26 determined in accordance with subparagraph 1 of this
27 paragraph, if the contributions are paid toward the purchase

1 of retirement annuities and such purchase is a part of a plan
2 which meets the requirements of subsection (e) of Section
3 40-18-25, and if refunds of premiums, if any, are applied
4 within the current taxable year or next succeeding taxable
5 year towards the purchase of such retirement annuities.

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

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

16 "4. In the taxable year when paid, if the plan is
17 not one included in subparagraphs 1, 2 or 3, if the employees'
18 rights to or derived from such employer's contribution or such
19 compensation are nonforfeitable at the time the contribution
20 or compensation is paid.

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

26 "6. If amounts are deductible under subparagraphs 1
27 and 3, or 2 and 3, or 1, 2 and 3, in connection with the two

1 or more trusts, or one or more trusts and an annuity plan, the
2 total amount deductible in a taxable year under such trusts
3 and plans shall not exceed 25 percent of the compensation
4 otherwise paid or accrued during the taxable year to the
5 persons who are the beneficiaries of the trusts or plans. In
6 addition, any amount paid into such trust or under such
7 annuity plans in any taxable year in excess of the amount
8 allowable with respect to such year under the preceding
9 provisions of this subparagraph shall be deductible in the
10 succeeding taxable years in order of time, but the amount so
11 deductible under this sentence in any one such succeeding
12 taxable year, together with the amount allowable under the
13 first sentence of this subparagraph, shall not exceed 30
14 percent of the compensation otherwise paid or accrued during
15 such taxable years to the beneficiaries under the trusts or
16 plans. This subparagraph shall not have the effect of reducing
17 the amount otherwise deductible under subparagraphs 1, 2 and
18 3, if no employee is a beneficiary under more than one trust,
19 or a trust and an annuity plan. If there is no plan but a
20 method of employer contributions or compensation has the
21 effect of a stock bonus, pension, profit-sharing, or annuity
22 plan, or similar plan deferring the receipt of compensation,
23 this paragraph shall apply as if there were such a plan. Also,
24 all contributions or gifts made by financial institutions to a
25 community chest or to recognized religious, charitable,
26 scientific or educational institutions or agencies, or to
27 institutions or agencies for the prevention of cruelty to

1 children or animals, which are not operated for profit and no
2 part of the net earnings of which inures to the benefit of any
3 private stockholder or individual or contributions or gifts
4 for vocational rehabilitation authorized by the United States
5 Vocational Rehabilitation Act. The amount of such deduction
6 shall not be, however, in excess of five percent of the
7 financial institution's net income as computed without the
8 benefit of this subsection. Such contributions or gifts shall
9 be allowable as deductions only where made to a community
10 chest or institution or agency recognized as such for the
11 above purposes under rules and regulations prescribed by the
12 Department of Revenue. Traveling expenses, including a
13 reasonable amount expended for meals and lodgings while away
14 from home in the necessary business of such institutions,
15 rentals or other payments required to be made as the condition
16 to the continued use or possession for the purposes of such
17 business, or property to which the taxpayer has not taken or
18 is not taking title or in which the taxpayer has no equity,
19 provided the amount and the reasonableness of all such
20 expenditures shall be approved by the state Department of
21 Revenue.

22 "b. All interest paid or accrued within the taxable
23 year on the indebtedness of said business. Also, all dividends
24 paid or accrued within the taxable year on the shares of
25 preferred stock held or owned by a reconstruction finance
26 corporation or any other governmental agency;

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

"d. Losses sustained and determined during the taxable year by the business and not compensated for by insurance or otherwise:

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

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

"e. Debts ascertained to be worthless and charged off within the taxable year; provided, that a schedule of such debts shall be filed and the reasons supporting such claim for deduction be filed with the return; provided, further, that bad debts shall not include losses on stocks and bonds or a reduction in the market value of such stocks and bonds except where loss is determined by the sale of such securities; provided, that in the case of any financial institution required by law to be examined by state, federal or federal

1 reserve bank examiners, such debts can be charged off and to
2 such an amount or extent as required to be charged off by
3 state, federal or federal reserve bank examiners. Any
4 reduction in the book value of any stocks or bonds carried on
5 the books of any such financial institution required by any
6 state, federal or federal reserve bank examiners shall be
7 allowed as proper deductions by the state Department of
8 Revenue. On the sale of any securities, the book value of
9 which has been reduced on the requirement of such examiners,
10 and the reduction so made claimed as a deduction,
11 accomplishing a reduction of the tax paid, any excess of the
12 sale price over said book value of such securities shall be
13 reflected as income and subject to the excise tax levied by
14 this chapter. When in the opinion of state, federal or federal
15 reserve bank examiners a debt is recoverable only in part and
16 when a part of such debt is charged off by requirement of
17 state, federal or federal reserve bank examiners, the
18 Department of Revenue shall allow a deduction in an amount
19 equal to the amount of such charge-off;

20 "f. A reasonable allowance for the exhaustion, wear
21 and tear of property used in the business, including a
22 reasonable allowance for obsolescence. The basis for
23 determining the amount of such depreciation deduction shall be
24 the cost of such property, or, if acquired prior to October
25 15, 1935, the basis shall be the depreciated cost as of
26 October 1, 1935;

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

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

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

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

"k. All financial institutions shall be allowed to carry back their net operating losses to apply as a deduction against prior income, and to deduct from succeeding years' income the excess loss, if any, that is not absorbed thereby. For purposes of this subdivision, the term net operating loss means the excess of allowable deductions over gross income. No net operating loss deduction (arising out of a net loss in an earlier or later year) shall be allowed in computing a net operating loss. Casualty losses and losses arising from theft, fraud and embezzlement, however, shall be deductible in computing the net operating loss. A net operating loss for a

1 taxable year ending after the year 1952 may be carried back
2 two years, then forward to the eight succeeding taxable years
3 in chronological order, provided, that no part of the net
4 operating loss which has been previously applied against
5 income for one taxable year may be applied as a carryback or
6 carryover to another taxable year. The net operating loss
7 deduction allowed herein shall be the sum of the carrybacks
8 and carryovers applicable to the taxable years. A successor
9 financial institution shall be allowed to carry over and
10 deduct from succeeding years' income, in the manner prescribed
11 herein, the net operating loss of its predecessor. Refunds
12 under the provisions of this subdivision shall be paid from
13 the current year's receipts.

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

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

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

"(3) (4) TAX YEAR OR TAXABLE YEAR. A full period of 12 consecutive months constituting the fiscal year or calendar year of each financial institution subject to the tax imposed by this chapter ended last prior to April 1, 1935, and thereafter ended last prior to April 1 of each year in which such tax is to be assessed. In the case of any financial institution taxable under this chapter whose business hereby taxed was conducted only during a fractional period of any year, or a period of less than 12 months resulting from a change in accounting period permitted by applicable federal authorities, a return shall be made as herein provided and the tax computed as herein provided, and such tax as assessed shall be an excise tax for the privilege of doing business in this state for such fractional year.

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

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

"§40-16-3.

"(a) Every financial institution, as in this chapter defined, shall ~~within the first 15 days of April in each year, no later than the due date, including applicable extensions, for its corresponding federal income tax or federal information return,~~ make and file with the Department of Revenue a return, signed under the penalties of perjury by its

1 cashier, treasurer or other authorized officer or employee, if
2 a corporation, or by a person or authorized employee in charge
3 of the conduct of the business to be taxed if an individual,
4 firm, association or other legal entity, in such form as may
5 be prescribed by the Department of Revenue, giving such
6 detailed information as the Department of Revenue may in its
7 opinion require to determine the net income of such financial
8 institution for the taxable year, by the net income of which
9 said excise tax is to be measured.

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

26 "(c) In order for financial institution members of a
27 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
26 consolidated return regulations of the Internal Revenue Code
27 and the principles contained therein ~~would~~ shall be used as a

1 guideline in the absence of clarifying ~~regulations issued~~
2 ~~rules adopted~~ by the Department of Revenue.

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

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

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

1 extension of time in writing for the filing thereof granted by
2 the Department of Revenue shall subject the financial
3 institution so failing to a penalty of 15 percent of the
4 amount of tax assessed, which amount shall be assessed and
5 collected as a part of the tax, and a like penalty of \$5 per
6 day for each day's failure to file such return, which penalty
7 shall be collected by civil action.

8 "§40-16-6.

9 "(a) The remittance of the excise tax ~~required due~~
10 under this chapter shall be made to the Department of Revenue
11 at Montgomery, Alabama, with checks payable to the ~~State~~
12 ~~Treasurer of Alabama~~ Department of Revenue.

13 "(b) The proceeds of the excise tax herein imposed
14 by this chapter shall be, without delay, deposited into the
15 State Treasury to the credit of the Financial Institution
16 Excise Tax Fund. The amount of money appropriated for each
17 fiscal year by the Legislature to the Department of Revenue
18 with which to pay the salaries, the cost of operation, and the
19 management of the department shall be deducted, as a first
20 charge, from the taxes collected pursuant to Section 40-16-4,
21 provided, that the expenditure of money so appropriated shall
22 be budgeted and allotted pursuant to Article 4 of Chapter 4 of
23 Title 41 and limited only to the amount appropriated with
24 which to defray the expenses of operating the department for
25 each fiscal year.

26 "(c) The excess of the tax levied by this chapter
27 computed using a rate of six and one-half percent and the tax

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

24 "(d) Any financial institution which conducts its
25 business in more than one municipality or in more than one
26 county in this state shall, in making the return required by
27 this chapter, report in detail the percentage of its total

1 business in the state conducted in each municipality and in
2 such county, and the portions of tax paid by each such
3 financial institution due to be distributed to the
4 municipality and county shall be distributed pro rata
5 according to the percentage reported to the municipalities and
6 counties where a business is conducted instead of solely to
7 the one where the principal place of business of a financial
8 institution is located in this state.

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

17 "(b) The Department of Revenue shall promptly
18 distribute the balance of financial institution excise tax
19 revenue, net of refunds, as of the close of each calendar
20 quarter, with fifty percent (50%) of the revenue distributed
21 to the general fund, thirty three and three tenths percent
22 (33.3%) distributed to municipalities and the remaining
23 sixteen and seven tenths percent (16.7%) distributed to
24 counties.

25 "(c) Total municipal financial institution excise
26 tax revenue shall be distributed among the municipalities
27 based on each municipality's share of total Alabama municipal

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

3 "(c) Beginning with the 2019 municipal financial
4 institution excise tax distribution, each municipality shall
5 receive a percentage share of the total municipal financial
6 institution excise tax revenue equal to its average percentage
7 share of the total municipal financial institution revenue
8 distribution over the five years ending in 2018.

9 "(d) The first twenty percent (20%) of total county
10 financial institution excise tax revenue shall be distributed
11 equally among all counties. The remaining eighty percent (80%)
12 of county financial institution excise tax revenue shall be
13 distributed among the counties based on each county's share of
14 total Alabama population as determined in the most recent
15 federal census prior to the distribution.

16 "(f) (e) No municipality or county within the state
17 may levy or assess any excise tax for the privilege of
18 engaging in a business in addition to that levied and
19 distributed to it as herein provided, except license taxes.
20 However, license taxes on banks shall not be levied in excess
21 of those which may be legally levied pursuant to Section
22 11-51-130, provided however, that the license authorized by
23 subdivisions (1) to (12), inclusive, of subsection (a) of
24 Section 11-51-130 may be levied only by the municipality where
25 the bank has its principal place of business."

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

§40-16-1.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§40-16-1.3

(a) With respect to credit unions only, net income
means financial statement income which is the final net income
amount (total revenue less total expenses) calculated for
financial statement purposes and reported to the Internal
Revenue Service as a tax exempt organization and to the
Alabama Credit Union Administration or other government
regulatory authority as appropriate, less the subtractions
specified below and as allocated and apportioned to Alabama

1 according to rules adopted by the Department of Revenue
2 pursuant to Section 40-16-4.

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

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

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

13 \$40-16-5.1.

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

22 (b) For the purposes of this section:

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

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

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

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

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

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

§40-16-10.

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

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

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

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

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

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

(b) In the case of a financial institution classified as an acquiring corporation within the meaning of 26 U.S.C. § 381, or in the case of a financial institution classified as a new loss corporation within the meaning of 26 U.S.C. § 382, or in the case of the recognized built-in gains of a financial institution classified as a gain corporation

1 within the meaning of 26 U.S.C. § 384, only the net operating
2 losses as are allowable in accordance with 26 U.S.C. §§ 381,
3 382, and 384 shall be allowed as a deduction under this
4 section. This subsection shall be applied before the
5 limitations in the preceding subsection are applied.

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

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

19 (2) Any current year net operating losses of the
20 parent of a qualified corporate group, as defined in Section
21 40-16-3(c), shall be allocated among the other members of the
22 qualified corporate group based on the percentage which the
23 gross assets of each member of the qualified corporate group
24 bears to the total gross assets of all members of the
25 qualified corporate group (excluding the parent of a qualified
26 corporate group), and shall be deducted prior to consolidating
27 any resulting taxable income with the other members' income on

1 the consolidated return under Section 40-16-3(b). To the
2 extent this loss described in the preceding sentence creates
3 or increases a loss for a member, such loss becomes part of
4 that member's net operating loss carryforward from the year of
5 such allocation.

6 \$40-16-11.

7 This section provides for transition rules for the
8 implementation of the Financial Institution Excise Tax Reform
9 Act.

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

19 (b) This act's conformity of the depreciation
20 deduction allowed in the calculation of the tax due under this
21 chapter with the corollary deduction allowed for federal
22 income tax purposes, as well as this act's express rejection
23 of the federal Tax Cuts and Jobs Act of 2017's (i) limitations
24 on the deductibility of Federal Deposit Insurance Corporation
25 premiums under 26 U.S.C. § 162(r), (ii) limitations on the
26 deductibility of certain interest under 26 U.S.C. § 163(j),
27 and (iii) inclusion of global intangible low-taxed income

1 (GILTI) under 26 U.S.C. § 951A and deduction of
2 foreign-derived intangible income and GILTI under 26 U.S.C. §
3 250, are merely a clarification of existing law and shall
4 apply retroactively to all open tax years.

5 (c) The enactment of Section 40-16-10 extends the
6 carryforward period for net operating losses to a maximum of
7 fifteen tax years, while eliminating the financial
8 institution's ability to carry back net operating losses to
9 the prior two tax years. The fifteen tax year carryforward
10 period shall only apply to net operating losses incurred in
11 tax years beginning after December 31, 2019. The clarification
12 of the ordering rules applicable to net operating losses
13 provided by Section 40-16-10(c) shall apply to all open tax
14 years.

15 (d) In addition to the deductions from federal
16 taxable income provided by Section 40-16-1.2(b), subject to
17 the limitation provided by Section 40-16-1.2(c), a financial
18 institution may deduct the applicable percentage of dividend
19 income from a Captive REIT if such dividend income would be
20 deductible under 26 U.S.C. § 243 if received from an entity
21 that is not a REIT, as defined in Section 40-18-1(27). For
22 purposes of this subsection (d), a "Captive REIT" shall
23 include any REIT, as defined in Section 40-18-1(27), whose
24 shares or certificates of beneficial interest are not
25 regularly traded on an established securities market and are
26 owned or controlled, at any time during the last half of the
27 tax year, by an association taxable as a corporation that is

1 not exempt from tax under 26 U.S.C. § 501(a) or a REIT, as
2 defined in Section 40-18-1(27). For purposes of the definition
3 of Captive REIT in this subsection (d), own or control means
4 to own or control directly, indirectly, beneficially, or
5 constructively more than fifty percent (50%) of the voting
6 power or value of an entity, applying the attribution rules of
7 26 U.S.C. § 318, as modified by 26 U.S.C. § 856(d)(5), in
8 determining ownership and control. For purposes of this
9 subsection (d), the "applicable percentage" shall be (i) one
10 hundred percent (100%) for tax years beginning after December
11 31, 2019 and before January 1, 2021, (ii) eighty percent (80%)
12 for tax years beginning after December 31, 2020 and before
13 January 1, 2022, (iii) sixty percent (60%) for tax years
14 beginning after December 31, 2021 and before January 1, 2023,
15 (iv) forty percent (40%) for tax years beginning after
16 December 31, 2022 and before January 1, 2024, (v) twenty
17 percent (20%) for tax years beginning after December 31, 2023
18 and before January 1, 2025; (vi) and zero percent (0%) for tax
19 years beginning after December 31, 2024.

20 (e) Notwithstanding the distribution formula
21 provided for in 40-16-6 (c), municipal financial institution
22 excise tax distributions made in 2019-2023 shall be
23 distributed as follows:

24 (1) For the financial institution excise tax
25 distribution made in 2019, each municipality shall receive a
26 percentage share of the total municipal financial institution
27 excise tax revenue equal to its percentage share of total

1 municipal financial institution revenue distributed over the
2 five years ending in 2018.

3 (2) For the quarterly financial institution excise
4 tax distributions made in 2020, seventy five percent (75%) of
5 the municipal financial institution excise tax revenue shall
6 be distributed based on each municipality's percentage share
7 of total municipal financial institution revenue distributed
8 over the five years ending in 2018. The remaining twenty five
9 percent (25%) shall be distributed based on the population
10 formula in Section 40-16-6(c).

11 (3) For the quarterly financial institution excise
12 tax distributions made in 2021, fifty percent (50%) of the
13 municipal financial institution excise tax revenue shall be
14 distributed based on each municipality's percentage share of
15 total municipal financial institution revenue distributed over
16 the five years ending in 2018. The remaining fifty percent
17 (50%) shall be distributed based on the population formula in
18 Section 40-16-6 (c).

19 (4) For the quarterly financial institution excise
20 tax distributions made in 2022, twenty five percent (25%) of
21 the municipal financial institution excise tax revenue shall
22 be distributed based on each municipality's percentage share
23 of total municipal financial institution revenue distributed
24 over the five years ending in 2018. The remaining seventy five
25 percent (75%) shall be distributed based on the population
26 formula in Section 40-16-6(c).

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

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

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

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

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2

3

House of Representatives

4 Read for the first time and re-
5 ferred to the House of Representa-
6 tives committee on Ways and Means
7 General Fund..... 11-APR-19

8

9 Read for the second time and placed
10 on the calendar 1 amendment 18-APR-19

11

12 Read for the third time and passed
13 as amended..... 08-MAY-19

14

15

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17

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Jeff Woodard
Clerk