HB353
205816-1
By Representative Garrett
RFD: Ways and Means Education
First Read: 27-FEB-20
SYNOPSIS: Under existing law, financial institutions are taxed at a rate of six and one-half percent of net income and allowed to deduct federal income taxes paid or accrued during the taxpayer’s tax year.

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

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

The 2017 federal Tax Cuts and Jobs Act eliminated or limited business deductions and created new classes of income for corporate income taxpayers. Since Alabama is a rolling conformity state, Alabama automatically conforms to many of the federal tax changes without new legislation.
This bill would decrease the financial institution excise tax rate but eliminate the deduction for federal income taxes paid or accrued during the taxpayer’s tax year.

This bill would decrease the income tax rate for corporations but eliminate the federal income tax deduction for corporate income taxpayers.

This bill would change the apportionment factor for most corporate income taxpayers from a three-factor apportionment formula, with the sales factor double-weighted, to a single sales factor formula.

For tax years beginning on or after January 1, 2020, this bill would decouple Alabama income tax from the provisions of the Tax Cuts and Jobs Act related to contributions to the capital of a corporation attributable to state economic development grants and incentives and global intangible low-tax income and would make changes to how a corporation limits its business interest expense deduction.

This bill would also provide for an Electing Pass-Through Entity to be taxed at the entity level instead of its owners, members, partners, or shareholders.

A BILL
TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as, "The Alabama Business Tax Competitiveness Act."
Section 2. Sections 40-16-1.2, 40-16-4, 40-18-31, 40-18-34, 40-18-35, and 40-27-1, Code of Alabama 1975, are amended 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 the 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 20 percent of the stock, by vote and value, but only to the extent the 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 20 percent 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).


"(6) Interest not deductible for federal income tax purposes under 26 U.S.C. §§ 265 or 291 related to tax-exempt securities.
"(7) (6) 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.


"(9) (8) 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) (9) Solely with respect to credit unions, the amount paid out as dividends on the withdrawable shares of such credit union.

"(11) (10) 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.

"§40-16-4.

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

"(i) Banking;

"(ii) Conducting the business of a financial institution as defined in this chapter;
"(iii) Conducting a credit card business through the issuance of credit cards to Alabama residents or businesses; or

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

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

"(3) The amount of the excise tax shall not be in excess of any limit fixed thereon by any present or future federal statute relating to the taxation of national banks by
this state. Under no circumstances will any dividends paid from a financial institution to the common parent corporation of a controlled group of corporations, as defined in Section 40-16-3, be subject to excise tax.

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

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

"(2) If, on or before December 31, 2030, the Alabama Department of Revenue certifies to the Legislature (1) that the applicable law in a majority of the states, including two states contiguous to Alabama, requires a financial institution to allocate and apportion its net income based at least in part on the institution's property in that state, and (2) that the related definition of property in each of those states excludes a financial institution's loans and credit card
receivables, then the Alabama Department of Revenue shall
promulgate a rule consistent with the applicable law in those
states. Any rule promulgated in accordance with the foregoing
sentence shall be promulgated in accordance with the Alabama
Administrative Procedure Act and shall be effective for all
tax years beginning on or after 120 days from the effective
date of the rule.


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

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

"$40-18-34.

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

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

(b) Interest on obligations of state or local
governments other than Alabama that is excludable from gross
income for federal income tax purposes.
(c) Refunds of federal income taxes deducted in prior tax years.

(d) (c) Dividends received from a corporation in which the taxpayer owns less than 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.

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

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

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

"c. The limitation provided in paragraph a. will apply before the application of the limitation provided in Section 40-18-35(b) for interest expense with a related member. For purposes of the limitation provided in Section 40-18-35(b), the net interest deduction limitation calculated under the provisions of this subsection shall be allocated on a pro-rata basis to the interest income recipients. Any resulting interest expense carryforward shall also be allocated on a pro-rata basis to the interest income recipients. In any tax year in which a taxpayer deducts business interest expense on its federal tax return, or the tax return of the federal consolidated group of which it is a member, which was carried forward from a previous tax year and which is also subject to the add back provisions for interest expense with a related member under Section 40-18-35(b), the taxpayer shall apply the provisions of Section 40-18-35(b) to the amount of the interest expense carried forward in addition to the amount accrued or incurred in the current tax year.

Taxpayers which determine their business interest expense
 deduction pursuant to the provisions of this subsection shall submit to the Alabama Department of Revenue the appropriate forms, schedules and statements needed in order to confirm the business interest expense deduction was calculated correctly.

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

"§40-18-35.

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

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

"(2) Federal income tax paid or accrued during the taxpayer's taxable year. The portion of federal income tax deductible by a corporation earning income from sources both inside and outside of Alabama shall be determined by the ratio that the corporation's taxable income, computed without the deduction for federal income tax, apportioned and allocated to Alabama bears to the corporation's taxable income, computed without the deduction for federal income tax, apportioned and allocated everywhere.
"(2) Interest income earned on obligations of the United States.

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

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

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

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

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

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

"b. 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; and

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

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

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

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

(9) The amount by which the depletion allowance specified in Section 40-18-16(b) exceeds the depletion allowance deducted in calculating federal taxable income.

(10) All amounts included in income under 26 U.S.C. § 951A. However, any amount subtracted under this subdivision is allowed only to the extent such amount is not deductible in
determining federal taxable income. As to any amount
subtracted under this subdivision, there shall be added to
such taxable income all expenses deducted under any section of
26 U.S.C. on the taxpayer’s return for the taxable year which
are attributable, directly or indirectly, to such subtracted
amount. The deduction provided by 26 U.S.C. § 250 shall apply
only to the extent the same income was included in Alabama
taxable income under this chapter.

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

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

"(1) For purposes of computing its taxable income, a
corporation shall add back otherwise deductible interest
expenses and costs and intangible expenses and costs directly
or indirectly paid, accrued, or incurred to, or in connection
directly or indirectly with one or more direct or indirect
transactions, with one or more related members, except to the
extent the corporation shows, upon request by the
commissioner, that the corresponding item of income was in the
same taxable year: a. Subject to a tax based on or measured by
the related member's net income in Alabama or any other state
of the United States, or b. subject to a tax based on or
measured by the related member's net income by a foreign
nation which has in force an income tax treaty with the United
States, if the recipient was a "resident" (as defined in the
income tax treaty) of the foreign nation. For purposes of this
section, subject to a tax based on or measured by the related
member's net income means that the receipt of the payment by
the recipient related member is reported and included in
income for purposes of a tax on net income, and not offset or
eliminated in a combined or consolidated return which includes
the payor. Any portion of an item of income that is not
attributed to the taxing jurisdiction, as determined by that
jurisdiction's allocation and apportionment methodology or
other sourcing methodology, is not included in income for
purposes of a tax on net income and, therefore, shall not be
considered subject to a tax. That portion of an item of income
which is attributed to a taxing jurisdiction having a tax on
net income shall be considered subject to a tax even if no
actual taxes are paid on such item of income in the taxing
jurisdiction by reason of deductions or otherwise.

"(2) The corporation shall make the adjustments
required in subdivision (1) unless the corporation establishes
that the adjustments are unreasonable, or the corporation and
the Commissioner of Revenue agree in writing to the
application or use of alternative adjustments and
computations. Nothing in this section shall be construed to
limit or negate the commissioner's authority to otherwise
enter into agreements and compromises otherwise allowed by law.

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

"(4) The adjustments required in subdivision (b)(1) shall not apply to that portion of interest expenses and costs and intangible expenses and costs that the corporation can establish was paid, accrued or incurred, directly or indirectly, by the related member during the same taxable year to a person that is not a related member.
(5) Nothing in this section shall require a corporation to add to its taxable income more than once any amount of interest expenses and costs or intangible expenses and costs that the corporation pays, accrues or incurs to a related member described in subdivision (1).

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

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

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

(d) Except with regard to payments described in subsections (a)(4)b (a)(3)b. and (a)(9) (a)(8), 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 taxable income of more than one taxpayer.

(e) The following credits shall be allowed against the tax levied by Section 40-18-31:
"(1) the amount provided to an approved company pursuant to Section 41-10-44.8(a)(1), subject however, to the limitations contained in Section 41-10-44.8(c); and

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

"§40-27-1.

"The following Multistate Tax Compact is hereby approved, adopted and enacted into law by the State of Alabama:

Multistate Tax Compact

Article I. Purposes.

"The purposes of this compact are to:

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

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

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

"4. Avoid duplicative taxation.
Article II. Definitions.

"As used in this compact:

"1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

"2. "Subdivision" means any governmental unit or special district of a state.

"3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or other person acting as a business entity in more than one state, but does not include any individual.

"4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

"5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

"6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax."
"7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

"8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention or other use of tangible personal property and (b) is complementary to a sales tax.

"9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax and any other tax which has a multistate impact, except that the provisions of articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of article IX of this compact shall apply only in respect to determinations pursuant to article IV.
Article III. Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

"1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his or her income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax."
"2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

"3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.
Article IV. Division of Income.

"1. As used in this article, unless the context otherwise requires:

"(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

"(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

"(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company or any type of insurance company.

"(e) "Nonbusiness income" means all income other than business income.

"(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property,
franchise or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

"(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

"(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

"(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

"2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or an individual, shall allocate and apportion his or her or its net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his or her or its income from activities subject to this article, the taxpayer may elect to allocate and apportion his or her or its entire net income as provided in this article.
"3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he or she or it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

"4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

"5. (a) Net rents and royalties from real property located in this state are allocable to this state.

"(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

"(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical
location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

"6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state. 

"(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

"(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

"7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

"8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

"(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing
or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

"(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

"9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four.

"10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

"11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate.
is the annual rental rate paid by the taxpayer less any annual
rental rate received by the taxpayer from subrentals.

"12. The average value of property shall be
determined by averaging the values at the beginning and ending
of the tax period but the tax administrator may require the
averaging of monthly values during the tax period if
reasonably required to reflect properly the average value of
the taxpayer's property.

"13. The payroll factor is a fraction, the numerator
of which is the total amount paid in this state during the tax
period by the taxpayer for compensation and the denominator of
which is the total compensation paid everywhere during the tax
period.

"14. Compensation is paid in this state if:

"(a) The individual's service is performed entirely
within the state;

"(b) The individual's service is performed both
within and without the state, but the service performed
without the state is incidental to the individual's service
within the state; or

"(c) Some of the service is performed in the state
and (1) the base of operations or, if there is no base of
operations, the place from which the service is directed or
controlled is in the state, or (2) the base of operations or
the place from which the service is directed or controlled is
not in any state in which some part of the service is
performed, but the individual's residence is in this state.
The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or.

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

Sales, other than sales described in Section 16 11, are in this State if the taxpayer's market for the sale is in this state.

(a) The taxpayer's market for a sale is in this state:

(1) In the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(2) In the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;
"(3) In the case of sale of a service, if and to the extent the service is delivered to a location in this state;

"(4) In the case of lease or license of intangible property; or sale or other exchange of intangible property if the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property, if and to the extent the intangible property is used in this state; provided that intangible property used in marketing a good or service to a consumer is used in this state if the good or service that is marketed using the intangible property is purchased by a consumer who is in this state; and

"(5) In the case of sale of intangible property other than that referenced in subdivision (4) above; where the property sold is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area; if and to the extent the intangible property is used in or otherwise associated with this state, provided that any sale of intangible property not otherwise described in this subdivision or subdivision (4) above shall be excluded from the numerator and the denominator of the sales factor.

"(b) If the state of assignment cannot be determined under subsection (a), it shall be reasonably approximated.

"(c) If the taxpayer is not taxable in a state to which a sale is assigned under subsection (a), or if the state of assignment cannot be determined under subsection (a) or
reasonably approximated under subsection (b), the sale shall be excluded from the denominator of the sales factor.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him or her with respect to the same property to another state and any subdivision thereof. The credit shall be
applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

"2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

"1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the
alternate. The Attorney General of each party state or his or her designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such Attorneys General, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this article.

"(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

"(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

"(d) The commission shall adopt an official seal to be used as it may provide.

"(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

"(f) The commission shall elect annually, from among its members, a chair, a vice-chair and a treasurer. The commission shall appoint an executive director who shall serve
at its pleasure, and it shall fix his or her duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

"(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

"(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

"(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

"(j) The commission may establish one or more offices for the transacting of its business.

"(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.
"(1) The commission annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

"2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chair, vice-chair, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

"(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to
any party state and problems dealing with particular types of
taxes.

"(c) The commission may establish such additional
committees as its bylaws may provide.

Powers.

"3. In addition to powers conferred elsewhere in
this compact, the commission shall have power to:

"(a) Study state and local tax systems and
particular types of state and local taxes.

"(b) Develop and recommend proposals for an increase
in uniformity or compatibility of state and local tax laws
with a view toward encouraging the simplification and
improvement of state and local tax law and administration.

"(c) Compile and publish information as in its
judgment would assist the party states in implementation of
the compact and taxpayers in complying with state and local
tax laws.

"(d) Do all things necessary and incidental to the
administration of its functions pursuant to this compact.

Finance.

"4. (a) The commission shall submit to the Governor
or designated officer or officers of each party state a budget
of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

"(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

"(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this article: Provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission
shall not incur any obligation prior to the allotment of funds
by the party states adequate to meet the same.

"(d) The commission shall keep accurate accounts of
all receipts and disbursements. The receipts and disbursements
of the commission shall be subject to the audit and accounting
procedures established under its bylaws. All receipts and
disbursements of funds handled by the commission shall be
audited yearly by a certified or licensed public accountant
and the report of the audit shall be included in and become
part of the annual report of the commission.

"(e) The accounts of the commission shall be open at
any reasonable time for inspection by duly constituted
officers of the party states and by any persons authorized by
the commission.

"(f) Nothing contained in this article shall be con-
strued to prevent commission compliance with laws relating to
audit or inspection of accounts by or on behalf of any govern-
ment contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

"1. Whenever any two or more party states, or
subdivisions of party states, have uniform or similar
provisions of law relating to an income tax, capital stock
tax, gross receipts tax, sales or use tax, the commission may
adopt uniform regulations for any phase of the administration
1 of such law, including assertion of jurisdiction to tax, or
2 prescribing uniform tax forms. The commission may also act
3 with respect to the provisions of article IV of this compact.
4 "2. Prior to the adoption of any regulation, the
5 commission shall:
6 "(a) As provided in its bylaws, hold at least one
7 public hearing on due notice to all affected party states and
8 subdivisions thereof and to all taxpayers and other persons
9 who have made timely request of the commission for advance
10 notice of its regulation-making proceedings.
11 "(b) Afford all affected party states and
12 subdivisions and interested persons an opportunity to submit
13 relevant written data and views, which shall be considered
14 fully by the commission.
15 "3. The commission shall submit any regulations
16 adopted by it to the appropriate officials of all party states
17 and subdivisions to which they might apply. Each such state
18 and subdivision shall consider any such regulation for adop-
19 tion in accordance with its own laws and procedures.
20 Article VIII. Interstate Audits.
21 "1. This article shall be in force only in those
22 party states that specifically provide therefor by statute.
23 "2. Any party state or subdivision thereof desiring
24 to make or participate in an audit of any accounts, books,
papers, records or other documents may request the commission
to perform the audit on its behalf. In responding to the
request, the commission shall have access to and may examine,
at any reasonable time, such accounts, books, papers, records
and other documents and any relevant property or stock of
merchandise. The commission may enter into agreements with
party states or their subdivisions for assistance in
performance of the audit. The commission shall make charges,
to be paid by the state or local government or governments for
which it performs the service, for any audits performed by it
in order to reimburse itself for the actual costs incurred in
making the audit.

"3. The commission may require the attendance of any
person within the state where it is conducting an audit or
part thereof at a time and place fixed by it within such state
for the purpose of giving testimony with respect to any
account, book, paper, document, other record, property or
stock of merchandise being examined in connection with the
audit. If the person is not within the jurisdiction, he or she
may be required to attend for such purpose at any time and
place fixed by the commission within the state of which he or
she is a resident: Provided that such state has adopted this
article.

"4. The commission may apply to any court having
power to issue compulsory process for orders in aid of its
powers and responsibilities pursuant to this article and any
and all such courts shall have jurisdiction to issue such
orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article.

"5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

"6. Information obtained by an audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or
subdivisions. Nothing in this article shall be construed to
require any taxpayer to keep records for any period not
otherwise required by law.

"7. Other arrangements made or authorized pursuant
to law for cooperative audit by or on behalf of the party
states or any of their subdivisions are not superseded or
invalidated by this article.

"8. In no event shall the commission make any charge
against a taxpayer for an audit.

"9. As used in this article, "tax," in addition to
the meaning ascribed to it in article II, means any tax or
license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration.

"1. Whenever the commission finds a need for
settling disputes concerning apportionments and allocations by
arbitration, it may adopt a regulation placing this article in
effect, notwithstanding the provisions of article VII.

"2. The commission shall select and maintain an
arbitration panel composed of officers and employees of state
and local governments and private persons who shall be
knowledgeable and experienced in matters of tax law and
administration.

"3. Whenever a taxpayer who has elected to employ
article IV, or whenever the laws of the party state or
subdivision thereof are substantially identical with the relevant provisions of article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he or she is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him or her to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

"4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he or she is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the
arbitration proceeding shall not constitute affiliation within
the meaning of this paragraph.

"5. The board may sit in any state or subdivision
party to the proceeding, in the state of the taxpayer's
incorporation, residence or domicile, in any state where the
taxpayer does business, or in any place that it finds most
appropriate for gaining access to evidence relevant to the
matter before it.

"6. The board shall give due notice of the times and
places of its hearings. The parties shall be entitled to be
heard, to present evidence, and to examine and cross-examine
witnesses. The board shall act by majority vote.

"7. The board shall have power to administer oaths,
take testimony, subpoena and require the attendance of
witnesses and the production of accounts, books, papers,
records, and other documents, and issue commissions to take
testimony. Subpoenas may be signed by any member of the board.
In case of failure to obey a subpoena, and upon application by
the board, any judge of a court of competent jurisdiction of
the state in which the board is sitting or in which the person
to whom the subpoena is directed may be found may make an
order requiring compliance with the subpoena, and the court
may punish failure to obey the order as a contempt. The
provisions of this paragraph apply only in states that have
adopted this article.

"8. Unless the parties otherwise agree the expenses
and other costs of the arbitration shall be assessed and
allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he or she is required on account of his or her service to forego the regular compensation attaching to his or her public employment, but any such board member shall be entitled to expenses.

"9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

"10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

"11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

"12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and
of any amendment thereto with the appropriate agency or
officer in each of the party states.

"13. Nothing contained herein shall prevent at any
time a written compromise of any matter or matters in dispute,
if otherwise lawful, by the parties to the arbitration pro-
ceeding.

Article X. Entry Into Force and Withdrawal.

"1. This compact shall enter into force when enacted
into law by any seven states. Thereafter, this compact shall
become effective as to any other state upon its enactment
thereof. The commission shall arrange for notification of all
party states whenever there is a new enactment of the compact.

"2. Any party state may withdraw from this compact
by enacting a statute repealing the same. No withdrawal shall
affect any liability already incurred by or chargeable to a
party state prior to the time of such withdrawal.

"3. No proceeding commenced before an arbitration
board prior to the withdrawal of a state and to which the
withdrawing state or any subdivision thereof is a party shall
be discontinued or terminated by the withdrawal, nor shall the
board thereby lose jurisdiction over any of the parties to the
proceeding necessary to make a binding determination therein.
Article XI. Effect on Other Laws and Jurisdiction.

"Nothing in this compact shall be construed to:

"(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement article III 2. of this compact.

"(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: Provided that the definition of "tax" in article VIII 9. may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to article VI 3. may apply.

"(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

"(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this
compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

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

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

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

(c) For tax years beginning on or after January 1, 2021, any Alabama S corporation, as is defined by Section 40-18-160, and any Subchapter K Entity, as is defined by
Section 40-18-1, may elect to be taxed as an Electing Pass-Through Entity.

(d) An Electing Pass-Through Entity shall submit the appropriate form to the Department of Revenue at any time during the tax year, or on or before the fifteenth day of the third month following the close of that tax year, for which the entity elects to be taxed as an Electing Pass-Through Entity. This election shall be binding for that year and all subsequent tax years and shall not be revoked unless the Electing Pass-Through Entity submits the appropriate form to the Department of Revenue at any time during a subsequent tax year, or on or before the fifteenth day of the third month following the close of that tax year, for which the entity elects to no longer be taxed as an Electing Pass-Through Entity. Once a revocation is made, the entity shall not be allowed to elect to be taxed as an Electing Pass-Through Entity before the fifth tax year which begins after the first tax year for which such revocation is effective, unless the Department of Revenue consents to such election. Both the election to become an Electing Pass-Through Entity and the revocation of that election shall be accomplished by a vote by or written consent of the members of the governing body of the entity as well as a vote by or written consent of the owners, members, partners, or shareholders holding greater than 50% of the voting control of the entity, within the time prescribed above.
(e) An Electing Pass-Through Entity shall be deemed an Alabama C Corporation for purposes of Chapter 18 of Title 40 and shall pay a tax equal to 3.95 percent of the taxable income, calculated in accordance with the provisions of Section 40-18-24 or Section 40-18-161 and Section 40-18-162, as appropriate, of the Electing Pass-Through Entity. An Electing Pass-Through Entity shall be subject to the provisions of Section 40-18-80.1 (estimated tax for corporations). In calculating taxable income for the purposes of this subsection, tax paid under the provisions of this subsection shall not be deducted in calculating Alabama taxable income.

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

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

(h) The adjusted basis of the owners, members, partners, or shareholders of an Electing Pass-Through Entity in their stock or other ownership interests in the entity shall be calculated without regard to the election under this section.
(i) Notwithstanding anything in Chapter 18 of Title 40 to the contrary, neither the election by an Electing Pass-Through Entity under this section nor its revocation of the election shall be considered a liquidation or termination of the entity or an otherwise taxable event.

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

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