



## MULTISTATE TAX

# Alabama passes wide ranging tax legislation addressing the CARES Act and federal COVID relief

## Tax Alert

### Overview

On February 12, 2021, Alabama Governor Kay Ivey signed into law [House Bill 170](#) (H.B. 170), which designates three separate acts: 1) The Alabama Taxpayer Stimulus Freedom Act of 2021 (“Act 1”); 2) The Alabama Business Tax Competitiveness Act (“Act 2”); and 3) The Alabama Electing Pass-Through Entity Tax Act (“Act 3”). The bill includes the following modifications to Alabama law:

#### Act 1:

- Excludes from individual taxation any federal tax credits, refunds, and other benefits or payments resulting from the federal [Coronavirus Aid, Relief, and Economic Security \(“CARES”\) Act](#).
- Excludes from income taxation and financial institution excise tax any amounts received from the [Coronavirus Relief Fund](#) and any amounts of loans forgiven under the [Paycheck Protection Program \(“PPP”\)](#).

#### Act 2:

- Changes the Alabama apportionment factor from a three-factor apportionment formula to a single sales factor formula.
- Eliminates the “throwback” rule in the sales factor.
- Retroactively decouples Alabama from federal Global Intangible Low-Taxed Income (“GILTI”) provisions.
- Provides that if no section 163(j) interest limitation exists at the federal level, no such limitation will exist for Alabama purposes.

#### Act 3:

- Allows pass-through entities (S-Corporations and Subchapter-K entities) to elect to be taxed at the entity level instead of the owner level.

## The Alabama Taxpayer Stimulus Freedom Act of 2021

Act 1 of H.B. 170 details that federal tax credits, advance refunds, or other similar amounts received under the CARES act or as part of COVID-related tax relief shall be excluded from Alabama individual income taxation.<sup>1</sup> Further, any amounts excluded from individual income taxation shall also be excluded from the determination of the taxpayer's federal income tax deduction.<sup>2</sup>

Student loan principal or interest payments made by an employer shall be excluded from the employee's Alabama individual income taxation to the same extent as excluded from their federal gross income.<sup>3</sup> Cancellation of debt resulting from loans forgiven under the PPP will be exempt from financial excise tax as well as corporate and individual income tax.<sup>4</sup> In addition, otherwise deductible expenses paid with PPP funds (such as rent, utilities, mortgage interest, and payroll) will be still be considered deductible expenses.<sup>5</sup>

## The Alabama Business Tax Competitiveness Act

Prior to the passage of H.B. 170, the Alabama apportionment factor consisted of a property factor, a payroll factor, and a double weighted sales factor. Act 2 of H.B. 170 changes the apportionment formula for most corporate income taxpayers to a single sales factor formula solely based on sales in the state.<sup>6</sup> Additionally, the section of Alabama law requiring "throwback" of sales to Alabama taxpayers is eliminated.<sup>7</sup> Specifically, any tangible personal property shipped from a location in Alabama to a location where the taxpayer is not subject to tax is no longer required to be "thrown back" or included in the Alabama sales factor numerator.<sup>8</sup> The "throw-out" provisions related to sales other than tangible personal property remain.

Act 2 further provides that GILTI amounts included under 951A in federal taxable income are deductible for Alabama purposes to the extent they were not deductible in computing federal taxable income.<sup>9</sup> H.B. 170 clarifies that the deduction provided by 26 U.S.C. 250 is deductible to the extent it was included in federal taxable income.<sup>10</sup> Also added as part of Act 2 is a provision which details that a taxpayer that is included in a U.S. federal consolidated group and which has no limitation to its business interest expense for federal income tax purposes under IRC section 163(j) would similarly have no limitation for Alabama income tax purposes.<sup>11</sup>

## The Alabama Electing Pass-Through Entity Tax Act

For tax years beginning on or after January 1, 2021, S-Corporations and Subchapter K entities (pass-through entities under Alabama law) can elect to be taxed as an "Electing Pass-Through Entity" in Alabama and thereby file and pay tax at the entity level instead of the owner level. The entity must submit the election to the Alabama Department of Revenue by the 15<sup>th</sup> day of the third month after the close of the tax year. The election, once made, is binding for the current year and all subsequent tax years until revoked by the pass through entity.<sup>12</sup> Electing pass-through entities will be subject to estimated payment requirements and will be subject to tax at the highest applicable individual income tax rate.<sup>13</sup>

## Taxpayer considerations

Due to the broad scope of this legislation, Alabama taxpayers should consider the potential impact on their Alabama tax position. Taxpayers significantly impacted by recent federal tax legislation – specifically the TCJA and CARES Act – will want to note the extent to which this legislation conforms Alabama to

parts of those federal provisions while decoupling it from other parts. Multistate taxpayers should consider the impact of the legislation's significant apportionment changes as the impact may be different for taxpayers with in-state property and payroll versus out-of-state taxpayers selling to Alabama customers. Finally, the new elective PTE tax should be considered by taxpayers operating in Alabama through S-corporations and partnerships. The election may be particularly beneficial to certain resident owners of multistate PTEs.

## Get in touch

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## Footnotes

<sup>1</sup> H.B. 170, sec. 2(a).

<sup>2</sup> H.B. 170, sec. 2(b).

<sup>3</sup> H.B. 170, sec. 2(c).

<sup>4</sup> H.B. 170, sec. 3.

<sup>5</sup> H.B. 170, sec. 4.

<sup>6</sup> H.B. 170, sec. 6 (amending Article IV sec. 9 of Ala. Code § 40-27-1).

<sup>7</sup> H.B. 170, sec. 6 (amending Article IV sec. 16 of Ala. Code § 40-27-1).

<sup>8</sup> Id.

<sup>9</sup> H.B. 170, sec. 7 (adding Ala. Code § 40-18-35.2).

<sup>10</sup> H.B. 170, sec. 7 (adding Ala. Code §40-18-35.3).

<sup>11</sup> H.B. 170, sec. 9 (adding Ala. Code §40-18-39.1).

<sup>12</sup> H.B. 170, sec. 10(d).

<sup>13</sup> H.B. 170, sec. 10(e).

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