

# New Alabama law implements financial institution excise tax reforms

## Overview

On May 28, 2019, Governor Kay Ivey signed House Bill 419 (H.B. 419).<sup>1</sup> The new law comes as a response to the federal Tax Cuts and Jobs Act of 2017 (i.e., P.L. 115-97) and is designed “to update existing law to provide clarification...”<sup>2</sup> In a revision to the law, H.B. 419 generally conforms Alabama’s financial institution excise tax (FIET) net income calculation to federal taxable income with certain modifications, as allocated and apportioned. H.B. 419 includes several other notable modifications to Alabama FIET, including transitioning the FIET from a “post-payment system” to a “pre-payment system”<sup>3</sup> and repealing a previously existing dividend deduction limitation.<sup>4</sup> This tax alert summarizes a number of elements of the provisions.

## Transitions FIET from a “post-payment system” to a “pre-payment system”

H.B. 419 requires taxpayers to pay estimated quarterly tax payments, rather than a lump sum payment each year and is effective for tax years beginning after December 31st, 2019.<sup>5</sup> H.B. 419 also provides that the Alabama Department of Revenue (the “Department”) will waive both interest and penalties “attributable to underpayments of estimated tax payments occurring within the first two applicable tax years and not attributable to an intentional disregard of the law.”<sup>6</sup>

Additionally, the bill provides an alternate distribution formula for counties and municipalities to transition from yearly to quarterly distributions.<sup>7</sup> As a component of the FIET, the municipal financial institution excise tax provides for funds distributions to Alabama counties as detailed in Ala Code § 40-16-6. The law amends the statute to change the municipal subsidy formula so that funds (net of refunds) are distributed quarterly as follows: 50% to the general fund, 33.3% to the municipalities, and the remaining 16.7% to the counties.<sup>8</sup>

## Conforms Alabama’s FIET net income calculation to federal taxable income with certain modifications

In a “clarification of the law,” H.B. 419 specifically incorporates federal taxable income as the starting point for Alabama FIET net income, subject to certain modifications.<sup>9</sup> In doing so, the FIET calculation and administration will more closely mirror the Alabama corporate income tax.<sup>10</sup> In addition, H.B. 419 provides the FIET now provides subtractions for certain provisions under the TCJA:

1. Internal Revenue Code (IRC) section 951A global intangible low-taxed income (GILTI) inclusion provisions<sup>11</sup> and foreign-derived intangible income (FDII) and GILTI deduction under IRC section 250;<sup>12</sup>
2. Business interest expense limitations under IRC section 163(j);<sup>13</sup> and

<sup>1</sup> Financial Institution Excise Tax Reform Act of 2019, Secs. 40-16-1, 40-16-3, 40-16-6 am'd, which is accessible [here](#).

<sup>2</sup> *Id.*

<sup>3</sup> H.B. 419, amending Ala. Code § 40-16-5.1.

<sup>4</sup> H.B. 419, amending Ala. Code § 40-16-1(2).

<sup>5</sup> H.B. 419, amending Ala. Code § 40-16-5.1.

<sup>6</sup> H.B. 419, amending Ala. Code § 40-16-11(a).

<sup>7</sup> H.B. 419, amending Ala. Code § 40-16-1.

<sup>8</sup> *Id.*

<sup>9</sup> H.B. 419, amending Ala. Code § 40-16-1(2).

<sup>10</sup> Ala. Code § 40-18-1.1

<sup>11</sup> H.B. 419, amending Ala. Code § 40-16-1.2(b)(7).

<sup>12</sup> H.B. 419, amending Ala. Code § 40-16-1.2(a)(7).

<sup>13</sup> H.B. 419, amending Ala. Code § 40-16-1.2(b)(5).

3. Federal Deposit Insurance Corporation (FDIC) premium deduction limitations under IRC section 162(r).<sup>14</sup>

H.B. 419 provides that the above modifications to net income are clarifications of existing law and apply “retroactively to all open tax years.”<sup>15</sup>

**Repeals dividend received deduction and additional changes**

Alabama FIET-related changes in H.B. 419 also include repealing a previously existing dividend deduction limitation on captive real estate investment trusts (REITs).<sup>16</sup> The law provides a new dividend received deduction for captive REIT parent companies with a five-year phase out of the dividend deduction for captive REITs.<sup>17</sup> New provisions allow a financial institution to deduct a percentage of dividend income received from a captive REIT, if the income would be deductible under IRC section 243 as specified.<sup>18</sup>

In addition, H.B. 419 changes the net operating loss (NOL) provisions and provides a carryforward period of fifteen consecutive tax years after the year of the loss.<sup>19</sup> The new carryforward period of fifteen years (with no carryback period) applies to NOLs incurred in tax years beginning after December 31, 2019.<sup>20</sup> Further, H.B. 419 clarifies the ordering rules of NOLs, which are applicable to open tax years.<sup>21</sup>

**Changes to the elective consolidated filing**

H.B. 419 includes changes in the requirements for qualified corporate groups that are eligible, and desire, to file on a consolidated basis.<sup>22</sup> H.B. 419 removes the filing fee for the privilege of filing a return on a consolidated basis.<sup>23</sup> In addition, the consolidated filing election shall be binding on both the taxpayer and the Department for a period of ten years, except that the election shall terminate automatically upon the revocation or termination of its federal consolidated return election.<sup>24</sup> The changes to these provisions are effective for tax years beginning after December 31, 2019.<sup>25</sup>

**Considerations**

Taxpayers who believe they may be impacted by H.B. 419 should consult with an Alabama tax advisor for further assistance.

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<sup>14</sup> H.B. 419, amending Ala. Code § 40-16-1.2(b)(4).

<sup>15</sup> H.B. 419, amending Ala. Code § 40-16-11(b).

<sup>16</sup> H.B. 419, amending Ala. Code § 40-16-1.2(4)

<sup>17</sup> H.B. 419, amending Ala. Code § 40-16-11(d).

<sup>18</sup> H.B. 419, amending Ala. Code § 40-16-11(d).

<sup>19</sup> H.B. 419, amending Ala. Code § 40-16-10.

<sup>20</sup> H.B. 419, amending Ala. Code §§ 40-16-10, 11(c).

<sup>21</sup> *Id.*

<sup>22</sup> H.B. 419, amending Ala. Code § 40-16-3.

<sup>23</sup> H.B. 419, amending Ala. Code § 40-16-3(b).

<sup>24</sup> H.B. 419, amending Ala. Code § 40-16-3(b).

<sup>25</sup> H.B. 419, Section 5, amending Ala. Code § 40-16-11.

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