

PRIVATE MEMORANDUM

TO **Members of the Alabama Society of CPAs**

FROM **Bruce P. Ely and William T. Thistle, II** *BPE/WTT*

DATE **June 17, 2019**

SUBJECT **Summary of Tax-Related* Legislation Enacted by Alabama Legislature**

■ **“Rebuild Alabama” Act (a/k/a the “Gas Tax Bill”)(HB 2, Act 2019-2, 1st Special Session)**

Beginning August 31, 2019, an additional excise tax of 6 cents is imposed on each gallon of gasoline and diesel fuel:

1. Increased to 8 cents on October 1, 2020
2. Increased to 10 cents on October 1, 2021
3. Beginning October 1, 2023, adjusted based on changes in National Highway Construction Cost Index
4. Effective January 1, 2020, annual registration fee of \$200 on battery-powered electric vehicles and \$100 on plug-in hybrid electric vehicles
5. Approved \$150M bond issuance to improve Port of Mobile

■ **Financial Institution Excise Tax (FIET) Reform Act of 2019 (HB 419, Act 2019-284)**

1. Amends FIET definition of “net income” by adopting federal “taxable income” as starting point for determining tax base, in order to more closely track both Alabama corporate income tax and Federal corporate income tax; special rule for credit unions
2. Confirms that several Tax Cuts and Jobs Act (TCJA) provisions don’t apply: limitation on deductions for FDIC insurance premiums, IRC section 163(j), and GILTI (more below)
3. 11 month collaborative effort between the ABA, ADOR, credit unions, local governments, and several tax practitioners resulting from ADOR’s analysis of likely impact of the TCJA on the 1939 FIET statute and increasing ambiguities
4. Effective for TYBA 12/31/19 except for clarifying amendments mentioned above.

■ **Alabama Incentives Modernization (AIM) Act (HB 540, Act 2019-392)**

Incentives for Rural Communities

1. The definition of “targeted counties” under the Jobs Act is revised to include any county with a population of 50,000 or less (currently 25,000 or less.)
2. Added a new category of “jumpstart counties” – those counties that have experienced negative population growth over the last five years and contain no more than two Opportunity Zones
3. Only 10 new jobs are needed for projects to be eligible for Jobs Act incentives in Targeted or Jumpstart counties, so long as at least \$2M of capital is deployed (currently 25 jobs in targeted counties)
4. Investment Credits may be granted for up to 15 years in these counties (currently 15 years but limited to suppliers of other Alabama manufacturers)
5. Investment Credits may be sold to banks and insurance companies
6. The Growing Alabama Credit would be available to fund industrial and research parks, inland ports and intermodal facilities, STEM marketing programs, and tech accelerators

Recruiting Tech Companies

1. Only 5 new jobs are needed to be eligible for Jobs Act incentives for a tech company (currently 50 jobs.)
2. 2% of tech company wages are available as additional Jobs Act credits (from 3% to 5%)
3. Growing Alabama Credits are available to fund tech accelerators, research parks, and marketing programs for STEM workers
4. No income tax on ‘capital gains’ for certain employees and investment funds when a tech company moves to Alabama for 3 years, sells itself, and stays 5 years after the sale

Enhancing Opportunity Zones

1. Provides income tax and FIET benefits similar to federal tax benefits for investors in “approved” Opportunity Zone funds
2. At least \$150M in non-RSA state funds may be invested in OZ funds in Alabama
3. \$50M of tax credits are available to guarantee minimum returns on investments in OZ funds in Alabama (subject to a maximum rate equal to the T-bill rate), with excess profits paid to the state

▪ **Amendments to ADOR Simplified Seller's Use Tax Program (HB 183, Act 2019-382)**

1. Grants amnesty to internet and other out-of-state vendors that have registered with or plan to register with ADOR's Simplified Seller's Use Tax Remittance Program for periods prior to October 1, 2019
2. Prohibits class actions against these vendors participating in the SSUT program

▪ **Rental Tax Sourcing Legislation (HB 155, Act 2019-89)**

1. Clarifies which city's and county's rental/lease tax is due on leasing transactions within the state (if they each impose a rental tax)
2. Creates 2 categories of lessors: lessors of titled vehicles and all others (including heavy equipment dealers)
 - a. Titled vehicle lessors – situs depends on garage address of lessee
 - b. All other lessors – depends upon whether lessor delivers the leased equipment to the lessee or the lessee takes possession at lessor's location
3. Retroactive for all open tax periods, but language was added that no assessments for past periods nor refunds would be issued

▪ **Alabama Innovation Act (SB 78, Act 2019-404)(lead sponsor, Sen. Arthur Orr)**

1. Allows for research and development enhancement grants to certain Alabama research entities
2. Program will be administered by ADECA; sunset date; \$10 Million aggregate cap
3. R & D tax *credit* bill died in the House

▪ **Municipal Business Delivery Licenses (HB 329, Act 2019-283)**

1. Clarifies delivery license fee is per business (not per vehicle), with maximum of \$100
2. Provides that businesses with no physical presence and less than \$10,000 of gross receipts in the municipality in the preceding year do not have to buy a license
3. Confirms that the purchase of a delivery license or exemption from the purchase of a license does not establish nexus or lack of nexus

▪ **Fantasy Contests Act (HB 361, Act 2019-343)**

1. Allows fantasy sports games among players 19 yrs. of age and older and requires operators to register with the Alabama AG's office and pay fees and taxes to the State

2. Operators with more than \$10M in national gross revenue are required to pay an \$85,000 annual fee to the state; operators with less than \$10M are required to pay \$1,000 annually
 3. In addition to the annual fee, operators must pay a 10.5% tax based on the calculation of entry fees paid by Alabama players less winnings paid to Alabama players
- **House Bill 203 (Act 2019-101)**
 1. Revision to Alabama Taxpayers' Bill of Rights to allow for longer-term installment agreements with delinquent taxpayers
 2. Authorizes ADOR to appoint multiple taxpayer advocate officers
 - **House Bill 383 (Act 2019-253)**
 1. ADOR bill; no opposition
 2. Allows for payments of sales, use, and lodging taxes on quarterly, semi-annual, or annual basis if taxes for previous year below certain thresholds (\$2,400; \$1,200; or \$600)
 - **House Bill 420 (Act 2019-285)**
 1. Allows ADOR to enter into agreements with financial institutions in Alabama to develop and operate a financial institution data match (FIDM) program
 2. Entirely voluntary on the part of the banks/credit unions
 - **Alabama Industry Recognized and Registered Apprenticeship Program Act (SB 295, Act 2019-506)**
 1. Establishes the Alabama Office of Apprenticeship
 2. Increases per capita apprenticeship tax credit from \$1,000 to \$1,250/employee
 3. Increases aggregate apprenticeship tax credits from \$3 million to \$7.5 million
 - **Railroad Modernization Act of 2019 (HB 457, Act 2019-459)**
 1. Provides an income tax credit for "qualified railroad rehabilitation expenditures"
 2. Effective beginning in 2020, credit equal to 50% of taxpayer's qualified expenditures
 3. Maximum credit equal to \$3,500 per mile of railroad track owned by the taxpayer in the state

■ **Senate Bill 171 (Act 2019-487)**

1. Codifies the ADOR lodging tax rule to exclude certain rentals from the lodging tax (and sales tax) and recent case involving Cullman County wedding chapel with adjacent cabins
2. Excludes rentals of places that are not “regularly furnished for overnight sleeping purposes,” such as wedding chapels, ballrooms, conference rooms, etc.

■ **Senate Bill 308 (Act 2019-387)**

1. Excludes from the transient occupancy (lodging) tax places or spaces for tent camping, marina slips, or spaces in parks for recreational vehicles, if such places are supplied for a period of at least 90 continuous days
2. Effective October 1, 2019

■ **House Bill 390 (Act 2019-444)**

1. Provides an exemption from sales and use tax for the initial retail sales of adaptive equipment that is permanently affixed to a motor vehicle (and separately stated on invoice or bill of sale)
2. “Adaptive Equipment” includes equipment not generally used by persons with normal mobility, which is appropriate for use in a motor vehicle

■ **Decoupling from Unwanted Provisions of Tax Cuts and Jobs Act (TCJA)?**

1. No legislation introduced this session that would have de-coupled the state’s corporate income tax or individual income tax from the new IRC section 163(j) interest deduction cap or GILTI (IRC section 951A- “global intangible low-taxed income”)
2. We will likely see more concentrated efforts on one or both fronts next session.
3. On the other hand, no legislation introduced that would have de-coupled Alabama from IRC section 168(k), which allows immediate expensing of equipment purchases, etc.

■ **Formation of Joint Legislative Task Force Regarding Tax Cuts and Jobs Act of 2017**

1. Established by Senate Joint Resolution 87 (Act 2019-339)(lead sponsor Sen. Dan Roberts)
2. The Task Force will study the fiscal impact of the federal tax reform law known as the TCJA on the corporate income tax. It seeks input from state agencies and subject matter experts
3. Composition:
 - a. 3 members of the House, appointed by the Speaker (at least one from minority caucus of the House)

- b. 3 members of the Senate, appointed by the President Pro Tem (at least one from minority caucus of the Senate)
 - c. Must commence meetings before September 30
4. Must report to the Legislature by 5th legislative day of 2020 regular session

**Does not include local acts (e.g., dealing with one county) or acts granting organization-specific tax exemptions or affecting only one industry, e.g., trucking. Please review the particular Act for a more complete analysis of its contents.

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