

1 HB263
2 181861-5
3 By Representatives Johnson (K), Butler, Collins, Nordgren,
4 Blackshear, Martin and Coleman
5 RFD: Financial Services
6 First Read: 16-FEB-17

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ENROLLED, An Act,

To amend Section 40-16-4 of the Code of Alabama 1975, as amended by Act 2016-283, relating to financial institutions with income taxed within and outside of the state; to include loans and credit card receivables as part of the calculation for the property factor of the finance institution excise tax apportionment formula; to specify that the apportionment formula would be applicable to all tax years beginning on or after January 1, 2017; and to provide for promulgation of rules by the Department of Revenue.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-16-4 of the Code of Alabama 1975, as amended by Act 2016-283, is amended to read as follows:

"§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

1 "(iv) Conducting a business employing moneyed
2 capital coming into competition with the business of national
3 banks

4 shall pay to the state annually for each taxable
5 year an excise tax measured by its net income allocated and
6 apportioned for the taxable year at the rate of six and
7 one-half percent of the net income.

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

24 "(3) The amount of the excise tax shall not be in
25 excess of any limit fixed thereon by any present or future

1 federal statute relating to the taxation of national banks by
2 this state. Under no circumstances will any dividends paid
3 from a financial institution to the common parent corporation
4 of a controlled group of corporations, as defined in Section
5 40-16-3, be subject to excise tax.

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

15 Section 2. The Department of Revenue shall have 120
16 days from the effective date of this act to promulgate rules
17 consistent with this act. Such rules shall be promulgated in
18 accordance with the Alabama Administrative Procedures Act and
19 shall be effective for all tax years beginning on or after
20 January 1, 2017.

21 If, on or before December 31, 2030, the Alabama
22 Department of Revenue certifies to the Legislature (1) that
23 the applicable law in a majority of the states, including two
24 states contiguous to Alabama, requires a financial instruction
25 to allocate and apportion its net income based at least in

1 part on the institution's property in that state, and (2) that
2 the related definition of property in each of those states
3 excludes a financial institution's loans and credit card
4 receivables, then the Alabama Department of Revenue shall
5 promulgate a rule consistent with the applicable law in those
6 states. Any rule promulgated in accordance with the foregoing
7 sentence shall be promulgated in accordance with the Alabama
8 Administrative Procedures Act and shall be effective for all
9 tax years beginning on or after 120 days from the effective
10 date of such rule.

11 Section 3. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law and shall be
14 applicable to all tax years beginning on and after January 1,
15 2017.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 15-MAR-17, as amended.

Jeff Woodard
Clerk

Senate	11-APR-17	Amended and Passed
House	11-APR-17	Concurred in Senate Amendment