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Alabama and Ohio: Financial institutions-related tax changes effective 2020

Guidance issued by the tax authorities of two states—Alabama and Ohio—concerns tax law changes affecting financial institutions that are effective beginning in 2020.

These changes will need to be taken into account in computing 2020 estimated payments in Alabama and Ohio.

Alabama

In 2019, legislation—**Act 2019-284** [PDF 1.3 MB]—was enacted and significantly revised the Alabama "financial institution excise tax" (FIET) effective for tax years beginning after December 31, 2019.

One change ties the FIET to federal taxable income before net operating losses (NOLs) and provides that going forward, Alabama will conform to the Internal Revenue Code on a rolling basis for FIET purposes.

Under the FIET, "qualified corporate groups" can opt to file one FIET return on a consolidated basis. Under prior law, a $6,000 fee was imposed on groups that elected to file a consolidated return; that fee is now eliminated. Two tests must be met for a financial institution member to be eligible to file on a consolidated basis with other entities—a stock ownership test and a filing test (meaning the member must be a financial institution required to file an Alabama FIET return). Under prior law, includable financial institutions connected though stock ownership with a common parent corporation were includable corporations if there was at least 80% direct stock ownership by another includable corporation or the common parent. Act 2019-284 revised the ownership test to include both direct ownership and indirect ownership of stock by another includable corporation or the common parent applying the attribution rules of IRC section 318.

The consolidated filing election will be binding on both the taxpayer and the Department of Revenue for 10 years, except that it will be terminated automatically if the federal consolidated election is terminated or revoked earlier.

Another significant change concerns FIET estimated payments. Under prior law, no FIET estimated payments were required. New Ala. Code § 40-16-5.1 provides that financial institutions will generally "pay estimated financial institutions excise tax in accordance with 26 U.S.C. § 6655."

Act 2019-284 also addressed certain aspects of federal tax reform—such as allowing a deduction for GILTI and interest not deductible under IRC section 163(j). To expand on this, the Alabama Department of Revenue issued **supplemental guidance** [PDF 237 KB] addressing how the 2017 federal tax law (Pub. L. No. 115-97, that is often referred to as the "Tax Cuts and Jobs Act") will interact with the revised FIET. The guidance confirms which provisions of the TCJA that Alabama follows and also those that are not adopted.

KPMG observation

In what may be a drafting error, the guidance appears to provide that Alabama conforms to the limits on the deductibility of FDIC insurance premiums under IRC section 162(r); however, Act 2019-284 specifically provides a deduction for amounts not deductible under IRC section 162(r).

Ohio

The Ohio Department of Taxation recently released guidance, **FIT 2020-01** [PDF 173 KB] addressing a 2019 amendment to Ohio Revised Code § 5726.04, which limits a financial institution's total equity capital to 14% of the financial institution's total assets for tax years beginning on and after January 1, 2020. The guidance is to be used in the calculation of the "financial institutions tax" (FIT) liability for purposes of calculating 2020 estimated payments—the first of which is due January 31, 2020.

The Ohio FIT is calculated by applying the applicable tax rates to a financial institution's total Ohio equity capital.

- For tax years 2014 through 2019, total Ohio equity capital was a financial institution's total equity capital apportioned by a single gross receipts factor.

- For tax year 2020 and thereafter, total Ohio equity capital is a financial institution's total equity capital, limited to 14% of that financial institution's total assets for the tax year, apportioned by a single gross receipts factor.

    - If 14% of a financial institution's total assets for the tax year is greater than that financial institution's total equity capital for that tax year, the amendment to R.C. 5726.04 will not affect that financial institution's tax liability.

    - If 14% of the financial institution's total assets is less than the financial institution's total equity capital for that tax year, the financial institution will not have to apportion the amount of its total equity capital that exceeds 14% of its total assets.

FIT 2020-01 includes guidance on computing the total consolidated assets of certain types of entities (e.g., bank holding companies, bank organization that file call reports, and others) and also provides examples of computing the limitation on the tax base.

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