

1 HB643  
2 202025-1  
3 By Representative Coleman  
4 RFD: Fiscal Responsibility  
5 First Read: 28-MAY-19

SYNOPSIS: In determining the amount of income that is subject to tax under current law, taxpayers are allowed to deduct, from income, the full amount of Federal Insurance Contribution Act (FICA) taxes withheld from wages. Under current law, remaining regular use tax proceeds are distributed to the Education Trust Fund and the General Fund.

This bill would amend Sections 40-18-15 and 40-23-85, Code of Alabama 1975, to remove the deduction for FICA taxes paid and to modify the disposition of funds derived from use taxes.

A BILL  
TO BE ENTITLED  
AN ACT

To amend Sections 40-18-15 and 40-23-85, Code of Alabama 1975, relating to income and use tax, to remove the deduction for FICA taxes paid and to modify the distribution of use taxes paid.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 40-18-15 and 40-23-85, Code of  
3 Alabama 1975, are hereby amended to read as follows:

4 "§40-18-15.

5 (a) No deduction shall be allowed for any losses,  
6 expenses, or interest deferred or disallowed pursuant to 26  
7 U.S.C. § 267 or for any cost required to be capitalized in  
8 accordance with 26 U.S.C. § 263A; otherwise, there shall be  
9 allowed as deductions:

10 (1) All ordinary and necessary expenses paid or  
11 incurred during the taxable year in carrying on any trade or  
12 business, as determined in accordance with 26 U.S.C. § 162.

13 (2) Interest paid or accrued within the taxable year  
14 on indebtedness, limited to the amount allowable as an  
15 interest deduction for federal income tax purposes in the  
16 corresponding tax year or period pursuant to the provisions of  
17 26 U.S.C. §§ 163, 264, and 265.

18 (3) The following taxes paid or accrued within the  
19 taxable year:

20 a. Income taxes, ~~Federal Insurance Contribution Act~~  
21 ~~taxes~~, taxes on self-employment income and estate and gift  
22 taxes imposed by authority of the United States or any  
23 possession of the United States.

24 b. State and local, and foreign, occupational  
25 license taxes, and contributions to state unemployment funds.

26 c. State and local, and foreign, real property  
27 taxes.

1 d. State and local personal property taxes.

2 e. The generation-skipping transfer (GST) tax  
3 imposed on income distributions by 26 U.S.C. § 2601.

4 f. The taxes described in paragraphs c., d., and e.  
5 shall be deductible only to the extent that the taxes are  
6 deductible for federal income tax purposes under 26 U.S.C. §  
7 164 (relating to taxes).

8 g. In addition, there shall be allowed as a  
9 deduction, state and local, and foreign taxes, except income  
10 taxes, and taxes imposed by authority of the United States or  
11 any possession of the United States, which are paid or accrued  
12 within the taxable year in carrying on a trade or business or  
13 an activity described in 26 U.S.C. § 212 (relating to expenses  
14 for the production of income).

15 h. Notwithstanding paragraph g., any tax described  
16 in any paragraph preceding paragraph g. that is paid or  
17 accrued in connection with an acquisition or disposition of  
18 property shall be treated as part of the cost of the acquired  
19 property or, in the case of a disposition, as a reduction in  
20 the amount realized on the disposition of that property.

21 (4) Losses sustained during the taxable year and not  
22 compensated for by insurance or otherwise if incurred in a  
23 trade or business, in accordance with 26 U.S.C. § 165(c)(1).

24 (5) Losses sustained during the taxable year and not  
25 compensated for by insurance or otherwise, if incurred in any  
26 transaction entered into for profit, though not connected with  
27 the trade or business in accordance with 26 U.S.C. §

1 165(c)(2); but, in the case of a taxpayer other than a  
2 resident of the state, only as to those transactions within  
3 the state.

4 (6) Casualty and theft losses sustained during the  
5 taxable year of property not connected with the conduct of a  
6 trade or business or a transaction entered into for profit as  
7 determined in accordance with subsections (c)(3) and (h) of 26  
8 U.S.C. § 165. In the case of a nonresident, the deduction  
9 shall be allowed only for the losses arising from property  
10 located within the State of Alabama and the limitations in 26  
11 U.S.C. § 165 shall be applied with regard only to the  
12 taxpayer's Alabama adjusted gross income. No loss shall be  
13 allowed if at the time of filing the return, the loss has been  
14 claimed on a federal estate tax return.

15 (7) Losses from debts ascertained to be worthless  
16 and charged off during the taxable year of ascertainment, if  
17 sustained in the conduct of the regular trade or business of  
18 the taxpayer.

19 (8) A reasonable allowance for the exhaustion, wear  
20 and tear of property from which any income is derived,  
21 including a reasonable allowance for obsolescence, in  
22 accordance with 26 U.S.C. §§ 167 and 168, and an allowance for  
23 the amortization of intangibles determined in accordance with  
24 26 U.S.C. § 197.

25 (9) In the case of mines, oil, and gas wells, other  
26 natural deposits and timber, a reasonable allowance for  
27 depletion and for depreciation of improvements, according to

1 the peculiar condition in each case based upon the cost,  
2 including the cost of development not otherwise deducted, such  
3 reasonable allowance in all cases to be made under rules and  
4 regulations to be prescribed by the Department of Revenue;  
5 and, in the case of leasehold interests, the deduction allowed  
6 by this section shall be equitably apportioned between the  
7 lessor and the lessee.

8 (10) Charitable contributions to the extent allowed  
9 for federal income tax purposes under 26 U.S.C. § 170  
10 (relating to charitable contributions and gifts).

11 (11) The deduction allowed to the individual for  
12 federal income tax purposes by 26 U.S.C. § 219 (relating to  
13 retirement savings).

14 (12) The deduction allowed for federal income tax  
15 purposes by 26 U.S.C. § 404 (relating to qualified pension,  
16 profit sharing, stock bonus, and annuity plans).

17 (13) For each individual income taxpayer, medical  
18 and dental expenses, including amounts paid for medicine and  
19 drugs and amounts paid for accident and health insurance, as  
20 determined in accordance with 26 U.S.C. § 213; provided,  
21 however, that the limitation of the deduction to the excess of  
22 those expenses over 7.5 percent of adjusted gross income as  
23 provided in 26 U.S.C. § 213 shall instead be limited to the  
24 excess of those expenses over 4.0 percent of adjusted gross  
25 income.

26 (14) For each individual income taxpayer, the  
27 deduction determined in accordance with 26 U.S.C. § 212 for

1 all the ordinary and necessary expenses paid or incurred  
2 during the taxable year for the production or collection of  
3 income, or for the management, conservation, or maintenance of  
4 property held for the production of income, or in connection  
5 with the determination, collection, or refund of any tax.

6 (15) Any expense not exceeding \$1,000 actually  
7 incurred during the taxable year in constructing on his or her  
8 property a family radioactive fallout shelter, as approved and  
9 certified by the State Department of Emergency Management, and  
10 any amount not exceeding \$1,000 which he or she contributed  
11 during the taxable year toward the construction of a community  
12 radioactive fallout shelter.

13 (16) A deduction from the taxpayer's adjusted gross  
14 income for state income tax purposes of the total cost of  
15 installation for conversion from gas or electricity to wood as  
16 the primary energy source for heating their individual  
17 domestic homes for the taxable year during which a conversion  
18 was completed.

19 (17) Alimony and separate maintenance payments, the  
20 amount deductible to be the same as the amount deductible for  
21 federal income tax purposes under 26 U.S.C. § 215 (relating to  
22 alimony payments).

23 (18) Moving expenses paid or incurred during the  
24 taxable year as allowed under 26 U.S.C. § 217 (relating to  
25 moving expenses). However, in applying 26 U.S.C. § 217, the  
26 term "new principal place of work" means only places of work  
27 located within the State of Alabama.

1           (19) Any expense not exceeding \$35,000 actually  
2 incurred during the taxable year in removing from his or her  
3 property any architectural or transportation barriers to  
4 handicapped persons with nonambulatory and semiambulatory  
5 disabilities; provided, however, that any improvements  
6 resulting from that expense shall not be eligible to be  
7 capitalized for depreciation.

8           (20) Notwithstanding subdivision (1), the deduction  
9 for expenses of travel, entertainment, and meals shall be  
10 determined in accordance with 26 U.S.C. § 274.

11           (21) The deduction allowed by 26 U.S.C. § 179  
12 (relating to expensing certain depreciable property), provided  
13 that no deduction shall be allowed under subdivision (8) for  
14 any amount allowed as a deduction under this subdivision.

15           (22) The deduction allowed by 26 U.S.C. § 195  
16 (relating to amortization of start-up expenditures), but in  
17 the case of a nonresident, only if the principal place of  
18 business of the business investigated, created, or acquired is  
19 located in the State of Alabama.

20           (23) The deduction allowed by subdivision (1), to  
21 the extent that it consists of unreimbursed employee business  
22 expenses, and the deduction allowed by subdivision (14) shall  
23 be allowed only to the extent that the aggregate of the  
24 deductions exceeds 2 percent of adjusted gross income.

25           (24) The reasonable medical and legal expenses paid  
26 or incurred by the taxpayer in connection with the adoption of  
27 a minor. For purposes of this subdivision, medical expenses



1 shall include any medical and hospital expenses of the adoptee  
2 and the adoptee's biological mother which are incident to the  
3 adoptee's birth and subsequent medical care and which, in the  
4 case of the adoptee, are paid or incurred before the petition  
5 is granted.

6 (25) The amount of any aid or assistance, whether in  
7 the form of property, services, or monies, provided to the  
8 State Industrial Development Authority pursuant to Section  
9 41-10-44.8(d) in order to induce an approved company to  
10 undertake a major project within the state.

11 (26) The amount of premiums paid pursuant to a  
12 qualifying insurance contract for qualified long-term care  
13 coverage.

14 (27) The amount deductible by the taxpayer in  
15 accordance with 26 U.S.C. § 162(h).

16 (28) The amount, up to five thousand dollars  
17 (\$5,000) per annum, contributed subsequent to December 31,  
18 2007, to the Alabama Prepaid Affordable College Tuition  
19 Program or the Alabama College Education Savings Program as  
20 defined in Chapter 33C of Title 16. If the taxpayer makes a  
21 nonqualified withdrawal as defined by Section 529 of the  
22 Internal Revenue Code (26 U.S.C. 529), the amount of the  
23 nonqualified withdrawal, plus 10 percent of the amount  
24 withdrawn, shall be added back to the income of the  
25 contributing taxpayer in the year the nonqualified withdrawal  
26 was distributed.

1 (b) (1) In lieu of the deductions allowable to  
2 individual taxpayers, as provided in subdivision (1) of  
3 subsection (a) to the extent of unreimbursed employee business  
4 expenses, and as provided in subdivisions (2), (3), (5), (6),  
5 (10), (13), (14), (15), (16), (19), (22), and (26) of  
6 subsection (a), the taxpayer may elect to take the optional  
7 standard deduction of 20 percent of the adjusted gross income  
8 or \$2,000, whichever is the lesser. Taxpayers filing jointly  
9 as defined in Section 40-18-27 may elect to take the optional  
10 standard deduction of 20 percent of the adjusted gross income  
11 or \$4,000, whichever is the lesser.

12 (2) For tax years beginning after December 31, 2006,  
13 the optional standard deduction shall be determined as  
14 follows:

15 a. The standard deduction for married taxpayers  
16 filing jointly with adjusted gross income of \$20,000 or less  
17 shall be \$7,500. For married taxpayers filing jointly with  
18 adjusted gross income of greater than \$20,000, the standard  
19 deduction shall be reduced by \$175 for each \$500 of adjusted  
20 gross income in excess of \$20,000. Notwithstanding the  
21 preceding sentence, the standard deduction shall not be less  
22 than \$4,000 for married taxpayers filing jointly.

23 b. The standard deduction for married taxpayers  
24 filing separate returns with adjusted gross income of \$10,000  
25 or less shall be \$3,750. For married taxpayers filing separate  
26 returns with adjusted gross income of greater than \$10,000,  
27 the standard deduction shall be reduced by \$88 for each \$250

1 of adjusted gross income in excess of \$10,000. Notwithstanding  
2 the preceding sentence, the standard deduction shall not be  
3 less than \$2,000 for married taxpayers filing separate  
4 returns.

5 c. The standard deduction for head of family  
6 taxpayers with adjusted gross income of \$20,000 or less shall  
7 be \$4,700. For head of family taxpayers with adjusted gross  
8 income of greater than \$20,000, the standard deduction shall  
9 be reduced by \$135 for each \$500 of adjusted gross income in  
10 excess of \$20,000. Notwithstanding the preceding sentence, the  
11 standard deduction shall not be less than \$2,000 for head of  
12 family taxpayers.

13 d. The standard deduction for single taxpayers with  
14 adjusted gross income of \$20,000 or less shall be \$2,500. For  
15 single taxpayers with adjusted gross income of greater than  
16 \$20,000, the standard deduction shall be reduced by \$25 for  
17 each \$500 of adjusted gross income in excess of \$20,000.  
18 Notwithstanding the preceding sentence, the standard deduction  
19 shall not be less than \$2,000 for single taxpayers.

20 (c) A deduction is allowable for the amount of  
21 federal income tax paid or accrued within the taxable year. In  
22 the case of a nonresident taxpayer, the amount of federal  
23 income tax deductible to Alabama shall be determined by the  
24 ratio that the amount of adjusted gross income received from  
25 sources within the State of Alabama bears to the amount of  
26 adjusted gross income received from sources within and outside  
27 the State of Alabama.

1 (d) If separate returns are filed by husband and  
2 wife and one spouse elects to claim the optional standard  
3 deduction, the other spouse must also claim the optional  
4 standard deduction, unless, for the tax returns filed for the  
5 2014 and subsequent tax years, the spouses have lived apart  
6 for the entire year. In this case, each spouse may claim  
7 either the optional standard deduction or itemized deductions.  
8 Neither spouse may claim a deduction for expenses paid by the  
9 other spouse.

10 (e) In the case of a nonresident individual:

11 (1) The deductions allowed in subdivisions (1), (2),  
12 (3), (4), (5), (7), (8), (9), (11), (12), (19), (21), (23),  
13 and (25) of subsection (a) shall be allowed only to the extent  
14 that they are paid or incurred in carrying on a trade or  
15 business within the State of Alabama and the deduction allowed  
16 by Section 40-18-15.2 shall be allowed only to the extent it  
17 arose from a trade or business carried on in Alabama.

18 (2) The deductions allowed by subdivisions (2), (3),  
19 (5), (8), (9), (14), and (19) of subsection (a) shall be  
20 allowed only to the extent arising from property located in  
21 Alabama or transactions producing income that is subject to  
22 tax in the State of Alabama.

23 (3) The amount of the deductions allowed by  
24 subdivisions (2), (3), (6), (10), (13), (15), (16), (17),  
25 (19), (24), and (26) of subsection (a) (and not allowed by  
26 subdivisions (1) or (2) of this subsection), or by subsection  
27 (b) if the taxpayer elects the standard deduction, shall be

1 limited to the amount determined by multiplying the total of  
2 such deductions by a fraction, the numerator of which is the  
3 taxpayer's adjusted gross income determined using the rules  
4 provided in subdivisions (1) and (2) of this subsection and  
5 the denominator of which is the taxpayer's adjusted gross  
6 income determined under Section 40-18-14.2. The deduction  
7 allowed in subdivision (17) of subsection (a) shall not be  
8 subtracted in calculating either the numerator or denominator  
9 in the previous sentence.

10 (f) Nothing in this section shall allow any item to  
11 be deducted more than once."

12 "§40-23-85.

13 All taxes, fees, interest, or penalties imposed and  
14 all amounts of tax herein required to be paid to the state  
15 under this article must be paid to the Department of Revenue  
16 at Montgomery, Alabama, with remittance payable to the  
17 Treasurer of Alabama. Such amount of money as shall be  
18 appropriated for each fiscal year by the Legislature to the  
19 Department of Revenue with which to pay the salaries, the cost  
20 of operation and the management of the department shall be  
21 deducted, as a first charge thereon, from the taxes collected  
22 under and pursuant to Section 40-23-61; provided, that the  
23 expenditure of the sum so appropriated shall be budgeted and  
24 allotted pursuant to Article 4 of Chapter 4 of Title 41, and  
25 limited to the amount appropriated to defray the expenses of  
26 operating the department for each fiscal year. After the  
27 distributions provided herein and the distributions of use tax

1 on automobiles to the General Fund as provided in Section  
2 40-23-61(c), the balance of the tax collected under and  
3 pursuant to Section 40-23-61 shall be distributed as follows:  
4 (1) remote use tax amounts, seventy-five percent (75%) to the  
5 General Fund and twenty-five percent (25%) to the Education  
6 Trust Fund, and (2) any remaining amounts, forty-seven percent  
7 (47%) to the ~~Education Trust Fund~~ General Fund to be used for  
8 mental health and health care and fifty-three percent (53%) to  
9 the General Fund. An amount sufficient to fund the Children's  
10 Health Insurance Program (CHIP) shall be distributed annually  
11 as a first charge against the amounts allocated to the General  
12 Fund under this section. It is the legislative intent that all  
13 amounts collected on transactions involving a seller located  
14 outside the State of Alabama when the property is shipped or  
15 transported from outside the state shall be considered use tax  
16 for the purpose of this distribution, regardless of whether  
17 the taxes may be considered sales taxes for other purposes.

18 Section 2. The provisions of this act are severable.  
19 If any part of this act is declared invalid or  
20 unconstitutional, that declaration shall not affect the part  
21 which remains.

22 Section 3. All laws or parts of laws which conflict  
23 with this act are hereby repealed.

24 Section 4. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or upon its otherwise becoming law, and shall apply

1 to the full tax year beginning January 1, 2020 and to all tax  
2 years thereafter.