HB376

207802-1

By Representative Sorrell

RFD: Ways and Means Education

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SYNOPSIS: This bill would exclude from gross income of individuals the net capital gain derived from the exchange of precious metal bullion.

This bill would also include as a deduction of individuals from gross income the net capital loss derived from the exchange of precious metal bullion.

A BILL

TO BE ENTITLED

AN ACT

Relating to state income tax as for individuals; to amend Sections 40-18-14 and 40-18-15, Code of Alabama 1975; to exclude net capital gains and losses derived from the exchange of precious metal bullion from state income taxes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Sound Money Tax Neutrality Act.

Section 2. Sections 40-18-14 and 40-18-15, Code of Alabama 1975, are amended to read as follows:

"§40-18-14.

"The term "gross income" as used herein:

"(1) Includes gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, income, fees, and other compensation of state, county, and municipal officers and employees, or from professions, vocations, trades, business, commerce or sales, or dealings in property whether real or personal, growing out of ownership or use of or interest in such property; also from interest, royalties, rents, dividends, securities, or transactions of any business carried on for gain or profit and the income derived from any source whatever, including any income not exempted under this chapter and against which income there is no provision for a tax. The term "gross income" as used herein also includes alimony and separate maintenance payments to the extent they are includable in gross income for federal income tax purposes under 26 U.S.C. § 71 (relating to alimony and separate maintenance payments). The term "gross income" as used herein also includes any amount included in gross income under 26 U.S.C. § 83 at the time it is so included under 26 U.S.C. § 83.

"(2) For purposes of this chapter, the reductions in tax attributes required by 26 U.S.C. § 108 shall be applied only to the net operating losses determined under this chapter and the basis of depreciable property. The basis reductions of depreciable property shall not exceed the basis reductions for federal income tax purposes. All other tax attribute reductions required by 26 U.S.C. § 108 shall not be recognized.

"(3) Gross income does not include the following items which shall be exempt from income tax under this chapter:

"a. Amounts received under life insurance policies and contracts paid by reason of the death of the insured in accordance with 26 U.S.C. § 101;

"b. Amounts received, other than amounts paid by reason of the death of the insured, under life insurance, endowment or annuity contracts, determined in accordance with 26 U.S.C. § 72;

"c. The value of property acquired by gift, bequest, devise, or descent, but the income from such property shall be included in the gross income, in accordance with 26 U.S.C. § 102;

"d. Interest upon obligations of the United States or its possessions; or securities issued under provisions of the Federal Farm Loan Act of July 18, 1916;

"e. Any amounts received by an individual which are excludable from gross income under 26 U.S.C. § 104 (relating to compensation for injuries or sickness) or 26 U.S.C. § 105 (relating to amounts received under accident or health plans);

"f. Interest on obligations of the State of Alabama and any county, municipality, or other political subdivision thereof;

"g. The rental value of a parsonage provided to a minister of the gospel to the extent excludable under 26 U.S.C. § 107;

"h. Income from discharge of indebtedness to the extent allowed by 26 U.S.C. § 108;

"i. For each individual resident taxpayer, or each husband and wife filing a joint income tax return, as the case may be, any gain realized from the sale of a personal residence of the taxpayer shall be excluded to the extent excludable for federal income tax purposes under 26 U.S.C. § 121;

"j. Contributions made by an employer on behalf of an employee to a trust which is part of a qualified cash or deferred arrangement (as defined in 26 U.S.C. § 401(k)(2), or 5 U.S.C. § 8437) under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash and contributions made by an employer for an employee for an annuity contract, which contributions would be excludable from the gross income (for federal income tax purposes) of the employee in accordance with the provisions of 26 U.S.C. § 403(b). The limitations imposed by 26 U.S.C. § 402(g) shall apply for purposes of this paragraph;

"k. Amounts that an employee is allowed to exclude from gross income for federal income tax purposes pursuant to

26 U.S.C. § 125 (relating to cafeteria plans) and 26 U.S.C. § 132 (relating to certain fringe benefits); and

"l. Amounts paid or incurred by an employer on behalf of an employee if the amounts may be excluded from gross income for federal income tax purposes by an employee pursuant to 26 U.S.C. § 129 (relating to dependent care expenses).

"<u>m. Any net capital gain derived from the exchange of precious metal bullion. For purposes of this paragraph, precious metal bullion means coins, bars, or rounds containing primarily refined gold, silver, or other precious metal that meets either of the following qualifications:</u>

"<u>1. Is marked and valued primarily by its weight, purity, and content.</u>

"<u>2. Is minted by a government authority.</u>

"(4) The term "gross income," in the case of a resident individual, includes income from sources within and outside Alabama, including without limitation, the resident's proportionate share of any income arising from a Subchapter K entity, Alabama S corporation, or estate or trust, regardless of the geographic source of the income. The term gross income, in the case of a nonresident individual, includes only income from property owned or business transacted in Alabama. For purposes of this article, proportionate share shall be defined by reference to (i) the status of the individual owner as a partner or member of a Subchapter K entity, shareholder of an Alabama S corporation, or beneficiary of an estate or trust, and (ii) the allocable interest in that entity owned by the individual.

"§40-18-15.

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

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

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

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

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

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

"c. State and local, and foreign, real property taxes.

"d. State and local personal property taxes.

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

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

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

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

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

"(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business in accordance with 26 U.S.C. § 165(c)(2); but, in the case of a taxpayer other than a resident of the state, only as to those transactions within the state.

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

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

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

"(9) In the case of mines, oil, and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar condition in each case based upon the cost, including the cost of development not otherwise deducted, such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Department of Revenue; and, in the case of leasehold interests, the deduction allowed by this section shall be equitably apportioned between the lessor and the lessee.

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

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

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

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

"(14) For each individual income taxpayer, the deduction determined in accordance with 26 U.S.C. § 212 for all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income, or in connection with the determination, collection, or refund of any tax.

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

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

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

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

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

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

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

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

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

"(24) The reasonable medical and legal expenses paid or incurred by the taxpayer in connection with the adoption of a minor. For purposes of this subdivision, medical expenses shall include any medical and hospital expenses of the adoptee and the adoptee's biological mother which are incident to the adoptee's birth and subsequent medical care and which, in the case of the adoptee, are paid or incurred before the petition is granted.

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

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

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

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

"(29) Any net capital loss derived from the exchange of precious metal bullion. For purposes of this paragraph, precious metal bullion means coins, bars, or rounds containing primarily refined gold, silver, or other precious metal that meets either of the following qualifications:

"a. Is marked and valued primarily by its weight, purity, and content.

"b. Is minted by a government authority.

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

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

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

"b. The standard deduction for married taxpayers filing separate returns with adjusted gross income of $10,000 or less shall be $3,750. For married taxpayers filing separate returns with adjusted gross income of greater than $10,000, the standard deduction shall be reduced by $88 for each $250 of adjusted gross income in excess of $10,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for married taxpayers filing separate returns.

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

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

"(3) For tax years beginning after December 31, 2018, the optional standard deduction shall be determined as follows:

"a. The standard deduction for married taxpayers filing jointly with adjusted gross income of less than $23,000 shall be $7,500. For married taxpayers filing jointly, the standard deduction shall be reduced further by $175 for each $500 of adjusted gross income in excess of $23,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $4,000 for married taxpayers filing jointly.

"b. The standard deduction for married taxpayers filing separate returns with adjusted gross income of less than $10,500 shall be $3,750. For married taxpayers filing separate returns, the standard deduction shall be reduced further by $88 for each $250 of adjusted gross income in excess of $10,500. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for married taxpayers filing separate returns.

"c. The standard deduction for head of family taxpayers with adjusted gross income of less than $23,000 shall be $4,700. For head of family taxpayers, the standard deduction shall be reduced further by $135 for each $500 of adjusted gross income in excess of $23,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for head of family taxpayers.

"d. The standard deduction for single taxpayers with adjusted gross income of less than $23,000 shall be $2,500. For single taxpayers, the standard deduction shall be reduced further by $25 for each $500 of adjusted gross income in excess of $23,000. Notwithstanding the preceding sentence, the standard deduction shall not be less than $2,000 for single taxpayers.

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

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

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

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

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

"(3) The amount of the deductions allowed by subdivisions (2), (3), (6), (10), (13), (15), (16), (17), (19), (24), and (26) of subsection (a) (and not allowed by subdivisions (1) or (2) of this subsection), or by subsection (b) if the taxpayer elects the standard deduction, shall be limited to the amount determined by multiplying the total of such deductions by a fraction, the numerator of which is the taxpayer's adjusted gross income determined using the rules provided in subdivisions (1) and (2) of this subsection and the denominator of which is the taxpayer's adjusted gross income determined under Section 40-18-14.2. The deduction allowed in subdivision (17) of subsection (a) shall not be subtracted in calculating either the numerator or denominator in the previous sentence.

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

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law, and shall apply to tax years commencing on or after January 1, 2021.