“.....modest, targeted action will put money directly in the pockets of American workers and generate additional incentives for work and employment, right when the money is needed most.”

President Donald Trump, August 8th 2020
Executive Order waiving the collection of taxes

A Net Neutral Opportunity for Alabama to Provide Immediate Sales Tax Relief Through CARES Act Funds

The Alabama Policy Institute’s fiscal analysis of the federal CARES Act and its application by other states has yielded a means by which the State of Alabama can provide immediate relief to its beleaguered citizens, spur increased business revenues, and do so in a manner that is net-neutral to the State. All of this appears possible solely by means of executive action through the Office of the Governor.

Synopsis

- The Trump Administration has just signaled very distinctly that it favors the idea of giving relief to citizens on a broad scale by simply taking less from them.
- Alabama has an opportunity to use CARES Act funds in a manner that would benefit every citizen by allowing all purchases from brick-and-mortar retailers to be purchased without sales tax for a period of time.
- This proposal would not require applications or a government-based selection process.
- This proposal would provide an incredible economic boost to Alabama’s small businesses, counties, and municipalities, many of whom were devastated by the coronavirus shutdown.
- This proposal is net neutral to the State of Alabama if CARES Act funds are used.
- Outside legal review by the Governor’s former Chief Legal Counsel indicates that such a use of CARES Act funds meets the guidelines previously set by the US Treasury Department.
- The State of Idaho, among others, is forging ahead with a similar program.
- Statewide polling by nationally renowned pollster Cygnal indicates approximately 70% approval rating of this proposal.
- Even if the US Treasury Dept. ultimately disallowed this opportunity after the fact Alabama can make a withdrawal from its Rainy Day Fund to make the repayment.
- Discussions with state leaders, business owners, Mayors, and stakeholder associations indicate very favorable response.
- The Governor’s staff was first presented with this proposal in June 2020 but to this date has declined to take it up.
**The Case for Tax Relief**

Alabama received $1.8 billion in COVID-19 related funding through the CARES Act. Almost all Alabamians have been directly impacted by the health and economic impacts of COVID-19. While the FY 2021 state General Fund Budget specified how much of the money can be spent, there is approximately $418 million that was identified by API’s fiscal analysis staff as having the requisite flexibility for use as proposed herein. As of mid-August, 2020 it appears that the Governor’s office has designated half of that amount for other relief efforts, largely in the form of grant programs.

Instead of using CARES Act money to grow government, or to put the government in the position of picking winners and losers in a grant program, the most effective way to help struggling Alabamians and stimulate the economy would be to use those funds to provide an extended state, county, and/or municipal sales tax holiday.

It is also noteworthy that on August 8th, 2020 President Trump signed an Executive Order for the purpose of waiving the collection of payroll taxes by the federal government. In doing so it is apparent that the President believes that it is of utmost importance in the pandemic economy to “give” to citizens in the form of “not taking”. API agrees with this approach.

There is a question as to whether a sales tax holiday would violate the prohibitions of the CARES Act which preclude the state from repaying itself for lost revenues. Treasury guidance specifically states that funds may not be used to replace lost revenues. API’s interpretation of Treasury Department guidance is that states have been given much flexibility as to how CARES Act funding may be used. Additionally, API retained the services of former State Senator and [most recently] Governor’s Chief Legal Counsel Bryan Taylor to provide a comprehensive review of the legalities of this proposal. Senator Taylor’s legal memorandum (See attached) finds that this program would be acceptable under existing Treasury guidance. Interestingly, Governor Ivey’s current Chief Legal Counsel John Montgomery (Taylor’s immediate successor) finds otherwise. (See attached)

Discussions with Alabama’s US delegation further yielded the belief that Treasury is likely to administer requests to utilize CARES Act funds with leniency and at the discretion of the various governors. In that regard the State of Idaho has chosen to forge ahead with a similar program under the belief that it is the best option for their citizens. (Idaho is using property tax relief as opposed to sales tax relief) (See attached)

In summary, the Trump administration has signaled a bent toward this line of pandemic economic relief. The funds are available. Governor Ivey’s former Chief Legal Counsel and her current former Chief Legal Counsel interpret the respective laws and regulations in differing manners. Other states are taking this action on behalf of their citizens. And additionally, Governor Ivey’s key staff all agree that this plan “would undoubtedly have a positive impact on Alabama’s economy.” (see attached)

To this date the Governor’s administration has declined.
Proposed Implementation

1. **Pay for education payroll/benefit costs with CARES Act funding.** The CARES Act states that other eligible expenditures “include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures.” While no final decision has been announced, it seems likely that most school systems will have some form of online learning through the fall. The state could use CARES Act funding to pay all salaries and benefits for K-12 public school teachers and support staff for several months while waiving sales taxes that would have otherwise paid these costs. Because of the Education Trust Fund’s reliance on sales tax revenues, option one may logistically be the best option as it would directly supply education funding without having to shift money from non-education accounts. Other options include:

2. **Implement an extended moratorium on the state 4% grocery sales tax.** According to a 2019 estimate from the Legislative Services Agency, the Alabama state grocery tax generates $514 million in revenue annually. Alabama is one of only three states that fully apply their sales tax to food purchased for home consumption without providing an income-based offset. With the remaining uncommitted CARES Act funds, the state could suspend grocery sales tax collections for months. Groceries are one of the few retail items that all Alabamians must purchase. Removing the state tax would benefit all citizens, regardless of income level.

3. **Provide a state and/or local sales tax holiday as a means of financial assistance to individuals and businesses.** Treasury guidance states that a government may use CARES Act money to provide emergency financial assistance to families so long as the government entity determines such assistance to be a necessary expenditure. Guidance also says that funds can be used to assist “small businesses to reimburse the costs of business interruption caused by required closures.” The guidance relating to small businesses does not require a stay-at-home order to be in effect to provide assistance. Using CARES Act funds to provide a sales tax holiday would provide financial assistance to both families and businesses that have been impacted by COVID-19.

4. **Use CARES Act funding to reimburse the state/local governments for ongoing public health and public safety expenditures.** Guidance from the Treasury Department specifies that a state or local government “may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Under this scenario, the state could pay for state and/or local government public health and safety costs with CARES Act funding. A condition of receiving funds would be that the accepting jurisdiction implements a temporary sales tax holiday. Funds that would have otherwise gone towards public health and public safety costs could then be shifted to makeup for lost sales tax revenues.
Regardless of how it is constructed, a sales tax holiday would provide aid to individuals and businesses, which is a permissible use under the CARES Act. It would offset consumer price increases that have occurred because of COVID-19 and encourage Alabamians (and potentially residents of neighboring states) to return to normal shopping habits, aiding struggling businesses. Given the regressive nature of Alabama sales taxes (such as taxing groceries), implementing a sales tax holiday would benefit all citizens, regardless of income. It would also be a victory for Governor Ivey, as she could provide a direct benefit to all Alabamians.

**How Would Such A Plan Be Received By Citizens of Alabama?**

API believes strongly in this proposal. However, rather than vest our opinion’s solely in our own perspective API committed considerable resources to having the matter polled statewide by one of the nation’s leadings pollsters, Cygnal.

Cygnal’s results are attached to this proposal and are a clear indication that the people of Alabama would overwhelmingly view the enactment of such a plan.

Cygnal’s results show a near 70% favorable result using a multi-media approach to polling across a broad spectrum of Alabama. It is rare that anything polls at that level of favorability.

(See attached)

**What Other States are Doing**

Though the CARES Act specifies that federal funding cannot be used to replace lost tax revenues, there is a precedent for using a portion of the funds to provide tax relief.

- Idaho recently approved a plan introduced by Governor Brad Little that will provide up to $200 million in property tax relief to Idaho citizens. To achieve this goal within the confines of the CARES Act, the state will reimburse county governments for salary expenditures of law enforcement, fire fighters, EMS, and other public safety employees. The plan specifies that for one year, county governments would not be able to increase property taxes (state law permits a 3% annual increase). Local governments have until July 17 to opt-in to the plan. Governor Little said that if local authorities opt to expand government, they will be deliberately choosing to deny property owners a credit against taxes due.

- Kansas is pursuing a similar plan to offer $250 million in property tax relief to residents. The Kansas Policy Institute has proposed that county governments reduce property tax rates by 6.8 mils this year and then replenish the reduced funding with CARES Act money. Whether this repayment system would be allowable under the CARES Act is undetermined.

- A concurrent resolution introduced in Louisiana (HCR 72) would suspend several state taxes, including personal and corporate income taxes, until September 1, 2020.

- New Jersey (A3866) and New York (A10556) have both introduced legislation to suspend sales taxes for small businesses and municipalities. If enacted, the New Jersey
tax holiday would last until the Governor declares there is no longer an emergency and the New York sales tax holiday would last three months.

- New Jersey (S2400) has also approved a one-year reduction in its casino gaming tax and hotel fees. In addition, the bill allocated $100 million in CARES Act funding for small business assistance. This is an example of another innovative way that states are seeking to provide tax relief to individuals and businesses.

**So What If Treasury Rejects This Plan After The Fact?**

It is API’s firm belief that using CARES Act funding to provide a sales tax holiday is an allowable use. However, barring direct confirmation from the U.S. Department of Treasury, there is a possibility that the federal government could deem such tax expenditures after the fact as an improper use of CARES funds. If Alabama proceeds with a sales tax holiday and the Treasury ultimately determines that it is not an allowable use of funding, Alabama would be required to pay back the federal government.

The benefits of a sales tax holiday outweigh the potential risk of having to repay the federal government. If the Treasury requires repayment the state could utilize the Education Trust Fund’s (ETF) rainy day account, which is funded by the Alabama Trust Fund’s oil and gas royalty payment receipts. Amendment 803 of the Alabama Constitution re-established the ETF rainy day account and specifies that if the Governor declares proration of the ETF, up to 6.5 percent of the previous year’s appropriation can be transferred to the rainy day account to cover the shortfall. As of March 31, 2020, the Alabama Trust Fund had a balance of $3.17 billion.

No legislative action is needed for the Governor to access the rainy day account. If Governor Ivey declares and certifies proration to the state comptroller, the funds could be transferred to cover an ETF shortfall. The only requirement is that the loan be repaid within six years. Based on a projected FY 2020 ETF appropriation of $7.1 billion, approximately $463 million could be transferred to the rainy day account to cover the costs of a sales tax holiday. This is more than enough to pay for the projected cost of API’s sales tax holiday proposal.

**Summary**

API strongly recommends, the research allows, the polling suggests, and the Trump Administration inclines, that the Governor of Alabama should provide direct relief to every citizen in the form of a sales tax holiday for an extended period of time. In doing so, API also believes that local governments will opt in for participation in this plan. By combining a state and local sales tax relief, promoting it in advance, and running it for an extended period, it is to be expected that brick-and-mortar retailers will see an economic boost at this critical time in our State’s existence.