RE: Proposal for CARES Act Funds for Tax Relief

To the Honorable Kay Ivey and Members of the Cabinet:

The leadership of the Alabama Policy Institute thanks you for the opportunity to present what we believe is one of the most dynamic opportunities to bring relief to the citizens of Alabama in the wake of the coronavirus. Please find documentation, enclosed in this packet, that supports the premise that tax relief is available through the Ivey Administration by Executive Order using funds derived from the Federal CARES Act.

It is our sincere hope that this will be received in the manner in which it has been generated - with the best interests of our state and its people in mind.

The Alabama Policy Institute stands ready to engage the topic with all of its resources and to help the administration see the matter through to a winning solution. Thank you in advance for your consideration.

Sincerely,

Caleb Crosby
President and CEO

Phil Williams
Director of Policy Strategy and General Counsel

Carl Jones
Chief Operations Officer

Josh Pendergrass
Chief Communications Officer

Justin Bogie
Senior Director of Fiscal Policy
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.

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 appears to have flexibility as to how it can be used.

Instead of using CARES Act money to grow government, 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.

API believes that the Alabama Congressional Delegation would support any of the proposals outlined below and would be willing to address the issue of sales tax relief with the Trump Administration if necessary.

How Sales Tax Relief Could be Implemented

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. However, there are several ways that this potential obstacle could be avoided:

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 nearly 10 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.

**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.