



This Week in State Tax (TWIST)

April 20, 2026



Alabama: Intermediary Entity Breaks the Chain for FEIT Consolidation

The Alabama Court of Civil Appeals held that a bank holding company (Parent) and its indirect banking subsidiary (Bank) could not file a consolidated Financial Institution Excise Tax (FEIT) return because the two were connected through an intermediary bank holding company (Intermediary) that could not be included in the group (Parent owned Intermediary; Intermediary owned Bank). For the tax years at issue, Parent filed consolidated FEIT returns for 2012–2018 that included Parent and Bank but not Intermediary; for 2019–2020, Parent filed consolidated returns that included Intermediary.

Alabama generally requires each financial institution to file a separate FIET return, but a “qualified corporate group” may elect to file a consolidated return, allowing one member’s losses to offset other members’ income. To be eligible for inclusion in a consolidated FIET return, each financial institution must meet both the statutory ownership test and the filing test. Consolidated filing also requires specified forms, including Form ET-1C for each member, Form ET-C by the common parent, and a pro forma Form ET-1 for each participating entity.

For the years at issue, the ownership test required direct common-parent ownership: at least 80 percent of the voting power and 80 percent of each class of nonvoting stock of each subsidiary had to be owned directly by one or more includable corporations, and the common parent had to directly own at least 80 percent of at least one includable member. The filing test required that each member be a financial institution, which is defined as “any person . . . doing business in this state as a . . . bank” or a registered bank holding company that is the common parent corporation of a controlled group eligible to file a consolidated FEIT return.

Although the case involved extensive audit activity, multiple tax years, assessments, refund claims, and layered administrative and judicial appeals, the dispositive issue before the Court of Civil Appeals was whether the taxpayer satisfied the statutory requirements to file consolidated FIET returns. Both the Alabama Tax Tribunal and the circuit court concluded that the proposed consolidated groups failed to meet either the ownership or the filing test under Alabama law for each year at issue—first because exclusion of Intermediary (for tax years 2012–2018) resulted in failing to meet the ownership requirement, and later because Intermediary was not itself required to file an FIET return, thus failing to meet the filing test. As a result, the Department properly recalculated FIET liabilities on a separate-entity basis and denied the taxpayers’ refund claims, according to the court.

For the 2012–2018 tax years, the court first held that because a Form ET-1 for Intermediary was not attached to the consolidated FIET return, Intermediary must be excluded from the consolidated group. The court further determined that the proposed consolidated group failed the FIET ownership test because Intermediary—the entity that directly owned Bank—was omitted from the consolidated filings. As a result, the only entities included

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were Parent and Bank, and Parent did not directly own at least 80 percent of Bank’s stock. The court rejected the taxpayer’s argument that mutual or indirect ownership among group members was sufficient, concluding that such a reading would improperly eliminate the statutory requirement of direct ownership.

For the 2019 and 2020 tax years, the court first noted that Intermediary filed the appropriate forms to be included in the consolidated FEIT return, making the issue for these tax years, whether Intermediary was a “financial institution” under Alabama law. The court determined that Intermediary was not a financial institution under either prong of the statutory definition of financial institution. First, Intermediary did not do business in Alabama, meaning it could not meet the definition of financial institution under the “doing business in this state as a bank” prong. Second, although Intermediary was a bank holding company and was Bank’s parent, it was not a financial institution under the “common parent corporation” prong because it was not the common parent of the entire consolidated group. The court rejected the taxpayer’s argument that Intermediary qualified as the common parent of a controlled group consisting of itself and Bank (which would be a controlled group that was eligible to file a consolidated FEIT return) because the statute references “the” common parent of a controlled group (not “a” common parent), indicating that it encompasses only a single common parent of the entire proposed consolidated group. Contact [Trent Kool](#) with questions about [Ally Financial v. Alabama Department of Revenue](#).

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