

*BOLLINGER V. STATE OF ALABAMA DEPARTMENT OF
REVENUE: HOW AN ALABAMA ADMINISTRATIVE TRIBUNAL
CREATED A DOUBLE TAX ON REMOTE WORKERS*

Note

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INTRODUCTION

Like many Alabamians, Mark Bollinger's day-to-day life was upended by the COVID-19 pandemic.¹ Bollinger worked in the repossessions department of BBVA Bank (BBVA) in Homewood, Alabama.² Bollinger's primary role was to take phone calls from customers who were in repossession status.³ Once the pandemic struck, Bollinger's in-office position was changed to a remote position, and he began to work from home at his Alabama apartment.⁴ In September of 2020, Bollinger decided that, with his position now being fully remote, he desired to move closer to his family.⁵ With permission from his supervisor, Bollinger relocated to Idaho while maintaining his same position with BBVA.⁶

These facts are relatively simple and have likely occurred hundreds of thousands of times across the nation since the COVID-19 pandemic.⁷ Perhaps the first inclination when reading those facts is not to consider the tax implications. Most would likely believe that Bollinger would now pay Idaho income tax and no longer pay Alabama income tax because he is now performing his job from Idaho. Unfortunately for Mr. Bollinger, the Alabama Department of Revenue (ADR) disagreed and sought to levy Alabama's income tax against Bollinger's Idaho-based work and income, potentially creating huge tax implications for employees and businesses within the state.⁸ The ADR believed that Mr. Bollinger did not change his domicile from Alabama to Idaho and that, even if he did, his remote work would still be subject to Alabama's income tax.⁹ In a surprising decision which caught the attention of both

1. *Bollinger v. State of Ala. Dep't of Revenue*, No. INC. 22-390-LP, 2023 WL 2576634, at *1-2 (Ala. Tax Tribunal Mar. 8, 2023).

2. *Id.* at *1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See, e.g., Emily Badger et al., *The Places Most Affected by Remote Workers' Moves Around the Country*, N.Y. TIMES (Jun. 17, 2023), <https://www.nytimes.com/interactive/2023/06/17/upshot/17migration-patterns-movers.html> [<https://perma.cc/2GYL-9CSF>] (finding that in the two years since the COVID-19 pandemic began, one in four workers who moved long-distance was working remotely and that over 300,000 remote workers left San Francisco and New York City alone in that same time period).

8. *Bollinger*, 2023 WL 2576634, at *1.

9. *Id.*

accounting and legal tax professionals,¹⁰ the Alabama Tax Tribunal agreed in part with the ADR and found that Bollinger’s remote work was subject to Alabama’s state income tax because that remote work constituted Bollinger “doing business” in Alabama while located in Idaho.¹¹

Part I of this Note will discuss the landscape of Alabama’s income-tax law prior to *Bollinger*, highlighting relevant constitutional provisions, statutes, and regulations, as well as decisions by Alabama’s former Administrative Law Division and the Alabama Supreme Court, surrounding the term “business transacted.” Part II will analyze the relevant facts surrounding the *Bollinger* decision and will highlight the Tribunal’s legal reasoning for ruling that Mr. Bollinger owed Alabama income tax for his time working remotely from Idaho. Part III will present the main thesis of this Note: the Alabama Tax Tribunal erroneously expanded the Alabama income-tax statute’s “business transacted” language to encompass remote work that takes place out of state, and this expansion creates a “convenience of the employer rule” (CER) in Alabama broader than the CER in the six other states which have such a rule. Part IV of this Note will highlight the negative implications that a CER can have on Alabama employees, employers, and state tax revenues and will advocate for both state and federal legislative remedies to remove Alabama’s new CER. This Note will then briefly conclude.

I. SUMMARY OF CASE LAW

A. *Alabama’s Income Tax*

The Alabama Constitution permits the Alabama legislature “to levy and collect taxes for state purposes on net incomes from whatever source derived within this state.”¹² The Alabama legislature exercised that power in Alabama’s income-tax statute, which taxes the income of “[e]very individual residing in Alabama” as well as the income of “[e]very nonresident individual receiving

10. See Andrea Ben-Yosef, *Alabama Tax Court Upholds Assessment of Income Tax on Remote Worker Providing Services from Home Office in Idaho*, ERNST & YOUNG (Mar. 30, 2023), <https://taxnews.ey.com/news/2023-0609-alabama-tax-court-upholds-assessment-of-income-tax-on-remote-worker-providing-services-from-home-office-in-idaho> [https://perma.cc/6SKY-MMVV]; Michael Palm, *Nomads Can Make You Go Mad – Tax Insights for Remote Workers (Volume 2)*, FORVIS MAZARS, LLP (Jul. 28, 2023), <https://www.forvis.com/article/2023/07/nomads-can-make-you-go-mad-tax-insights-remote-workers-volume-2> [https://perma.cc/74HX-49D8]; Janelle Fritts, *Alabama Tax Tribunal Says Out-of-State Workers Owe Income Taxes*, TAX FOUND. (Mar. 31, 2023), <https://taxfoundation.org/blog/alabama-remote-work-tax/> [https://perma.cc/5FYK-JGLA]; J. Mahoney Jr. et al., *Spotlight on Alabama: Recent Tax Tribunal Decision Should Be of Interest to Employers Using Remote Workers*, BAKER DONELSON (Mar. 28, 2023), <https://www.bakerdonelson.com/spotlight-on-alabama-recent-tax-tribunal-decision-should-be-of-interest-to-employers-using-remote-workers> [https://perma.cc/ST78-QR23].

11. *Bollinger*, 2023 WL 2576634, at *4.

12. ALA. CONST. art. XI, § 211.01.

income from property owned or *business transacted* in Alabama.”¹³ The statute further establishes that anyone “domiciled in the State of Alabama . . . shall be presumed to be residing within the state.”¹⁴ Further, ADR regulations state that “[t]he gross income of a nonresident includes compensation for personal services only to the extent that the services were rendered in this State.”¹⁵

B. *Alabama’s Administrative Tax Court*

Prior to 2014, Alabama taxpayers filed tax appeals with the ADR’s Administrative Law Division.¹⁶ The Alabama Taxpayer Fairness Act of 2014 created the Alabama Tax Tribunal, an independent executive-branch agency that would hear disputes between taxpayers and the ADR.¹⁷ The Tribunal is composed of anywhere from one to three judges appointed by the governor for six-year terms.¹⁸ Taxpayers may appeal to the Tribunal a variety of actions taken by the ADR.¹⁹ The Tribunal is subject to various quasi-judicial standards of discovery, hearings, and opinion drafting, and decisions made by the Tribunal can be appealed to “the appropriate circuit court.”²⁰

C. *Smith v. State of Alabama Department of Revenue*

In 2013, the Administrative Law Division of the ADR decided *Smith v. State of Alabama Department of Revenue*.²¹ In *Smith*, the ADR believed that Gail Smith did not report all of her income on her W-2 for income earned from Birmingham Southern College (BSC).²² Smith argued that, pursuant to ADR regulations, she was not required to include income earned from BSC after she permanently moved to Canada.²³ The ADR attempted to argue that “although

13. ALA. CODE § 40-18-2(a) (1975) (emphasis added); see also ALA. ADMIN. CODE r. 810-3-2.01(3) (2024) (“Nonresident individuals receiving taxable income from property owned or business transacted (including wages for personal services) within Alabama are taxable on such income from within Alabama.”).

14. ALA. CODE § 40-18-2(b) (1975).

15. ALA. ADMIN. CODE r. 810-3-14.05(1)(a) (2024).

16. Dana Beyerle, *Historic Alabama Tax Tribunal Begins on Wednesday*, BUS. COUNCIL OF ALA. (Sept. 29, 2014), <https://www.bcatoday.org/historic-alabama-tax-tribunal-begins-on-wednesday/> [<https://perma.cc/AH8C-TGMK>].

17. ALA. CODE § 40-2B-2 (1975); see also Tom Zobebelein, *An Independent Tax Tribunal Comes to Alabama*, PEARCE, BEVILL, LEESBURG, MOORE, P.C. (Jun. 10, 2015), <https://www.pearcebevill.com/news/an-independent-tax-tribunal-comes-to-alabama/> [<https://perma.cc/8X9S-GVYE>]. The Alabama Tax Tribunal was given jurisdiction over all cases that were pending at the Administrative Law Division on October 1, 2014. ALA. CODE § 40-2B-2(g)(1) (1975).

18. ALA. CODE § 40-2B-2(c)(1)–(2) (1975).

19. *Id.* § 40-2B-2(h)(1).

20. *Id.* § 40-2B-2(j)–(m).

21. *Smith v. State of Ala. Dep’t of Revenue*, No. INC. 12-253, slip op. at 1 (Admin. Law Div. Jan. 30, 2013).

22. *Id.*

23. *Id.*; see also ALA. ADMIN. CODE r. 810-3-14.05 (2024).

the Taxpayers have provided proof of Canadian residency, they had not provided proof that they don't owe Alabama tax.”²⁴ Chief Administrative Law Judge Bill Thompson disagreed and found that Smith was “not liable for Alabama tax on the income from Ms. Smith’s personal services performed outside of Alabama.”²⁵ Judge Thompson primarily based this decision on an ADR regulation which then said, “Where compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services.”²⁶ Therefore, Gail Smith was found not liable for income tax for the work she performed for BSC while she was located in Canada.

D. Law Defining the Term “Business Transacted”

While nonresident income from “business transacted” in Alabama can be taxed under Alabama’s income-tax statute, there is no statutory definition of what constitutes “business transacted.”²⁷ In 2012, the Administrative Law Division addressed the definition of “business transacted” in a case involving whether a Florida resident’s settling of an Alabama lawsuit was taxable income.²⁸ The administrative-law judge stated:

The next question is whether the proceeds were derived from “business transacted” in Alabama. That is, was the Taxpayer doing business in Alabama when he filed and subsequently settled the lawsuit in the State.

“Doing business” is not statutorily defined for Alabama tax purposes. The Alabama Supreme Court has held, however, that a corporation is doing business in Alabama if it is “engaged (in Alabama) in the transaction of business, or any part of the business, for which it was created.” *State v. Anniston Rolling Mills*, 27 So. 921, 922 (1900); See also, *State v. City Stores Co.*, 171 So.2d 121 (Ala. 1965); *Dial Bank v. State of Alabama*, Docket Inc. 95-289 (Admin. Law Div. 8/10/1998) (“On the other hand, doing business in Alabama is a practical question of whether a taxpayer is engaged in a primary business activity in Alabama.” *Dial Bank* at 13.) “Alabama courts have, on occasion, construed the term ‘engage in business’ . . . to indicate a regular and legal

24. *Smith*, slip op. at 2 (citing Ala. Dep’t of Revenue’s Response to Fifth Preliminary Order at 2, *Smith*, No. INC. 12-253 (Admin. Law Div. Jan. 30, 2013)).

25. *Id.*

26. ALA. ADMIN. CODE r. 810-3-14.05(1)(b)(2) (2013). That regulation is identical to the language in the current regulation. ALA. ADMIN. CODE r. 810-3-14.05(1)(b)(2) (2024) (“Where compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services . . .”).

27. *Gasser v. State of Ala. Dep’t of Revenue*, No. INC. 11-489, slip op. at 7 (Admin. Law Div. Oct. 15, 2012).

28. *Id.* slip op. at 3.

employment. . . .” *Scott & Scott Inc. et al. v. City of Mountain Brook*, 844 So. 2d 577, 591 (Ala. 2002).²⁹

No explanation in the opinion is given as to why the Administrative Law Division equates the language “business transacted” to “doing business.” It is also noteworthy that while the Administrative Law Division may have been interpreting Alabama’s income-tax statute, none of the Alabama Supreme Court decisions cited above were interpreting the Alabama income-tax statute.³⁰

II. THE *BOLLINGER* DECISION

The action before the Tax Tribunal in *Bollinger* was an appeal by Bollinger after the ADR issued a final assessment on Mark Bollinger’s 2020 tax return that included his income earned remotely while working in Idaho.³¹ After outlining the underlying and undisputed facts regarding Bollinger’s new remote position, the Tribunal was faced with two main disputes between Bollinger and the ADR.³² First, “[t]he Revenue Department stated that its position is that [Bollinger] did not abandon his Alabama domicile in 2020.”³³ Second, the ADR argued that “even if he did, the income was taxable as Alabama-sourced income.”³⁴

While the Tribunal began by addressing whether or not Bollinger was domiciled in Alabama, the Tribunal quickly dispensed with that argument and found that Bollinger did abandon Alabama as his domicile.³⁵ More interesting, of course, is the finding that despite the abandonment of Alabama as his domicile, Bollinger’s work performed in Idaho was subject to Alabama’s income tax.

The key issue decided by the Tax Tribunal was “whether the income earned by [Bollinger] after he moved to Idaho was taxable as Alabama-sourced income.”³⁶ The Tribunal began by highlighting that the only way Bollinger’s

29. *Id.* slip op. at 7.

30. *See* *State v. Anniston Rolling Mills*, 27 So. 921, 921 (Ala. 1900) (“This is an action by the state to recover a license tax”); *State v. City Stores Co.*, 171 So. 2d 121, 121 (Ala. 1965) (“The State Department of Revenue made final an assessment of foreign franchise tax”); *Scott & Scott Inc., v. City of Mountain Brook*, 844 So. 2d 577, 580 (Ala. 2002) (“[T]he City of Mountain Brook sued . . . seeking to collect allegedly owed and unpaid business license taxes.”).

31. *Bollinger v. State of Ala. Dep’t of Revenue*, No. INC. 22-390-LP, 2023 WL 2576634, at *1 (Ala. Tax Tribunal Mar. 8, 2023).

32. *See supra* text accompanying notes 1–6; *see also* *Bollinger*, 2023 WL 2576634, at *1–2.

33. *Bollinger*, 2023 WL 2576634, at *2.

34. *Id.*

35. *Id.* at *2. The ADR attempted to argue that Bollinger’s maintaining of an Alabama driver’s license established Alabama as his domicile. *Id.* The Tribunal analogized the case to a previous decision in which a man who moved to Texas maintained his driver’s license and upheld the rule that maintaining an Alabama’s driver’s license does not per se establish Alabama as the license holder’s domicile. *Id.* (citing *Hare v. State of Ala. Dep’t of Revenue*, No. INC. 16-1133-CE, 2018 WL 2087241 (Ala. Tax Tribunal Apr. 12, 2018)).

36. *Id.*

income could be taxed under the Alabama income-tax statute would be if his work from Idaho was found to be “business transacted in Alabama.”³⁷ The Tribunal went on to establish that the holding in *Smith* “seems analogous to the [Bollinger] case.”³⁸ In both situations, an Alabama income earner received payment from their Alabama employer for work performed outside of the state.³⁹ However, instead of applying the *Smith* reasoning to Bollinger’s case, the Tribunal stated that, despite the Tax Tribunal effectively re-organizing the Administrative Law Division,⁴⁰ the Tribunal is not bound by the Administrative Law Division’s prior decisions.⁴¹ Therefore, the Tribunal would “look anew to the construction of § 40-18-2 and r. 810-3-14.05, particularly, to whether the Taxpayer’s income was from ‘business transacted in Alabama.’”⁴²

Despite having established that the Tax Tribunal is not subject to the decisions of the Administrative Law Division, the Tribunal then proceeded to adopt language from an Administrative Law Division decision that previously attempted to define “business transacted” by citing the aforementioned series of Alabama Supreme Court cases defining “doing business” for corporations.⁴³ Based on the adoption of that language, the Tribunal stated that “the Taxpayer was clearly engaged in business, i.e., a regular and legal employment with BBVA, which was in Alabama.”⁴⁴ Addressing Bollinger’s argument that the services rendered were provided, and therefore the business transacted, in Idaho, the Tribunal stated that “[b]ecause of the availability of remote work, however, the Taxpayer’s physical presence in Alabama was not needed in order for him to maintain his employment in Alabama.”⁴⁵ The Tribunal cited testimony from Bollinger that “he was able to continue his duties while working remotely and reported to the same Alabama supervisors to whom he had reported while

37. *Id.*

38. *Id.* at *3; see *supra* text accompanying notes 22–25.

39. *Bollinger*, 2023 WL 2576634, at *1, *3.

40. See, e.g., ALA. CODE § 40-2B-2(c)(3) (1975) (establishing that the Chief Administrative Law Judge of the Department of Revenue shall become the initial Chief Judge of the Alabama Tax Tribunal); *id.* § 40-2B-2(d)(6) (establishing that certain employees of the Administrative Law Division will be transferred to the Alabama Tax Tribunal); *id.* § 40-2B-2(g)(1) (establishing that the Alabama Tax Tribunal will “hear and determine all appeals pending before the Department of Revenue’s Administrative Law Division”); *id.* § 40-2B-2(r) (establishing that the budget for the Administrative Law Division shall be the budget for the Alabama Tax Tribunal’s first year of operations).

41. *Bollinger*, 2023 WL 2576634, at *3 (“I note, however, that the Alabama Tax Tribunal is not bound by the decisions of the former Administrative Law Division. But see, Ala. Code 1975 40-2B-2(l)(7) [establishing that the Tax Tribunal should interpret statutes consistent with prior Tax Tribunal rulings].”).

42. *Id.* Despite referencing the ADR regulation here, the Tribunal does not reference or analyze r. 810-3-14-.05 for the remainder of the opinion. See generally *id.*

43. *Id.* at *4 (citing *Gasser v. State of Ala. Dep’t of Revenue*, No. INC. 11-489, slip op. at 7 (Admin. Law Div. Oct. 15, 2012)). In *Gasser*, the Administrative Law Division found that a Florida resident who had received a lawsuit settlement in Alabama did not transact business in Alabama, and therefore did not owe Alabama income tax on the settlement. See *supra* text accompanying notes 27–29.

44. *Bollinger*, 2023 WL 2576634, at *4.

45. *Id.*

working physically in Alabama.”⁴⁶ The Tribunal concluded that Bollinger’s employment by BBVA was in fact “business transacted” in Alabama, despite the work occurring in Idaho, and therefore subject to the Alabama income tax.⁴⁷

III. ANALYSIS OF THE *BOLLINGER* DECISION

A. *The Definition of “Business Transacted” Erroneously Expanded to Include Remote Work*

The decision in *Bollinger* marks the expansion of the Alabama income-tax statute’s “business transacted” language to encompass remote work.⁴⁸ The Tribunal stated that it is not subject to following the precedent of the former Administrative Law Division.⁴⁹ What the Tribunal did not make clear, and where its reasoning therefore failed, is why it then decided to follow in the footsteps of the Administrative Law Division and hold that the phrase “business transacted in Alabama” in the income-tax statute should be interpreted as identical language to “engage in business.”⁵⁰

Using the series of Alabama Supreme Court cases cited above,⁵¹ the Tribunal determined that “regular and legal employment” is enough to establish Bollinger as “engaged in business.”⁵² In doing so, the Tribunal cited language from *Scott & Scott, Inc. v. City of Mountain Brook*, a case involving a municipal business-license tax.⁵³ However, in *Scott*, the Alabama Supreme Court was interpreting what it meant to “engage in business” by looking to the statutory definition of “business” in the Alabama tax code⁵⁴ and interpreting the word “engage.”⁵⁵ Indeed, this is the correct approach to statutory interpretation under Alabama Supreme Court precedent.⁵⁶ However, instead of following the

46. *Id.*

47. *Id.* Judgment was entered against Bollinger for the amount of \$33.72. *Id.*

48. *Id.*; see also sources cited *supra* note 10.

49. *Bollinger*, 2023 WL 2576634, at *3. Notably, the Tribunal does also cite ALA. CODE § 40-2B-2(l)(7) (1975) as evidence contradictory to its premise that it is not subject to decisions from the Administrative Law Division. *Id.* That code section states that the Tribunal should adhere to its precedent unless “application conflicts with that of an appellate court or the Alabama Tax Tribunal provides satisfactory reasons for reversing prior precedent.” ALA. CODE § 40-2B-2(l)(7) (1975); see also Zobelein, *supra* note 17.

50. *Bollinger*, 2023 WL 2576634, at *4. Compare ALA. CODE § 40-18-2(a)(6) (1975) (“Every nonresident individual receiving income from property owner or business transacted in Alabama.”), with ALA. CODE § 40-23-1(a)(11) (1975) (defining “business” as “[a]ll activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit, or advantage”); see also *Scott & Scott, Inc. v. City of Mountain Brook*, 844 So. 2d 577, 592 (Ala. 2002) (interpreting ALA. CODE § 40-23-1(a)(11) (1975)).

51. See *supra* text accompanying note 29.

52. *Bollinger*, 2023 WL 2576634, at *4.

53. *Id.* (citing *Scott*, 844 So. 2d at 591).

54. ALA. CODE § 40-23-1(a)(11) (1975); see also *Scott*, 844 So. 2d at 591.

55. *Scott*, 844 So. 2d at 592.

56. See Jay Mitchell, *Textualism in Alabama*, 74 ALA. L. REV. 1089, 1123 (2023) (citing *Casey v. Beeker*, 321 So. 3d 662, 666 (Ala. 2020) (highlighting that the Alabama Supreme Court adheres to the “Interpretive-Direction Canon” in which “[d]efinition sections and interpretation clauses are to be carefully followed”).

statutory definition of “business” and then interpreting the phrase “transacted in Alabama,” the Tribunal simply cites the cases interpreting “engage in business” and treats the income-tax statute as if the statute reads “engage in business.”

Had the Tribunal correctly followed the Alabama Supreme Court’s lead in *Scott*, it would have determined that “business” under Alabama’s tax code was defined as “[a]ll activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit, or advantage. . . .”⁵⁷ So, the Tribunal should have read the income-tax statute as “[a]ll activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit, or advantage . . . transacted in Alabama.”⁵⁸ In this instance, it is obvious that the “activities engaged in,” and therefore allegedly subject to the income tax, are the services performed by Bollinger. This would task the Tribunal with determining whether the services performed by Bollinger were “transacted in Alabama.” Under Alabama law, “when a term is not defined in a statute, the commonly accepted definition of the term should be applied.”⁵⁹ Rather than arrive at the conclusion that “transacted” would be synonymous with “regular and legal employment” with an Alabama company,⁶⁰ the Tribunal should have arrived at the inevitable conclusion that “transacted” means “[t]he act or an instance of conducting business.”⁶¹ In summation, the Tribunal would be faced with the question of whether “the act or instance” of Bollinger’s services were conducted in Alabama. The obvious answer, and the one the Tribunal should have arrived at, is no.

Had the Tribunal correctly arrived at the conclusion that the “act or instance” of Bollinger’s work in Idaho occurred in Idaho, the Tribunal should have ruled that Bollinger’s income was not business “transacted in Alabama” and therefore not subject to Alabama’s income tax.

B. *Bollinger Creates a “Convenience of the Employer Rule” in Alabama*

A CER is a tax rule that “sources wages to the location of a nonresident employee’s assigned office.”⁶² In other words, regardless of where the work is performed, an employee is subject to the income tax of the state where the

57. ALA. CODE § 40-23-1(a)(11) (1975).

58. This definition replaces “business” in ALA. CODE § 40-18-2(a)(6) (1975) with the definition of “business” in § 40-23-1(a)(11).

59. *See Mitchell*, *supra* note 56, at 1118 (citing *Russell v. Sedinger*, 350 So. 3d 311, 315 (Ala. 2021)).

60. *Bollinger v. State of Ala. Dep’t of Revenue*, No. INC. 22-390-LP, 2023 WL 2576634, at *4 (Ala. Tax Tribunal Mar. 8, 2023).

61. *Transaction*, BLACK’S LAW DICTIONARY (11th ed. 2019).

62. Mandy R. Riles, *Understanding the Convenience of the Employer Rule*, WIPFLI (Mar. 6, 2023), <https://www.wipfli.com/insights/articles/tax-understanding-the-convenience-of-the-employer-rule> [<https://perma.cc/9Q7X-ZYCY>].

office they are working for is located, as well as the state they reside in.⁶³ By holding that Bollinger was subject to Alabama income tax solely because of his employment with BBVA, which was located in Alabama, the Tribunal effectively created a CER for the state of Alabama.⁶⁴ In doing so, the Tribunal held that *BBVA's* location establishes whether Bollinger “continued to transact business in Alabama,” *not Bollinger's* location.⁶⁵ Alabama’s income-tax statute was given a new, expansive meaning that taxes workers solely based on the location of their employer.

It is also worth noting that the Tribunal’s holding appears to be very broad in scope. In Bollinger’s case, the only thing that changed was his physical location.⁶⁶ However, there is no discussion about Bollinger previously living in Alabama as a factor in considering whether the income tax should be assessed.⁶⁷ Imagine a scenario in which Bollinger lived in Idaho his entire life and simply took the remote position with the Homewood BBVA branch. Under the Tribunal’s new interpretation of the income-tax statute, Bollinger would regardless be “transact[ing] business in Alabama via his employment with BBVA.”⁶⁸ What if Bollinger was tasked with working on Idaho-based clients, while located in Idaho, but reported to his previous supervisors in Alabama? Again, it can be assumed that because Bollinger “was able to continue his duties while working remotely and reported to the same Alabama supervisors”⁶⁹ that he would also fall under the Tribunal’s ruling and be liable for the income tax. The Tribunal’s broad ruling seems to create a CER that subjects any nonresident working remotely for an Alabama company or office to Alabama’s state income tax.⁷⁰

63. *See generally* REMOTE WORK TAX’N WORK GRP., NAT’L CONF. OF STATE LEGISLATURES, STATE AND LOCAL TAX CONSIDERATIONS OF REMOTE WORK ARRANGEMENTS (2023), <https://documents.ncsl.org/wwwncsl/State-Federal/NCSL-SALT-Remote-Work-Considerations-White-Paper-2023.pdf> [<https://perma.cc/8M3J-7HT9>].

64. *Bollinger*, 2023 WL 2576634, at *4 (“[Bollinger] testified that he was able to continue his duties while working remotely and reported to the same Alabama supervisors to whom he had reported while working physically in Alabama.”); *see also* REMOTE WORK TAX’N WORK GRP., *supra* note 63, at 7.

65. *Bollinger*, 2023 WL 2576634, at *4.

66. *Id.* at *1.

67. *See generally id.*

68. *Id.* at *4; *see also* ALA. CODE § 40-2B-2(l)(7) (1975) (“The Alabama Tax Tribunal’s interpretation of a taxing statute subject to contest in one case shall be followed by the Alabama Tax Tribunal in subsequent cases involving the same statute . . .”).

69. *Bollinger*, 2023 WL 2576634, at *4.

70. *Id.*

C. Comparison of Other States with CERs

There are six other states which have some form of a CER.⁷¹ This portion analyzes each state's CER, its enactment, and highlights key differences among them.

1. Connecticut

Connecticut's CER was enacted by statute on June 14, 2018.⁷² However, Connecticut's CER only applies if the nonresident remote worker lives in a state which also has a CER.⁷³ This means that Connecticut residents who pay income taxes to a state that enforces a CER will not receive a credit for those taxes paid on their Connecticut income-tax return, while Connecticut residents who pay income tax to states without CERs will receive a credit for the amount they paid in income tax to the other states.⁷⁴ Connecticut seemingly passed their CER as a form of retaliation to New York's CER.⁷⁵

2. Delaware

Delaware passed its CER by statute on January 1, 1992.⁷⁶ Interestingly, Delaware suspended its CER for some taxpayers who were previously remote employees by choice but became mandated remote employees during the COVID-19 pandemic.⁷⁷

3. Nebraska

Nebraska's CER was created via a regulation from the Nebraska Department of Revenue on February 24, 2009.⁷⁸ During the 2023 legislative

71. See Riles, *supra* note 62.

72. CONN. GEN. STAT. § 12-711(b)(2)(C) (2019); see also H.B. 5028, 2018 Gen. Assemb., Reg. Sess. (Conn. 2018).

73. RUTE PINHO, CONN. OFF. OF LEGIS. RSCH., CONVENIENCE OF THE EMPLOYER RULE 1 (2021).

74. REMOTE WORK TAX'N WORK GRP., *supra* note 63, at 8.

75. Stephen A. Josey, *An Inconvenient Truth About Remote Work: Connecticut's Income-Sourcing Statute Needs Fixing*, CPA J. (May/June 2023), <https://www.cpajournal.com/2023/08/16/an-inconvenient-truth-about-remote-work-2/> [<https://perma.cc/ET6K-KSXF>]; see also Sierra Williams & Jeffrey Levin, *Work Is Where the Tax Is: Navigating the "Convenience of the Employer" Rule (US)*, NAT'L L. REV. (Feb. 26, 2024), <https://www.natlawreview.com/article/work-where-tax-navigating-convenience-employer-rule-us> [<https://perma.cc/8L7F-L3RS>].

76. DEL. CODE ANN. tit. 30, § 1124(b) (2009); see also H.B. 349, 136th Gen. Assemb., 1st Sess. (Del. 1991).

77. JENNIFER R. NOEL, DEL. DIV. OF REVENUE, TECHNICAL INFORMATION MEMORANDUM: TREATMENT OF WAGES FROM REMOTE WORK IN 2021 (2022), <https://revenuefiles.delaware.gov/2021/TIM%202022-2-treatmentofwageincomeforindividualsworkingremotelyfor2021taxreturns.pdf> [<https://perma.cc/77T9-58MS>].

78. 316 NEB. ADMIN. CODE § 22-003.01C(1) (2024); see also DEP'T OF REVENUE, 2009 NE. REG. TEXT 149222 (NS) (Neb. 2009). Nebraska has recently made some minor changes to the applicability of their

session, Nebraska State Senator Kathleen Kauth filed a bill to remove the state's CER.⁷⁹ This bill was supported by the Greater Omaha and Lincoln Chamber of Commerce, local businesses, CPAs, and the Nebraska Chamber of Commerce.⁸⁰ The bill did not pass but has been carried over into the 2024 legislative session.⁸¹

4. *New Jersey*

New Jersey enacted its CER on July 21, 2023,⁸² apparently following Connecticut's lead in retaliating against New York's CER.⁸³ Similar to Connecticut, New Jersey's rule only applies to nonresidents who live in a state which has a CER.⁸⁴ The New Jersey Division of Taxation has stated that its CER will not apply to other states that have "reciprocal" laws, such as Connecticut, and so it appears that New Jersey will not apply its CER to Connecticut as long as Connecticut does not apply its CER to New Jersey.⁸⁵

5. *New York*

New York's CER stems from a November 22, 1995 regulation by the New York Revenue Department.⁸⁶ Professor Edward Zelinsky of the Benjamin N. Cardozo School of Law in New York City has repeatedly challenged New York's CER but has thus far been unsuccessful.⁸⁷ Neighboring states whose residents commonly work fully or partly remotely for New York companies

CER through the Relocation Incentive Act, though the CER still applies. L.B. 1023, 2024 Reg. Sess. (Neb. 2024).

79. L.B. 416, 108th Leg., 1st Sess. (Neb. 2023).

80. See *Public Hearing on L.B.416 Before the Revenue Committee*, 19th Leg., 1st Sess. 8–9 (Neb. 2023) (statement of Nicholas Bjornson, Representative, Greater Omaha and Lincoln Chamber of Commerce); *id.* at 10 (statement of Stacy Watson, Shareholder, Lutz and Company); *id.* (statement of John Cederberg, CPA); *id.* at 11–13 (statement of Bryan Slone, President, Nebraska Chamber of Commerce).

81. Carryover Legislation, 108th Leg., 2nd Sess. (Neb. 2024).

82. JASON FEINGERTZ ET AL., HUNTON ANDREWS KURTH, NEW JERSEY STRIKES BACK WITH NEW CONVENIENCE OF THE EMPLOYER RULE (2024), <https://www.huntonak.com/images/content/9/5/v2/95844/new-jersey-strikes-back-with-new-convenience-of-employer-rule.pdf> [<https://perma.cc/RS6N-GRU7>].

83. *Id.*

84. N.J. REV. STAT. § 54A:5-8 (2017).

85. *Convenience of the Employer Sourcing Rule Enacted for Gross Income Tax*, N.J. TREASURY DIV. TAX'N (Nov. 22, 2023), <https://www.nj.gov/treasury/taxation/conveniencerule.shtml> [<https://perma.cc/W5DL-LUEA>].

86. N.Y. COMP. CODES R. & REGS. tit. 20, § 132.18 (2023).

87. See *Zelinsky v. Tax Appeals Tribunal*, 1 N.Y.3d 85 (2003), *cert. denied*, 541 U.S. 1009 (2004). Professor Zelinsky has renewed that challenge following New York's Revenue Department issuing guidance that remote employees would still be subject to New York income tax even when their offices were closed during the COVID-19 pandemic. See Mario T. Caito & Timothy P. Noonan, *An Inside Look at Zelinsky Part II*, HODGSON RUSS LLP (May 8, 2023), <https://www.hodgsonruss.com/blogs-Noonans-Notes-Blog,an-inside-look-at-zelinsky-part-ii> [<https://perma.cc/THX6-3VCR>].

have instituted a number of ways to combat New York’s CER, which have apparently been incredibly economically beneficial to the state.⁸⁸ For example:

[B]oth New Jersey and Connecticut have created a “bounty” for their residents: for any New Jersey or Connecticut resident that successfully challenges New York’s [CER] and receives a refund from New York . . . , that resident will be entitled to a 50% credit on what taxes they would then owe to either New Jersey or Connecticut⁸⁹

6. Pennsylvania

Pennsylvania’s CER was created via regulation on December 11, 1999.⁹⁰ Pennsylvania, however, has “reciprocity” agreements with Indiana, Maryland, New Jersey, Ohio, Virginia, and West Virginia.⁹¹ These reciprocity agreements “make it so only the state of residency [of a remote employee] can tax that individual’s compensation.”⁹²

* * *

Perhaps the most obvious difference in Alabama’s CER and the six states highlighted above is that Alabama is the only one to have such a rule created by an administrative tribunal. Each of the six states above have clear language in their statutes or regulations that establishes the CER.⁹³ In contrast, instead of the typical legislative or rulemaking process that laws and regulations go through, Alabama’s Tax Tribunal unilaterally decided that the ninety-year-old Alabama income-tax statute applied to remote work.⁹⁴ Indeed, because of the failure to go through the democratic process, Alabama’s rule appears to be the most sweeping and broadly applicable CER in the nation, as no exceptions or reciprocity agreements are created by the ruling.

88. Williams & Levin, *supra* note 75; *see also* Josey, *supra* note 75.

89. Williams & Levin, *supra* note 75.

90. 61 PA. CODE § 109.8 (2000).

91. *See* Jared Walczak, *Do Unto Others: The Case for State Income Tax Reciprocity*, TAX FOUND. (Nov. 16, 2022), <https://taxfoundation.org/research/all/state/state-reciprocity-agreements/> [<https://perma.cc/C7R2-2LB4>]; *see also* Michael T. Fatale, *Post-Pandemic State Taxation of Nonresident Telecommuter Wages*, 64 B.C. L. REV. 1859, 1914 (2023).

92. Michael R. Bannasch, *PA Convenience of the Employer Doctrine: Income Tax Withholding Considerations for Fully Remote Workers*, RKL (Sept. 21, 2021), <https://www.rklcpa.com/pa-convenience-of-employer-doctrine-income-tax-withholding-considerations-fully-remote-workers/> [<https://perma.cc/9BCP-3R8N>].

93. *Compare* CONN. GEN. STAT. § 12-711(b)(2)(C) (2019); DEL. CODE ANN. tit. 30 § 1124(b) (2009); 316 NEB. ADMIN. CODE § 22-003.01C(1) (2024); N.J. REV. STAT. § 54A:5-8 (2017); N.Y. COMP. CODES R. & REGS. tit. 20, § 132.18 (2023); 61 PA. CODE § 109.8 (2000), *with* *Bollinger v. State of Ala. Dep’t of Revenue*, No. INC. 22-390-LP, 2023 WL 2576634, at *4 (Ala. Tax Tribunal Mar. 8, 2023).

94. *See Bollinger*, 2023 WL 2576634, at *4; *see also* *In re* Opinions of the Justices (*In re* Income Tax Enabling Act) 149 So. 776, 777 (Ala. 1933) (highlighting that the Alabama income-tax statute was first passed in 1933).

IV. IMPLICATIONS AND REMEDIES

A Implications

Given that Alabama would be one of only six states that applies a CER, Alabama employees, businesses, and state tax revenues will be placed at a disadvantage compared to other states.⁹⁵ Take Mark Bollinger for example. Seeing as he lives in Idaho, Bollinger will naturally be subject to Idaho's 5.7% income tax.⁹⁶ Under Alabama's new CER, up to 5% of Bollinger's income would also be subject to Alabama's income tax.⁹⁷ Bollinger would be paying two separate state income taxes for the same income—also described as paying a “double tax” on the same income.⁹⁸ It is not surprising then that Bollinger did in fact cease to work for BBVA and therefore no longer subjected himself to Alabama's CER.⁹⁹

However, it is unlikely, in that scenario, that Bollinger would actually pay both 5% of his income to Alabama and 5.7% to Idaho. Instead, “states generally provide a credit for all or a portion of taxes paid to another state on income.”¹⁰⁰ In Idaho for example, Bollinger would receive a credit up to “the amount of tax actually paid to the other state.”¹⁰¹ So, if Bollinger had a tax liability to Alabama under the CER of \$100, and a tax liability to Idaho of \$105, Bollinger would pay Alabama \$100 and Idaho \$5 to satisfy his tax liabilities.

At first glance, this may seem like a win-win for Alabama, as there is no true increase in taxes on out-of-state residents and now there is a new revenue stream for the state. However, a CER can create massive economic burdens on employees, employers, and state tax revenues in states where they are implemented.¹⁰²

Imagine, for example, if Bollinger had moved to one of the nine states that do not assess an income tax.¹⁰³ In that instance, there is no way for Bollinger to

95. See Fritts, *supra* note 10 (“If working remotely from another state means double taxation, a remote work benefit is not much of a benefit.”).

96. IDAHO CODE § 63-3024(2)(a) (2024), <https://legislature.idaho.gov/statutesrules/idstat/title63/t63ch30/sect63-3024/> [<https://perma.cc/6W75-MGUM>].

97. ALA. CODE § 40-18-5 (1975).

98. See Jared Walczak, *Teleworking Employees Face Double Taxation Due to Aggressive “Convenience Rule” Policies in Seven States*, TAX FOUND. (Aug. 2020), <https://taxfoundation.org/research/all/state/remote-work-from-home-teleworking/> [<https://perma.cc/WG67-VYGY>].

99. *Bollinger*, 2023 WL 2576634, at *1.

100. REMOTE WORK TAX'N WORK GRP., *supra* note 63, at 10.

101. IDAHO ADMIN. CODE r. 35.01.01.700 (2024).

102. See generally ANDREW WILFORD, INTERSTATE COM. INITIATIVE, NAT'L TAXPAYERS UNION FOUND., *THE 2024 ROAM INDEX: HOW STATE TAX CODES AFFECT REMOTE AND MOBILE WORKERS* (2024), <https://www.ntu.org/library/doclib/2024/01/2024-ROAM-Index-3-.pdf> [<https://perma.cc/4BSE-RFUJ>] (describing CERs as “fundamentally illogical” and explaining that CERs “cause significant confusion” and “can result in double-taxation”).

103. The states that currently do not assess a personal income tax are Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming. Elizabeth Gravier, *Living in These*

get a “credit” against his income taxes paid to Alabama. Instead, Bollinger would actually be assessed up to a 5% tax on his income from Alabama and not receive any benefit from his state of residency. If Bollinger were to take a new position with an equal salary located in a state that does not have a CER, Bollinger would actually see a 5% increase in his salary because he would not be subject to that state’s income tax and would continue to not be assessed an income tax from his state of residence. This creates a strong incentive for residents of the nine states that do not assess a personal income tax to avoid taking remote positions with Alabama companies.

Similarly, imagine if Bollinger had relocated to Connecticut or New Jersey. As described in Section III.C, these states will not provide a tax credit for income taxes paid to states that enforce a CER.¹⁰⁴ Therefore, Bollinger would have to actually pay the “double tax” to both Alabama and Connecticut or New Jersey.¹⁰⁵

Further, Alabama employers are harmed by the CER. Prior to Alabama’s CER, employers who wished to hire remote out-of-state workers could simply choose among all fifty states in determining who to hire for the job without worrying about confusing tax implications. However, with a CER, Alabama businesses will have to consider the potential tax implications of the CER when making hiring decisions. If an Alabama business was looking to hire remote workers from a state without an income tax or a state like Connecticut or New Jersey, that business would face a dilemma—either force their employee to take an up to 5% pay cut by subjecting them to Alabama’s CER or pay that employee a higher salary to offset the cost of the CER that the employee would have to pay to Alabama.¹⁰⁶ And “[w]hile people might put up with paying taxes in two states for a very specialized role that’s not available elsewhere . . . Alabama largely lacks those kinds of ‘only here’ jobs.”¹⁰⁷ The resulting effect is that Alabama employers either lose out on attracting and employing highly qualified remote workers or are forced to pay a significantly higher premium for those employees, simply because of a state tax rule.

Of course, the state may see it as a win regardless, as they now have a new revenue stream. However, the CER has the potential to do more harm than good to the state of Alabama’s income-tax revenues. As outlined above, businesses in Alabama will be faced with limited choices when it comes to hiring remote workers. The resulting loss in efficiency and productivity can do serious

9 States Means You Don’t Pay Income Tax, but Here’s What to Watch Out for, CNBC (Feb. 9, 2023), <https://www.cnbc.com/select/states-with-no-income-tax/> [https://perma.cc/WZC7-E8ZP].

104. See *supra* Sections III.C.1 and III.C.4.

105. See Fritts, *supra* note 10 (“If working remotely from another state means double taxation, a remote work benefit is not much of a benefit.”).

106. *Id.* (“Making it prohibitively difficult for Alabama-based companies to employ remote workers makes it much harder for companies to operate in the state.”).

107. *Id.*

harm to a business's income, which Alabama taxes at 6.5%.¹⁰⁸ There is a strong argument that by giving up the CER, Alabama businesses will gain access to a much greater remote-talent pool and become more profitable, creating profits that Alabama can tax at a higher rate than personal income.¹⁰⁹

A CER in Alabama is both unfair and confusing to out-of-state remote workers who work for Alabama companies, and it may deter them from wanting to work for Alabama companies at all. Further, the loss in productivity and efficiency that results from the CER can harm Alabama businesses and result in a loss of more tax revenues than the CER gains. These harmful effects show that Alabama's CER should be removed.

B. *Mirroring the Arkansas Legislature's Remedy*

The question then becomes how to remedy the Tribunal's unfortunate creation of a CER in Alabama. The state of Arkansas faced a strikingly similar issue in recent years.¹¹⁰ Instead of being instituted by an administrative court, the CER in Arkansas was created by a legal opinion from Arkansas's Department of Finance and Administration, the Arkansas equivalent of the ADR.¹¹¹ A woman living in Washington was notified that she was subject to Arkansas's income tax because her employer was located in Arkansas.¹¹² The Arkansas legislature immediately took notice, and in its 2021 regular legislative session passed SB 484, which sought "to clarify that nonresident income is allocated based on where the employee is located when performing the work associated with the income."¹¹³ That change in the law included an "emergency" provision that allowed the law to immediately go into effect when signed by Governor Hutchinson.¹¹⁴

108. ALA. CODE § 40-18-31(a) (1975).

109. See Meredith A. Bentley, *Huckaby v. New York State Division of Tax Appeals: In Upholding the Current Tax Treatment of Telecommuters, the Court of Appeals Demonstrates the Need for Legislative Action*, 80 ST. JOHN'S L. REV. 1147, 1165–66 (2006) (highlighting how a similar dynamic in New York could harm New York state revenues). But see Brian Borie, *The Convenience of the Employer Test: Why We Should Reconsider the Critique of New York's Tax Apportionment Scheme*, 72 ALB. L. REV. 791, 822 (2009) (critiquing Bentley's analysis of the economic harms of a CER as "based on pure conjecture").

110. JOHN THEIS, STATE OF ARK. DEPT OF FIN. AND ADMIN., RE: LEGAL OPINION NO. 20200203 (2020), <https://www.ark.org/dfa-act896/index.php/api/document/download/20200203.pdf> [<https://perma.cc/8F8G-MDDT>]; see also David Brunori, *Arkansas Ends the Convenience of Employer Test*, RSM (May 4, 2021), <https://rsmus.com/insights/tax-alerts/2021/arkansas-ends-the-convenience-of-employer-test.html> [<https://perma.cc/ZT9Z-SJVD>] ("[Arkansas's Department of Finance and Administration] determined that an employee of an Arkansas-based company who worked entirely from her home in Washington state was subject to Arkansas personal income tax on 100% of her compensation.").

111. THEIS, *supra* note 110.

112. *Id.*

113. S.B. 484, 93d Gen. Assemb., Reg. Sess. § 1 (Ark. 2021).

114. *Id.* § 6. The emergency clause was entered into because, much like in Alabama, "employers and employees face unintended income taxation." *Id.*

In order to eliminate the CER, SB 484 simply had to clarify that “[a] nonresident individual . . . shall pay Arkansas income tax only on the portion of the individual’s income that reasonably can be allocated to work performed in Arkansas” and “[a] nonresident individual performs work in Arkansas when that individual is physically located in Arkansas when performing the work.”¹¹⁵ This was “a clear rejection of the convenience of the employer test” in Arkansas.¹¹⁶ The Alabama legislature can and should similarly reject Alabama’s CER and amend Alabama’s income-tax statute with similar language to clarify that nonresidents who perform work outside of Alabama are not subject to Alabama’s income tax.

C. Federal Legislative Remedies and Potential Federalism Issues

An additional proposed remedy that could solve CER problems like Alabama’s comes in the form of federal legislation.¹¹⁷ For example, both House and Senate lawmakers have introduced legislation that would “restrict states’ ability to tax nonresident telecommuters, stipulating that an individual cannot be deemed to be present or working in a state for tax purposes when they are working from their home in another state.”¹¹⁸

However, while federal legislation like the Multi-State Worker Tax Fairness Act would certainly fall within the scope of the Commerce Clause,¹¹⁹ there are certain federalism concerns to consider before advocating for a federal solution.¹²⁰ A primary issue that arises when the federal government completely removes the ability of the states to regulate a particular area is that there is no longer room for regulatory competition.¹²¹ States often engage in regulatory competition with tax policy, seeking to entice residents to both move to and stay in their states.¹²² This “[c]ompetition forces state governments to respond to the political preferences of their residents.”¹²³ However, federal legislation like the Multi-State Worker Tax Fairness Act would remove competition by instituting a uniform rule among all states.

Understanding that such a federal law does implicate regulatory competition and innovation concerns, if the Alabama legislature does not act

115. *Id.* § 2.

116. Brunori, *supra* note 110.

117. *See generally* Walczak, *supra* note 98.

118. *Id.* at 6; *see also* Multi-State Worker Tax Fairness Act of 2016, S.2813, 114th Cong., 2d Sess., (2016); Multi-State Worker Tax Fairness Act of 2020, H.R.7968, 116th Cong., 2d Sess., (2020).

119. U.S. Const. art. I, § 8, cl. 3. *But see* U.S. amend. X. *See generally* CONG. RSCH. SERV., R43842, CONSTITUTIONAL AUTHORITIES UNDER WHICH CONGRESS REGULATES STATE TAXATION (2015).

120. *See generally* Ruth Mason, *Federalism and the Taxing Power*, 99 CALIF. L. REV. 975 (2011).

121. *See id.* at 992–93 (“Competition forces state governments to respond to the political preferences of their residents.”).

122. *Id.* at 992.

123. *Id.* at 992–93.

quickly to remove the potential double taxation of remote workers such as Bollinger, Alabama's federal congressional delegation should seriously consider pursuing federal legislative solutions to ensure that Alabama remains economically competitive with nearby states.

CONCLUSION

Alabama has experienced tremendous economic growth in recent years.¹²⁴ This is due in no small part to efforts by Alabama officials to reduce burdensome regulations and rules imposed on the businesses and working citizens of the state.¹²⁵ However, the recent Alabama Tax Tribunal decision to rewrite Alabama's income-tax statute to include a CER threatens that progress by imposing a harsh new tax on remote workers working for Alabama companies. These companies may decide that they would rather relocate to other states than subject their nonresident remote employees to Alabama's income tax. The Alabama legislature should follow the Arkansas legislature's path by removing Alabama's CER and clarifying that Alabama's income-tax statute does not apply to remote out-of-state workers. If the Alabama legislature does not act, Alabama's federal congressional delegation should consider proposed legislation that would outlaw CERs nationwide in order to keep Alabama economically competitive with the vast majority of states.

*Zachary Pate**

124. Compare SUMMARY *State Annual Summary Statistics: Personal Income, GDP, Consumer Spending, Price Indexes, and Employment*, BEA, <https://www.bea.gov/itable/regional-gdp-and-personal-income> [<https://perma.cc/YLE8-LSEP>] (click "Interactive Data Tables"; then click "SUMMARY TABLE FOR GDP, PERSONAL INCOME, AND RELATED DATA"; choose "SASUMMARY State annual summary statistics . . ." from dropdown; choose "Alabama" from Area dropdown; click "Next Step"; choose "2017" from dropdown), with SUMMARY *State Annual Summary Statistics: Personal Income, GDP, Consumer Spending, Price Indexes, and Employment*, BEA, <https://www.bea.gov/itable/regional-gdp-and-personal-income> [<https://perma.cc/YLE8-LSEP>] (click "Interactive Data Tables"; then click "SUMMARY TABLE FOR GDP, PERSONAL INCOME, AND RELATED DATA"; choose "SASUMMARY State annual summary statistics . . ." from dropdown; choose "Alabama" from Area dropdown; click "Next Step"; choose "2022" from dropdown) (showing that from 2017 to 2022, Alabama has seen a 29% increase in GDP, a 30% increase in personal income, a regional price index decrease of 2.58%, and an addition of approximately 220,000 jobs). *But see* Mike Cason, *Alabama's Low Labor Force Participation Rate Increases Slightly*, AL.COM (Dec. 22, 2023, 12:59 PM), <https://www.al.com/news/2023/12/alabamas-low-labor-force-participation-rate-increases-slightly.html> [<https://perma.cc/4VJZ-3XW7>] (highlighting that Alabama's labor participation rate is "a key indicator for state officials because it is low compared to most other states").

125. *See, e.g.*, Alexander Willis, *Ivey Orders 25% Cut to Business Regulations*, ALA. DAILY NEWS (Mar. 9, 2023), <https://aldailynews.com/ivey-orders-25-cut-to-business-regulations/> [<https://perma.cc/Y2JM-P72W>].

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