

1 HB203
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3 By Representative Johnson
4 RFD: Financial Services
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ENROLLED, An Act,

To amend Sections 40-2A-4 and 40-2A-10, Code of Alabama 1975, relating to the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act; to authorize the Department of Revenue to appoint multiple taxpayer advocate officers; to expand the authority of the department to allow for installment agreements with taxpayers who are seeking to pay their outstanding tax liabilities; and to clarify the role of the department in the development and maintenance of its automated tax records systems.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-2A-4 and 40-2A-10 of the Code of Alabama 1975, are amended to read as follows:

"§40-2A-4.

"(a) Rights of the taxpayer.

"(1) For purposes of this subsection and subsections (c) and (d), the term "department" shall include the Department of Revenue, a self-administered county or municipality, or a private examining or collecting firm, depending on whether the Department of Revenue, a self-administered county or municipality, or private examining or collecting firm is conducting the examination of the taxpayer.

1 "(2) At or before the commencement of an examination
2 of the books and records of a taxpayer, the department shall
3 provide to the taxpayer the current version of Publication 1A.
4 Publication 1A shall provide, in simple and non-technical
5 terms, a statement of the taxpayer's rights. Those rights
6 include the right to be represented during an examination, an
7 explanation of their appeal rights, and the right to know the
8 criteria and procedures used to select taxpayers for an
9 examination.

10 "(3) At or before the issuance of a preliminary
11 assessment, the department shall provide to the taxpayer in
12 simple and non-technical terms:

13 "a. A written description of the basis for the
14 assessment and any penalty asserted with respect to the
15 assessment.

16 "b. A written description of the method by which the
17 taxpayer may request an administrative review of the
18 preliminary assessment.

19 "(4) At or before the issuance of a final
20 assessment, the department shall inform the taxpayer by a
21 written statement of his or her right to appeal to the Alabama
22 Tax Tribunal or to the circuit court.

23 "(5) Except in cases involving suspected criminal
24 violations of the tax law or other criminal activity, the
25 department shall conduct an examination of a taxpayer during

1 regular business hours after providing reasonable notice to
2 the taxpayer. A taxpayer who refuses a proposed time for an
3 examination on the grounds that the proposed examination would
4 cause inconvenience or hardship must offer reasonable
5 alternative times and dates for the examination.

6 "(6) At all stages of an examination or the
7 administrative review of the examination, and in any appeal to
8 the Alabama Tax Tribunal, a taxpayer is entitled to be
9 assisted or represented, at his or her own expense, by an
10 authorized representative. The department shall prescribe a
11 form by which the taxpayer may designate a person to represent
12 him or her in the conduct of any proceedings, including
13 collection proceedings, resulting from actions of the
14 department. In the absence of this form, the department or the
15 Alabama Tax Tribunal may accept such other evidence that a
16 person is the authorized representative of a taxpayer as it
17 considers appropriate. This ~~provision~~ subdivision shall not be
18 construed as authorizing the practice of law before the
19 department, Alabama Tax Tribunal, or any court in this state
20 by a person who is not a licensed attorney.

21 "(7) A taxpayer shall be allowed to make an audio
22 recording of any in-person interview with any officer or
23 employee of the department relating to any examination or
24 investigation by the department, provided, however, the
25 taxpayer ~~must~~ shall give reasonable advance notice to the

1 department of his or her intent to record and the recording
2 shall be at the taxpayer's own expense and with the taxpayer's
3 own equipment. The department shall also be allowed to record
4 any interview if the taxpayer is recording the interview, or
5 if the department gives the taxpayer reasonable advance notice
6 of its intent to record the interview. The department shall
7 provide the taxpayer with a copy of the recording, but only if
8 the taxpayer provides reimbursement for the cost of the
9 transcript and reproduction of the copy. The cost shall be
10 reasonable as prescribed by ~~regulations~~ rules issued by the
11 department.

12 "(8) This section shall not apply to criminal
13 investigations or investigations relating to the integrity of
14 any officer or employee of the department.

15 "(b) Department responsibilities generally.

16 "(1) The commissioner shall appoint ~~a Taxpayer~~
17 ~~Advocate~~ one or more taxpayer advocates from among the
18 employees of the department. ~~This officer~~ These officers shall
19 receive and review inquiries or complaints concerning matters
20 that have been pending before the department for an
21 unreasonable length of time, or matters where the taxpayer has
22 been unable to obtain a reasonable response after several
23 attempts to communicate with the department employee assigned
24 to the taxpayer's case, or his or her immediate superiors. In
25 addition, ~~this officer~~ these officers shall review and have

1 the authority to waive a penalty for reasonable cause as
2 provided in subsection (h) of Section 40-2A-11, shall promptly
3 review inquiries concerning release of property levied upon,
4 the erroneous filing of liens, the failure to release a lien
5 for good cause, or other matters complained of by a taxpayer
6 or other affected party. ~~The Taxpayer Advocate~~ A taxpayer
7 advocate shall have no authority nor issue any ruling with
8 regard to any taxes collected by or on behalf of a
9 self-administered county or municipality.

10 "a. ~~The Taxpayer Advocate shall~~ A taxpayer advocate,
11 subject to the approval of the commissioner or the assistant
12 commissioner, shall issue taxpayer assistance orders in the
13 form and manner prescribed herein and by department
14 ~~regulations~~ rules.

15 "b. Notwithstanding any statute of limitation or
16 other provision in this title, a taxpayer assistance order may
17 declare that any tax, including a final assessment, was
18 erroneously assessed or reported and is not a liability due
19 the state, or that a petition for refund was erroneously
20 denied by the department.

21 "c. A taxpayer assistance order shall grant relief
22 as deemed appropriate, including the voiding of any
23 erroneously issued final assessment for a tax which was not a
24 debt due the state, granting of any refund due the taxpayer,

1 or abating an assessment of interest that has accrued because
2 of undue delay by department personnel.

3 "d. At the request of the Alabama Tax Tribunal, ~~the~~
4 a taxpayer advocate shall review a final order issued by the
5 Alabama Tax Tribunal that was not appealed pursuant to Section
6 40-2B-2, if there is newly discovered evidence which by due
7 diligence could not have been discovered in time to file an
8 application for rehearing pursuant to Section 40-2B-2, and may
9 propose relief as the taxpayer advocate deems appropriate and
10 approved by the commissioner or the assistant commissioner.

11 "e. All taxpayer assistance orders shall be dated
12 and signed by ~~the Taxpayer Advocate~~ a taxpayer advocate and
13 approved either by the commissioner or the assistant
14 commissioner, and shall state the underlying facts, the
15 reasons for granting relief, and the relief granted. Any
16 taxpayer assistance order ~~may~~, for good cause, may be modified
17 or rescinded in writing by ~~the Taxpayer Advocate~~ a taxpayer
18 advocate and either the commissioner or the assistant
19 commissioner.

20 "f. ~~The Taxpayer Advocate~~ A taxpayer advocate shall
21 have full access to department personnel, books, and records
22 subject, however, to the confidentiality restrictions imposed
23 by this chapter.

24 "g. Taxpayer assistance orders shall not be subject
25 to the confidentiality provisions of this title, and shall be

1 maintained by the secretary of the department and shall be
2 open to review upon written request. ~~The Taxpayer Advocate~~ A
3 taxpayer advocate shall have no authority nor issue any ruling
4 with regard to any taxes collected by or on behalf of a
5 self-administered county or municipality.

6 "h. The commissioner shall make an annual report to
7 the Legislature of all taxpayer assistance orders approved in
8 accordance with ~~the provisions of~~ this section and Sections
9 40-2A-2 and 40-2A-3. ~~Such~~ The report shall contain the total
10 amount of relief granted and the types of taxes for which
11 relief was granted.

12 "(2) The department shall maintain a continuing
13 education program to train employees of the department and to
14 provide them with a current knowledge of state and applicable
15 federal tax laws.

16 "(3) In addition to any other information provided
17 by law, the commissioner shall include in the department's
18 annual report information about the number or kind of audits
19 or assessments conducted in the year covered by the report.

20 "(4) The department shall not use the amounts of
21 taxes assessed by an employee of the department as:

22 "a. The basis of a production quota system for
23 employees; or

24 "b. The basis for evaluating an employee's
25 performance.

1 "(5) The department shall establish procedures for
2 monitoring the performance of department employees which may
3 include the use of evaluations obtained from taxpayers.

4 "(6) INSTALLMENT PAYMENTS.

5 "a. The commissioner is authorized to enter into
6 written agreements to allow any taxpayer to pay any tax in
7 installment payments if the commissioner determines that such
8 agreement will facilitate collection of such tax.

9 Notwithstanding the preceding sentence, such agreements shall
10 be entered into only regarding a tax that has been finally
11 assessed by the department ~~and not appealed, and such~~
12 ~~agreements shall not extend for a period exceeding 12 months,~~
13 ~~provided, that any such agreement may be renewed at the~~
14 ~~discretion of the commissioner for succeeding periods not to~~
15 ~~exceed 12 months.~~ The commissioner shall only be authorized to
16 enter such an agreement with regard to a tax administered or
17 collected by the department.

18 "b. The commissioner may terminate, alter, or modify
19 any agreement entered into hereunder if:

20 "1. Information provided by the taxpayer to the
21 commissioner prior to the date of such agreement was
22 inaccurate or incomplete;

23 "2. The taxpayer fails to pay any installment at the
24 time such installment payment is due under such agreement;

1 "3. The taxpayer fails to pay any other tax
2 liability due the department at the time such liability is
3 due, unless the taxpayer has appealed such other liability
4 pursuant to the terms of this chapter;

5 "4. The financial condition of the taxpayer has
6 significantly changed;

7 "5. The taxpayer fails to provide a financial
8 condition update as requested by the commissioner; or

9 "6. The commissioner believes that collection of any
10 tax to which an agreement under this provision relates is in
11 jeopardy.

12 "c. The commissioner shall have sole authority or
13 discretion to enter into or amend, modify, or terminate any
14 installment payment agreement provided for herein. The
15 commissioner shall promulgate ~~regulations~~ rules necessary for
16 the implementation of this provision.

17 "d. Any self-administered county or municipality
18 shall have the same authority as provided to the commissioner
19 by this subdivision relating to installment payments with
20 respect to taxes administered or collected by the
21 self-administered county or municipality.

22 "(c) Department failure to comply with this section.
23 The failure of the department to comply with any provision of
24 this section shall not prohibit the department from assessing
25 any tax as provided in this chapter, nor excuse the taxpayer

1 from timely complying with any time limitations under this
2 chapter. However, if the department fails to substantially
3 comply with the provisions of this section, the commissioner
4 ~~shall~~, upon application by the taxpayer or other good cause
5 shown, shall abate any penalties otherwise arising from the
6 examination or assessment.

7 "(d) Abatement of penalty. The department shall
8 abate any penalty attributable to erroneous written advice
9 furnished to a taxpayer by an employee of the department.
10 However, this section shall apply only if the department
11 employee provided the written advice in good faith while
12 acting in his or her official capacity, the written advice was
13 reasonably relied on by the taxpayer and was in response to a
14 specific written request of the taxpayer, and the penalty did
15 not result from the taxpayer's failure to provide adequate or
16 accurate information.

17 "§40-2A-10.

18 "(a) Except as otherwise provided in this section,
19 it shall be unlawful for any person to print, publish, or
20 divulge, without the written permission or approval of the
21 taxpayer, the return of any taxpayer or any part of the
22 return, or any information secured in arriving at the amount
23 of tax or value reported, for any purpose other than the
24 proper administration of any matter administered by the
25 department, a county, or a municipality, or upon order of any

1 court, or as otherwise allowed in this section. Statistical
2 information pertaining to taxes may be disclosed at the
3 discretion of the commissioner or his or her delegate to the
4 legislative or executive branch of the state. Upon request,
5 the commissioner or his or her delegate may make written
6 disclosure as to the status of compliance of entities subject
7 to state taxes administered by the department. A compliance
8 certificate shall be issued to a requesting person with
9 respect to a business entity if the entity has filed all state
10 tax returns and paid the taxes shown as payable in accordance
11 with those returns except as provided for in this section. The
12 department shall charge a fee of ~~\$10~~ ten dollars (\$10) for
13 each certificate of compliance issued. In addition to any and
14 all funds heretofore or heretoeafter appropriated, for the
15 fiscal year beginning October 1, 2015, there is appropriated
16 to the department the fees collected for the certificates of
17 compliance. This fee shall be used by the department for
18 administrative purposes. Any person found guilty of violating
19 this section ~~shall~~, for each act of disclosure, shall have
20 committed a Class A misdemeanor. Additionally, to the extent
21 provided in 26 U.S.C. § 7213A, it shall be unlawful for any
22 state employee willfully to inspect, except as authorized in
23 26 U.S.C. § 6103, any federal tax return or federal tax return
24 information acquired by the employee or another person under a

1 provision of 26 U.S.C. § 6103 referred to in 26 U.S.C. §
2 7213(a)(2).

3 "(b) This section shall not apply to returns filed
4 and information secured under laws of the state (1) governing
5 the registration and titling of motor vehicles, (2) levying or
6 imposing excise taxes or inspection fees upon the sale of,
7 use, and other disposition of gasoline and other petroleum
8 products, (3) governing the licensing of motor vehicle
9 dealers, reconditioners, rebuilders, wholesalers, and
10 automotive dismantlers and parts recyclers, (4) governing the
11 privilege licenses as provided in Chapter 12, other than
12 Article 4, of this title or (5) governing the issuance or
13 affixing of tobacco stamps and governing the online web site
14 listing of permitted and registered tobacco distributors
15 required under Chapter 25.

16 "(c) This section shall not apply to the disclosure
17 of the amount of local privilege license or franchise fees
18 paid to counties and municipalities by any taxpayer possessing
19 a franchise (whether or not exclusive) granted by the
20 respective county or municipality. However, any information
21 other than the amount of license or franchise fees paid,
22 including returns or parts thereof or documents filed with or
23 secured by any municipality or county or their authorized
24 agent and relating to local privilege licenses and franchises

1 shall remain confidential information subject to subsection
2 (a).

3 "(d) Except as otherwise provided in subdivision (3)
4 of subsection (k) of Section 40-2B-2, the orders of the
5 Alabama Tax Tribunal judge and all evidence, pleadings, and
6 any other information offered or submitted in any appeal
7 before the Alabama Tax Tribunal are not subject to this
8 section.

9 "(e) The commissioner shall promulgate reasonable
10 ~~regulations~~ rules permitting and governing the exchange of tax
11 returns, information, records, and other documents secured by
12 the department, with tax officers of other agencies of the
13 state, municipal, and county government agencies in the state,
14 federal government agencies, any association of state
15 government tax agencies, any state government tax agencies of
16 other states, and any foreign government tax agencies.
17 However, (1) any tax returns, information, records, or other
18 documents remain subject to the confidentiality provisions set
19 forth in subsection (a); (2) the department may charge a
20 reasonable fee for providing information or documents for the
21 benefit of self-administered counties and municipalities; (3)
22 self-administered counties and municipalities may charge a
23 reasonable fee for providing information or documents for the
24 benefit of the department; and (4) any exchange shall be for
25 one or more of the following purposes:

1 "a. Collecting taxes due.

2 "b. Ascertaining the amount of taxes due from any
3 person.

4 "c. Determining whether a person is liable for, or
5 whether there is probable cause for believing a person might
6 be liable for, the payment of any tax to a federal, state,
7 county, municipal, or foreign government agency.

8 "(f) (1) Nothing herein shall prohibit the use of tax
9 returns or tax information by the department or county tax
10 collecting officials in the proper administration of any
11 matter administered by the department or county tax collecting
12 officials. The department, a municipality, or county tax
13 official may also divulge to a purchaser, prospective
14 purchaser, as defined pursuant to the regulations of the
15 department, or successor of a business or stock of goods the
16 outstanding sales, use, or rental tax liability of the seller
17 for which the purchaser, prospective purchaser, as defined
18 pursuant to the regulations of the department, or successor
19 may be liable pursuant to Section 40-23-25, 40-23-82, or
20 40-12-224. This section shall not preclude the inspection of
21 returns by federal or foreign state agents pursuant to Section
22 40-18-53.

23 "(2) Upon a request by the State Treasurer, the
24 commissioner may provide the State Treasurer with the names
25 and addresses of those persons entitled to property acquired

1 by the state under Article 2, commencing with Section
2 35-12-20, of Chapter 12 of Title 35, the Uniform Disposition
3 of Unclaimed Property Act. The information shall be used by
4 the State Treasurer solely for the purpose of administering
5 the Uniform Disposition of Unclaimed Property Act.

6 "(3) Upon a request by the Secretary of Technology,
7 the commissioner may provide to the Secretary of Technology an
8 annual report outlining the measures employed by the
9 department to maintain the security of taxpayer information
10 protected from disclosure under this section or under federal
11 law, to include federal tax information as defined from time
12 to time in Internal Revenue Service Publication 1075 and which
13 is subject to the confidentiality protections of the Internal
14 Revenue Code, or personal information subject to the
15 confidentiality provisions of the federal Driver's Privacy
16 Protection Act under Public Law 103-322. Except as provided in
17 this subdivision, the development, implementation, and
18 maintenance of the information technology systems of the
19 department shall not be subject to oversight by any other
20 state agency.

21 "(g) Nothing herein shall prohibit the exchange of
22 information between and among county or municipal governments,
23 provided that any exchange shall be subject to the same
24 restrictions and criminal penalties imposed on the department
25 and its personnel as described in this section.

1 "(h) In no event shall any damages, attorney fees,
2 or court costs be assessed against the state, a county, or a
3 municipal government under this section, nor shall any
4 damages, attorney fees, or court costs be assessed against
5 elected officials, officers, or employees of a state, county,
6 or municipal government."

7 Section 2. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.

