

1 SB74  
2 155963-3  
3 By Senator Taylor  
4 RFD: Fiscal Responsibility and Accountability  
5 First Read: 14-JAN-14  
6 PFD: 01/07/2014

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8 SYNOPSIS: Under existing law, the Alabama Taxpayers'  
9 Bill of Rights and Uniform Revenue Procedures Act  
10 governs the administrative procedures of the  
11 Department of Revenue and local governments  
12 relating to taxpayers' rights and responsibilities,  
13 refunds, penalties, assessments, and appeals.

14 This bill would amend the act to conform in  
15 several respects to the federal Taxpayers' Bill of  
16 Rights, including broader "innocent spouse" type  
17 relief, and make technical corrections to remove  
18 ambiguities and conflicts. This bill would require  
19 certain state tax income returns to be filed as a  
20 result of IRS audit changes, consistent with the  
21 Multistate Tax Commission's model statute, and  
22 increase a taxpayer's penalties for fraud,  
23 negligence, and frivolous appeals or returns,  
24 consistent with federal law. This bill would  
25 increase the time period in which a taxpayer has to  
26 file an appeal of a preliminary or final  
27 assessment.

1                   This bill would specifically state that it  
2                   is the intent of this bill to adopt in large part  
3                   the American Bar Association Model State  
4                   Administrative Tax Tribunal Act.

5                   This bill would abolish the Administrative  
6                   Law Division of the Department of Revenue and  
7                   provide for the creation and operation of a new,  
8                   independent state agency, known as the Alabama Tax  
9                   Appeals Commission, to hear appeals of tax and  
10                  other matters administered by the Department of  
11                  Revenue and appeals related to certain local taxes  
12                  levied by or on behalf of self-administered  
13                  counties or municipalities, unless the governing  
14                  body elects out. The bill would transfer office  
15                  furniture, equipment, computers, and other property  
16                  from the Department of Revenue to the Tax Appeals  
17                  Commission and also transfer from the Revenue  
18                  Department Administrative Fund the necessary funds  
19                  for the first year of operation of the Tax Appeals  
20                  Commission.

21                  This bill would also amend portions of  
22                  Chapters 2A and 18 of Title 40, Code of Alabama  
23                  1975, for purposes of conformity and to make  
24                  technical corrections.

25  
26                                   A BILL  
27                                   TO BE ENTITLED

1 AN ACT

2  
3 To add Chapter 2B to Title 40 of the Code of Alabama  
4 1975, to provide for the creation and operation of the Alabama  
5 Tax Appeals Commission; to state that the intent of this act  
6 is to adopt in large part the American Bar Association Model  
7 State Administrative Tax Tribunal Act; to hear appeals of tax  
8 and other matters administered by the Department of Revenue  
9 and certain taxes levied by or on behalf of self-administered  
10 counties or municipalities that do not opt out; to provide the  
11 necessary funding for the first year of operations of the Tax  
12 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,  
13 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of  
14 Alabama 1975, for purposes of conformity to the federal  
15 Taxpayer Bill of Rights, including broader innocent spouse  
16 type relief and increased penalties for negligence, fraud, and  
17 frivolous appeals or returns; to make technical corrections;  
18 to require amended state income tax returns as a result of IRS  
19 audit changes; to increase the amount of time a taxpayer has  
20 to file an appeal of a preliminary or final assessment; and to  
21 abolish the Administrative Law Division of the Department of  
22 Revenue, including repealing Section 40-2A-9, Code of Alabama  
23 1975.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. In order to increase public confidence in  
26 the fairness of Alabama's tax system, the state shall provide  
27 an independent agency, with tax expertise, to resolve disputes

1 between the Department of Revenue, or certain  
2 self-administered counties and municipalities, and taxpayers  
3 prior to requiring the payment of the amounts in issue or the  
4 posting of a bond, but after the taxpayer has had a full  
5 opportunity to attempt settlement with the Department of  
6 Revenue or with a self-administered county or municipality  
7 that has not elected out based, among other issues, on the  
8 hazards of litigation. By establishing an independent tax  
9 tribunal within the executive branch of government, this act  
10 shall provide taxpayers with a means of resolving  
11 controversies that ensures both the appearance and the reality  
12 of due process and fundamental fairness. To that end, Chapter  
13 2B of Title 40 of the Code of Alabama 1975, by this act shall  
14 be known and may be cited as the Alabama Tax Appeals  
15 Commission Act.

16 It is the intent of the Legislature to adopt in  
17 large part the American Bar Association Model State  
18 Administrative Tax Tribunal Act.

19 It is the intent of the Legislature that this act  
20 foster the settlement or other resolution of tax disputes to  
21 the greatest extent possible and, in cases in which litigation  
22 is necessary, to provide taxpayers with a fair, independent,  
23 pre-payment procedure to resolve a dispute with the Department  
24 of Revenue or, in certain cases, a self-administered county or  
25 municipality.

26 It is also the intent of the Legislature to amend  
27 the existing Alabama Taxpayers' Bill of Rights provisions,

1 which apply to both the Department of Revenue and  
2 self-administered counties and municipalities as a result of  
3 the Local Tax Procedures Act of 1998, to conform more closely  
4 to current federal law and to provide additional safeguards to  
5 taxpayers during the audit and appeals process. To that end,  
6 the provisions of this act and existing Chapter 2A of Title 40  
7 of the Code of Alabama 1975, shall be known and may be cited  
8 as the Alabama Taxpayers' Bill of Rights II.

9 Section 2. Chapter 2B is added to Title 40 of the  
10 Code of Alabama 1975, to read as follows:

11 CHAPTER 2B

12 CREATION AND OPERATION OF THE ALABAMA TAX APPEALS  
13 COMMISSION.

14 §40-2B-1. Alabama Tax Appeals Commission.

15 (a) As part of the executive branch of state  
16 government, there is hereby created an independent commission  
17 to be known as the Alabama Tax Appeals Commission, also  
18 referred to herein as the "Tax Appeals Commission".

19 (b) The Tax Appeals Commission shall become fully  
20 operational on October 1, 2014. The Tax Appeals Commission, in  
21 cases within its jurisdiction:

22 (1) Is a commission of limited and special  
23 jurisdiction.

24 (2) Possesses the same powers and may exercise all  
25 ordinary and extraordinary legal and equitable remedies  
26 available in the circuit courts with respect to tax cases, as  
27 prescribed herein, including the interpretation and

1 application of constitutional principles and such additional  
2 remedies as may be assigned to it by the Legislature, but may  
3 not declare a statute or ordinance in violation of either a  
4 federal or state constitutional provision.

5 (c) The Tax Appeals Commission shall have a seal  
6 engraved with the words Alabama Tax Appeals Commission. The  
7 Tax Appeals Commission shall authenticate all of its orders,  
8 records, correspondence, and proceedings with the seal, and  
9 the courts of this state shall take judicial notice of the  
10 seal.

11 §40-2B-2. Definitions.

12 (a) The definitions provided for in Section 40-2A-3  
13 shall also apply to this chapter, except as provided in this  
14 section. For purposes of this chapter, the following terms  
15 shall have the following meanings:

16 (1) The term "Department of Revenue" means the  
17 Alabama Department of Revenue and does not include the  
18 governing body of any self-administered county or  
19 municipality.

20 (2) The term "U.S. mail with delivery confirmation"  
21 means a delivery service available through the U.S. Postal  
22 Service that provides the sender with the date, Zip Code, and  
23 time the article was delivered or the time delivery was  
24 attempted.

25 (b) For purposes of this chapter, if a  
26 self-administered county or municipality has not elected out

1 of this chapter pursuant to Section 40-2B-25, the following  
2 terms shall have the following meanings:

3 (1) The term "taxpayer" shall include a person, as  
4 defined in Section 40-2A-3, when paying a sales, use, rental,  
5 or lodgings tax to, or being assessed or examined by, a  
6 self-administered county or municipality or its agent.

7 (2) The term "department" shall include the  
8 governing body of each self-administered county or  
9 municipality that has not elected out.

10 (3) The term "secretary" shall include the clerk of  
11 the applicable self-administered county or municipality that  
12 has not elected out.

13 (4) The term "tax" shall mean and refer to a sales,  
14 use, rental, or lodgings tax levied by or on behalf of a  
15 self-administered county or municipality that has not elected  
16 out.

17 §40-2B-3. Jurisdiction and initial organization of  
18 the Tax Appeals Commission.

19 (a) The Tax Appeals Commission shall have  
20 jurisdiction to hear and determine all appeals pending before  
21 the Department of Revenue's Administrative Law Division on  
22 September 30, 2014, and all subsequent appeals filed with the  
23 Tax Appeals Commission pursuant to Chapters 2A and 29 of this  
24 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to  
25 motor vehicles, or Section 40-2B-25, relating to  
26 self-administered counties and municipalities, except as  
27 follows:



1           (1) Appeals filed directly with the circuit court  
2 either from a final assessment entered by the department or  
3 from the department's denial in whole or in part of a claim  
4 for refund.

5           (2) The determination and assessment of ad valorem  
6 taxes on real and personal property, which is administered by  
7 the various counties of the State of Alabama, except that  
8 appeals from final assessments of value of property of public  
9 utilities under Chapter 21 may be heard by the Tax Appeals  
10 Commission in accordance with the procedures set forth in this  
11 chapter.

12           (3) Any appeals regarding a sales, use, rental, or  
13 lodgings tax levied or collected by or on behalf of a  
14 self-administered county or municipality if the governing body  
15 of the county or municipality has made an election under  
16 Section 40-2B-25 to divest the Tax Appeals Commission of  
17 jurisdiction over the dispute, challenge, or appeal. Such  
18 appeals shall be heard by the employee or other agent of the  
19 self-administered county or municipality serving in the  
20 capacity of a hearings or appeals officer, subject to Section  
21 40-2A-6.

22           (b) To provide for a proper transition from the  
23 Administrative Law Division to the Tax Appeals Commission, the  
24 Department of Revenue, on or before October 1, 2014, shall  
25 transfer to the Tax Appeals Commission office furniture,  
26 equipment, computers, and other tangible personal property  
27 used by the Administrative Law Division, as well as all case

1 files, docket books, and all other documents and information,  
2 in both tangible and intangible form, compiled, used, or  
3 maintained by the Administrative Law Division. Further, any  
4 appeals that are timely filed with the Administrative Law  
5 Division after September 30, 2014, shall be deemed timely  
6 filed with and transferred to the Tax Appeals Commission. The  
7 Chief Administrative Law Judge of the Administrative Law  
8 Division shall have and is hereby granted the power and  
9 authority necessary to effect an orderly transition,  
10 including, but not limited to, the power and authority to  
11 execute binding contracts and commitments on behalf of the Tax  
12 Appeals Commission with respect to employees, office space,  
13 equipment, and other property, consistent with Sections  
14 40-2B-16 and 40-2B-20.

15 §40-2B-4. Service of papers and process.

16 Except concerning notices to the Department of  
17 Revenue from the Tax Appeals Commission, or as otherwise  
18 provided in this chapter, the Tax Appeals Commission shall  
19 mail any final order in which a judgment is entered or  
20 affirmed or any notice of hearing by either U.S. mail with  
21 delivery confirmation or certified U.S. mail, return receipt  
22 requested, to the taxpayer's last known address or, if the  
23 taxpayer has an authorized representative, to the authorized  
24 representative's last known address. All other orders or  
25 documents may, at the Tax Appeals Commission's discretion, be  
26 mailed by first class U.S. mail.

1           §40-2B-5. Timely mailed document considered to be  
2 timely filed.

3           Any notice of appeal, application for rehearing, or  
4 other document required by law to be timely filed with the Tax  
5 Appeals Commission shall be deemed timely filed if:

6           (1) Timely mailed or delivered in accordance with  
7 Section 40-1-45 and Department of Revenue regulations  
8 pertinent thereto;

9           (2) Received by the Tax Appeals Commission on or  
10 before the date due; or

11           (3) Received by the Tax Appeals Commission in  
12 legible form by facsimile or electronic transmission on or  
13 before the due date, if the original, signed document is  
14 mailed or delivered to the Tax Appeals Commission within seven  
15 days after receipt of the facsimile or electronic  
16 transmission.

17           §40-2B-6. Issuance of subpoenas; administration of  
18 oaths.

19           (a) A judge of the Tax Appeals Commission shall have  
20 the authority and the discretion to issue subpoenas, on his or  
21 her own motion or at the request of a party, requiring any  
22 person whose testimony may be relevant to an appeal to appear  
23 and give testimony, at either a deposition or a hearing before  
24 the judge. If a person is subpoenaed to testify at a  
25 deposition or a hearing at the request of a party, that party  
26 shall bear the cost of transcription of the deposition and the  
27 fees and mileage provided in Section 40-2A-7(a)(4). The judge

1 shall also have discretion to issue subpoenas duces tecum  
2 requiring the production of any document or other evidence  
3 relevant to the appeal. Such subpoenas or subpoenas duces  
4 tecum shall be issued in the name of the Tax Appeals  
5 Commission, signed by a judge of the Tax Appeals Commission,  
6 and may be served either in the same manner as subpoenas  
7 issued by a circuit court or either by U.S. mail with delivery  
8 confirmation or certified U.S. mail, return receipt requested.  
9 If any person has been subpoenaed to appear and testify or  
10 appear and produce documents or other information and fails or  
11 refuses to appear or testify or to produce such documents or  
12 other information, such person shall be subject to contempt  
13 proceedings, if instituted by a petition for contempt issued  
14 by a judge of the Tax Appeals Commission, in the circuit court  
15 of the judicial circuit in which such person resides and, upon  
16 proof of such fact to the circuit court, may be punished for  
17 contempt as is provided in cases of contempt in circuit court.  
18 Such proof of contempt may be evidenced by an affidavit of a  
19 judge of the Tax Appeals Commission. Likewise, such circuit  
20 court shall have jurisdiction to hear and, if appropriate, to  
21 grant a motion to quash such subpoena.

22 (b) Any judge, or any employee of the Tax Appeals  
23 Commission as designated in writing by the chief judge, may  
24 administer oaths.

25 §40-2B-7. Hearings to be without a jury and de novo.

26 All appeals to the Tax Appeals Commission shall be  
27 tried without a jury and shall be de novo.

1           §40-2B-8. Notice to taxpayer of right to appeal to  
2 Tax Appeals Commission.

3           The department shall notify a taxpayer of the right  
4 to appeal to the Tax Appeals Commission and the jurisdictional  
5 requirements for perfecting the appeal. Such notice shall be  
6 given with a final assessment, or with any notice by the  
7 department informing the taxpayer that his or her claim for  
8 refund has been denied in whole or in part, or any notice by  
9 the department informing the taxpayer of any act, proposed  
10 act, or refusal to act by the department from which the  
11 taxpayer has a right to appeal to the Tax Appeals Commission.

12           §40-2B-9. Procedures concerning appeals.

13           (a) The purpose of this section is to establish  
14 uniform procedures concerning appeals to the Tax Appeals  
15 Commission and to establish the authority and responsibilities  
16 of the judges of the Tax Appeals Commission concerning those  
17 appeals. This section shall be liberally construed to provide  
18 for the fair, efficient, and complete resolution of all  
19 matters in dispute.

20           (b) Judges of the Tax Appeals Commission shall hear  
21 and decide all appeals to the Tax Appeals Commission, as  
22 assigned by the chief judge. A judge, without a hearing, may  
23 dismiss any appeal, or grant appropriate relief to any party,  
24 if a party fails or refuses to comply with any Tax Appeals  
25 Commission regulation or statute concerning appeals before the  
26 Tax Appeals Commission or if any party fails or refuses to  
27 comply with any preliminary order issued by a judge. The

1 judge, for good cause, may reinstate an appeal dismissed under  
2 this subsection or withdraw an order granting relief only if  
3 an application to reinstate the appeal or withdraw the order  
4 is filed within 15 days from the date on which the order  
5 dismissing the appeal or granting the relief was entered or on  
6 the judge's own motion within 90 days. A final order  
7 dismissing an appeal or granting relief to a party may be  
8 appealed to circuit court in the same manner and subject to  
9 the same requirements as appeals from final or other  
10 appealable orders of the Tax Appeals Commission.

11 (c) The notice of appeal filed with the Tax Appeals  
12 Commission shall identify the final assessment, denied refund,  
13 or other act or refusal to act by the department which is the  
14 subject of the appeal, the position of the appealing party,  
15 the basis on which relief should be granted, and the relief  
16 sought. A notice of appeal that does not include all of the  
17 above information shall be sufficient to invoke the  
18 jurisdiction of the Tax Appeals Commission. The judge may  
19 require a taxpayer to file an amended notice of appeal if more  
20 information is deemed necessary.

21 (d) (1) Except as provided in subdivision (2), the  
22 Tax Appeals Commission shall notify the legal division of the  
23 Department of Revenue in writing that an appeal has been filed  
24 and shall mail a copy of such notification to the taxpayer or  
25 its authorized representative. The legal division shall file a  
26 written answer with the Tax Appeals Commission within 60 days  
27 from the date of issuance of the notice to the legal division.

1 The judge may allow the legal division additional time, not to  
2 exceed 30 days, within which to file an answer only if the  
3 legal division requests the extension within the 60-day period  
4 provided by the preceding sentence. The answer shall state the  
5 facts and the issues involved and the Department of Revenue's  
6 position relating thereto. The judge may require the  
7 Department of Revenue to file an amended answer if more  
8 information is deemed necessary. A county or municipality may  
9 consult with the legal division of the Department of Revenue  
10 concerning any appeal that involves the county's or  
11 municipality's tax that is administered by the Department of  
12 Revenue.

13 (2) If the appeal involves a tax levied by or on  
14 behalf of a self-administered county or municipality, the Tax  
15 Appeals Commission shall promptly mail a copy of the notice of  
16 appeal by either U.S. mail with delivery confirmation or  
17 certified U.S. mail to the governing body of the affected  
18 county or municipality and shall provide the taxpayer or its  
19 authorized representative with written notification of the  
20 date the copy was mailed to the governing body. The affected  
21 county or municipality shall file a written answer with the  
22 Tax Appeals Commission within 60 days of the date of mailing  
23 the notice of appeal to the affected county or municipality.  
24 The judge may allow the county or municipality additional  
25 time, not to exceed 30 days, within which to file an answer,  
26 but only if the county or municipality requests the extension  
27 within the 60-day period provided by the preceding sentence.

1 The answer shall state the facts and the issues involved and  
2 the county's or municipality's position relating thereto. The  
3 judge may require the county or municipality to file an  
4 amended answer if more information is deemed necessary. The  
5 county or municipality and its authorized representatives may  
6 consult with the legal division of the Department of Revenue  
7 concerning the appeal.

8 (e) An appeal may be held in abeyance at the  
9 discretion of the judge or may be submitted for decision on a  
10 joint stipulation of facts without a hearing or as otherwise  
11 agreed by the parties. Otherwise, except as provided in  
12 Section 40-2B-9(b), a hearing shall be conducted by the judge.  
13 Notice of the hearing shall be mailed to the taxpayer at the  
14 taxpayer's last known address, by either U.S. mail with  
15 delivery confirmation or certified U.S. mail, return receipt  
16 requested, or to the taxpayer's representative, if any, at the  
17 representative's last known address, by either U.S. mail with  
18 delivery confirmation or certified U.S. mail, return receipt  
19 requested. Except as provided in the next sentence, notice of  
20 the hearing shall be mailed to the Department of Revenue by  
21 first class U.S. mail, by intragovernmental hand mail, or  
22 otherwise delivered as provided by regulation. If the appeal  
23 involves a tax levied by or on behalf of a self-administered  
24 county or municipality, the Tax Appeals Commission shall  
25 instead promptly mail a copy of the notice of the hearing to  
26 the governing body of the affected county or municipality by  
27 either U.S. mail with delivery confirmation or certified U.S.



1 mail. The judge shall conduct the hearing substantially as  
2 follows:

3 (1) Open the record and receive appearances.

4 (2) Receive testimony and exhibits presented by the  
5 parties. All testimony shall be under oath, and any person  
6 testifying under oath shall be subject to the perjury  
7 provisions of Section 13A-10-102.

8 (3) Interrogate witnesses if deemed necessary.

9 (4) Require oral arguments and the submission of  
10 briefs and other authorities if deemed necessary.

11 (5) Continue or reopen the hearing as deemed  
12 necessary for a fair, efficient, and complete resolution of  
13 the matter or matters in dispute.

14 (f) A judge may enter a preliminary order directing  
15 one or more parties to take such action as deemed appropriate  
16 or referring any issue or issues in dispute to the Department  
17 of Revenue's Taxpayer Advocate for consideration if the issue  
18 or issues relate to a tax administered by the Department of  
19 Revenue. A judge, after a hearing or after a case is otherwise  
20 submitted for decision, may issue an opinion and preliminary  
21 order, which shall include findings of fact and conclusions of  
22 law. The opinion and preliminary order may direct the  
23 department to recompute a taxpayer's liability or the amount  
24 of a refund due or for any party to take such action as  
25 specified in the preliminary order.

26 (g) A final order shall be entered by the judge  
27 which, if deemed appropriate by the judge, shall contain

1 findings of fact and conclusions of law. The final order shall  
2 provide appropriate relief under the circumstances and, unless  
3 altered or amended on appeal or rehearing, shall have the same  
4 force and effect as a final order issued by a circuit court in  
5 Alabama.

6 (h) If a preliminary order, an opinion and  
7 preliminary order, or a final order involves a tax levied by  
8 or on behalf of a self-administered county or municipality and  
9 is within the jurisdiction of the Tax Appeals Commission, the  
10 Tax Appeals Commission shall mail a copy of the order to the  
11 governing body of the affected county or municipality and, if  
12 applicable, its authorized representative, by either U.S. mail  
13 with delivery confirmation or certified U.S. mail return  
14 receipt requested, within three days of the date of entry.  
15 However, the failure of the Tax Appeals Commission to timely  
16 mail a copy of an order to the affected municipality or county  
17 or the failure of the municipality or county to receive the  
18 order shall not affect the validity of the order.

19 (i) Any party may apply for rehearing from any final  
20 order or opinion and preliminary order, provided however, the  
21 application must be filed within 15 days from the date of  
22 entry of such order. The application for rehearing shall  
23 specify the reasons and supporting arguments why such order is  
24 incorrect and should be reconsidered. The timely filing of an  
25 application for rehearing from a final order shall suspend the  
26 time period for filing an appeal to circuit court. If an  
27 application for rehearing is timely filed, the judge shall

1 thereafter issue a final or other order on rehearing, either  
2 with or without a hearing on the application, at the  
3 discretion of the judge. The time for filing a notice of  
4 appeal to circuit court shall begin anew on the date of entry  
5 of the final order on rehearing.

6 (j) All hearings before the Tax Appeals Commission  
7 shall be recorded by a qualified court reporter. The  
8 proceedings shall be transcribed at the request of the  
9 department, the taxpayer, the affected self-administered  
10 county or municipality, or the Tax Appeals Commission, with  
11 the expense of transcription to be paid by the requesting  
12 party. The record of the proceedings shall be maintained by  
13 the Tax Appeals Commission for at least five years. Upon  
14 appeal to circuit court, the Tax Appeals Commission shall  
15 submit the record on appeal, including any transcript, to the  
16 circuit court for use in the appeal.

17 (k) The rules of evidence applicable in civil  
18 nonjury cases in the circuit courts of Alabama shall be  
19 followed by the Tax Appeals Commission. However evidence not  
20 admissible thereunder may be admitted in the discretion of the  
21 judge, if relevant, not unfairly prejudicial to any party, and  
22 necessary for the fair adjudication of the case. The judge may  
23 announce before or during a hearing that it shall not be  
24 necessary for either party to object to any testimony or  
25 evidence offered by a party, and any objections shall be  
26 preserved and may be made on appeal. The final order issued by  
27 the judge shall be based only on such evidence as is relevant

1 and material. Documentary evidence may be received in copy  
2 form if there is no objection thereto or in the discretion of  
3 the judge. Official notice may be taken of any technical facts  
4 within the specialized knowledge of the judge.

5 (1) A taxpayer or a self-administered county or  
6 municipality may be represented before the Tax Appeals  
7 Commission by an authorized representative. If a taxpayer or a  
8 self-administered county or municipality or their authorized  
9 representative fails to appear at a hearing after proper  
10 service of notice, the judge may dismiss the appeal with  
11 prejudice, reset the matter for a subsequent hearing, or  
12 proceed with the hearing.

13 (m) Upon timely application, a taxpayer, herein  
14 referred to as the "applicant," subject to the tax at issue in  
15 an action before the Tax Appeals Commission, shall be  
16 permitted to intervene, unless the applicant's interest is  
17 adequately represented by the existing parties, (1) when the  
18 applicant claims an interest relating to the property or  
19 transaction that is the subject of the action and the taxpayer  
20 is so situated that the disposition of the action may, as a  
21 practical matter, impair or impede the taxpayer's ability to  
22 protect that interest, or (2) when the judge determines that a  
23 taxpayer's claim or defense and the main action have a  
24 question of law or facts in common. An applicant who has been  
25 permitted to intervene by the judge may also appeal to circuit  
26 court from a final or other appealable order, as provided  
27 herein for appeals. Parties interested in the outcome of any

1 case before the Tax Appeals Commission, with the permission of  
2 the judge, may submit amicus briefs pursuant to Rule 29 of the  
3 Alabama Rules of Appellate Procedure.

4 (n) All testimony, exhibits, documents, and other  
5 materials submitted by a party or introduced into evidence at  
6 a hearing before the Tax Appeals Commission, and all final and  
7 other orders issued by the judge, shall be deemed public  
8 information except:

9 (1) Information received from the Internal Revenue  
10 Service that is restricted by law or agreement from  
11 disclosure.

12 (2) Other information or records required by law not  
13 to be disclosed or which are the subject of a protective order  
14 issued pursuant to Section 40-2B-11(b).

15 (3) As otherwise ordered by the judge.

16 §40-2B-10. Burden of proof in Tax Appeals Commission  
17 proceedings.

18 On appeal to the Tax Appeals Commission, a final  
19 assessment shall be prima facie correct, and the burden of  
20 proof shall be on the taxpayer to prove that the assessment is  
21 incorrect. In cases involving denied refunds, the burden shall  
22 be on the taxpayer to prove that a refund is due. The judge  
23 shall have discretion to determine the party to proceed first  
24 with the evidence in the case.

25 §40-2B-11. Hearings to be open to public; report of  
26 proceedings; exception; confidential information.

1           (a) Hearings before the Tax Appeals Commission shall  
2 be open to the public, except as provided in subsections (b)  
3 and (c).

4           (b) A judge may close a hearing to the public if, in  
5 the discretion of the judge, trade secrets, federal or other  
6 tax information, confidential business records, or other  
7 confidential information may be disclosed during the hearing.  
8 A judge may also issue protective orders concerning any  
9 evidence involving trade secrets, federal or other tax  
10 information, confidential business records, or other  
11 confidential information. In determining whether a hearing  
12 should be closed or a protective order issued, the judge shall  
13 weigh the harm that may be suffered by the disclosing party  
14 against any benefit received by the public as a result of the  
15 disclosure. If the judge closes a hearing or issues a  
16 protective order as requested by a party or refuses to close a  
17 hearing or to issue a requested protective order, the judge  
18 shall issue an order to that effect. The order shall explain  
19 the reasons why the request was granted or denied, as  
20 applicable.

21           (c) An order closing a hearing or granting a  
22 protective order or an order denying same shall be considered  
23 a final order for purposes of appeal to circuit court. A party  
24 may appeal such an order to circuit court in the same manner  
25 and subject to the same requirements as appeals from final  
26 orders of the Tax Appeals Commission, except that if the case  
27 involves a disputed final assessment, the final assessment

1 need not be paid, nor a supersedeas bond or other security  
2 filed, in connection with the appeal. The Tax Appeals  
3 Commission may stay the case on the merits until the issue is  
4 finally resolved on appeal.

5 §40-2B-12. Authority to issue regulations. The Tax  
6 Appeals Commission, through the chief judge, is authorized to  
7 issue regulations governing procedures and practice before the  
8 Tax Appeals Commission and matters of internal organization  
9 and operation. Such regulations shall be issued in accordance  
10 with Chapter 22 of Title 41.

11 §40-2B-13. Appeals to circuit court; reviewing  
12 authority and action on appeal.

13 (a) Other than an application for rehearing to the  
14 Tax Appeals Commission, the exclusive remedy for review of any  
15 final or other appealable order issued by the Tax Appeals  
16 Commission shall be by appeal to the appropriate circuit  
17 court.

18 (b) The taxpayer, an intervenor pursuant to Section  
19 40-2B-9(m), a self-administered county or municipality whose  
20 tax is within the jurisdiction of the Tax Appeals Commission,  
21 or the Department of Revenue may appeal to circuit court from  
22 a final or other appealable order issued by the Tax Appeals  
23 Commission by filing a notice of appeal with the appropriate  
24 circuit court within 60 days from the date the final or other  
25 appealable order was entered. A copy of the notice of appeal  
26 shall be submitted to the Tax Appeals Commission within the  
27 60-day appeal period. The Tax Appeals Commission shall

1 thereafter prepare a record on appeal. The appeal shall be  
2 filed in the following circuit courts:

3 (1) Any appeal by the Department of Revenue, a  
4 self-administered county or municipality whose tax is within  
5 the jurisdiction of the Tax Appeals Commission, or an  
6 intervenor shall be filed with the circuit court of the county  
7 in which the taxpayer resides or has a principal place of  
8 business in Alabama.

9 (2) Any appeal by the taxpayer shall be filed with  
10 the Circuit Court of Montgomery County, Alabama, or with the  
11 circuit court of the county in which the taxpayer resides or  
12 has a principal place of business in Alabama.

13 (3) Notwithstanding subdivisions (1) and (2), if the  
14 taxpayer does not reside in Alabama or have a principal place  
15 of business in Alabama, any appeal by the taxpayer, the  
16 Department of Revenue, a self-administered county or  
17 municipality whose tax is within the jurisdiction of the Tax  
18 Appeals Commission, or an intervenor shall be filed with the  
19 Circuit Court of Montgomery County, Alabama.

20 (c) If the appeal to circuit court pursuant to  
21 subsection (b) is by a taxpayer from a final order involving a  
22 final assessment, the taxpayer, within the 60-day appeal  
23 period, shall do one of the following:

24 (1) Remit the amount of the final assessment  
25 determined to be due by the final order to the Department of  
26 Revenue, or to the self-administered county or municipality,  
27 if applicable.



1           (2) Execute a supersedeas bond, which shall be  
2           executed by a surety company licensed to do business in  
3           Alabama, in an amount equal to 125 percent of the amount  
4           determined to be due by the final order, plus applicable  
5           interest and any court costs relating to the appeal, payable  
6           to the Department of Revenue, or to the self-administered  
7           county or municipality, if applicable, and conditioned to pay  
8           the amount determined to be due by the final order.

9           (3) File an irrevocable letter of credit with the  
10          circuit court in an amount equal to 125 percent of the amount  
11          determined to be due by the final order. The irrevocable  
12          letter of credit shall be issued by a financial institution  
13          designated as a qualified public depository by the Board of  
14          Directors of the Security for Alabama Funds Enhancement (SAFE)  
15          Program pursuant to Chapter 14A of Title 41. The Department of  
16          Revenue, or the self-administered county or municipality, if  
17          applicable, shall be named the beneficiary of the irrevocable  
18          letter of credit. The irrevocable letter of credit shall be  
19          conditioned to pay the amount determined to be due by the  
20          final order, plus applicable interest and any court costs  
21          relating to the appeal. A taxpayer may not issue an  
22          irrevocable letter of credit as to an appeal by the same  
23          taxpayer.

24          (4) File a pledge or collateral assignment of  
25          securities with the circuit court that constitute eligible  
26          collateral under Chapter 14A of Title 41 in an amount equal to  
27          200 percent of the amount determined to be due by the final

1 order. The pledge or collateral assignment shall be in favor  
2 of the Department of Revenue, or the self-administered county  
3 or municipality, if applicable, and conditioned to pay the  
4 amount determined to be due by the final order, plus  
5 applicable interest and any court costs relating to the  
6 appeal.

7 (5) Show to the satisfaction of the clerk of the  
8 circuit court to which the appeal is taken that the taxpayer  
9 has a net worth, based on fair market value, of one hundred  
10 thousand dollars (\$100,000), or less, including his or her  
11 homestead.

12 (d) (1) Except as provided in subdivision (2), the  
13 circuit court shall dismiss any appeal:

14 a. That is not timely filed with the circuit court  
15 and the Tax Appeals Commission as herein provided.

16 b. That involves a final assessment, if either the  
17 amount stated as due in the final order of the Tax Appeals  
18 Commission is not timely paid in full or a supersedeas bond,  
19 irrevocable letter of credit, or pledge or collateral  
20 assignment of securities is not timely filed as required in  
21 subsection (c).

22 (2) If the circuit court determines that the  
23 taxpayer has not satisfied the requirements of subsection (b)  
24 or (c), the circuit court shall order that the taxpayer  
25 satisfy such requirements. The taxpayer may satisfy such  
26 requirements at any time within 30 days after service of the  
27 court order. No order of dismissal for lack of jurisdiction

1 shall be entered within 30 days after service of the court  
2 order and no order of dismissal shall thereafter be entered if  
3 such requirement is satisfied within such 30-day period.

4 (e) The appeal to circuit court from a final or  
5 other appealable order issued by the Tax Appeals Commission  
6 shall be a trial de novo, except that the order shall be  
7 presumed prima facie correct and the burden shall be on the  
8 appealing party to prove otherwise. The circuit court shall  
9 hear the case by its own rules and shall decide all questions  
10 of fact and law. The administrative record and transcript  
11 shall be transmitted to the reviewing court as provided herein  
12 and shall be admitted into evidence in the trial de novo,  
13 subject to the rights of either party to object to any  
14 testimony or evidence in the administrative record or  
15 transcript. With the consent of all parties, judicial review  
16 may be on the administrative record and transcript. The  
17 circuit court shall affirm, modify, or reverse the order of  
18 the Tax Appeals Commission, with or without remanding the case  
19 for further hearing, as justice may require.

20 §40-2B-14.

21 Publication of Tax Appeals Commission decisions.

22 Subject to Section 40-2B-9, the decisions determined  
23 to be of general public interest may be published and  
24 distributed by the Tax Appeals Commission as prescribed by the  
25 chief judge. A decision may not be published until either the  
26 time period for appealing the decision has expired or the Tax  
27 Appeals Commission has received a copy of the notice of appeal

1 pursuant to Section 40-2B-13(b), in which case the fact that  
2 the decision has been appealed shall be noted on the first  
3 page of the published decision. A reasonable fee may be  
4 charged for the publication, as established from time to time  
5 by the chief judge.

6 §40-2B-15. Appointment and term of judges; maximum  
7 number; vacancy.

8 (a) The term of a judge of the Tax Appeals  
9 Commission shall be six years, except as herein provided. The  
10 term of the first chief judge shall begin on October 1, 2014.

11 (b) Additional or successor judges of the Tax  
12 Appeals Commission shall be nominated by a committee of seven  
13 persons, except as provided below. The nominating committee  
14 shall provide the Governor with a list of five qualified  
15 candidates for each open or newly created Tax Appeals  
16 Commission judge's position. Within 45 days after receipt of  
17 the list, the Governor may appoint a nominee from the list of  
18 candidates or request that the nominating committee provide  
19 another list of qualified candidates. The Governor shall  
20 promptly thereafter appoint a nominee from the new list. The  
21 term of any new or successor judge shall begin on the first  
22 day of the month following the date that the Governor makes  
23 the appointment.

24 (c) The nominating committee shall be organized  
25 within six months of the effective date of this act and shall  
26 consist of the following:

1           (1) One member in good standing with the Alabama  
2 State Bar who has at least five years' experience in the  
3 private practice of tax law in this state, to be appointed by  
4 the State Bar President.

5           (2) The Commissioner of the Department of Revenue,  
6 or his or her designee.

7           (3) Except as otherwise provided in this  
8 subdivision, one member appointed by the Association of County  
9 Commissions of Alabama, who shall be a representative of  
10 county government. If more than 50 percent of the  
11 self-administered counties in this state have elected to  
12 divest the Tax Appeals Commission of jurisdiction pursuant to  
13 Section 40-2B-25 as of October 1 of each year, the  
14 representative of county government shall be removed and the  
15 Director of Finance or his or her designee shall serve as a  
16 member of the nominating committee.

17           (4) Except as otherwise provided in this  
18 subdivision, one member appointed by the Alabama League of  
19 Municipalities, who shall be a representative of municipal  
20 government. If more than 50 percent of the self-administered  
21 municipalities in this state have elected to divest the Tax  
22 Appeals Commission of jurisdiction pursuant to Section  
23 40-2B-25 as of October 1 of each year, the representative of  
24 municipal government shall be removed and the Director of  
25 Finance or his or her designee shall serve as a member of the  
26 nominating committee. If more than 50 percent of the  
27 self-administered counties and more than 50 percent of the

1 self-administered municipalities have elected to divest the  
2 Tax Appeals Commission of jurisdiction pursuant to Section  
3 40-2B-25 as of October 1 of each year, there shall be only  
4 five members of the nominating committee.

5 (5) Two members appointed by the President of the  
6 Alabama Circuit Judges Association, one who shall be a  
7 representative of the individual taxpayers of the state and  
8 one who shall be a representative of the business taxpayers of  
9 the state. Neither member shall be a practicing attorney or  
10 employee or former employee of the Department of Revenue or  
11 municipal or county government.

12 (6) One member appointed by the Alabama Society of  
13 Certified Public Accountants who shall be a representative of  
14 the taxpayers of the state but who shall not be a practicing  
15 attorney or employee or former employee of the Department of  
16 Revenue or municipal or county government. The appointing  
17 authorities should take into consideration the racial, gender,  
18 geographic, urban/rural, and economic diversity of the state  
19 when selecting representatives for the nominating committee.

20 (d) The appointing authorities shall submit to the  
21 Governor's Office the name or names of the initial member or  
22 members appointed to the nominating committee. The term of a  
23 member of the nominating committee shall be six years and  
24 shall begin on the first day of the month following the  
25 submission of the member's appointment letter by the  
26 appointing authority to the Governor's Office. An appointing  
27 authority may remove a sitting member or members previously

1 appointed by such authority and appoint another member or  
2 members before the term of the sitting member or members has  
3 expired by filing notice of such action with the Governor's  
4 Office. An appointing authority may also appoint a new or  
5 replacement member if a sitting member dies, resigns, or is  
6 otherwise unable to serve. The term of any new or replacement  
7 member shall begin on the first day of the month following the  
8 submission to the Governor's Office of the appointment letter  
9 naming the new or replacement member to the committee. Members  
10 of the nominating committee shall serve without compensation  
11 or reimbursement for expenses. The nominating committee shall  
12 appoint a chair and secretary from among themselves and adopt  
13 rules and procedures for the conduct of its meetings and other  
14 business of the nominating committee. The secretary shall  
15 maintain the permanent records of the nominating committee. A  
16 copy of all appointment letters submitted by an appointing  
17 authority to the Governor's Office shall be mailed or  
18 otherwise delivered to the secretary of the nominating  
19 committee, once a secretary is appointed. The committee may  
20 conduct private meetings, as deemed appropriate by the  
21 committee, but only in compliance with applicable laws. The  
22 nominating committee shall compile a list of three nominees by  
23 majority vote and shall otherwise act by a majority vote at  
24 any meeting at which a quorum is present either in person, by  
25 written proxy, or by the written consent of all its members.  
26 For the purposes of this section, a quorum shall consist of a

1 majority of the members of the nominating committee then  
2 serving.

3 (e) Any sitting judge, at the end of his or her  
4 term, shall be automatically appointed to a subsequent  
5 six-year term unless the judge is recalled in accordance with  
6 this subsection. A recall may be initiated by the Governor,  
7 the Attorney General, or the Judicial Inquiry Commission by  
8 submitting a petition for recall to the Chief Judge of the  
9 Court of the Judiciary no more than 12 and no less than three  
10 months before the end of a judge's current term. The petition  
11 shall state the reasons why the judge should not serve another  
12 six-year term. A copy of the petition for recall shall be  
13 simultaneously submitted to the chair of the nominating  
14 committee. In such case, the nominating committee shall  
15 provide an objective, written appraisal of the performance of  
16 the sitting judge to the Chief Judge of the Court of the  
17 Judiciary for use in determining the competency and fitness of  
18 the judge, including a recommendation by the committee. If the  
19 Court of the Judiciary votes to recall the judge, the judge is  
20 not reappointed to another six-year term, and a successor  
21 judge shall be appointed as provided in subsection (b). The  
22 term of the judge subject to the petition for recall shall be  
23 extended during the pendency of the recall proceedings, and if  
24 recalled, the judge shall continue to serve until a successor  
25 judge is appointed as provided in subsection (b). If a  
26 petition for recall is timely submitted but the Court of the  
27 Judiciary does not vote to recall the judge, the judge shall



1 thereafter be automatically appointed to another six-year  
2 term.

3 (f) There shall be no less than one nor more than  
4 three judges serving at any one time. The initial judge of the  
5 Tax Appeals Commission shall serve as chief judge. If the  
6 chief judge determines that a second or third judge is  
7 necessary, based on current and anticipated case load, the  
8 chief judge shall so notify the Governor, and the Governor  
9 shall thereafter determine whether a second or third judge is  
10 necessary. If the Governor agrees with the chief judge's  
11 determination, the Governor shall instruct the nominating  
12 committee to commence proceedings under this section to fill  
13 the additional position; provided, that any such proceeding  
14 may not commence until on or after October 1, 2015. The chief  
15 judge may, with the advice and consent of the Governor,  
16 eliminate an associate judge position if the current and  
17 anticipated case load does not warrant the position.

18 (g) If a Tax Appeals Commission judge's position  
19 becomes vacant, the vacancy shall be filled according to the  
20 method set forth in subsection (b).

21 §40-2B-16. Qualifications of Tax Appeals Commission  
22 judge; oath; Tax Appeals Commission employees.

23 (a) Each Tax Appeals Commission judge shall be a  
24 United States citizen, domiciled in Alabama, and a member in  
25 good standing of the Alabama State Bar Association. The chief  
26 judge must have at least 10 years' experience and an associate  
27 judge must have at least five years' experience, either in the

1 active practice of law in Alabama, whether in the governmental  
2 or private sector, or in a judicial or quasi-judicial office  
3 such as an administrative law judge. The judge shall possess  
4 an acceptable judicial temperament and a high level of  
5 knowledge and degree of experience in the area of state and  
6 local taxation, as determined by the Governor and the  
7 nominating committee.

8 (b) Before entering upon the duties of office, the  
9 judge shall take and subscribe to an oath or affirmation for  
10 the faithful discharge of his or her duties.

11 (c) Tax Appeals Commission judges shall be subject  
12 to disciplinary proceedings before the Judicial Inquiry  
13 Commission to the same extent as circuit judges. The Judicial  
14 Inquiry Commission shall have the authority to remove any Tax  
15 Appeals Commission judge from office, after notice and an  
16 opportunity to be heard, for neglect of duty, inability to  
17 perform duties, malfeasance in office, or other good cause.

18 (d) Tax Appeals Commission judges shall be  
19 classified state employees as provided in Section 36-26-10. As  
20 such, a judge, except for appointment, reconfirmation,  
21 removal, and dismissal as provided in this chapter, shall be  
22 entitled to all benefits and protections available to  
23 classified state employees, including the right to participate  
24 in any retirement benefit plan available to certain state  
25 employees from time to time. A judge who is qualified and who  
26 elects to participate in any such retirement plan, while  
27 participating in the plan, shall retain the same status,

1 duties, authority, and rights as granted to Tax Appeals  
2 Commission judges by this chapter. If a judge, while  
3 participating in such plan, is not automatically reappointed  
4 or not reappointed and reconfirmed to another term as herein  
5 provided, the judge shall be considered as having been  
6 involuntarily terminated for purposes of receiving any  
7 retirement benefits and member contributions pursuant to the  
8 retirement plan. If at the time of appointment, a judge is a  
9 Merit System employee of the state, the judge shall be  
10 entitled to carry over, continue, and retain any of the  
11 benefits resulting from prior state employment. Tax Appeals  
12 Commission judges shall also participate in the State  
13 Employees' Retirement System.

14 (e) The chief judge may employ one Executive  
15 Assistant III as an unclassified service state employee, as  
16 provided in Section 36-26-10(c). All other Tax Appeals  
17 Commission personnel shall be appointed or hired by the chief  
18 judge, as necessary for the proper operation of the Tax  
19 Appeals Commission, shall be state employees under the state  
20 Merit System, and shall be entitled to all benefits and  
21 protections available to state employees. The Executive  
22 Assistant III employed in the Administrative Law Division as  
23 of September 30, 2014, shall be transferred to the Tax Appeals  
24 Commission, along with any other Merit System employees  
25 employed by the Administrative Law Division on that date.

26 §40-2B-17. Judge's salary, expenses.

1 (a) The chief judge of the Tax Appeals Commission  
2 shall receive such salary as is provided from time to time  
3 within Pay Grade 88 of the compensation plan of the state  
4 Merit System, as determined by the Governor with the advice of  
5 the nominating committee. Associate judges shall receive such  
6 salary as is provided from time to time within Pay Grade 84 of  
7 the compensation plan of the state Merit System, as determined  
8 by the chief judge with the advice of the Governor. The judges  
9 shall receive no other monetary compensation for services  
10 except as authorized by subsection (b). This subsection shall  
11 neither increase nor decrease the salary received by the chief  
12 administrative law judge of the Department of Revenue, who  
13 shall become the initial chief judge of the Tax Appeals  
14 Commission pursuant to Section 40-2B-18(a).

15 (b) When a judge or other Tax Appeals Commission  
16 employee travels on Tax Appeals Commission business away from  
17 the state capital, he or she shall be reimbursed as provided  
18 for other state employees in Sections 36-7-20, 36-7-21,  
19 36-7-22, and 36-7-24. The chief judge, at his or her  
20 discretion, may direct and require any judge or other employee  
21 of the Tax Appeals Commission to attend continuing legal  
22 education or other training as necessary.

23 §40-2B-18. Chief judge; associate judges; functions.

24 (a) The initial chief judge of the Tax Appeals  
25 Commission shall be the chief administrative law judge of the  
26 Department of Revenue serving on September 30, 2014.  
27 Thereafter, the individual who is appointed as chief judge by

1 the Governor, as provided in Section 40-2B-15(b), shall serve  
2 as chief judge.

3 (b) The chief judge shall assign cases and otherwise  
4 have authority over the operations of the Tax Appeals  
5 Commission, including any associate judge. The chief judge  
6 shall also have the discretion to order the Tax Appeals  
7 Commission to hear cases en banc if there is more than one  
8 judge sitting at that time.

9 (c) All judges of the Tax Appeals Commission, other  
10 than the chief judge, shall be designated as associate judges  
11 and shall have the same authority and powers of the chief  
12 judge, except as specified in this chapter.

13 (d) If a judge of the Tax Appeals Commission dies,  
14 retires, or resigns, or is unable to serve as judge, or is  
15 removed from office for cause, the Governor may appoint a Tax  
16 Appeals Commission judge pro tempore, who must meet the  
17 qualifications for a Tax Appeals Commission judge set forth in  
18 Section 40-2B-16(a). Such appointment shall become effective  
19 the first day of the month following the submission of the  
20 appointment letter by the chief justice to the Governor's  
21 Office. Such judge pro tempore shall serve until such time as  
22 a successor judge is appointed by the Governor, as provided  
23 herein. If the judge pro tempore is appointed to fill the  
24 position of chief judge, he or she shall be compensated at the  
25 rate provided herein for the chief judge and shall have and  
26 exercise all powers granted the chief judge. Otherwise, a  
27 judge pro tempore shall be compensated at the rate of an

1 associate judge and shall have and exercise all the powers  
2 granted an associate judge. Such compensation shall be paid  
3 out of the appropriation for the Tax Appeals Commission. The  
4 chief judge may also appoint a judge pro tempore to hear a  
5 special case or cases, as assigned by the chief judge,  
6 including in cases where a judge disqualifies himself or  
7 herself on his or her own motion. Such judge pro tempore must  
8 meet the qualifications set forth in Section 40-2B-16(a), and  
9 shall be compensated at a rate specified by the chief judge,  
10 but not at a rate that exceeds any rate paid to an associate  
11 judge.

12 §40-2B-19. Offices of Tax Appeals Commission;  
13 location of hearings.

14 The principal office of the Tax Appeals Commission  
15 shall be in Montgomery and in a building that is separate and  
16 apart from any building in which the Department of Revenue has  
17 an office, as approved by the Finance Director. The Tax  
18 Appeals Commission may hold hearings in any county seat, in  
19 the discretion of the chief judge. If the appeal involves a  
20 tax levied by or on behalf of a self-administered county or  
21 municipality, the Tax Appeals Commission may hold the hearing  
22 in the county seat of the affected county or the county seat  
23 of the county in which the affected municipality is located.  
24 The circuit court sitting in any county, without charge and  
25 upon reasonable notice from a judge of the Tax Appeals  
26 Commission, shall provide the Tax Appeals Commission with  
27 suitable rooms and facilities within the courthouse space

1 assigned to the circuit court. The county commission shall  
2 have no obligation or responsibility to provide space or  
3 facilities. The Tax Appeals Commission may also hold hearings  
4 in the Department of Revenue's service centers located  
5 throughout the state.

6 §40-2B-20. Authority to contract and expend funds;  
7 budget of Tax Appeals Commission; limitation on activities of  
8 personnel.

9 (a) The Tax Appeals Commission, through the chief  
10 judge, may contract or enter into agreements with any private  
11 or governmental agency, upon approval of the Finance Director,  
12 for the rental of office space and the rental or purchase of  
13 equipment, administrative or other support services, supplies,  
14 and all other property or services necessary for the operation  
15 of the Tax Appeals Commission. The funds for the operation of  
16 the Tax Appeals Commission shall be administered by the Tax  
17 Appeals Commission, through the chief judge. With respect to  
18 the fiscal year ending September 30, 2015, there shall be  
19 transferred from the Revenue Department Administrative Fund to  
20 the Tax Appeals Commission the amount of four hundred  
21 twenty-five thousand dollars (\$425,000). The amount  
22 transferred from the Revenue Department Administrative Fund  
23 shall be disbursed to the Tax Appeals Commission in four equal  
24 increments, at the beginning of each quarter of the fiscal  
25 year. Thereafter, the Tax Appeals Commission, through the  
26 chief judge, shall prepare an annual budget, and funds shall  
27 be appropriated annually by the Legislature from the Revenue

1 Department Administrative Fund to be used exclusively for the  
2 operation of the Tax Appeals Commission.

3 (b) No employee of the Tax Appeals Commission or  
4 person serving as judge pro tempore shall act as an authorized  
5 representative or representative of the department before the  
6 Tax Appeals Commission while an employee or while serving as a  
7 judge pro tempore. A former employee of the Tax Appeals  
8 Commission or former judge pro tempore shall not act as an  
9 authorized representative, representative of the department,  
10 or otherwise participate in any case that was pending before  
11 the Tax Appeals Commission on the date of termination of that  
12 person's employment with or service on behalf of the Tax  
13 Appeals Commission. A former Tax Appeals Commission judge may  
14 represent a client before the Tax Appeals Commission in a  
15 legal, non-lobbying capacity in a case that was not pending  
16 before the Tax Appeals Commission when the judge left office,  
17 to the same extent former members of the Alabama judiciary are  
18 allowed by Section 36-25-13.

19 §40-2B-21. Records.

20 The Tax Appeals Commission shall maintain an  
21 official docket, fee book, and other records as deemed  
22 necessary by the chief judge. Such records may be maintained  
23 in electronic format.

24 §40-2B-22. Filing fees prohibited.

25 No filing fee shall be imposed for any appeal filed  
26 with the Tax Appeals Commission.



1           §40-2B-23. Fees and expenses of witnesses. Any  
2 witness subpoenaed by the Tax Appeals Commission on its own  
3 motion to testify or produce records at a hearing before the  
4 Tax Appeals Commission shall be entitled to receive from the  
5 Tax Appeals Commission the fees and mileage provided in  
6 Section 40-2A-7(a) (4). Any witness subpoenaed by the Tax  
7 Appeals Commission at the request of a party to testify or  
8 produce records at such a hearing shall be entitled to receive  
9 from the requesting party the fees and mileage provided in  
10 Section 40-2A-7(a) (4).

11           §40-2B-24. Department of Revenue allowed to  
12 acquiesce or nonacquiesce in Tax Appeals Commission and  
13 circuit court decisions.

14           (a) The commissioner or deputy commissioner may  
15 state and periodically publish the Department of Revenue's  
16 acquiescence or nonacquiescence to indicate its position on  
17 decisions of the Tax Appeals Commission or a circuit court.

18           (b) Acquiescence in a decision means acceptance by  
19 the Department of Revenue of the conclusion reached, but does  
20 not necessarily mean acceptance and approval of the reasons or  
21 rationale of the Tax Appeals Commission or circuit court for  
22 its conclusion.

23           §40-2B-25. Election by self-administered county or  
24 municipality to divest jurisdiction of Tax Appeals Commission.

25           (a) Unless a self-administered county or  
26 municipality elects, in the manner prescribed below, to divest  
27 the Tax Appeals Commission of jurisdiction over appeals of

1 final assessments or denied refunds, in whole or in part, of  
2 any sales, use, rental, or lodgings taxes levied or collected  
3 from time to time by or on behalf of the self-administered  
4 county or municipality, a taxpayer may appeal a final  
5 assessment or denied refund involving any such tax to the Tax  
6 Appeals Commission in accordance with the procedures and  
7 requirements provided in Section 40-2A-7 and this chapter. For  
8 purposes of any appeal filed by a taxpayer pursuant to this  
9 section, the term "department" as used in Section 40-2A-7  
10 means the governing body of the applicable self-administered  
11 county or municipality and not the Department of Revenue, and  
12 the term "secretary" as used in Section 40-2A-7 means the  
13 clerk of the governing body of the applicable  
14 self-administered county or municipality.

15 (b) Subject to the limitation imposed by subsection  
16 (e), the election-out under this section shall be made by  
17 serving a copy of the ordinance or resolution evidencing the  
18 election-out, adopted by the governing body of the  
19 self-administered county or municipality pursuant to this  
20 section, with the Tax Appeals Commission. Service may be  
21 accomplished by mailing a copy of the ordinance or resolution,  
22 certified by an appropriate official, by either U.S. mail with  
23 delivery confirmation or certified U.S. mail, return receipt  
24 requested, by hand delivery, or by an expedited courier  
25 service to the Tax Appeals Commission's office. The Tax  
26 Appeals Commission shall promptly publish notice of the  
27 election-out pursuant to subsection (d), and the election

1 shall be effective on the date that notice is published.  
2 Notwithstanding the foregoing, appeals of final assessments or  
3 denied refunds involving the electing county or municipality  
4 that were pending before the Tax Appeals Commission on the  
5 date that notice of the election-out is published shall  
6 continue to be heard and decided by the Tax Appeals Commission  
7 as if the election-out had not been made.

8 (c) Subject to the limitation imposed by subsection  
9 (e), an election-out may be revoked, prospectively, by the  
10 governing body of the self-administered county or municipality  
11 at any time by resolution or ordinance, a certified copy of  
12 which shall be served on the Tax Appeals Commission in the  
13 manner prescribed above. The revocation of an election-out  
14 vests jurisdiction in the Tax Appeals Commission over all  
15 appeals of final assessments or denied refunds, in whole or in  
16 part, of the county's or municipality's sales, use, rental,  
17 and lodgings taxes that are entered or denied on or after the  
18 date that notice of revocation is published by the Tax Appeals  
19 Commission.

20 (d) At least once a month, the Tax Appeals  
21 Commission shall provide the Department of Revenue with a list  
22 of all self-administered counties and municipalities that have  
23 elected out pursuant to subsection (b) or that have filed a  
24 notice of revocation of their election-out pursuant to  
25 subsection (c). The Department of Revenue shall publish the  
26 list on its website and otherwise make available to the public  
27 in the same manner that the rates and administrators of

1 certain county and municipal taxes are published by the  
2 Department of Revenue. The Tax Appeals Commission may also  
3 publish the list on its own website.

4 (e) A self-administered county or municipality may  
5 make only one election-out under subsection (b) or one  
6 revocation under subsection (c) during each calendar year. If  
7 an appeal is timely filed with the Tax Appeals Commission  
8 after the notice of an election-out by the self-administered  
9 county or municipality is published by the Tax Appeals  
10 Commission, the appeal shall be deemed timely filed with and  
11 transferred to the self-administered county or municipality.  
12 If an appeal is timely filed with a self-administered county  
13 or municipality after the notice of revocation by the  
14 self-administered county or municipality is published by the  
15 Tax Appeals Commission, the appeal shall be deemed timely  
16 filed with and transferred to the Tax Appeals Commission.

17 Section 3. The Code Commissioner shall review Titles  
18 11 and 40 of the Code of Alabama 1975, and, at times deemed  
19 appropriate, shall substitute "Alabama Tax Appeals Commission"  
20 for any reference to the Administrative Law Division of the  
21 Department of Revenue and shall make any other similar  
22 amendments consistent herewith.

23 Section 4. Sections 40-2A-3, 40-2A-4, 40-2A-5,  
24 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of Alabama  
25 1975, are amended to read as follows:

26 "§40-2A-3.

1           ~~For~~ Except as otherwise specifically provided or  
2 limited, for the purposes of this chapter and Chapter 2B, the  
3 following terms shall have the following meanings:

4           ~~"(1) ADMINISTRATIVE LAW JUDGE. The chief~~  
5 ~~administrative law judge of the department, or any other~~  
6 ~~individual acting in that capacity as appointed by the~~  
7 ~~commissioner.~~

8           ~~"(2) ADMINISTRATIVE LAW DIVISION. The administrative~~  
9 ~~law division of the department.~~

10           "(1) ASSOCIATE TAX APPEALS COMMISSION JUDGE. An  
11 associate judge, as defined in Section 40-2B-18(c), of the  
12 Alabama Tax Appeals Commission.

13           ~~"(3)~~ (2) AUTHORIZED REPRESENTATIVE. Any individual  
14 with written authority or power of attorney to represent a  
15 taxpayer before the department or the Tax Appeals Commission;  
16 provided however, that nothing herein shall be construed as  
17 entitling any such individual who is not a licensed attorney  
18 to engage in the practice of law.

19           "(3) CHIEF TAX APPEALS COMMISSION JUDGE or CHIEF  
20 JUDGE. The chief judge, as defined in Section 40-2B-18(a), of  
21 the Alabama Tax Appeals Commission.

22           "(4) COMMISSIONER. The commissioner of the  
23 department or his or her delegate.

24           "(5) COMPTROLLER. The Comptroller of the State of  
25 Alabama.

26           "(6) DELEGATE. When used with reference to the  
27 commissioner means any officer or employee of the department

1       duly authorized by the commissioner, directly or indirectly,  
2       by one or more redelegations of authority, to perform the  
3       function described in the context.

4               "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The  
5       Alabama Department of Revenue.

6               "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES  
7       TAX. A privilege or license tax, imposed by a municipality or  
8       county, measured by gross receipts or gross proceeds of sale  
9       and which: (i) was in effect on or before February 25, 1997,  
10       or is an amendment to a tax which was in effect on that date;  
11       (ii) is levied against those selling tangible personal  
12       property at retail, those operating public places of amusement  
13       or entertainment, those making street deliveries, and those  
14       leasing or renting tangible personal property; and (iii) is  
15       due and payable to a county or municipality monthly or  
16       quarterly.

17               "(9) FINAL ASSESSMENT. The final notice of value,  
18       underpayment, or nonpayment of any tax administered by the  
19       department.

20               "(10) INTEREST. That amount computed under Section  
21       40-1-44, on any overpayment or underpayment of tax or under  
22       Section 40-2A-18 on a final assessment.

23               "(11) INTERNAL REVENUE SERVICE. The agency of the  
24       United States principally responsible for the determination,  
25       assessment, and collection of taxes established by Title 26 of  
26       the United States Code.

1           "(12) NOTICE OF APPEAL. Any written notice  
2 sufficient to identify the name of the taxpayer or other party  
3 appealing, the specific matter appealed from, the basis for  
4 that appeal, and the relief sought.

5           "(13) PERSON. Any individual, association, estate,  
6 trust, partnership, limited liability company, corporation,  
7 real estate investment trust, or other entity of any kind.

8           "(14) PETITION FOR REFUND. Any written request for a  
9 refund of any tax previously paid, including in the form of ~~an~~  
10 any return or amended return. Unless otherwise provided by  
11 law, the request shall include sufficient information to  
12 identify the type and amount of tax overpaid, the taxpayer,  
13 the period included, and the reasons for the refund.

14           "(15) PETITION FOR REVIEW. A written document filed  
15 with the department in response to a preliminary assessment in  
16 which the taxpayer sets forth reasonably specific objections  
17 to the preliminary assessment.

18           "(16) PRELIMINARY ASSESSMENT. The preliminary notice  
19 of value or underpayment or nonpayment of any tax administered  
20 by the department.

21           "(17) PRIVATE ~~AUDITING~~ EXAMINING OR COLLECTING FIRM.  
22 Any person in the business of collecting, through contract or  
23 otherwise, local sales, use, rental, lodgings or other taxes  
24 or license fees for any county or municipality, or auditing  
25 any taxpayer, through the examination of books and records,  
26 for any county or municipality. The term shall not include any  
27 of the following:

1            "a. The Department of Revenue.

2            "b. A county or municipality that has entered into a  
3 contract or other arrangement to collect local sales, use,  
4 rental, lodgings or other taxes or license fees on behalf of  
5 another county or municipality, or to audit a taxpayer,  
6 through the examination of books and records, on behalf of  
7 another county or municipality.

8            "c. A person or firm whose sole function and purpose  
9 on behalf of a municipality or group of municipalities is to  
10 collect delinquent insurance premium license fees levied by  
11 that municipality or group of municipalities, and who has no  
12 authority to determine the amount of license fee, interest,  
13 court cost, or penalty owed to the municipality or group of  
14 municipalities.

15            "(18) PUBLICATION 1A. A written pamphlet to be  
16 distributed by the department to all taxpayers whose books and  
17 records are being examined by the department, at or before the  
18 commencement of an examination, explaining in simple and  
19 nontechnical terms, the role of the department and the rights  
20 of the taxpayer, ~~whose books and records are being examined by~~  
21 ~~the department during the examination and~~ which shall be  
22 promptly revised from time to time to reflect any changes in  
23 the applicable law or rules.

24            "(19) RETURN. Any report, document, or other  
25 statement required to be filed with the department for the  
26 purpose of paying, reporting, or determining the proper amount  
27 of value or tax due.



1           "(20) SECRETARY. The secretary of the department.

2           "(21) SELF-ADMINISTERED COUNTY OR MUNICIPALITY. A  
3 county or municipality that administers its own sales and use  
4 taxes or other local municipal or county taxes levied or  
5 authorized to be levied by a general or local act, or  
6 contracts out all or part of that function to a private  
7 ~~auditing~~ examining or collecting firm. The term does not  
8 include any of the following:

9           "a. A county or municipality that allows the  
10 department to administer a sales, use, rental, or lodgings tax  
11 which is levied by or on behalf of that county or  
12 municipality.

13           "b. A municipality or county that levies a gross  
14 receipts tax in the nature of a sales tax, as defined in  
15 subdivision (8). A county or municipality that both  
16 self-administers a sales, use, rental, or lodgings tax and  
17 allows the department to administer a sales, use, rental, or  
18 lodgings tax that is levied by or on behalf of the county or  
19 municipality is only a self-administered county or  
20 municipality with respect to those sales, use, rental, or  
21 lodgings taxes that the county or municipality administers  
22 itself or for those taxes that it contracts for the  
23 collection.

24           "(22) TAX. Any amount, including applicable penalty  
25 and interest, levied or assessed against a taxpayer and which  
26 the department or any county, municipality, or their designees

1 are required or authorized to administer under the provisions  
2 of Alabama law.

3 "(23) TAX APPEALS COMMISSION. The Alabama Tax  
4 Appeals Commission, as described in Chapter 2B (commencing  
5 with Section 40-2B-1).

6 "~~(23)~~(24) TAXPAYER. Any person subject to or liable  
7 for any state or local tax; any person required to file a  
8 return with respect to, or to pay, or withhold and remit any  
9 state or local tax or to report any information or value to  
10 the department, a county, municipality, or its designee; or  
11 any person required to obtain or holding any interest in any  
12 license, permit, or certificate of title issued by the  
13 department, a county, municipality, or its designee, or any  
14 person that may be affected by any act or refusal to act by  
15 the department, a county, municipality, or its designee, or to  
16 keep any records required by this chapter.

17 "~~(24)~~(25) TAXPAYER ADVOCATE. The person so  
18 designated from time to time by the commissioner to assist the  
19 taxpayers of the State of Alabama with regard to tax issues  
20 resulting from any taxes administered or collected by the  
21 department.

22 "~~(25)~~(26) TAXPAYER ASSISTANCE ORDER. A written order  
23 issued by the Taxpayer Advocate and approved by either the  
24 commissioner or assistant commissioner which, among other  
25 items, states the facts and grants relief to a taxpayer  
26 concerning an issue in dispute with the department with regard  
27 to tax issues resulting from any taxes administered or

1 collected by the department or grants a waiver of penalties  
2 otherwise owed to the department by a defined class or group  
3 of taxpayers who are the subject of a declaration of natural  
4 disaster by the Governor.

5 "§40-2A-4.

6 "(a) Rights of the taxpayer.

7 ~~"(1) For purposes of this section, the term~~  
8 ~~"taxpayer" shall only mean a taxpayer whose books and records~~  
9 ~~are subject to examination by the department, and shall not~~  
10 ~~include any taxpayer regarding taxes collected or examined by~~  
11 ~~a self-administered county or municipality.~~

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

19 "(2) At or before the commencement of an examination  
20 of the books and records of a taxpayer, the department shall  
21 provide to the taxpayer the current version of Publication 1A.  
22 Publication 1A shall provide, in simple and non-technical  
23 terms, a statement of the taxpayer's rights. Those rights  
24 include the right to be represented during an examination, an  
25 explanation of their appeal rights, and the right to know the  
26 criteria and procedures used to select taxpayers for an  
27 examination.

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

4           "a. A written description of the basis for the  
5 assessment and any penalty asserted with respect to the  
6 assessment.

7           "b. A written description of the method by which the  
8 taxpayer may request an administrative review of the  
9 preliminary assessment.

10           "(4) ~~At or before~~ Together with the issuance of a  
11 final assessment, the department shall inform the taxpayer by  
12 a written statement of his or her right to appeal to the  
13 ~~administrative law division~~ Tax Appeals Commission or to  
14 circuit court and shall include the written description  
15 required by subdivision (3)a., as revised if necessary to  
16 reflect any changes since the issuance of the preliminary  
17 assessment.

18           "(5) Except in cases involving suspected criminal  
19 violations of the tax law or other criminal activity, the  
20 department shall conduct an examination of a taxpayer during  
21 regular business hours after providing reasonable notice to  
22 the taxpayer. A taxpayer who refuses a proposed time for an  
23 examination on the grounds that the proposed examination would  
24 cause inconvenience or hardship must offer reasonable  
25 alternative times and dates for the examination.

26           "(6) At all stages of an examination or the  
27 administrative review of the examination, and in any appeal to

1 the Tax Appeals Commission, a taxpayer is entitled to be  
2 assisted or represented, at his or her own expense, by an  
3 authorized representative. ~~The department shall prescribe a~~  
4 ~~form by which the~~ A taxpayer may designate a person to  
5 ~~represent him or her in the conduct of any proceedings,~~  
6 ~~including collection proceedings, resulting from actions of~~  
7 ~~the department~~ execute a power of attorney, including by  
8 executing such form prescribed by the department, designating  
9 any individual or individuals as his or her authorized  
10 representative. In the absence of this ~~form~~ power of attorney,  
11 the department or the Tax Appeals Commission may accept such  
12 other evidence that a person is the authorized representative  
13 of a taxpayer as it considers appropriate. This provision  
14 shall not, however, be construed as authorizing the practice  
15 of law before the department, the Tax Appeals Commission, or  
16 any court in this state by a person who is not a licensed  
17 attorney.

18 "(7) A taxpayer shall be allowed to make an audio  
19 recording of any in-person interview with any officer or  
20 employee of the department relating to any examination or  
21 investigation by the department, provided, however, the  
22 taxpayer must give reasonable advance notice to the department  
23 of his or her intent to record and the recording shall be at  
24 the taxpayer's own expense and with the taxpayer's own  
25 equipment. The department shall also be allowed to record any  
26 interview if the taxpayer is recording the interview, or if  
27 the department gives the taxpayer reasonable advance notice of

1 its intent to record the interview. The department shall  
2 provide the taxpayer with a copy of the recording, but only if  
3 the taxpayer provides reimbursement for the cost of the  
4 transcript and reproduction of the copy. The cost shall be  
5 reasonable as prescribed by regulations issued by the  
6 department.

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

10 "(b) Department responsibilities generally.

11 "(1) The commissioner shall appoint a Taxpayer  
12 Advocate from among the employees of the department. This  
13 officer shall receive and review inquiries or complaints  
14 concerning matters that have been pending before the  
15 department for an unreasonable length of time, or matters  
16 where the taxpayer has been unable to obtain a reasonable  
17 response after several attempts to communicate with the  
18 department employee assigned to the taxpayer's case, or his or  
19 her immediate superiors. In addition, this officer shall  
20 review and have the authority to waive a penalty for  
21 reasonable cause as provided in subsection (h) of Section  
22 40-2A-11, shall promptly review inquiries concerning release  
23 of property levied upon, the erroneous filing of liens, the  
24 failure to release a lien for good cause, or other matters  
25 complained of by a taxpayer or other affected party, or  
26 matters referred to him or her by a judge of the Tax Appeals  
27 Commission. The review process shall include consultation with

1 the taxpayer or his or her authorized representative and the  
2 self-administered county or municipality, if applicable,  
3 regarding the background for the inquiry, complaint, or  
4 request for waiver of penalty or other relief sought. The  
5 Taxpayer Advocate shall have no authority nor issue any ruling  
6 with regard to any taxes collected by or on behalf of a  
7 self-administered county or municipality.

8 "a. The Taxpayer Advocate shall, subject to the  
9 approval of the commissioner or the assistant commissioner,  
10 issue taxpayer assistance orders in the form and manner  
11 prescribed herein and by department regulations.

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

18 "c. A taxpayer assistance order shall grant relief  
19 as deemed appropriate, including the voiding of any  
20 erroneously issued final assessment for a tax which was not a  
21 debt due the state, granting of any refund due the taxpayer,  
22 or abating an assessment of interest that has accrued because  
23 of undue delay by department personnel.

24 "d. At the request of the Tax Appeals Commission,  
25 the Taxpayer Advocate shall review a final order issued by the  
26 Tax Appeals Commission that was not appealed pursuant to  
27 Section 40-2B-13, if there is newly discovered evidence which

1 by due diligence could not have been discovered in time to  
2 file an application for rehearing pursuant to Section  
3 40-2B-9(i), and may grant such relief as the Taxpayer Advocate  
4 deems appropriate.

5 "d.e. All taxpayer assistance orders shall be dated  
6 and signed by the Taxpayer Advocate and approved either by the  
7 commissioner or the assistant commissioner, and shall state  
8 the underlying facts, the reasons for granting relief, and the  
9 relief granted. Any taxpayer assistance order may, for good  
10 cause, be modified or rescinded in writing by the Taxpayer  
11 Advocate and either the commissioner or the assistant  
12 commissioner.

13 "e.f. The Taxpayer Advocate shall have full access  
14 to department personnel, books, and records subject, however,  
15 to the confidentiality restrictions imposed by this chapter.

16 "f.g. Taxpayer assistance orders shall not be  
17 subject to the confidentiality provisions of this title, and  
18 shall be maintained by the secretary of the department and  
19 shall be open to review upon written request. The Taxpayer  
20 Advocate shall have no authority nor issue any ruling with  
21 regard to any taxes collected by or on behalf of a  
22 self-administered county or municipality.

23 "g.h. The commissioner shall make an annual report  
24 to the Legislature of all taxpayer assistance orders approved  
25 in accordance with the provisions of this section and Sections  
26 40-2A-2 and 40-2A-3. Such report shall contain the total



1 amount of relief granted and the types of taxes for which  
2 relief was granted.

3 "(2) The department shall maintain a continuing  
4 education program to train employees of the department and to  
5 provide them with a current knowledge of state and applicable  
6 federal tax laws.

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

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

13 "a. The basis of a production quota system for  
14 employees; or

15 "b. The basis for evaluating an employee's  
16 performance.

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

20 "(6) INSTALLMENT PAYMENTS.

21 "a. The commissioner is authorized to enter into  
22 written agreements to allow any taxpayer to pay any tax in  
23 installment payments if the commissioner determines that such  
24 agreement will facilitate collection of such tax.

25 Notwithstanding the preceding sentence, such agreements shall  
26 be entered into only regarding a tax ~~that has been finally~~  
27 ~~assessed by the department and not appealed~~ liability

1 resulting from a final assessment from which an appeal can no  
2 longer be taken, unless the right to appeal is waived by the  
3 taxpayer in writing, and such agreements shall not extend for  
4 a period exceeding 12 months, provided, that any such  
5 agreement may be renewed at the discretion of the commissioner  
6 for succeeding periods not to exceed 12 months. The  
7 commissioner shall only be authorized to enter such an  
8 agreement with regard to a tax administered or collected by  
9 the department.

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

12 "1. Information provided by the taxpayer to the  
13 commissioner prior to the date of such agreement was  
14 inaccurate or incomplete;

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

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

21 "4. The financial condition of the taxpayer has  
22 significantly changed;

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

25 "6. The commissioner believes that collection of any  
26 tax to which an agreement under this provision relates is in  
27 jeopardy.

1            "c. The commissioner shall have sole authority or  
2            discretion to enter into or amend, modify, or terminate any  
3            installment payment agreement provided for herein. The  
4            commissioner shall promulgate regulations necessary for the  
5            implementation of this provision.

6            "d. Any self-administered county or municipality or  
7            any private examining or collecting firm, acting with the  
8            approval of a self-administered county or municipality, shall  
9            have the same authority as provided to the commissioner by  
10           this subdivision relating to installment payments with respect  
11           to taxes administered or collected by the self-administered  
12           county or municipality or the private examining or collecting  
13           firm.

14           " (c) Department failure to comply with this section.  
15           The failure of the department to comply with any provision of  
16           this section shall not prohibit the department from assessing  
17           any tax as provided in this chapter, nor excuse the taxpayer  
18           from timely complying with any time limitations under this  
19           chapter. However, if the department fails to substantially  
20           comply with the provisions of this section, the commissioner  
21           shall, upon application by the taxpayer or other good cause  
22           shown, abate any penalties otherwise arising from the  
23           examination or assessment.

24           " (d) Abatement of penalty. The department shall  
25           abate any penalty attributable to erroneous written advice  
26           furnished to a taxpayer by an employee of the department.  
27           However, this section shall apply only if the department

1 employee provided the written advice in good faith while  
2 acting in his or her official capacity, the written advice was  
3 reasonably relied on by the taxpayer and was in response to a  
4 specific written request of the taxpayer, and the penalty did  
5 not result from the taxpayer's failure to provide adequate or  
6 accurate information.

7 "§40-2A-5.

8 "(a) The commissioner may, in addition to all other  
9 powers and authority now granted by law, issue "revenue  
10 rulings" describing the substantive application of any law or  
11 regulation administered by the department. Revenue rulings may  
12 also govern procedures applicable to the department, and in  
13 that event, shall be called "revenue procedures." Revenue  
14 rulings shall be binding on the department and the state, its  
15 political subdivisions, and taxing authorities only with  
16 respect to the taxpayer making the request and only with  
17 respect to the facts contained in the request. The department  
18 attorney assigned to review the request for a revenue ruling  
19 shall consult with the taxpayer or their authorized  
20 representative, if requested by the taxpayer or their  
21 authorized representative, prior to issuing the revenue  
22 ruling. A revenue ruling shall constitute the department's  
23 interpretation of the law or regulations as applied to the  
24 facts contained in the request, but only pertaining to the  
25 particular facts described in the request, and only to the  
26 taxpayer making the request.

1           "(b) Revenue rulings may be issued only if no taxes  
2 have accrued with respect to the transactions, events, or  
3 facts contained in the request at the time of the issuance of  
4 the ruling.

5           "(c) Revenue rulings may be revoked or modified by  
6 the commissioner at any time; but any revocation or  
7 modification shall not be effective retroactively unless one  
8 of the following has occurred:

9           "(1) The person making the request misstated or  
10 omitted facts material to the ruling.

11           "(2) The ruling was issued with respect to a matter  
12 involving the computation or payment of a tax that was due and  
13 payable at the time the ruling was requested.

14           "(3) The law applied by the commissioner in the  
15 revenue ruling is changed in a manner to alter the  
16 commissioner's conclusions in the ruling and the change in the  
17 law is made effective as of the date of the ruling.

18           "The taxpayer may petition for a hearing with the  
19 ~~Administrative Law Division~~ Tax Appeals Commission to  
20 determine the propriety, under ~~subsections~~ subsection (a),  
21 (b), or (c), of any retroactive revocation of a ruling.

22           "(d) All revenue rulings issued by the department  
23 shall be published, maintained as a public record, and made  
24 available by the department for public inspection and copying,  
25 within a reasonable time following their issuance, at a  
26 reasonable cost to be determined by the department. Prior to  
27 publication, the department shall delete from the text of the

1 ruling all names, addresses, titles, figures, dates, and other  
2 information which may identify the particular taxpayer who  
3 requested the ruling. If a revenue ruling contains trade  
4 secrets or other confidential information, the department  
5 shall, upon written request of the taxpayer, delete that  
6 information prior to publication.

7 "(e) Requests for revenue rulings shall be submitted  
8 in writing to the secretary in the form and manner as  
9 prescribed by department regulations, accompanied by a fee of  
10 two hundred dollars (\$200). The commissioner shall either  
11 issue or refuse to issue a ruling within 120 days after  
12 receipt of the request unless the taxpayer consents to an  
13 extension of time. If the commissioner refuses to issue a  
14 ruling within the time prescribed, the two hundred dollar  
15 (\$200) fee shall be refunded to the taxpayer. A request may be  
16 withdrawn at any time prior to the issuance of the requested  
17 ruling, in which case there shall be no refund of the two  
18 hundred dollar (\$200) fee.

19 "(f) Revenue rulings shall be issued in the name of  
20 the commissioner.

21 "(g) Subject to the provisions of this section, the  
22 commissioner may also issue a revenue ruling in response to a  
23 written request by a governing body of a self-administered  
24 county or municipality, or by a taxpayer, regarding the  
25 substantive application of a sales, use, rental, or lodgings  
26 tax levied by or on behalf of the self-administered  
27 municipality or county; provided, however, that the

1 commissioner may not (i) issue a revenue ruling interpreting  
2 any tax levied by or on behalf of a self-administered  
3 municipality or county which levies a gross receipts tax in  
4 the nature of a sales tax, as defined in Section 40-2A-3(8),  
5 or (ii) issue a revenue ruling that would establish a rule of  
6 nexus determining the locality to which sales and use taxes,  
7 or gross receipts taxes in the nature of a sales tax as  
8 defined by Section 40-2A-3(8), are due if the locality is a  
9 self-administered county or municipality, as defined by  
10 Section 40-2A-3(20). Revenue rulings shall be binding on a  
11 self-administered county or municipality only with respect to  
12 the specific taxpayer making the request and only with respect  
13 to the specific facts contained in the request. Any ruling  
14 shall, if the other requirements of this section are met, be  
15 issued within 45 days of receipt of the request, and if the  
16 requesting party is a self-administered municipal or county  
17 governing body, the fee for issuance of the ruling shall be  
18 waived. If the requesting party is a taxpayer, the department  
19 shall, promptly upon receipt, forward a copy of the ruling  
20 request to the appropriate municipal or county governing body  
21 and shall consult with and accept written comments from  
22 representatives of the municipality or county prior to  
23 issuance of the ruling.

24 "§40-2A-7.

25 "(a) Maintenance of records; audit and subpoena  
26 authority; authority to issue regulations.

1           "(1) In addition to all other recordkeeping  
2 requirements otherwise set out in this title, taxpayers shall  
3 keep and maintain an accurate and complete set of records,  
4 books, and other information sufficient to allow the  
5 department to determine the correct amount of value or correct  
6 amount of any tax, license, permit, or fee administered by the  
7 department, or other records or information as may be  
8 necessary for the proper administration of any matters under  
9 the jurisdiction of the department. The books, records, and  
10 other information shall be open and available for inspection  
11 by the department upon request at a reasonable time and  
12 location.

13           "(2) The department may examine and audit the  
14 records, books, or other relevant information maintained by  
15 any taxpayer or other person for the purpose of computing and  
16 determining the correct amount of value or correct amount of  
17 any tax, license, or fee administered by the department, or  
18 for any other purpose necessary for the proper administration  
19 of any matter under the jurisdiction of the department.

20           "(3) A taxpayer, or any officer of a corporation or  
21 association, or partner of a partnership, manager of a  
22 manager-managed limited liability company, member of a  
23 member-managed limited liability company, or fiduciary of a  
24 trust, or other responsible individual of any entity under a  
25 duty to maintain books and records pursuant to this subsection  
26 who fails or refuses to maintain such records and books, or  
27 permit inspection, shall be subject to contempt proceedings in



1 the circuit court of the judicial circuit in which the person  
2 resides or has a principal place of business, and upon proof  
3 of the fact to the court, may be punished for contempt as  
4 provided in cases of contempt in circuit court.

5 "(4) The department may summon any witness to appear  
6 and give testimony, and summon by subpoena duces tecum any  
7 records, books, or other information of any kind relating to  
8 any matter which the department has authority to administer.  
9 The witness may be summoned by subpoena issued by the  
10 secretary of the department, any circuit judge, any  
11 magistrate, or any district judge, in the name of the  
12 department, directed to any sheriff of Alabama and returnable  
13 to the department. The subpoena may be served in like manner  
14 as subpoenas issued out of any circuit court, or the subpoena  
15 may be served by an authorized employee of the department or  
16 by either U.S. mail with delivery confirmation or certified  
17 mail, return receipt requested. A fee shall be paid to banking  
18 institutions, other similar entities, or any other person  
19 except the taxpayer, for copying, searching for, reproducing,  
20 and transporting any records, books, papers, or other  
21 documents requested or subpoenaed by the department and to  
22 persons who are required to appear as a witness equal to the  
23 fee authorized to be paid by the Internal Revenue Service for  
24 similar services or appearances pursuant to ~~Section 7610 of~~  
25 ~~the Internal Revenue Code of 1986~~ 26 U.S.C. § 7610, as amended  
26 from time to time. If any witness has been subpoenaed to  
27 appear and testify or appear and produce records, books, or

1 other information, and fails or refuses to appear or testify  
2 or to produce the books, records, or other information, that  
3 witness shall be subject to contempt proceedings in the  
4 circuit court of the judicial circuit in which the witness  
5 resides, and upon proof of the fact to a circuit court may be  
6 punished for contempt as is provided in cases of contempt in  
7 circuit court. The circuit court shall also have jurisdiction  
8 to hear and, if appropriate, to grant a motion to quash the  
9 subpoena. This subdivision shall not apply to any appeal  
10 pending before the Tax Appeals Commission.

11 "(5) The department may issue forms and make  
12 reasonable regulations concerning any matter administered by  
13 the department. Regulations promulgated by the department  
14 shall be issued in accordance with the procedures set forth in  
15 the Alabama Administrative Procedure Act, Chapter 22 of Title  
16 41.

17 "(b) Procedures governing entry of preliminary and  
18 final assessments; appeals therefrom.

19 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL  
20 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND  
21 FINAL ASSESSMENTS.

22 "a. If the department determines that the amount of  
23 any tax as reported on a return is incorrect, or if no return  
24 is filed, or if the department is required to determine value,  
25 the department may calculate the correct tax or value based on  
26 the most accurate and complete information reasonably  
27 obtainable by the department. The department may thereafter

1 enter a preliminary assessment for the correct tax or value,  
2 including any applicable penalty and interest.

3 "b. Where the amount of tax or value reported on a  
4 return is undisputed by the department, or the taxpayer  
5 consents in writing to the amount of any deficiency,  
6 determination of value, or preliminary assessment ~~in writing~~  
7 as provided by regulation, the department may immediately  
8 enter a final assessment for the amount of the tax or value,  
9 plus applicable penalty and interest; provided, the department  
10 may at any time enter a final jeopardy assessment pursuant to  
11 Sections 40-17A-12, 40-29-90, and 40-29-91.

12 "c. All preliminary and final assessments issued by  
13 the department shall be executed as provided by regulations  
14 promulgated by the department.

15 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY  
16 ASSESSMENT. Any preliminary assessment shall be entered within  
17 three years from the due date of the return, or three years  
18 from the date the return is filed with the department,  
19 whichever is later, or if no return is required to be filed,  
20 within three years of the due date of the tax, except as  
21 follows:

22 "a. A preliminary assessment may be entered at any  
23 time if no return is filed as required, or if a false or  
24 fraudulent return is filed with the intent to evade tax.

25 "b. A preliminary assessment may be entered within  
26 six years from the due date of the return or six years from  
27 the date the return is filed with the department, whichever is

1 later, if the taxpayer omits from the taxable base an amount  
2 properly includable therein which is in excess of 25 percent  
3 of the amount of the taxable base stated in the return.

4 "For purposes of this paragraph:

5 "1. The term "taxable base" means the gross income,  
6 gross proceeds from sales, gross receipts, ~~capital employed~~  
7 net worth, or other amounts on which the tax ~~paid with~~  
8 reported on the return is computed measured; provided, that  
9 for a corporation subject to the income tax imposed by Chapter  
10 18 of this title, the term "taxable base" means the  
11 corporation's federal gross income multiplied by its Alabama  
12 apportionment factor for the same tax year, calculated  
13 pursuant to Chapter 27 of this title; and

14 "2. In determining the amount omitted from the  
15 taxable base, there shall not be taken into account any amount  
16 which is omitted from the taxable base stated in the return if  
17 the amount is disclosed in the return, or in a statement  
18 attached to the return, in a manner adequate to apprise the  
19 department of the nature and amount of the item. With respect  
20 to a corporation subject to the income tax imposed by Chapter  
21 18 of this title, an amount omitted from the taxable base  
22 shall not include any amounts for which the taxpayer has  
23 substantial authority supporting its position. For purposes of  
24 this subparagraph, the term "substantial authority" shall be  
25 defined by reference to 26 U.S.C. § 6662, as in effect from  
26 time to time, as may be modified by department rule to conform  
27 to Alabama tax law.

1 "c. A preliminary assessment entered pursuant to  
2 Sections 40-29-72 and 40-29-73, may be entered within five  
3 years from the due date of the return on which the underlying  
4 tax is required to be reported or within five years of the  
5 date the return is filed, whichever is later.

6 "d.1. In the case of income received during the  
7 lifetime of a decedent, or by his or her estate during the  
8 period of administration, the preliminary assessment of any  
9 income tax shall be entered within 18 months after written  
10 request therefor, filed after the return is made, by the  
11 executor, administrator, or other fiduciary representing the  
12 estate of the decedent, but not after the expiration of three  
13 years from the due date of the return or three years from the  
14 date the return is filed with the department, whichever is  
15 later.

16 "2. In the case of income received by a corporation  
17 contemplating dissolution, a preliminary assessment of any  
18 income tax shall be entered within 18 months after written  
19 request, by the corporation, filed after the return is made,  
20 but not after the expiration of three years from the due date  
21 of the return or three years from the date the return is filed  
22 with the department, whichever is later. This subparagraph  
23 shall not apply to any corporation unless dissolution is  
24 completed within 18 months of the date of the written notice.

25 "e. If a taxpayer has made the election provided in  
26 subsection (d) ~~or (e)~~ of Section 40-18-8, a preliminary  
27 assessment based on the gain realized as a result of the

1 involuntary conversion ~~[in the case of subsection (d) of~~  
2 ~~Section 40-18-8]~~ or a rollover of gain on the sale of a  
3 personal residence ~~[as provided in subsection (e) of Section~~  
4 ~~40-18-8]~~ may be entered within three years from the date the  
5 taxpayer notified the department of the replacement of the  
6 property in accordance with subsection (d) or (e) of Section  
7 40-18-8, ~~as the case may be,~~ or of his or her intention not to  
8 replace the property.

9 "f. ~~If a taxpayer has validly elected to have the~~  
10 ~~provisions of subdivision (a) (7) of Section 40-18-6 and~~  
11 ~~subsection (l) of Section 40-18-8 apply to an acquisition of~~  
12 ~~stock before January 1, 1985, any liability of the taxpayer~~  
13 ~~under this title, solely from amendment of its returns to be~~  
14 ~~consistent with that election may be assessed at any time~~  
15 ~~within five years from the date on which the taxpayer filed~~  
16 ~~the amended returns with the department.~~

17 "g.1.f. Reporting federal audit changes; time  
18 limitations for assessments. When the Internal Revenue Service  
19 changes the amount of federal income tax or federal estate tax  
20 in any manner owed by the taxpayer, and the change results in  
21 an increase in additional income tax or estate tax owed under  
22 this title, ~~the department may, at any time~~ the taxpayer shall  
23 be required to file an amended return with the department  
24 within one year 180 days after the department is notified or  
25 otherwise learns date that the change ~~has become~~ becomes  
26 final, ~~enter a preliminary assessment for~~ and pay the  
27 additional tax and interest due with the amended return. For

1 purposes of this subdivision, an amended return includes an  
2 amended income or estate tax return on a form prescribed by  
3 the department, along with reasonably detailed documentation  
4 to verify the taxpayer's computation of the tax due and  
5 identification of the federal changes. The department shall  
6 prescribe a form or schedule that a taxpayer, or an affiliated  
7 group of taxpayers, may file electronically that complies with  
8 the amended return requirement of this subdivision. The  
9 department shall be allowed to ~~assess the tax within the time~~  
10 ~~period otherwise allowed by this section.~~ enter a preliminary  
11 assessment for any additional tax due as a result of this  
12 subdivision by the later of the following periods:

13 "1. Within the time period otherwise allowed by this  
14 section.

15 "2. If the taxpayer files an amended return as  
16 prescribed by and within the time specified in this  
17 subdivision, within one year following the date the amended  
18 return, as prescribed in this subdivision, was filed.

19 "3. If the taxpayer fails to file an amended return  
20 as prescribed by and within the time specified in this  
21 subdivision, within one year following the date the taxpayer  
22 actually files such amended return with the department.

23 "4. If the taxpayer failed to file an amended return  
24 as prescribed by and within the time specified in this  
25 subdivision, within one year following the date when the  
26 department is notified or otherwise learns that the federal  
27 change has become final, provided that the taxpayer has not

1 filed an amended return to report the federal changes prior to  
2 the department's receipt of such notification.

3 "Any tax assessed within the appropriate additional  
4 one year time period allowed by this subdivision shall be  
5 limited to those items changed on the federal income tax  
6 return or federal estate tax return that affect the income tax  
7 liability or the estate tax liability imposed by this title.

8 ~~"2. When a federal income tax return or federal~~  
9 ~~estate tax return is changed in any manner after it has been~~  
10 ~~filed with the Internal Revenue Service, other than by an~~  
11 ~~amended return, and the change results in an overpayment of~~  
12 ~~taxes imposed by this title, a petition for refund of the~~  
13 ~~overpayment may be filed within the later of one year after~~  
14 ~~the federal changes become final, or within the time allowed~~  
15 ~~for the filing of a petition for refund as provided in this~~  
16 ~~chapter. The refund shall be limited to those items changed on~~  
17 ~~the federal income tax return or federal estate tax return~~  
18 ~~that affect the income tax liability or estate tax liability~~  
19 ~~imposed by this title.~~

20 "~~3.5.~~ For purposes of this subdivision and  
21 subsection (c)(2)c., the date that a federal change becomes  
22 final is the date on which the taxpayer and the Internal  
23 Revenue Service formally agree to the changes, or the date ~~of~~  
24 on which any administrative or judicial order, judgment, or  
25 decree ~~from which no further appeal was or may be taken~~ can no  
26 longer be appealed due to the lapse of time.



1           "h.g. The running of the period of limitations  
2 provided herein for entering a preliminary assessment shall be  
3 suspended for the period that:

4           "1. The taxpayer or the assets of the taxpayer are  
5 involved in a case under Title 11 of the United States Code,  
6 Bankruptcy, and for a period of six months thereafter; or

7           "2. The assets of the taxpayer are in the control or  
8 custody of a court in any proceeding, and for a period of six  
9 months thereafter.

10           "i.h. The department and the taxpayer may, prior to  
11 the expiration of the period for entering a preliminary  
12 assessment or the filing of a petition for refund, agree in  
13 writing to extend the time provided for entering the  
14 assessment or filing the petition in this chapter. The tax may  
15 be assessed, or the petition for refund may be filed, at any  
16 time prior to the expiration of the period agreed upon. The  
17 period agreed upon may be extended by subsequent agreements in  
18 writing made before the expiration of the period previously  
19 agreed upon.

20           "j.i. Additional tax may be assessed by the  
21 department within any applicable period allowed above, even  
22 though a preliminary or final assessment has been previously  
23 entered by the department against the same taxpayer for the  
24 same or a portion of the same tax period. No taxpayer,  
25 however, shall be subject to unnecessary examination or  
26 investigation, and only one inspection of a taxpayer's books  
27 and records relating to each type of tax administered by the

1 department shall be made for each taxable year, unless the  
2 taxpayer requests otherwise or unless the commissioner after  
3 investigation, notifies the taxpayer in writing that an  
4 additional inspection is necessary. The commissioner shall  
5 promulgate regulations consistent with those followed by the  
6 Internal Revenue Service with respect to second inspection of  
7 a taxpayer's books and records.

8 "j. The three-year statute of limitations provided  
9 by this subdivision for entering a preliminary assessment  
10 shall be extended by 60 days for the benefit of a  
11 self-administered county or municipality, in cases where the  
12 department has audited a taxpayer and additional sales, use,  
13 rental, or lodgings tax was found to be due, and the taxpayer  
14 likewise owes tax to the self-administered county or  
15 municipality for the same tax period or periods.

16 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON  
17 TAXPAYER. The preliminary assessment entered by the  
18 department, or a copy thereof, shall be promptly mailed by the  
19 department to the taxpayer's last known address by either  
20 first class U.S. mail or certified mail with return receipt  
21 requested, but at the option of the department, the  
22 preliminary assessment may be delivered to the taxpayer by  
23 personal delivery or by U.S. mail with delivery confirmation.

24 "(4) PROCEDURE FOR REVIEW OF DISPUTED PRELIMINARY  
25 ASSESSMENTS; ENTRY AND NOTICE OF FINAL ASSESSMENT.

26 "a. If a taxpayer disagrees with a preliminary  
27 assessment as entered by the department, the taxpayer may file

1 a written petition for review with the department within ~~30~~ 60  
2 days from the date of entry of the preliminary assessment  
3 setting out the specific objections to the preliminary  
4 assessment. If a petition for review is timely filed, or if  
5 the department otherwise deems it necessary, the department  
6 shall schedule a conference with the taxpayer for the purpose  
7 of allowing the taxpayer and the department to present their  
8 respective positions, discuss any omissions or errors, and to  
9 attempt to agree upon any changes or modifications to their  
10 respective positions.

11 "b. If a written petition for review:

12 "1. Is not timely filed, or

13 "2. Is properly filed, and upon further review the  
14 department determines the preliminary assessment is due to be  
15 upheld in whole or in part, the department may make the  
16 assessment final in the amount of tax due as computed by the  
17 department, with applicable interest and penalty computed to  
18 the date of entry of the final assessment.

19 "c. If a preliminary assessment is not made final by  
20 the department within three years from the date of entry, the  
21 taxpayer may appeal the preliminary assessment to the Tax  
22 Appeals Commission or to the appropriate circuit court as  
23 provided by subsection (b) (5) for an appeal of a final  
24 assessment. Any preliminary assessment that is outstanding as  
25 of October 1, 2014, and that was entered five or more years  
26 prior to that date, is void unless the preliminary assessment  
27 is made final or the department and the taxpayer agrees in

1 writing to extend the time period for entering a final  
2 assessment prior to October 1, 2014.

3 "c.d. The final assessment entered by the  
4 department, or a copy thereof, shall promptly upon entry be  
5 mailed by the department to the taxpayer's last known address  
6 (i) by either first class U.S. mail or certified mail with  
7 return receipt requested in the case of assessments of tax of  
8 ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) or  
9 less or (ii) by certified U.S. mail with return receipt  
10 requested in the case of assessments of tax of more than ~~five~~  
11 ~~hundred dollars (\$500)~~ one thousand dollars (\$1,000). In  
12 either case and at the option of the department, the final  
13 assessment, or a copy thereof, may instead be delivered to the  
14 taxpayer by personal delivery or by U.S. mail with delivery  
15 confirmation.

16 "(5) PROCEDURE FOR APPEAL FROM FINAL ASSESSMENT.

17 "a. A taxpayer may appeal to the Tax Appeals  
18 Commission from any final assessment entered by the department  
19 by filing a notice of appeal ~~with the Administrative Law~~  
20 ~~Division~~ within ~~30~~ 60 days from the date of entry of the final  
21 assessment, and the appeal, if timely filed, shall proceed as  
22 ~~herein provided~~ in Chapter 2B for appeals to the  
23 ~~Administrative Law Division~~ Tax Appeals Commission.

24 "b.1. In lieu of the appeal under paragraph a., at  
25 the option of the taxpayer, the taxpayer may appeal from any  
26 final assessment entered by the department to the Circuit  
27 Court of Montgomery County, Alabama, or to the circuit court

1 of the county in which the taxpayer resides or has a principal  
2 place of business in Alabama, as appropriate, by filing a  
3 notice of appeal within ~~30~~ 60 days from the date of entry of  
4 the final assessment with both the secretary of the department  
5 and the clerk of the circuit court in which the appeal is  
6 filed.

7 "2. If the appeal is to circuit court, the taxpayer,  
8 also within the ~~30-day~~ 60-day period allowed for appeal, shall  
9 do one of the following:

10 "(i) Pay the tax, interest, and any penalty shown on  
11 the final assessment.

12 "(ii) File a supersedeas bond with the court ~~for in~~  
13 an amount equal to 125 percent of the amount of the tax,  
14 interest, and any penalty shown on the final assessment. The  
15 supersedeas bond shall be executed by a surety company  
16 licensed and authorized to do business in Alabama and shall be  
17 conditioned to pay the amount of tax, interest, and any  
18 penalties shown on the final assessment, plus applicable  
19 interest and any court costs relating to the appeal, payable  
20 to the department, or the self-administered county or  
21 municipality, if applicable.

22 "(iii) File an irrevocable letter of credit with the  
23 circuit court in an amount equal to 125 percent of the amount  
24 of the tax, interest, and any penalty shown on the final  
25 assessment. The irrevocable letter of credit shall be issued  
26 by a financial institution designated as a qualified public  
27 depository by the Board of Directors of the Security for

1 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter  
2 14A, Title 41. ~~The State of Alabama~~ department or the  
3 self-administered county or municipality, if applicable, shall  
4 be named the beneficiary of the irrevocable letter of credit.  
5 The irrevocable letter of credit shall be conditioned to pay  
6 the assessment plus applicable interest and any court costs  
7 relating to the appeal. The taxpayer may not issue an  
8 irrevocable letter of credit as to a final assessment entered  
9 against the same taxpayer.

10 "(iv) File a pledge or collateral assignment of  
11 securities with the circuit court that constitute eligible  
12 collateral under Chapter 14A, Title 41, in an amount equal to  
13 200 percent of the amount of the tax, interest, and penalty  
14 shown on the final assessment. The pledge or collateral  
15 assignment shall be in favor of the department or the  
16 self-administered county or municipality, if applicable, and  
17 conditioned to pay the assessment plus applicable interest and  
18 any court costs relating to the appeal.

19 "(v) Show to the satisfaction of the clerk of the  
20 circuit court to which the appeal is taken that the taxpayer  
21 has a net worth, on the basis of fair market value, of one  
22 hundred thousand dollars (\$100,000) or less, including his or  
23 her homestead.

24 "3. A taxpayer may appeal a final assessment to  
25 either the ~~Administrative Law Division~~ Tax Appeals Commission  
26 or to circuit court as provided herein, even though the  
27 taxpayer has paid the tax in issue prior to taking the appeal.

1            "c.1. The filing of the notice of appeal with the  
2 ~~Administrative Law Division~~ Tax Appeals Commission or, in the  
3 case of appeals to the circuit court, the filing of the notice  
4 of appeal with both the secretary of the department and the  
5 clerk of the circuit court in which the appeal is filed and  
6 also the payment of the assessment in full ~~and applicable~~  
7 ~~interest~~ or the filing of a supersedeas bond, an irrevocable  
8 letter of credit, or a pledge or collateral assignment of  
9 securities as provided herein, are jurisdictional. Except as  
10 set forth in subparagraph 2., if such prerequisites are not  
11 satisfied within the time provided for appeal, the appeal  
12 shall be dismissed for lack of jurisdiction.

13            "2. Notwithstanding subparagraph 1., should the  
14 circuit court determine that the taxpayer has not satisfied  
15 the requirements of subparagraph b.2., the circuit court shall  
16 order that the taxpayer satisfy such requirements. The  
17 taxpayer may satisfy such requirements at any time within 30  
18 days after service of the court order. No order of dismissal  
19 for lack of jurisdiction shall be entered within 30 days after  
20 service of the court order, and no order of dismissal shall  
21 thereafter be entered if such requirement is satisfied within  
22 such 30-day period.

23            "3. On appeal to the circuit court or to the  
24 ~~Administrative Law Division~~ Tax Appeals Commission, the final  
25 assessment shall be prima facie correct, and the burden of  
26 proof shall be on the taxpayer to prove the assessment is  
27 incorrect.

1           "1. The ~~Administrative Law Division~~ Tax Appeals  
2 Commission, circuit court, or the appellate court on appeal  
3 may increase or decrease the assessment to reflect the correct  
4 amount due.

5           "2. If a final assessment is reduced on appeal, any  
6 overpayment of tax paid by the taxpayer shall immediately be  
7 refunded to the taxpayer by the state, county, municipality,  
8 or other entity to which the overpayment was distributed.

9           "3. No court shall have the power to enjoin the  
10 collection of any taxes due on an assessment so appealed or to  
11 suspend the payment thereof.

12           "(6) 30-DAY APPEAL PERIODS FOR INDIVIDUALS WHO FAIL  
13 TO FILE AN ALABAMA INCOME TAX RETURN. Notwithstanding the  
14 60-day appeal periods for preliminary assessments and final  
15 assessments provided by subdivisions (4) and (5), in the case  
16 of an individual who is subject to Alabama income tax and who  
17 fails to file timely the return required by Chapter 18 for a  
18 particular tax year, if the department enters a preliminary  
19 assessment against the taxpayer based on information received  
20 from the Internal Revenue Service with respect to that same  
21 tax year, the taxpayer shall have only 30 days to file a  
22 petition for review pursuant to subdivision (4), and if the  
23 preliminary assessment is made final, the taxpayer shall have  
24 only 30 days to file a notice of appeal pursuant to  
25 subdivision (5).

26           "(7) 30-DAY APPEAL PERIOD FOR PUBLIC UTILITIES.  
27 Notwithstanding the 60-day appeal period for final assessments



1 provided by subdivision (5), in the case of a final assessment  
2 of value of property of public utilities under Chapter 21 of  
3 this title, the taxpayer shall have only 30 days to file a  
4 notice of appeal pursuant to subdivision (5).

5 "(c) Procedure governing petitions for refund;  
6 appeals therefrom.

7 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any  
8 taxpayer may file a petition for refund with the department  
9 for any overpayment of tax or other amount erroneously paid to  
10 the department or concerning any refund which the department  
11 is required to administer. If a final assessment for the tax  
12 has been entered by the department, a petition for refund of  
13 all or a portion of the tax may be filed only if the final  
14 assessment plus applicable interest has been paid in full  
15 prior to or with the filing of the petition for refund. The  
16 department may also issue automatic refunds pursuant to  
17 Section 40-29-71. In the case of a petition for refund of  
18 sales or use taxes pursuant to Chapter 23, public utilities  
19 taxes pursuant to Chapter 21, and any transient occupancy tax  
20 pursuant to Chapter 26, the petition shall be filed jointly by  
21 the taxpayer who collected and paid over the tax to the  
22 department and the consumer/purchaser who paid the tax to the  
23 taxpayer. A direct petition may be filed by the taxpayer if  
24 the taxpayer never collected the tax from the  
25 consumer/purchaser, or if the tax has been credited or repaid  
26 to the consumer/purchaser by the taxpayer.

1           "(2) TIME LIMITATION FOR FILING PETITION FOR REFUND;  
2       AUTOMATIC REFUND.

3           "a. Generally. A petition for refund shall be filed  
4       with the department or an automatic refund issued pursuant to  
5       Section 40-29-71, or a credit allowed, within (i) three years  
6       from the date that the return was filed, or (ii) two years  
7       from the date of payment of the tax, whichever is later, or,  
8       ~~if no return was timely filed, two years from the date of~~  
9       ~~payment of the tax~~ if an individual income tax return required  
10      by Section 40-18-27 is not timely filed for a particular year,  
11      a petition for refund of individual income tax paid by  
12      withholding or estimated payment with respect to that year  
13      shall be filed, or a credit allowed, within three years from  
14      the original due date of the return. ~~For purposes of this~~  
15      ~~paragraph, taxes paid through withholding or by estimated~~  
16      ~~payment shall be deemed paid on the original due date of the~~  
17      ~~return.~~

18          "b. Net operating loss carryback. In lieu of the  
19      periods provided in paragraph a., in the case of a net  
20      operating loss carryback, the period for filing a petition for  
21      refund, the department making an automatic refund or allowing  
22      a credit shall be the period prescribed in 26 U.S.C. ~~Section §~~  
23      6511(d) (2) for the claiming of a credit or refund.

24          "c. Federal audit changes. When a federal income tax  
25      return or federal estate tax return is changed after it has  
26      been filed with the Internal Revenue Service, other than by an  
27      amended return, and the change results in an overpayment of

1 income tax or estate tax imposed by this title, a petition for  
2 refund of the overpayment must be filed within the later of  
3 one year after the federal changes become final or the time  
4 otherwise allowed for the filing of a petition for refund as  
5 provided in this chapter. The refund shall be limited to the  
6 tax overpaid as a result of those items changed on the federal  
7 income tax return or federal estate tax return that affect the  
8 income tax liability or estate tax liability imposed by this  
9 title. For purposes of this subdivision, the date that a  
10 federal change becomes final shall be determined as provided  
11 in Section 40-2A-7(b) (2) f.5.

12 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;  
13 TIME LIMITATIONS. The department shall either grant or deny a  
14 petition for refund within six months from the date the  
15 petition is filed, unless the period is extended by written  
16 agreement of the taxpayer and the department. The taxpayer and  
17 his or her authorized representative, if applicable, shall be  
18 notified of the department's decision concerning the petition  
19 for refund by either first class United States U.S. mail, or  
20 by certified U.S. mail, return receipt requested, or by U.S.  
21 mail with delivery confirmation, sent to the taxpayer's or the  
22 authorized representative's last known address. If the  
23 department fails to grant a refund within the time provided  
24 herein, the petition for refund shall be deemed to be denied.

25 "(4) PROCEDURES IF REFUNDS GRANTED; CREDIT OF  
26 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a  
27 petition is granted in whole or in part, or the department,

1 the ~~Administrative Law Division~~ Tax Appeals Commission, or a  
2 court otherwise determines that a refund is due, the  
3 overpayment shall be refunded to the taxpayer by the state,  
4 county, municipality, or other entity to which the overpayment  
5 was distributed. If the department determines that a refund is  
6 due, the amount of the overpayment plus accrued interest may  
7 first be credited by the department against any outstanding  
8 ~~final tax liabilities due and owing by the taxpayer to the~~  
9 ~~department~~ tax due as reported by a taxpayer on a return, any  
10 outstanding tax liability resulting from a final assessment  
11 from which an appeal can no longer be taken, or any  
12 outstanding tax liability that has been affirmed on appeal by  
13 the Tax Appeals Commission or by a circuit or appellate court  
14 in Alabama and from which no further appeal can be taken, and  
15 the balance of any overpayment shall, subject to the setoff  
16 provisions of Article 3 of Chapter 18, be refunded to the  
17 taxpayer. If any refund or part thereof is credited to any  
18 other tax by the department, the department shall provide a  
19 written detailed statement to the taxpayer showing the amount  
20 of overpayment, the amount credited for payment to other  
21 taxes, and the amount refunded.

22 "(5) PROCEDURES IF REFUND DENIED; APPEAL.

23 "a. A taxpayer may appeal from the denial in whole  
24 or in part of a petition for refund by filing a notice of  
25 appeal with the ~~Administrative Law Division~~ Tax Appeals  
26 Commission within two years from the date the petition is  
27 ~~denied, and the appeal, if .~~ If timely filed, the appeal shall

1 proceed as ~~hereinafter~~ provided in Chapter 2B for appeals to  
2 the ~~Administrative Law Division~~ Tax Appeals Commission.

3 "b. In lieu of appealing to the ~~Administrative Law~~  
4 ~~Division~~ Tax Appeals Commission, the taxpayer may appeal from  
5 the denial, in whole or in part, of a petition for refund by  
6 filing a notice of appeal with the Circuit Court in Montgomery  
7 County, Alabama, or the circuit court of the county in which  
8 the taxpayer resides or has a principal place of business in  
9 Alabama, as appropriate, by filing the notice of appeal within  
10 two years from the date the petition is denied. The circuit  
11 court shall hear the appeal according to its own rules and  
12 procedures and shall determine the correct amount of refund  
13 due, if any.

14 "c. If an appeal is not filed with the  
15 ~~Administrative Law Division~~ Tax Appeals Commission or the  
16 appropriate circuit court within two years of the date the  
17 petition is denied, ~~then~~ the appeal shall be dismissed for  
18 lack of jurisdiction.

19 "(d) The Department of Revenue shall revise existing  
20 regulations or administrative guidance, or issue new  
21 regulations or administrative guidance, as appropriate, in  
22 conformance with this section.

23 "(e) ~~This~~ The amendments made to this section by Act  
24 2007-504 shall apply to all appeals filed after June 15, 2007.  
25 Notwithstanding the prior sentence, in any appeal to a circuit  
26 court which ~~is~~ was pending on June 15, 2007, and in which a  
27 supersedeas bond was filed pursuant to, and in compliance

1 with, the requirements of this section, for double the amount  
2 of the tax, interest, and any penalty shown on the final  
3 assessment, or for double the amount of the final order of the  
4 administrative law judge, such bond may be reduced to 125  
5 percent of such amount shown on the final assessment or in the  
6 final order of the administrative law judge.

7 "§40-2A-8.

8 "(a) The department shall notify a taxpayer in  
9 writing of any act or proposed act or refusal to act  
10 concerning the denial or revocation of a license, permit, or  
11 certificate of title concerning which the taxpayer has any  
12 interest. The notice must be mailed by either first-class U.S.  
13 mail or certified U.S. mail or U.S. mail with delivery  
14 confirmation to the taxpayer's last known address, or to the  
15 last known address of the taxpayer's authorized  
16 representative, if applicable. Any taxpayer aggrieved by any  
17 act or proposed act or refusal to act concerning the denial or  
18 revocation of a license, permit, or certificate of title by  
19 the department shall be entitled to file a notice of appeal  
20 from such act or proposed act or refusal to act with the  
21 ~~Administrative Law Division~~ Tax Appeals Commission. Such  
22 notice of appeal must be filed within ~~30~~ 60 days of the date  
23 notice of such act or refusal to act is mailed to the  
24 taxpayer, and such appeal, if timely filed, shall proceed as  
25 herein provided for appeals to the ~~Administrative Law Division~~  
26 Tax Appeals Commission. Any taxpayer aggrieved by any act,  
27 proposed act, or refusal to act by the department, who is not

1 issued written notice by the department of his or her right to  
2 appeal, shall have 60 days from actual notice of such act,  
3 proposed act, or refusal to act in which to appeal to the Tax  
4 Appeals Commission. The burden shall be on the taxpayer in  
5 such cases to prove that the appeal was filed within 60 days  
6 of actual notice. If any matter is timely appealed to the Tax  
7 Appeals Commission pursuant to this section, the commission,  
8 in its discretion, may remand or refer the matter to the  
9 department or the department's Taxpayer Advocate for review  
10 before proceeding with the appeal.

11 "(b) A taxpayer may elect to file a notice of appeal  
12 with the Tax Appeals Commission regarding a notice of proposed  
13 adjustment issued by the department affecting the taxpayer's  
14 net operating loss deductions or carryovers for purposes of  
15 the taxes imposed by Chapters 16 and 18 of this title. Such  
16 notice of appeal shall be filed within the time period  
17 prescribed in subsection (a), and the Tax Appeals Commission  
18 shall have jurisdiction to determine the amount of the  
19 taxpayer's net operating loss deductions or carryovers for the  
20 tax periods in question.

21 ~~"(b)(c)~~ The department may proceed with the intended  
22 action if no appeal is filed by the taxpayer with the  
23 ~~Administrative Law Division~~ Tax Appeals Commission within 30  
24 days of the mailing of the notice by the department to the  
25 taxpayer the time allowed under subsection (a). If a  
26 designated agent has failed to provide the department with a  
27 bond and any qualifying license as provided in Section

1 32-8-34, the revocation of designated agent status by the  
2 department shall be effective immediately upon electronic  
3 notice through the system the designated agent uses to process  
4 applications for certificates of title or receipt of written  
5 notice of revocation, whether by U.S. mail or hand delivery.  
6 Otherwise, the revocation of a designated agent status shall  
7 be effective after the time for appeal under this section has  
8 expired. If a new or used motor vehicle dealer, motor vehicle  
9 wholesaler, motor vehicle reconditioner, or motor vehicle  
10 rebuilder licensee has failed to provide the department with  
11 or maintain the required bond or insurance, the revocation of  
12 the regulatory license shall be effective immediately upon  
13 electronic notice through the system the licensee uses to  
14 apply for or renew the regulatory license or upon written  
15 notice of revocation, whether by U.S. mail or hand delivery.  
16 Otherwise, the revocation of the regulatory license shall be  
17 effective after the time for appeal under this section has  
18 expired. The revocation of any motor vehicle certificate of  
19 title or license by the department shall not be final until  
20 either the titled owner and lien holder, if any, consent to  
21 the revocation or the time for filing an appeal to the Tax  
22 Appeals Commission has expired. The department may obtain an  
23 injunction in the appropriate circuit court at any time  
24 enjoining a licensee or designated agent from continuing to  
25 operate under a disputed license or designated agent  
26 authority, if the continued operation may cause substantial  
27 loss of revenue, would cause substantial harm to the state or



1 public, or for such other good reason as determined by the  
2 circuit court. The department may suspend the designated  
3 agent's access to process new applications for certificate of  
4 title until such time as any outstanding title applications  
5 not properly filed by the designated agent are properly filed  
6 with the department.

7           "~~(c)~~(d) This section shall not apply to the  
8 procedures governing assessments and refunds which are  
9 otherwise provided for by this chapter, or to  
10 intradepartmental personnel actions or any matter which is the  
11 subject of any action then pending in state or federal court,  
12 or to the collection of any liability due the department.

13           "~~(d)~~(e) A taxpayer may appeal any matter governed by  
14 this section to the circuit court only after exhausting his  
15 appeal rights provided under this section. Any appeal to the  
16 circuit court must be from a final or other appealable order  
17 issued by the ~~administrative law judge~~ Tax Appeals Commission.

18           "§40-2A-11.

19           "(a) Failure to timely file ~~return~~ certain returns.  
20 Except in the case of an individual income tax return filed  
21 with no tax or refund due at the time of filing, or as  
22 otherwise provided below, if a taxpayer fails to file any  
23 return required to be filed with the department on or before  
24 the date prescribed therefor, determined with regard to any  
25 extension of time for filing, there shall be assessed as a  
26 penalty the greater of an amount equal to 10 percent of any  
27 ~~additional~~ the correct amount of tax required to be paid with

1 the return or fifty dollars (\$50). If the taxpayer is not  
2 required to pay any additional tax due with the return, the  
3 penalty imposed by this subsection shall not be assessed  
4 unless the department has first provided 30 days' written  
5 notice to the taxpayer, at the last known address of the  
6 taxpayer, that the return has not been filed and the taxpayer  
7 fails or refuses to file the delinquent return within that  
8 time period; provided, however, that the penalty may be  
9 assessed if the taxpayer has been given written notice of a  
10 delinquent return for the same type of tax within the 12  
11 months preceding the due date of the second delinquent return.

12 "(b) Failure to timely pay tax.

13 "(1) If a taxpayer fails to pay to the department  
14 the amount of tax shown as due on a return required to be  
15 filed on or before the date prescribed for payment of the tax,  
16 determined with regard to any extension of time for payment,  
17 there shall be added as a penalty one percent of the net  
18 amount of the tax due if the failure to pay is for not more  
19 than one month, with an additional one percent for each  
20 additional month or fraction thereof during which failure to  
21 pay continues, not exceeding 25 percent in the aggregate. In  
22 lieu of the penalty provided in the immediately preceding  
23 sentence, for any tax for which a monthly or quarterly return  
24 is required, or for which no return is required, the  
25 department shall add a failure to timely pay penalty of 10  
26 percent of the unpaid amount shown as tax due on the return or  
27 the amount stated in the notice and demand.

1           "(2) If a taxpayer fails to pay to the department  
2 any amount in respect of any tax required to be shown on any  
3 return, which is not so shown, within 30 calendar days from  
4 the date of the first written notice and demand therefore,  
5 there shall be added as a penalty one percent of the net  
6 amount of the tax due if the failure to pay is for not more  
7 than one month, with an additional one percent for each  
8 additional month or fraction thereof during which failure to  
9 pay continues, not exceeding 25 percent in the aggregate. In  
10 lieu of the penalty provided in the immediately preceding  
11 sentence, for any tax for which a monthly or quarterly return  
12 is required, or for which no return is required, the  
13 department shall add a failure to timely pay penalty of 10  
14 percent of the unpaid amount stated in the notice and demand  
15 unless payment is received within 30 calendar days from the  
16 date of the first written notice and demand.

17           "(3) This subsection shall not apply to any failure  
18 to pay any estimated tax required to be paid by Sections  
19 40-18-80 and 40-18-80.1.

20           "(c) Underpayment due to negligence. If any part of  
21 any underpayment of tax is due to negligence or disregard of  
22 rules or regulations, there shall be added to the tax an  
23 amount equal to ~~five~~ 20 percent of that part of the tax  
24 attributable to negligence or disregard of rules or  
25 regulations.

26           "For purposes of this subsection, the term  
27 "negligence" includes any failure to make a reasonable attempt

1 to comply with ~~Title 40~~ this title or other statutes  
2 administered by the department, and the term "disregard"  
3 includes any careless, reckless, or intentional disregard of  
4 valid rules and regulations.

5 "(d) Underpayment due to fraud. If any part of any  
6 underpayment of tax required to be shown on a return is due to  
7 fraud, there shall be added to the tax an amount equal to ~~50~~  
8 75 percent of that portion of the underpayment which is  
9 attributable to fraud.

10 "For purposes of this section, the term "fraud"  
11 shall have the same meaning as ascribed to the term under 26  
12 U.S.C. ~~Section § 6663,~~ as in effect from time to time, except  
13 that the reference therein to the secretary shall instead mean  
14 the commissioner.

15 "(e) Frivolous return penalty. If a taxpayer files a  
16 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~  
17 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~  
18 ~~hundred fifty dollars (\$250)~~ five hundred dollars (\$500).

19 "(f) Frivolous appeal penalty. If any appeal to the  
20 ~~administrative law division~~ Tax Appeals Commission or circuit  
21 court is determined to be frivolous or primarily for the  
22 purpose of delay or to impede collection of any tax, a penalty  
23 of ~~two hundred fifty dollars (\$250)~~ five hundred dollars  
24 (\$500) or, at the discretion of the Tax Appeals Commission or  
25 circuit judge, up to 25 percent of the tax in question,  
26 whichever is greater, shall be assessed in addition to any tax  
27 due.

1           "(g) Failure to file partnership or Alabama S  
2           corporation returns. If a pass-through entity, as defined in  
3           Section 40-18-24.2, or an Alabama S corporation, as defined in  
4           Section 40-18-160(b)(1), fails to file the applicable  
5           information return required by Section 40-18-28 or 40-18-39  
6           for any taxable year within the time prescribed therefor, the  
7           pass-through entity or corporation shall be liable for a  
8           penalty equal to the product of fifty dollars (\$50) multiplied  
9           by the number of members of the pass-through entity or  
10           shareholders of the Alabama S corporation, whichever is  
11           applicable, for each month, or fraction thereof, during which  
12           such failure continues, but not to exceed 12 months. In no  
13           case, however, shall the penalty exceed one thousand dollars  
14           (\$1,000) per return.

15           "(h) Failure to pay by electronic funds transfer. If  
16           a taxpayer fails to timely pay a tax by means of electronic  
17           funds transfer as required by Section 41-1-20, there may be  
18           assessed a penalty equal to the greater of one hundred dollars  
19           (\$100) or five percent of the required payment.

20           "(g)(i) Penalties not exclusive. The penalties  
21           provided in this section for failure to timely file a return,  
22           failure to timely pay tax, filing a frivolous return, filing a  
23           frivolous appeal, or underpayment of tax due to negligence may  
24           be asserted against the same taxpayer for the same tax period.  
25           If the fraud penalty is asserted, however, no other penalties  
26           shall be asserted.

1           "~~(h)~~(j) Waiver of penalties. Notwithstanding the  
2           foregoing, any penalty under this title or Section ~~10-2B-15.02~~  
3           10A-2-15.02 shall be waived upon a determination of reasonable  
4           cause. Reasonable cause shall include, but not be limited to,  
5           those instances in which the taxpayer has acted in good faith.  
6           The burden of proving reasonable cause shall be on the  
7           taxpayer.

8           "~~(i)~~(k) Discount sustained for ~~just causes~~  
9           reasonable cause. All other provisions of tax laws  
10          notwithstanding, either the ~~Commissioner of the Department of~~  
11          ~~Revenue~~ commissioner or the Taxpayer Advocate of the  
12          department, upon review of the circumstances involved, may  
13          authorize the continuance or reinstatement of a  
14          ~~statute-allowable~~ an otherwise allowable discount for timely  
15          payment or filing when timely payment is made, ~~but~~ or filing  
16          is delayed for ~~just causes~~ reasonable cause.

17          "~~(j)~~(l) Penalty and interest assessed as tax. All  
18          penalties and interest administered by the department shall be  
19          assessed and collected in the same manner as taxes.

20          "~~(k)~~(m) Penalty not to apply to registration and  
21          titling of motor vehicles. The penalties provided herein shall  
22          not apply to the registration or titling of motor vehicles.

23          "§40-18-27.

24          "(a) Effective for tax years beginning after  
25          December 31, 1997, every taxpayer having an adjusted gross  
26          income for the taxable year of more than one thousand eight  
27          hundred seventy-five dollars (\$1,875) if single or if married

1 and not living with spouse, and of more than three thousand  
2 seven hundred fifty dollars (\$3,750) if married and living  
3 with spouse, shall each year file with the Department of  
4 Revenue a return stating specifically the items of gross  
5 income, the deductions and credits allowed by this chapter,  
6 the place of residence, and post office address. If a husband  
7 and wife living together have an adjusted gross income of more  
8 than three thousand seven hundred fifty dollars (\$3,750), each  
9 shall file a return unless the income of each is included in a  
10 single joint return. If the taxpayer is unable to file a  
11 return, the return shall be filed by a duly authorized agent,  
12 a guardian, or other person charged with the care of the  
13 person or property of the taxpayer.

14 "(b) A taxpayer other than a resident shall not be  
15 entitled to the deductions authorized by Sections 40-18-15 and  
16 40-18-15.2 unless the taxpayer files a complete return showing  
17 the gross income of the taxpayer both from within and outside  
18 the state. Included on every income tax return shall be the  
19 name, address, and Social Security number or Preparer Taxpayer  
20 Identification Number of the person who prepared the return.  
21 The taxpayer shall be held liable for any statement made by an  
22 agent of the taxpayer with reference to any information  
23 required by law to be furnished in connection with that tax  
24 return.

25 "(c) Returns filed on the basis of the calendar year  
26 shall be filed on or before April 15 following the close of  
27 the calendar year. Returns filed on the basis of a fiscal year

1 shall be filed on or before the fifteenth day of the fourth  
2 month following the close of the fiscal year. The department  
3 may grant a reasonable extension of time for filing returns,  
4 under rules and regulations as it shall prescribe. Except in  
5 the case of taxpayers who are abroad, no extension shall be  
6 for more than six months. If the taxpayer has requested an  
7 extension of time for the filing of a return, the period  
8 during which the return will be considered timely filed shall  
9 not expire until 10 days after the Department of Revenue mails  
10 to the taxpayer a rejection of the request for an extension of  
11 time for filing the return. The return must be signed or  
12 otherwise validated by both the taxpayer(s) and, if  
13 applicable, the tax return preparer under rules or regulations  
14 of the Department of Revenue and must contain a printed  
15 declaration that the return is filed under the penalties of  
16 perjury.

17 "(d) Every individual who willfully files and signs  
18 or otherwise validates under rules or regulations of the  
19 Department of Revenue a return which the individual does not  
20 believe to be true and correct as to every material particular  
21 shall be guilty of perjury and, upon conviction thereof, shall  
22 be imprisoned in the penitentiary for not less than one, nor  
23 more than five years.

24 "(e) In the event a husband and wife file a joint  
25 return, the husband and wife shall be jointly and severally  
26 liable for the income tax shown on the return or as may be  
27 determined by the Department of Revenue to be due by them to



1 the State of Alabama. Notwithstanding the foregoing, a husband  
2 or wife shall be relieved of certain liabilities to the same  
3 extent and in the same manner as allowed by the Internal  
4 Revenue Code for federal income tax purposes, including Title  
5 26 U.S.C. §§ 6015(b), 6015(c), and 6015(f), as amended from  
6 time to time."

7 Section 5. All laws or parts of laws which conflict  
8 with this act are repealed; and Section 40-2A-9, Code of  
9 Alabama 1975, is specifically repealed.

10 Section 6. The provisions of this act are severable.  
11 If any part of this act is declared invalid or  
12 unconstitutional, that declaration shall not affect the part  
13 which remains.

14 Section 7. It is the intent of the Legislature that  
15 the existence, authority, and powers of the Administrative Law  
16 Division of the Department of Revenue shall remain in full  
17 force and effect until the Tax Appeals Commission created  
18 herein becomes fully operational on October 1, 2014, and that  
19 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8  
20 shall continue to be filed with and handled by the  
21 Administrative Law Division until that date. To that end, the  
22 repeal of Section 40-2A-9, and those portions of other  
23 sections of Titles 11 and 40 relating to the powers,  
24 authority, and duties of the Administrative Law Division and  
25 the administrative law judge, and the right of a taxpayer to  
26 appeal to the Administrative Law Division, shall not become  
27 effective until October 1, 2014. Notwithstanding the

1       foregoing, the Tax Appeals Commission shall not have  
2       jurisdiction over any appeals regarding taxes levied by or on  
3       behalf of a self-administered county or municipality until  
4       October 1, 2015. The amendments made by this act to Section  
5       40-2A-7(b)(2)f., Code of Alabama 1975, relating to amended  
6       returns due to federal audit changes, Section 40-2A-7(b)(2)b.,  
7       Code of Alabama 1975, relating to the six-year statute of  
8       limitations for corporate income tax purposes, and Section  
9       40-2A-11, Code of Alabama 1975, relating to civil penalties,  
10      shall only apply to tax periods beginning on or after January  
11      1, 2014.

12                 Section 8. This act shall become effective upon its  
13      passage and approval by the Governor, or its otherwise  
14      becoming law.