

1 SB223
2 146853-4
3 By Senators Taylor, Glover, Ward, Scofield, Irons, Waggoner,
4 Reed, Williams, McGill, Fielding, Bedford, Beasley, Allen,
5 Keahey, Bussman, Blackwell, Holtzclaw and Marsh
6 RFD: Fiscal Responsibility and Accountability
7 First Read: 19-FEB-13

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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. This bill would establish a new

1 procedure for seeking an expedited revenue ruling
2 from the department.

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

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

23 This bill would also amend portions of
24 Chapters 2A and 18 of Title 40, Code of Alabama
25 1975, for purposes of conformity and to make
26 technical corrections.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
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5 To add Chapter 2B to Title 40 of the Code of Alabama
6 1975, to provide for the creation and operation of the Alabama
7 Tax Appeals Commission; to state that the intent of this act
8 is to adopt in large part the American Bar Association Model
9 State Administrative Tax Tribunal Act; to hear appeals of tax
10 and other matters administered by the Department of Revenue
11 and certain taxes levied by or on behalf of self-administered
12 counties or municipalities that do not opt out; to provide the
13 necessary funding for the first year of operations of the Tax
14 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,
15 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of
16 Alabama 1975, for purposes of conformity to the federal
17 Taxpayer Bill of Rights, including broader innocent spouse
18 type relief and increased penalties for negligence, fraud, and
19 frivolous appeals or returns; to make technical corrections;
20 to require amended state income tax returns as a result of IRS
21 audit changes; to increase the amount of time a taxpayer has
22 to file an appeal of a preliminary or final assessment; and to
23 abolish the Administrative Law Division of the Department of
24 Revenue, including repealing Section 40-2A-9, Code of Alabama
25 1975.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. In order to increase public confidence in
2 the fairness of Alabama's tax system, the state shall provide
3 an independent agency, with tax expertise, to resolve disputes
4 between the Department of Revenue, or certain
5 self-administered counties and municipalities, and taxpayers
6 prior to requiring the payment of the amounts in issue or the
7 posting of a bond, but after the taxpayer has had a full
8 opportunity to attempt settlement with the Department of
9 Revenue or with a self-administered county or municipality
10 that has not elected out based, among other issues, on the
11 hazards of litigation. By establishing an independent tax
12 tribunal within the executive branch of government, this act
13 shall provide taxpayers with a means of resolving
14 controversies that ensures both the appearance and the reality
15 of due process and fundamental fairness. To that end, Chapter
16 2B of Title 40 of the Code of Alabama 1975, by this act shall
17 be known and may be cited as the Alabama Tax Appeals
18 Commission Act.

19 It is the intent of the Legislature to adopt in
20 large part the American Bar Association Model State
21 Administrative Tax Tribunal Act.

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

1 of Revenue or, in certain cases, a self-administered county or
2 municipality.

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

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

15 CHAPTER 2B

16 CREATION AND OPERATION OF THE ALABAMA TAX APPEALS
17 COMMISSION.

18 §40-2B-1. Alabama Tax Appeals Commission.

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

23 (b) The Tax Appeals Commission shall become fully
24 operational on October 1, 2013. The Tax Appeals Commission, in
25 cases within its jurisdiction:

26 (1) Is a commission of limited and special
27 jurisdiction.

1 (2) Possesses the same powers and may exercise all
2 ordinary and extraordinary legal and equitable remedies
3 available in the circuit courts with respect to tax cases, as
4 prescribed herein, including the interpretation and
5 application of constitutional principles and such additional
6 remedies as may be assigned to it by the Legislature, but may
7 not declare a statute or ordinance in violation of either a
8 federal or state constitutional provision.

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

15 §40-2B-2. Definitions.

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

20 (1) The term "Department of Revenue" means the
21 Alabama Department of Revenue and does not include the
22 governing body of any self-administered county or
23 municipality.

24 (2) The term "U.S. mail with delivery confirmation"
25 means a delivery service available through the U.S. Postal
26 Service that provides the sender with the date, Zip Code, and

1 time the article was delivered or the time delivery was
2 attempted.

3 (b) For purposes of this chapter, if a
4 self-administered county or municipality has not elected out
5 of this chapter pursuant to Section 40-2B-25, the following
6 terms shall have the following meanings:

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

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

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

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

21 §40-2B-3. Jurisdiction and initial organization of
22 the Tax Appeals Commission.

23 (a) The Tax Appeals Commission shall have
24 jurisdiction to hear and determine all appeals pending before
25 the Department of Revenue's Administrative Law Division on
26 September 30, 2013, and all subsequent appeals filed with the
27 Tax Appeals Commission pursuant to Chapters 2A and 29 of this

1 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to
2 motor vehicles, or Section 40-2B-25, relating to
3 self-administered counties and municipalities, except as
4 follows:

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

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

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

26 (b) To provide for a proper transition from the
27 Administrative Law Division to the Tax Appeals Commission, the

1 Department of Revenue, on or before October 1, 2013, shall
2 transfer to the Tax Appeals Commission office furniture,
3 equipment, computers, and other tangible personal property
4 used by the Administrative Law Division, as well as all case
5 files, docket books, and all other documents and information,
6 in both tangible and intangible form, compiled, used, or
7 maintained by the Administrative Law Division. Further, any
8 appeals that are timely filed with the Administrative Law
9 Division after September 30, 2013, shall be deemed timely
10 filed with and transferred to the Tax Appeals Commission. The
11 Chief Administrative Law Judge of the Administrative Law
12 Division shall have and is hereby granted the power and
13 authority necessary to effect an orderly transition,
14 including, but not limited to, the power and authority to
15 execute binding contracts and commitments on behalf of the Tax
16 Appeals Commission with respect to employees, office space,
17 equipment, and other property, consistent with Sections
18 40-2B-16 and 40-2B-20.

19 §40-2B-4. Service of papers and process.

20 Except concerning notices to the Department of
21 Revenue from the Tax Appeals Commission, or as otherwise
22 provided in this chapter, the Tax Appeals Commission shall
23 mail any final order in which a judgment is entered or
24 affirmed or any notice of hearing by either U.S. mail with
25 delivery confirmation or certified U.S. mail, return receipt
26 requested, to the taxpayer's last known address or, if the
27 taxpayer has an authorized representative, to the authorized

1 representative's last known address. All other orders or
2 documents may, at the Tax Appeals Commission's discretion, be
3 mailed by first class U.S. mail.

4 §40-2B-5. Timely mailed document considered to be
5 timely filed.

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

9 (1) Timely mailed or delivered in accordance with
10 Section 40-1-45 and Department of Revenue regulations
11 pertinent thereto;

12 (2) Received by the Tax Appeals Commission on or
13 before the date due; or

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

20 §40-2B-6. Issuance of subpoenas; administration of
21 oaths.

22 (a) A judge of the Tax Appeals Commission shall have
23 the authority and the discretion to issue subpoenas, on his or
24 her own motion or at the request of a party, requiring any
25 person whose testimony may be relevant to an appeal to appear
26 and give testimony, at either a deposition or a hearing before
27 the judge. If a person is subpoenaed to testify at a

1 deposition or a hearing at the request of a party, that party
2 shall bear the cost of transcription of the deposition and the
3 fees and mileage provided in Section 40-2A-7(a)(4). The judge
4 shall also have discretion to issue subpoenas duces tecum
5 requiring the production of any document or other evidence
6 relevant to the appeal. Such subpoenas or subpoenas duces
7 tecum shall be issued in the name of the Tax Appeals
8 Commission, signed by a judge of the Tax Appeals Commission,
9 and may be served either in the same manner as subpoenas
10 issued by a circuit court or either by U.S. mail with delivery
11 confirmation or certified U.S. mail, return receipt requested.
12 If any person has been subpoenaed to appear and testify or
13 appear and produce documents or other information and fails or
14 refuses to appear or testify or to produce such documents or
15 other information, such person shall be subject to contempt
16 proceedings, if instituted by a petition for contempt issued
17 by a judge of the Tax Appeals Commission, in the circuit court
18 of the judicial circuit in which such person resides and, upon
19 proof of such fact to the circuit court, may be punished for
20 contempt as is provided in cases of contempt in circuit court.
21 Such proof of contempt may be evidenced by an affidavit of a
22 judge of the Tax Appeals Commission. Likewise, such circuit
23 court shall have jurisdiction to hear and, if appropriate, to
24 grant a motion to quash such subpoena.

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

1 §40-2B-7. Hearings to be without a jury and de novo.

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

4 §40-2B-8. Notice to taxpayer of right to appeal to
5 Tax Appeals Commission.

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

15 §40-2B-9. Procedures concerning appeals.

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

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

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

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

24 (d) (1) Except as provided in subdivision (2), the
25 Tax Appeals Commission shall notify the legal division of the
26 Department of Revenue in writing that an appeal has been filed
27 and shall mail a copy of such notification to the taxpayer or

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

16 (2) If the appeal involves a tax levied by or on
17 behalf of a self-administered county or municipality, the Tax
18 Appeals Commission shall promptly mail a copy of the notice of
19 appeal by either U.S. mail with delivery confirmation or
20 certified U.S. mail to the governing body of the affected
21 county or municipality and shall provide the taxpayer or its
22 authorized representative with written notification of the
23 date the copy was mailed to the governing body. The affected
24 county or municipality shall file a written answer with the
25 Tax Appeals Commission within 60 days of the date of mailing
26 the notice of appeal to the affected county or municipality.
27 The judge may allow the county or municipality additional

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

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

1 instead promptly mail a copy of the notice of the hearing to
2 the governing body of the affected county or municipality by
3 either U.S. mail with delivery confirmation or certified U.S.
4 mail. The judge shall conduct the hearing substantially as
5 follows:

6 (1) Open the record and receive appearances.

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

11 (3) Interrogate witnesses if deemed necessary.

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

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

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

1 of a refund due or for any party to take such action as
2 specified in the preliminary order.

3 (g) A final order shall be entered by the judge
4 which, if deemed appropriate by the judge, shall contain
5 findings of fact and conclusions of law. The final order shall
6 provide appropriate relief under the circumstances and, unless
7 altered or amended on appeal or rehearing, shall have the same
8 force and effect as a final order issued by a circuit court in
9 Alabama.

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

23 (i) Any party may apply for rehearing from any final
24 order or opinion and preliminary order, provided however, the
25 application must be filed within 15 days from the date of
26 entry of such order. The application for rehearing shall
27 specify the reasons and supporting arguments why such order is

1 incorrect and should be reconsidered. The timely filing of an
2 application for rehearing from a final order shall suspend the
3 time period for filing an appeal to circuit court. If an
4 application for rehearing is timely filed, the judge shall
5 thereafter issue a final or other order on rehearing, either
6 with or without a hearing on the application, at the
7 discretion of the judge. The time for filing a notice of
8 appeal to circuit court shall begin anew on the date of entry
9 of the final order on rehearing.

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

21 (k) The rules of evidence applicable in civil
22 nonjury cases in the circuit courts of Alabama shall be
23 followed by the Tax Appeals Commission. However evidence not
24 admissible thereunder may be admitted in the discretion of the
25 judge, if relevant, not unfairly prejudicial to any party, and
26 necessary for the fair adjudication of the case. The judge may
27 announce before or during a hearing that it shall not be

1 necessary for either party to object to any testimony or
2 evidence offered by a party, and any objections shall be
3 preserved and may be made on appeal. The final order issued by
4 the judge shall be based only on such evidence as is relevant
5 and material. Documentary evidence may be received in copy
6 form if there is no objection thereto or in the discretion of
7 the judge. Official notice may be taken of any technical facts
8 within the specialized knowledge of the judge.

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

17 (m) Upon timely application, a taxpayer, herein
18 referred to as the "applicant," subject to the tax at issue in
19 an action before the Tax Appeals Commission, shall be
20 permitted to intervene, unless the applicant's interest is
21 adequately represented by the existing parties, (1) when the
22 applicant claims an interest relating to the property or
23 transaction that is the subject of the action and the taxpayer
24 is so situated that the disposition of the action may, as a
25 practical matter, impair or impede the taxpayer's ability to
26 protect that interest, or (2) when the judge determines that a
27 taxpayer's claim or defense and the main action have a

1 question of law or facts in common. An applicant who has been
2 permitted to intervene by the judge may also appeal to circuit
3 court from a final or other appealable order, as provided
4 herein for appeals. Parties interested in the outcome of any
5 case before the Tax Appeals Commission, with the permission of
6 the judge, may submit amicus briefs pursuant to Rule 29 of the
7 Alabama Rules of Appellate Procedure.

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

13 (1) Information received from the Internal Revenue
14 Service that is restricted by law or agreement from
15 disclosure.

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

19 (3) As otherwise ordered by the judge.

20 §40-2B-10. Burden of proof in Tax Appeals Commission
21 proceedings.

22 On appeal to the Tax Appeals Commission, a final
23 assessment shall be prima facie correct, and the burden of
24 proof shall be on the taxpayer to prove that the assessment is
25 incorrect. In cases involving denied refunds, the burden shall
26 be on the taxpayer to prove that a refund is due. The judge

1 shall have discretion to determine the party to proceed first
2 with the evidence in the case.

3 §40-2B-11. Hearings to be open to public; report of
4 proceedings; exception; confidential information.

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

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

25 (c) An order closing a hearing or granting a
26 protective order or an order denying same shall be considered
27 a final order for purposes of appeal to circuit court. A party

1 may appeal such an order to circuit court in the same manner
2 and subject to the same requirements as appeals from final
3 orders of the Tax Appeals Commission, except that if the case
4 involves a disputed final assessment, the final assessment
5 need not be paid, nor a supersedeas bond or other security
6 filed, in connection with the appeal. The Tax Appeals
7 Commission may stay the case on the merits until the issue is
8 finally resolved on appeal.

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

15 §40-2B-13. Appeals to circuit court; reviewing
16 authority and action on appeal.

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

22 (b) The taxpayer, an intervenor pursuant to Section
23 40-2B-9(m), a self-administered county or municipality whose
24 tax is within the jurisdiction of the Tax Appeals Commission,
25 or the Department of Revenue may appeal to circuit court from
26 a final or other appealable order issued by the Tax Appeals
27 Commission by filing a notice of appeal with the appropriate

1 circuit court within 60 days from the date the final or other
2 appealable order was entered. A copy of the notice of appeal
3 shall be submitted to the Tax Appeals Commission within the
4 60-day appeal period. The Tax Appeals Commission shall
5 thereafter prepare a record on appeal. The appeal shall be
6 filed in the following circuit courts:

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

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

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

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

1 (1) Remit the amount of the final assessment
2 determined to be due by the final order to the Department of
3 Revenue, or to the self-administered county or municipality,
4 if applicable.

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

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

1 (4) File a pledge or collateral assignment of
2 securities with the circuit court that constitute eligible
3 collateral under Chapter 14A of Title 41 in an amount equal to
4 200 percent of the amount determined to be due by the final
5 order. The pledge or collateral assignment shall be in favor
6 of the Department of Revenue, or the self-administered county
7 or municipality, if applicable, and conditioned to pay the
8 amount determined to be due by the final order, plus
9 applicable interest and any court costs relating to the
10 appeal.

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

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

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

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

26 (2) If the circuit court determines that the
27 taxpayer has not satisfied the requirements of subsection (b)

1 or (c), the circuit court shall order that the taxpayer
2 satisfy such requirements. The taxpayer may satisfy such
3 requirements at any time within 30 days after service of the
4 court order. No order of dismissal for lack of jurisdiction
5 shall be entered within 30 days after service of the court
6 order and no order of dismissal shall thereafter be entered if
7 such requirement is satisfied within such 30-day period.

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

24 §40-2B-14.

25 Publication of Tax Appeals Commission decisions.

26 Subject to Section 40-2B-9, the decisions determined
27 to be of general public interest may be published and

1 distributed by the Tax Appeals Commission as prescribed by the
2 chief judge. A decision may not be published until either the
3 time period for appealing the decision has expired or the Tax
4 Appeals Commission has received a copy of the notice of appeal
5 pursuant to Section 40-2B-13(b), in which case the fact that
6 the decision has been appealed shall be noted on the first
7 page of the published decision. A reasonable fee may be
8 charged for the publication, as established from time to time
9 by the chief judge.

10 §40-2B-15. Appointment and term of judges; maximum
11 number; vacancy.

12 (a) The term of a judge of the Tax Appeals
13 Commission shall be six years, except as herein provided. The
14 term of the first chief judge shall begin on October 1, 2013.

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

1 (c) The nominating committee shall be organized
2 within six months of the effective date of this act and shall
3 consist of the following:

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

8 (2) The Commissioner of the Department of Revenue,
9 or his or her designee.

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

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

1 Finance or his or her designee shall serve as a member of the
2 nominating committee. If more than 50 percent of the
3 self-administered counties and more than 50 percent of the
4 self-administered municipalities have elected to divest the
5 Tax Appeals Commission of jurisdiction pursuant to Section
6 40-2B-25 as of October 1 of each year, there shall be only
7 five members of the nominating committee.

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

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

23 (d) The appointing authorities shall submit to the
24 Governor's Office the name or names of the initial member or
25 members appointed to the nominating committee. The term of a
26 member of the nominating committee shall be six years and
27 shall begin on the first day of the month following the

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

1 written proxy, or by the written consent of all its members.
2 For the purposes of this section, a quorum shall consist of a
3 majority of the members of the nominating committee then
4 serving.

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

1 petition for recall is timely submitted but the Court of the
2 Judiciary does not vote to recall the judge, the judge shall
3 thereafter be automatically appointed to another six-year
4 term.

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

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

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

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

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

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

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

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

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

15 (e) The chief judge may employ one Executive
16 Assistant III as an unclassified service state employee, as
17 provided in Section 36-26-10(c). All other Tax Appeals
18 Commission personnel shall be appointed or hired by the chief
19 judge, as necessary for the proper operation of the Tax
20 Appeals Commission, shall be state employees under the state
21 Merit System, and shall be entitled to all benefits and
22 protections available to state employees. The Executive
23 Assistant III employed in the Administrative Law Division as
24 of September 30, 2013, shall be transferred to the Tax Appeals
25 Commission, along with any other Merit System employees
26 employed by the Administrative Law Division on that date.

27 §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, 2013.
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, 2014, 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 and shall substitute "Alabama Tax Appeals
19 Commission" for any reference to the Administrative Law
20 Division of the Department of Revenue and shall make any other
21 similar amendments consistent herewith.

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

25 "§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 subsection (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. A taxpayer may request an expedited
19 revenue ruling in the form and manner prescribed by department
20 regulations, accompanied by a fee of three thousand dollars
21 (\$3,000), which the commissioner shall issue within 30 days
22 after receipt of the request or shall promptly refund the
23 filing fee to the taxpayer.

24 "(f) Revenue rulings shall be issued in the name of
25 the commissioner.

26 "(g) Subject to the provisions of this section, the
27 commissioner may also issue a revenue ruling in response to a

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

1 representatives of the municipality or county prior to
2 issuance of the ruling.

3 "§40-2A-7.

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

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

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

25 "(3) A taxpayer, or any officer of a corporation or
26 association, or partner of a partnership, manager of a
27 manager-managed limited liability company, member of a

1 member-managed limited liability company, or fiduciary of a
2 trust, or other responsible individual of any entity under a
3 duty to maintain books and records pursuant to this subsection
4 who fails or refuses to maintain such records and books, or
5 permit inspection, shall be subject to contempt proceedings in
6 the circuit court of the judicial circuit in which the person
7 resides or has a principal place of business, and upon proof
8 of the fact to the court, may be punished for contempt as
9 provided in cases of contempt in circuit court.

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

1 fee authorized to be paid by the Internal Revenue Service for
2 similar services or appearances pursuant to ~~Section 7610 of~~
3 ~~the Internal Revenue Code of 1986~~ 26 U.S.C. § 7610, as amended
4 from time to time. If any witness has been subpoenaed to
5 appear and testify or appear and produce records, books, or
6 other information, and fails or refuses to appear or testify
7 or to produce the books, records, or other information, that
8 witness shall be subject to contempt proceedings in the
9 circuit court of the judicial circuit in which the witness
10 resides, and upon proof of the fact to a circuit court may be
11 punished for contempt as is provided in cases of contempt in
12 circuit court. The circuit court shall also have jurisdiction
13 to hear and, if appropriate, to grant a motion to quash the
14 subpoena. This subdivision shall not apply to any appeal
15 pending before the Tax Appeals Commission.

16 "(5) The department may issue forms and make
17 reasonable regulations concerning any matter administered by
18 the department. Regulations promulgated by the department
19 shall be issued in accordance with the procedures set forth in
20 the Alabama Administrative Procedure Act, Chapter 22 of Title
21 41.

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

24 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL
25 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND
26 FINAL ASSESSMENTS.

1 "a. If the department determines that the amount of
2 any tax as reported on a return is incorrect, or if no return
3 is filed, or if the department is required to determine value,
4 the department may calculate the correct tax or value based on
5 the most accurate and complete information reasonably
6 obtainable by the department. The department may thereafter
7 enter a preliminary assessment for the correct tax or value,
8 including any applicable penalty and interest.

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

18 "c. All preliminary and final assessments issued by
19 the department shall be executed as provided by regulations
20 promulgated by the department.

21 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
22 ASSESSMENT. Any preliminary assessment shall be entered within
23 three years from the due date of the return, or three years
24 from the date the return is filed with the department,
25 whichever is later, or if no return is required to be filed,
26 within three years of the due date of the tax, except as
27 follows:

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

4 "b. A preliminary assessment may be entered within
5 six years from the due date of the return or six years from
6 the date the return is filed with the department, whichever is
7 later, if the taxpayer omits from the taxable base an amount
8 properly includable therein which is in excess of 25 percent
9 of the amount of the taxable base stated in the return.

10 "For purposes of this paragraph:

11 "1. The term "taxable base" means the gross income,
12 gross proceeds from sales, gross receipts, ~~capital employed~~
13 net worth, or other amounts on which the tax ~~paid with~~
14 reported on the return is computed measured; provided, that
15 for a corporation subject to the income tax imposed by Chapter
16 18 of this title, the term "taxable base" means the
17 corporation's federal gross income multiplied by its Alabama
18 apportionment factor for the same tax year, calculated
19 pursuant to Chapter 27 of this title; and

20 "2. In determining the amount omitted from the
21 taxable base, there shall not be taken into account any amount
22 which is omitted from the taxable base stated in the return if
23 the amount is disclosed in the return, or in a statement
24 attached to the return, in a manner adequate to apprise the
25 department of the nature and amount of the item. With respect
26 to a corporation subject to the income tax imposed by Chapter
27 18 of this title, an amount omitted from the taxable base

1 shall not include any amounts for which the taxpayer has
2 substantial authority supporting its position. For purposes of
3 this subparagraph, the term "substantial authority" shall be
4 defined by reference to 26 U.S.C. § 6662, as in effect from
5 time to time, as may be modified by department rule to conform
6 to Alabama tax law.

7 "c. A preliminary assessment entered pursuant to
8 Sections 40-29-72 and 40-29-73, may be entered within five
9 years from the due date of the return on which the underlying
10 tax is required to be reported or within five years of the
11 date the return is filed, whichever is later.

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

22 "2. In the case of income received by a corporation
23 contemplating dissolution, a preliminary assessment of any
24 income tax shall be entered within 18 months after written
25 request, by the corporation, filed after the return is made,
26 but not after the expiration of three years from the due date
27 of the return or three years from the date the return is filed

1 with the department, whichever is later. This subparagraph
2 shall not apply to any corporation unless dissolution is
3 completed within 18 months of the date of the written notice.

4 "e. If a taxpayer has made the election provided in
5 subsection (d) ~~or (e)~~ of Section 40-18-8, a preliminary
6 assessment based on the gain realized as a result of the
7 involuntary conversion ~~[in the case of subsection (d) of~~
8 ~~Section 40-18-8]~~ or a rollover of gain on the sale of a
9 personal residence ~~[as provided in subsection (e) of Section~~
10 ~~40-18-8]~~ may be entered within three years from the date the
11 taxpayer notified the department of the replacement of the
12 property in accordance with subsection (d) or (e) of Section
13 40-18-8, ~~as the case may be,~~ or of his or her intention not to
14 replace the property.

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

23 "g.1.f. Reporting federal audit changes; time
24 limitations for assessments. When the Internal Revenue Service
25 changes the amount of federal income tax or federal estate tax
26 in any manner owed by the taxpayer, and the change results in
27 an increase in additional income tax or estate tax owed under

1 this title, ~~the department may, at any time~~ the taxpayer shall
2 be required to file an amended return with the department
3 within one year 180 days after the department is notified or
4 ~~otherwise learns~~ date that the change ~~has become~~ becomes
5 ~~final, enter a preliminary assessment for~~ and pay the
6 additional tax and interest due with the amended return. For
7 purposes of this subdivision, an amended return includes an
8 amended income or estate tax return on a form prescribed by
9 the department, along with reasonably detailed documentation
10 to verify the taxpayer's computation of the tax due and
11 identification of the federal changes. The department shall
12 prescribe a form or schedule that a taxpayer, or an affiliated
13 group of taxpayers, may file electronically that complies with
14 the amended return requirement of this subdivision. The
15 department shall be allowed to ~~assess the tax within the time~~
16 ~~period otherwise allowed by this section.~~ enter a preliminary
17 assessment for any additional tax due as a result of this
18 subdivision by the later of the following periods:

19 "1. Within the time period otherwise allowed by this
20 section.

21 "2. If the taxpayer files an amended return as
22 prescribed by and within the time specified in this
23 subdivision, within one year following the date the amended
24 return, as prescribed in this subdivision, was filed.

25 "3. If the taxpayer fails to file an amended return
26 as prescribed by and within the time specified in this

1 subdivision, within one year following the date the taxpayer
2 actually files such amended return with the department.

3 "4. If the taxpayer failed to file an amended return
4 as prescribed by and within the time specified in this
5 subdivision, within one year following the date when the
6 department is notified or otherwise learns that the federal
7 change has become final, provided that the taxpayer has not
8 filed an amended return to report the federal changes prior to
9 the department's receipt of such notification.

10 "Any tax assessed within the appropriate additional
11 one year time period allowed by this subdivision shall be
12 limited to those items changed on the federal income tax
13 return or federal estate tax return that affect the income tax
14 liability or the estate tax liability imposed by this title.

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

1 ~~"3.5.~~ For purposes of this subdivision and
2 subsection (c)(2)c., the date that a federal change becomes
3 final is the date on which the taxpayer and the Internal
4 Revenue Service formally agree to the changes, or the date ~~of~~
5 on which any administrative or judicial order, judgment, or
6 decre ~~e from which no further appeal was or may be taken~~ can no
7 longer be appealed due to the lapse of time.

8 "h.g. The running of the period of limitations
9 provided herein for entering a preliminary assessment shall be
10 suspended for the period that:

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

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

17 "i.h. The department and the taxpayer may, prior to
18 the expiration of the period for entering a preliminary
19 assessment or the filing of a petition for refund, agree in
20 writing to extend the time provided for entering the
21 assessment or filing the petition in this chapter. The tax may
22 be assessed, or the petition for refund may be filed, at any
23 time prior to the expiration of the period agreed upon. The
24 period agreed upon may be extended by subsequent agreements in
25 writing made before the expiration of the period previously
26 agreed upon.

1 "j.i. Additional tax may be assessed by the
2 department within any applicable period allowed above, even
3 though a preliminary or final assessment has been previously
4 entered by the department against the same taxpayer for the
5 same or a portion of the same tax period. No taxpayer,
6 however, shall be subject to unnecessary examination or
7 investigation, and only one inspection of a taxpayer's books
8 and records relating to each type of tax administered by the
9 department shall be made for each taxable year, unless the
10 taxpayer requests otherwise or unless the commissioner after
11 investigation, notifies the taxpayer in writing that an
12 additional inspection is necessary. The commissioner shall
13 promulgate regulations consistent with those followed by the
14 Internal Revenue Service with respect to second inspection of
15 a taxpayer's books and records.

16 "j. The three-year statute of limitations provided
17 by this subdivision for entering a preliminary assessment
18 shall be extended by 60 days for the benefit of a
19 self-administered county or municipality, in cases where the
20 department has audited a taxpayer and additional sales, use,
21 rental, or lodgings tax was found to be due, and the taxpayer
22 likewise owes tax to the self-administered county or
23 municipality for the same tax period or periods.

24 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON
25 TAXPAYER. The preliminary assessment entered by the
26 department, or a copy thereof, shall be promptly mailed by the
27 department to the taxpayer's last known address by either

1 first class U.S. mail or certified mail with return receipt
2 requested, but at the option of the department, the
3 preliminary assessment may be delivered to the taxpayer by
4 personal delivery or by U.S. mail with delivery confirmation.

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

7 "a. If a taxpayer disagrees with a preliminary
8 assessment as entered by the department, the taxpayer may file
9 a written petition for review with the department within ~~30~~ 60
10 days from the date of entry of the preliminary assessment
11 setting out the specific objections to the preliminary
12 assessment. If a petition for review is timely filed, or if
13 the department otherwise deems it necessary, the department
14 shall schedule a conference with the taxpayer for the purpose
15 of allowing the taxpayer and the department to present their
16 respective positions, discuss any omissions or errors, and to
17 attempt to agree upon any changes or modifications to their
18 respective positions.

19 "b. If a written petition for review:

20 "1. Is not timely filed, or

21 "2. Is properly filed, and upon further review the
22 department determines the preliminary assessment is due to be
23 upheld in whole or in part, the department may make the
24 assessment final in the amount of tax due as computed by the
25 department, with applicable interest and penalty computed to
26 the date of entry of the final assessment.

1 "c. If a preliminary assessment is not made final by
2 the department within three years from the date of entry, the
3 taxpayer may appeal the preliminary assessment to the Tax
4 Appeals Commission or to the appropriate circuit court as
5 provided by subsection (b) (5) for an appeal of a final
6 assessment. Any preliminary assessment that is outstanding as
7 of October 1, 2013, and that was entered five or more years
8 prior to that date, is void unless the preliminary assessment
9 is made final or the department and the taxpayer agree in
10 writing to extend the time period for entering a final
11 assessment prior to October 1, 2013.

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

25 (5) PROCEDURE FOR APPEAL FROM FINAL ASSESSMENT.

26 "a. A taxpayer may appeal to the Tax Appeals
27 Commission from any final assessment entered by the department

1 by filing a notice of appeal ~~with the Administrative Law~~
2 ~~Division~~ within ~~30~~ 60 days from the date of entry of the final
3 assessment, and the appeal, if timely filed, shall proceed as
4 herein provided in Chapter 2B for appeals to the
5 ~~Administrative Law Division~~ Tax Appeals Commission.

6 "b.1. In lieu of the appeal under paragraph a., at
7 the option of the taxpayer, the taxpayer may appeal from any
8 final assessment entered by the department to the Circuit
9 Court of Montgomery County, Alabama, or to the circuit court
10 of the county in which the taxpayer resides or has a principal
11 place of business in Alabama, as appropriate, by filing a
12 notice of appeal within ~~30~~ 60 days from the date of entry of
13 the final assessment with both the secretary of the department
14 and the clerk of the circuit court in which the appeal is
15 filed.

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

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

21 "(ii) File a supersedeas bond with the court ~~for~~ in
22 an amount equal to 125 percent of the amount of the tax,
23 interest, and any penalty shown on the final assessment. The
24 supersedeas bond shall be executed by a surety company
25 licensed and authorized to do business in Alabama and shall be
26 conditioned to pay the amount of tax, interest, and any
27 penalties shown on the final assessment, plus applicable

1 interest and any court costs relating to the appeal, payable
2 to the department, or the self-administered county or
3 municipality, if applicable.

4 "(iii) File an irrevocable letter of credit with the
5 circuit court in an amount equal to 125 percent of the amount
6 of the tax, interest, and any penalty shown on the final
7 assessment. The irrevocable letter of credit shall be issued
8 by a financial institution designated as a qualified public
9 depository by the Board of Directors of the Security for
10 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter
11 14A, Title 41. ~~The State of Alabama~~ department or the
12 self-administered county or municipality, if applicable, shall
13 be named the beneficiary of the irrevocable letter of credit.
14 The irrevocable letter of credit shall be conditioned to pay
15 the assessment plus applicable interest and any court costs
16 relating to the appeal. The taxpayer may not issue an
17 irrevocable letter of credit as to a final assessment entered
18 against the same taxpayer.

19 "(iv) File a pledge or collateral assignment of
20 securities with the circuit court that constitute eligible
21 collateral under Chapter 14A, Title 41, in an amount equal to
22 200 percent of the amount of the tax, interest, and penalty
23 shown on the final assessment. The pledge or collateral
24 assignment shall be in favor of the department or the
25 self-administered county or municipality, if applicable, and
26 conditioned to pay the assessment plus applicable interest and
27 any court costs relating to the appeal.

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

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

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

22 "2. Notwithstanding subparagraph 1., should the
23 circuit court determine that the taxpayer has not satisfied
24 the requirements of subparagraph b.2., the circuit court shall
25 order that the taxpayer satisfy such requirements. The
26 taxpayer may satisfy such requirements at any time within 30
27 days after service of the court order. No order of dismissal

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

5 "3. On appeal to the circuit court or to the
6 ~~Administrative Law Division~~ Tax Appeals Commission, the final
7 assessment shall be prima facie correct, and the burden of
8 proof shall be on the taxpayer to prove the assessment is
9 incorrect.

10 "d.1. The ~~Administrative Law Division~~ Tax Appeals
11 Commission, circuit court, or the appellate court on appeal
12 may increase or decrease the assessment to reflect the correct
13 amount due.

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

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

21 "(6) 30-DAY APPEAL PERIODS FOR INDIVIDUALS WHO FAIL
22 TO FILE AN ALABAMA INCOME TAX RETURN. Notwithstanding the
23 60-day appeal periods for preliminary assessments and final
24 assessments provided by subdivisions (4) and (5), in the case
25 of an individual who is subject to Alabama income tax and who
26 fails to file timely the return required by Chapter 18 for a
27 particular tax year, if the department enters a preliminary

1 assessment against the taxpayer based on information received
2 from the Internal Revenue Service with respect to that same
3 tax year, the taxpayer shall have only 30 days to file a
4 petition for review pursuant to subdivision (4), and if the
5 preliminary assessment is made final, the taxpayer shall have
6 only 30 days to file a notice of appeal pursuant to
7 subdivision (5).

8 "(7) 30-DAY APPEAL PERIOD FOR PUBLIC UTILITIES.

9 Notwithstanding the 60-day appeal period for final assessments
10 provided by subdivision (5), in the case of a final assessment
11 of value of property of public utilities under Chapter 21 of
12 this title, the taxpayer shall have only 30 days to file a
13 notice of appeal pursuant to subdivision (5).

14 "(c) Procedure governing petitions for refund;
15 appeals therefrom.

16 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any
17 taxpayer may file a petition for refund with the department
18 for any overpayment of tax or other amount erroneously paid to
19 the department or concerning any refund which the department
20 is required to administer. If a final assessment for the tax
21 has been entered by the department, a petition for refund of
22 all or a portion of the tax may be filed only if the final
23 assessment plus applicable interest has been paid in full
24 prior to or with the filing of the petition for refund. The
25 department may also issue automatic refunds pursuant to
26 Section 40-29-71. In the case of a petition for refund of
27 sales or use taxes pursuant to Chapter 23, public utilities

1 taxes pursuant to Chapter 21, and any transient occupancy tax
2 pursuant to Chapter 26, the petition shall be filed jointly by
3 the taxpayer who collected and paid over the tax to the
4 department and the consumer/purchaser who paid the tax to the
5 taxpayer. A direct petition may be filed by the taxpayer if
6 the taxpayer never collected the tax from the
7 consumer/purchaser, or if the tax has been credited or repaid
8 to the consumer/purchaser by the taxpayer.

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

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

26 "b. Net operating loss carryback. In lieu of the
27 periods provided in paragraph a., in the case of a net

1 operating loss carryback, the period for filing a petition for
2 refund, the department making an automatic refund or allowing
3 a credit shall be the period prescribed in 26 U.S.C. ~~Section §~~
4 6511(d) (2) for the claiming of a credit or refund.

5 "c. Federal audit changes. When a federal income tax
6 return or federal estate tax return is changed after it has
7 been filed with the Internal Revenue Service, other than by an
8 amended return, and the change results in an overpayment of
9 income tax or estate tax imposed by this title, a petition for
10 refund of the overpayment must be filed within the later of
11 one year after the federal changes become final or the time
12 otherwise allowed for the filing of a petition for refund as
13 provided in this chapter. The refund shall be limited to the
14 tax overpaid as a result of those items changed on the federal
15 income tax return or federal estate tax return that affect the
16 income tax liability or estate tax liability imposed by this
17 title. For purposes of this subdivision, the date that a
18 federal change becomes final shall be determined as provided
19 in Section 40-2A-7(b) (2) f.5.

20 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
21 TIME LIMITATIONS. The department shall either grant or deny a
22 petition for refund within six months from the date the
23 petition is filed, unless the period is extended by written
24 agreement of the taxpayer and the department. The taxpayer and
25 his or her authorized representative, if applicable, shall be
26 notified of the department's decision concerning the petition
27 for refund by either first class United States U.S. mail, or

1 by certified U.S. mail, return receipt requested, or by U.S.
2 mail with delivery confirmation, sent to the taxpayer's or the
3 authorized representative's last known address. If the
4 department fails to grant a refund within the time provided
5 herein, the petition for refund shall be deemed to be denied.

6 "(4) PROCEDURES IF REFUNDS GRANTED; CREDIT OF
7 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a
8 petition is granted in whole or in part, or the department,
9 the ~~Administrative Law Division~~ Tax Appeals Commission, or a
10 court otherwise determines that a refund is due, the
11 overpayment shall be refunded to the taxpayer by the state,
12 county, municipality, or other entity to which the overpayment
13 was distributed. If the department determines that a refund is
14 due, the amount of the overpayment plus accrued interest may
15 first be credited by the department against any outstanding
16 ~~final tax liabilities due and owing by the taxpayer to the~~
17 ~~department~~ tax due as reported by a taxpayer on a return, any
18 outstanding tax liability resulting from a final assessment
19 from which an appeal can no longer be taken, or any
20 outstanding tax liability that has been affirmed on appeal by
21 the Tax Appeals Commission or by a circuit or appellate court
22 in Alabama and from which no further appeal can be taken, and
23 the balance of any overpayment shall, subject to the setoff
24 provisions of Article 3 of Chapter 18, be refunded to the
25 taxpayer. If any refund or part thereof is credited to any
26 other tax by the department, the department shall provide a
27 written detailed statement to the taxpayer showing the amount

1 of overpayment, the amount credited for payment to other
2 taxes, and the amount refunded.

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

4 "a. A taxpayer may appeal from the denial in whole
5 or in part of a petition for refund by filing a notice of
6 appeal with the ~~Administrative Law Division~~ Tax Appeals
7 Commission within two years from the date the petition is
8 denied, ~~and the appeal, if .~~ If timely filed, the appeal shall
9 proceed as ~~hereinafter~~ provided in Chapter 2B for appeals to
10 the ~~Administrative Law Division~~ Tax Appeals Commission.

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

22 "c. If an appeal is not filed with the
23 ~~Administrative Law Division~~ Tax Appeals Commission or the
24 appropriate circuit court within two years of the date the
25 petition is denied, ~~then~~ the appeal shall be dismissed for
26 lack of jurisdiction.

1 "(d) The Department of Revenue shall revise existing
2 regulations or administrative guidance, or issue new
3 regulations or administrative guidance, as appropriate, in
4 conformance with this section.

5 "(e) ~~This~~ The amendments made to this section by Act
6 2007-504 shall apply to all appeals filed after June 15, 2007.
7 Notwithstanding the prior sentence, in any appeal to a circuit
8 court which ~~is~~ was pending on June 15, 2007, and in which a
9 supersedeas bond was filed pursuant to, and in compliance
10 with, the requirements of this section, for double the amount
11 of the tax, interest, and any penalty shown on the final
12 assessment, or for double the amount of the final order of the
13 administrative law judge, such bond may be reduced to 125
14 percent of such amount shown on the final assessment or in the
15 final order of the administrative law judge.

16 "§40-2A-8.

17 "(a) The department shall notify a taxpayer in
18 writing of any act or proposed act or refusal to act
19 concerning the denial or revocation of a license, permit, or
20 certificate of title concerning which the taxpayer has any
21 interest. The notice must be mailed by either first-class U.S.
22 mail or certified U.S. mail or U.S. mail with delivery
23 confirmation to the taxpayer's last known address, or to the
24 last known address of the taxpayer's authorized
25 representative, if applicable. Any taxpayer aggrieved by any
26 act or proposed act or refusal to act concerning the denial or
27 revocation of a license, permit, or certificate of title by

1 the department shall be entitled to file a notice of appeal
2 from such act or proposed act or refusal to act with the
3 ~~Administrative Law Division~~ Tax Appeals Commission. Such
4 notice of appeal must be filed within ~~30~~ 60 days of the date
5 notice of such act or refusal to act is mailed to the
6 taxpayer, and such appeal, if timely filed, shall proceed as
7 herein provided for appeals to the ~~Administrative Law Division~~
8 Tax Appeals Commission. Any taxpayer aggrieved by any act,
9 proposed act, or refusal to act by the department, who is not
10 issued written notice by the department of his or her right to
11 appeal, shall have 60 days from actual notice of such act,
12 proposed act, or refusal to act in which to appeal to the Tax
13 Appeals Commission. The burden shall be on the taxpayer in
14 such cases to prove that the appeal was filed within 60 days
15 of actual notice. If any matter is timely appealed to the Tax
16 Appeals Commission pursuant to this section, the commission,
17 in its discretion, may remand or refer the matter to the
18 department or the department's Taxpayer Advocate for review
19 before proceeding with the appeal.

20 "(b) A taxpayer may elect to file a notice of appeal
21 with the Tax Appeals Commission regarding a notice of proposed
22 adjustment issued by the department affecting the taxpayer's
23 net operating loss deductions or carryovers for purposes of
24 the taxes imposed by Chapters 16 and 18 of this title. Such
25 notice of appeal shall be filed within the time period
26 prescribed in subsection (a), and the Tax Appeals Commission
27 shall have jurisdiction to determine the amount of the

1 taxpayer's net operating loss deductions or carryovers for the
2 tax periods in question.

3 "(b)(c) The department may proceed with the intended
4 action if no appeal is filed by the taxpayer with the
5 Administrative Law Division Tax Appeals Commission within 30
6 days of the mailing of the notice by the department to the
7 taxpayer the time allowed under subsection (a). If a
8 designated agent has failed to provide the department with a
9 bond and any qualifying license as provided in Section
10 32-8-34, the revocation of designated agent status by the
11 department shall be effective immediately upon electronic
12 notice through the system the designated agent uses to process
13 applications for certificates of title or receipt of written
14 notice of revocation, whether by U.S. mail or hand delivery.
15 Otherwise, the revocation of a designated agent status shall
16 be effective after the time for appeal under this section has
17 expired. If a new or used motor vehicle dealer, motor vehicle
18 wholesaler, motor vehicle reconditioner, or motor vehicle
19 rebuilder licensee has failed to provide the department with
20 or maintain the required bond or insurance, the revocation of
21 the regulatory license shall be effective immediately upon
22 electronic notice through the system the licensee uses to
23 apply for or renew the regulatory license or upon written
24 notice of revocation, whether by U.S. mail or hand delivery.
25 Otherwise, the revocation of the regulatory license shall be
26 effective after the time for appeal under this section has
27 expired. The revocation of any motor vehicle certificate of

1 title or license by the department shall not be final until
2 either the titled owner and lien holder, if any, consent to
3 the revocation or the time for filing an appeal to the Tax
4 Appeals Commission has expired. The department may obtain an
5 injunction in the appropriate circuit court at any time
6 enjoining a licensee or designated agent from continuing to
7 operate under a disputed license or designated agent
8 authority, if the continued operation may cause substantial
9 loss of revenue, would cause substantial harm to the state or
10 public, or for such other good reason as determined by the
11 circuit court. The department may suspend the designated
12 agent's access to process new applications for certificate of
13 title until such time as any outstanding title applications
14 not properly filed by the designated agent are properly filed
15 with the department.

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

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

27 "§40-2A-11.

1 "(a) Failure to timely file ~~return~~ certain returns.
2 Except in the case of an individual income tax return filed
3 with no tax or refund due at the time of filing, or as
4 otherwise provided below, if a taxpayer fails to file any
5 return required to be filed with the department on or before
6 the date prescribed therefor, determined with regard to any
7 extension of time for filing, there shall be assessed as a
8 penalty the greater of an amount equal to 10 percent of any
9 ~~additional~~ the correct amount of tax required to be paid with
10 the return or fifty dollars (\$50). If the taxpayer is not
11 required to pay any additional tax due with the return, the
12 penalty imposed by this subsection shall not be assessed
13 unless the department has first provided 30 days' written
14 notice to the taxpayer, at the last known address of the
15 taxpayer, that the return has not been filed and the taxpayer
16 fails or refuses to file the delinquent return within that
17 time period; provided, however, that the penalty may be
18 assessed if the taxpayer has been given written notice of a
19 delinquent return for the same type of tax within the 12
20 months preceding the due date of the second delinquent return.

21 "(b) Failure to timely pay tax.

22 "(1) If a taxpayer fails to pay to the department
23 the amount of tax shown as due on a return required to be
24 filed on or before the date prescribed for payment of the tax,
25 determined with regard to any extension of time for payment,
26 there shall be added as a penalty one percent of the net
27 amount of the tax due if the failure to pay is for not more

1 than one month, with an additional one percent for each
2 additional month or fraction thereof during which failure to
3 pay continues, not exceeding 25 percent in the aggregate. In
4 lieu of the penalty provided in the immediately preceding
5 sentence, for any tax for which a monthly or quarterly return
6 is required, or for which no return is required, the
7 department shall add a failure to timely pay penalty of 10
8 percent of the unpaid amount shown as tax due on the return or
9 the amount stated in the notice and demand.

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

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

4 "(c) Underpayment due to negligence. If any part of
5 any underpayment of tax is due to negligence or disregard of
6 rules or regulations, there shall be added to the tax an
7 amount equal to ~~five~~ 20 percent of that part of the tax
8 attributable to negligence or disregard of rules or
9 regulations.

10 "For purposes of this subsection, the term
11 "negligence" includes any failure to make a reasonable attempt
12 to comply with ~~Title 40~~ this title or other statutes
13 administered by the department, and the term "disregard"
14 includes any careless, reckless, or intentional disregard of
15 valid rules and regulations.

16 "(d) Underpayment due to fraud. If any part of any
17 underpayment of tax required to be shown on a return is due to
18 fraud, there shall be added to the tax an amount equal to ~~50~~
19 75 percent of that portion of the underpayment which is
20 attributable to fraud.

21 "For purposes of this section, the term "fraud"
22 shall have the same meaning as ascribed to the term under 26
23 U.S.C. ~~Section~~ § 6663, as in effect from time to time, except
24 that the reference therein to the secretary shall instead mean
25 the commissioner.

26 "(e) Frivolous return penalty. If a taxpayer files a
27 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~

1 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~
2 ~~hundred fifty dollars (\$250)~~ five hundred dollars (\$500).

3 "(f) Frivolous appeal penalty. If any appeal to the
4 ~~administrative law division~~ Tax Appeals Commission or circuit
5 court is determined to be frivolous or primarily for the
6 purpose of delay or to impede collection of any tax, a penalty
7 of ~~two hundred fifty dollars (\$250)~~ five hundred dollars
8 (\$500) or, at the discretion of the Tax Appeals Commission or
9 circuit judge, up to 25 percent of the tax in question,
10 whichever is greater, shall be assessed in addition to any tax
11 due.

12 "(g) Failure to file partnership or Alabama S
13 corporation returns. If a pass-through entity, as defined in
14 Section 40-18-24.2, or an Alabama S corporation, as defined in
15 Section 40-18-160(b)(1), fails to file the applicable
16 information return required by Section 40-18-28 or 40-18-39
17 for any taxable year within the time prescribed therefor, the
18 pass-through entity or corporation shall be liable for a
19 penalty equal to the product of fifty dollars (\$50) multiplied
20 by the number of members of the pass-through entity or
21 shareholders of the Alabama S corporation, whichever is
22 applicable, for each month, or fraction thereof, during which
23 such failure continues, but not to exceed 12 months. In no
24 case, however, shall the penalty exceed one thousand dollars
25 (\$1,000) per return.

26 "(h) Failure to pay by electronic funds transfer. If
27 a taxpayer fails to timely pay a tax by means of electronic

1 funds transfer as required by Section 41-1-20, there may be
2 assessed a penalty equal to the greater of one hundred dollars
3 (\$100) or five percent of the required payment.

4 ~~"(g)(i)~~ Penalties not exclusive. The penalties
5 provided in this section for failure to timely file a return,
6 failure to timely pay tax, filing a frivolous return, filing a
7 frivolous appeal, or underpayment of tax due to negligence may
8 be asserted against the same taxpayer for the same tax period.
9 If the fraud penalty is asserted, however, no other penalties
10 shall be asserted.

11 ~~"(h)(j)~~ Waiver of penalties. Notwithstanding the
12 foregoing, any penalty under this title or Section ~~10-2B-15.02~~
13 10A-2-15.02 shall be waived upon a determination of reasonable
14 cause. Reasonable cause shall include, but not be limited to,
15 those instances in which the taxpayer has acted in good faith.
16 The burden of proving reasonable cause shall be on the
17 taxpayer.

18 ~~"(i)(k)~~ Discount sustained for ~~just causes~~
19 reasonable cause. All other provisions of tax laws
20 notwithstanding, either the ~~Commissioner of the Department of~~
21 ~~Revenue~~ commissioner or the Taxpayer Advocate of the
22 department, upon review of the circumstances involved, may
23 authorize the continuance or reinstatement of a
24 ~~statute-allowable~~ an otherwise allowable discount for timely
25 payment or filing when timely payment is made, ~~but~~ or filing
26 ~~is~~ was delayed for ~~just causes~~ reasonable cause.

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

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

7 "§40-18-27.

8 "(a) Effective for tax years beginning after
9 December 31, 1997, every taxpayer having an adjusted gross
10 income for the taxable year of more than one thousand eight
11 hundred seventy-five dollars (\$1,875) if single or if married
12 and not living with spouse, and of more than three thousand
13 seven hundred fifty dollars (\$3,750) if married and living
14 with spouse, shall each year file with the Department of
15 Revenue a return stating specifically the items of gross
16 income, the deductions and credits allowed by this chapter,
17 the place of residence, and post office address. If a husband
18 and wife living together have an adjusted gross income of more
19 than three thousand seven hundred fifty dollars (\$3,750), each
20 shall file a return unless the income of each is included in a
21 single joint return. If the taxpayer is unable to file a
22 return, the return shall be filed by a duly authorized agent,
23 a guardian, or other person charged with the care of the
24 person or property of the taxpayer.

25 "(b) A taxpayer other than a resident shall not be
26 entitled to the deductions authorized by Sections 40-18-15 and
27 40-18-15.2 unless the taxpayer files a complete return showing

1 the gross income of the taxpayer both from within and outside
2 the state. Included on every income tax return shall be the
3 name, address, and Social Security number or Preparer Taxpayer
4 Identification Number of the person who prepared the return.
5 The taxpayer shall be held liable for any statement made by an
6 agent of the taxpayer with reference to any information
7 required by law to be furnished in connection with that tax
8 return.

9 "(c) Returns filed on the basis of the calendar year
10 shall be filed on or before April 15 following the close of
11 the calendar year. Returns filed on the basis of a fiscal year
12 shall be filed on or before the fifteenth day of the fourth
13 month following the close of the fiscal year. The department
14 may grant a reasonable extension of time for filing returns,
15 under rules and regulations as it shall prescribe. Except in
16 the case of taxpayers who are abroad, no extension shall be
17 for more than six months. If the taxpayer has requested an
18 extension of time for the filing of a return, the period
19 during which the return will be considered timely filed shall
20 not expire until 10 days after the Department of Revenue mails
21 to the taxpayer a rejection of the request for an extension of
22 time for filing the return. The return must be signed or
23 otherwise validated by both the taxpayer(s) and, if
24 applicable, the tax return preparer under rules or regulations
25 of the Department of Revenue and must contain a printed
26 declaration that the return is filed under the penalties of
27 perjury.

1 "(d) Every individual who willfully files and signs
2 or otherwise validates under rules or regulations of the
3 Department of Revenue a return which the individual does not
4 believe to be true and correct as to every material particular
5 shall be guilty of perjury and, upon conviction thereof, shall
6 be imprisoned in the penitentiary for not less than one, nor
7 more than five years.

8 "(e) In the event a husband and wife file a joint
9 return, the husband and wife shall be jointly and severally
10 liable for the income tax shown on the return or as may be
11 determined by the Department of Revenue to be due by them to
12 the State of Alabama. Notwithstanding the foregoing, a husband
13 or wife shall be relieved of certain liabilities to the same
14 extent and in the same manner as allowed by the Internal
15 Revenue Code for federal income tax purposes, including Title
16 26 U.S.C. §§ 6015(b), 6015(c), and 6015(f), as amended from
17 time to time."

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

21 Section 6. The provisions of this act are severable.
22 If any part of this act is declared invalid or
23 unconstitutional, that declaration shall not affect the part
24 which remains.

25 Section 7. It is the intent of the Legislature that
26 the existence, authority, and powers of the Administrative Law
27 Division of the Department of Revenue shall remain in full

1 force and effect until the Tax Appeals Commission created
2 herein becomes fully operational on October 1, 2013, and that
3 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8
4 shall continue to be filed with and handled by the
5 Administrative Law Division until that date. To that end, the
6 repeal of Section 40-2A-9, and those portions of other
7 sections of Titles 11 and 40 relating to the powers,
8 authority, and duties of the Administrative Law Division and
9 the administrative law judge, and the right of a taxpayer to
10 appeal to the Administrative Law Division, shall not become
11 effective until October 1, 2013. Notwithstanding the
12 foregoing, the Tax Appeals Commission shall not have
13 jurisdiction over any appeals regarding taxes levied by or on
14 behalf of a self-administered county or municipality until
15 October 1, 2014. The amendments made by this act to Section
16 40-2A-7(b)(2)f., Code of Alabama 1975, relating to amended
17 returns due to federal audit changes, Section 40-2A-7(b)(2)b.,
18 Code of Alabama 1975, relating to the six-year statute of
19 limitations for corporate income tax purposes, and Section
20 40-2A-11, Code of Alabama 1975, relating to civil penalties,
21 shall only apply to tax periods beginning on or after January
22 1, 2014.

23 Section 8. This act shall become effective upon its
24 passage and approval by the Governor, or its otherwise
25 becoming law.