

1 SB426  
2 138798-1  
3 By Senator Irons  
4 RFD: Finance and Taxation Education  
5 First Read: 20-MAR-12

SYNOPSIS: This bill would remove the penalty related to failing to timely file an individual income tax return when no tax is due at the time of filing the return.

A BILL  
TO BE ENTITLED  
AN ACT

To amend Section 40-2A-11, Code of Alabama 1975, to eliminate a minimum penalty provision in the failure to file tax law when there is no tax due on an individual income tax return.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-2A-11, Code of Alabama 1975, is amended to read as follows:

"§40-2A-11.

"(a) Failure to timely file return. ~~If~~ Except in the case of an individual income tax return filed with no tax due at the time of filing, if a taxpayer fails to file any return

1 required to be filed with the department on or before the date  
2 prescribed therefor, determined with regard to any extension  
3 of time for filing, there shall be assessed as a penalty the  
4 greater of 10 percent of any additional tax required to be  
5 paid with the return or fifty dollars (\$50).

6 "(b) Failure to timely pay tax.

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

22 "(2) If a taxpayer fails to pay to the department  
23 any amount of any tax required to be shown on any return,  
24 which is not so shown, within 30 calendar days from the date  
25 of the first notice and demand therefore, there shall be added  
26 as a penalty one percent of the amount of the tax due if the  
27 failure to pay is for not more than one month, with an

1 additional one percent for each additional month or fraction  
2 thereof during which failure to pay continues, not exceeding  
3 25 percent in the aggregate. In lieu of the penalty provided  
4 in the immediately preceding sentence, for any tax for which a  
5 monthly or quarterly return is required, or for which no  
6 return is required, the department shall add a failure to  
7 timely pay penalty of 10 percent of the unpaid amount stated  
8 in the notice and demand unless payment is received within 30  
9 calendar days from the date of the first notice and demand.

10 "(c) Underpayment due to negligence. If any part of  
11 any underpayment of tax is due to negligence or disregard of  
12 rules or regulations, there shall be added to the tax an  
13 amount equal to five percent of that part of the tax  
14 attributable to negligence or disregard of rules or  
15 regulations.

16 "For purposes of this subsection, the term  
17 "negligence" includes any failure to make a reasonable attempt  
18 to comply with Title 40, and the term "disregard" includes any  
19 careless, reckless, or intentional disregard.

20 "(d) Underpayment due to fraud. If any part of any  
21 underpayment of tax required to be shown on a return is due to  
22 fraud, there shall be added to the tax an amount equal to 50  
23 percent of that portion of the underpayment which is  
24 attributable to fraud.

25 "For purposes of this section, the term "fraud"  
26 shall have the same meaning as ascribed to the term under 26  
27 U.S.C. Section 6663, as in effect from time to time.

1           "(e) Frivolous return penalty. If a taxpayer files a  
2           "frivolous return," as that term is used in 26 U.S.C. Section  
3           6702, that taxpayer may be liable for a penalty of up to two  
4           hundred fifty dollars (\$250).

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

11          "(g) Penalties not exclusive. The penalties provided  
12          in this section for failure to timely file a return, failure  
13          to timely pay tax, filing a frivolous return, filing a  
14          frivolous appeal, or negligence may be asserted against the  
15          same taxpayer for the same tax period. If the fraud penalty is  
16          asserted, no other penalties shall be asserted.

17          "(h) Waiver of penalties. Notwithstanding the  
18          foregoing, ~~no~~ any penalty under this title or Section  
19          10-2B-15.02 shall be ~~assessed, or if assessed, shall be~~ waived  
20          upon a determination of reasonable cause. Reasonable cause  
21          shall include, but not be limited to, those instances in which  
22          the taxpayer has acted in good faith. The burden of proving  
23          reasonable cause shall be on the taxpayer.

24          "(i) Discount sustained for just causes. All other  
25          provisions of tax laws notwithstanding, the Commissioner of  
26          the Department of Revenue, upon review of the circumstances  
27          involved, may authorize continuance of a statute-allowable

1 discount when timely payment is made, but filing is delayed  
2 for just causes.

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

6 "(k) Penalty not to apply to registration and  
7 titling of motor vehicles. The penalties provided herein shall  
8 not apply to the registration or titling of motor vehicles."

9 Section 2. The provisions of this act are severable.  
10 If any part of this act is declared invalid or  
11 unconstitutional, that declaration shall not affect the part  
12 which remains.

13 Section 3. This act shall become effective  
14 immediately following its passage and approval by the  
15 Governor, or its otherwise becoming law, for the tax returns  
16 filed for the 2011 and subsequent tax years.