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3 By Representative DeMarco  
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ENGROSSED

A BILL  
TO BE ENTITLED  
AN ACT

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

1 Revenue, including repealing Section 40-2A-9, Code of Alabama  
2 1975.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. In order to increase public confidence in  
5 the fairness of Alabama's tax system, the state shall provide  
6 an independent agency, with tax expertise, to resolve disputes  
7 between the Department of Revenue, or certain  
8 self-administered counties and municipalities, and taxpayers,  
9 prior to requiring the payment of the amounts in issue or the  
10 posting of a bond, but after the taxpayer has had a full  
11 opportunity to attempt settlement with the Department of  
12 Revenue or with a self-administered county or municipality  
13 that has not elected-out based, among other issues, on the  
14 hazards of litigation. By establishing an independent tax  
15 tribunal within the executive branch of government, this act  
16 shall provide taxpayers with a means of resolving  
17 controversies that ensures both the appearance and the reality  
18 of due process and fundamental fairness. To that end, Chapter  
19 2B of Title 40 of the Code of Alabama 1975, by this act shall  
20 be known and may be cited as the Alabama Tax Appeals  
21 Commission Act.

22 It is the intent of the Legislature to adopt in  
23 large part the American Bar Association Model State  
24 Administrative Tax Tribunal Act.

25 It is the intent of the Legislature that this act  
26 foster the settlement or other resolution of tax disputes to  
27 the greatest extent possible and, in cases in which litigation

1 is necessary, to provide taxpayers with a fair, independent,  
2 pre-payment procedure to resolve a dispute with the Department  
3 of Revenue or, in certain cases, a self-administered county or  
4 municipality.

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

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

17 CHAPTER 2B

18 CREATION AND OPERATION OF THE ALABAMA TAX APPEALS  
19 COMMISSION

20 §40-2B-1. Alabama Tax Appeals Commission.

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

25 (b) The Tax Appeals Commission shall become fully  
26 operational on October 1, 2012. The Tax Appeals Commission, in  
27 cases within its jurisdiction:

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

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

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

17                   §40-2B-2. Definitions.

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

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

26                   (2) The term "U.S. mail with delivery confirmation"  
27 means a delivery service available through the U.S. Postal

1 Service that provides the sender with the date, zip code, and  
2 time the article was delivered or the time delivery was  
3 attempted.

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

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

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

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

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

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

24 (a) The Tax Appeals Commission shall have  
25 jurisdiction to hear and determine all appeals pending before  
26 the Department of Revenue's Administrative Law Division on  
27 September 30, 2012, and all subsequent appeals filed with the

1 Tax Appeals Commission pursuant to Chapters 2A and 29 of this  
2 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to  
3 motor vehicles, or Section 40-2B-25, relating to  
4 self-administered counties and municipalities, except as  
5 follows:

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

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

17 (3) Any appeals regarding a sales, use, rental, or  
18 lodgings tax levied or collected by or on behalf of a  
19 self-administered county or municipality if the governing body  
20 of the county or municipality has made an election under  
21 Section 40-2B-25 to divest the Tax Appeals Commission of  
22 jurisdiction over the dispute, challenge, or appeal. Such  
23 appeals shall be heard by the employee or other agent of the  
24 self-administered county or municipality serving in the  
25 capacity of a hearings or appeals officer, subject to Section  
26 40-2A-6.

1 (b) To provide for a proper transition from the  
2 Administrative Law Division to the Tax Appeals Commission, the  
3 Department of Revenue, on or before October 1, 2012, shall  
4 transfer to the Tax Appeals Commission office furniture,  
5 equipment, computers, and other tangible personal property  
6 used by the Administrative Law Division, as well as all case  
7 files, docket books, and all other documents and information,  
8 in both tangible and intangible form, compiled, used, or  
9 maintained by the Administrative Law Division. Further, any  
10 appeals that are timely filed with the Administrative Law  
11 Division after September 30, 2012, shall be deemed timely  
12 filed with and transferred to the Tax Appeals Commission. The  
13 Chief Administrative Law Judge of the Administrative Law  
14 Division shall have and is hereby granted the power and  
15 authority necessary to effect an orderly transition,  
16 including, but not limited to, the power and authority to  
17 execute binding contracts and commitments on behalf of the Tax  
18 Appeals Commission with respect to employees, office space,  
19 equipment, and other property, consistent with Sections  
20 40-2B-16 and 40-2B-20.

21 §40-2B-4. Service of papers and process.

22 Except concerning notices to the Department of  
23 Revenue from the Tax Appeals Commission, or as otherwise  
24 provided in this chapter, the Tax Appeals Commission shall  
25 mail any final order in which a judgment is entered or  
26 affirmed or any notice of hearing by either U.S. mail with  
27 delivery confirmation or certified U.S. mail, return receipt



1 requested, to the taxpayer's last known address, or if the  
2 taxpayer has an authorized representative, to the authorized  
3 representative's last known address. All other orders or  
4 documents may, at the Tax Appeals Commission's discretion, be  
5 mailed by first class U.S. mail.

6 §40-2B-5. Timely mailed document considered to be  
7 timely filed.

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

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

14 (2) Received by the Tax Appeals Commission on or  
15 before the date due; or

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

22 §40-2B-6. Issuance of subpoenas; administration of  
23 oaths.

24 (a) A judge of the Tax Appeals Commission shall have  
25 the authority and the discretion to issue subpoenas, on his or  
26 her own motion or at the request of a party, requiring any  
27 person whose testimony may be relevant to an appeal to appear

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

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

4 §40-2B-7. Hearings to be without a jury and de novo.

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

7 §40-2B-8. Notice to taxpayer of right to appeal to  
8 Tax Appeals Commission.

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

19 §40-2B-9. Procedures concerning appeals.

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

1 (b) Judges of the Tax Appeals Commission shall hear  
2 and decide all appeals to the Tax Appeals Commission, as  
3 assigned by the chief judge. A judge, without a hearing, may  
4 dismiss any appeal, or grant appropriate relief to any party,  
5 if a party fails or refuses to comply with any Tax Appeals  
6 Commission regulation or statute concerning appeals before the  
7 Tax Appeals Commission, or if any party fails or refuses to  
8 comply with any preliminary order issued by a judge. The  
9 judge, for good cause, may reinstate an appeal dismissed under  
10 this subsection or withdraw an order granting relief, but only  
11 if an application to reinstate the appeal or withdraw the  
12 order is filed within 15 days from the date on which the order  
13 dismissing the appeal or granting the relief was entered, or  
14 on the judge's own motion within 90 days. A final order  
15 dismissing an appeal or granting relief to a party may be  
16 appealed to circuit court in the same manner and subject to  
17 the same requirements as appeals from final or other  
18 appealable orders of the Tax Appeals Commission.

19 (c) The notice of appeal filed with the Tax Appeals  
20 Commission shall identify the final assessment, denied refund,  
21 or other act or refusal to act by the department which is the  
22 subject of the appeal, the position of the appealing party,  
23 the basis on which relief should be granted, and the relief  
24 sought. A notice of appeal that does not include all of the  
25 above information shall be sufficient to invoke the  
26 jurisdiction of the Tax Appeals Commission. The judge may

1 require a taxpayer to file an amended notice of appeal if more  
2 information is deemed necessary.

3 (d) (1) Except as provided in subdivision (2), the  
4 Tax Appeals Commission shall notify the legal division of the  
5 Department of Revenue in writing that an appeal has been filed  
6 and shall mail a copy of such notification to the taxpayer or  
7 its authorized representative. The legal division shall file a  
8 written answer with the Tax Appeals Commission within 60 days  
9 from the date of issuance of the notice to the legal division.  
10 The judge may allow the legal division additional time, not to  
11 exceed 30 days, within which to file an answer, but only if  
12 the legal division requests the extension within the 60-day  
13 period provided by the preceding sentence. The answer shall  
14 state the facts and the issues involved and the Department of  
15 Revenue's position relating thereto. The judge may require the  
16 Department of Revenue to file an amended answer if more  
17 information is deemed necessary. A county or municipality may  
18 consult with the legal division of the Department of Revenue  
19 concerning any appeal that involves the county's or  
20 municipality's tax that is administered by the Department of  
21 Revenue.

22 (2) If the appeal involves a tax levied by or on  
23 behalf of a self-administered county or municipality, the Tax  
24 Appeals Commission shall promptly mail a copy of the notice of  
25 appeal by either U.S. mail with delivery confirmation or  
26 certified U.S. mail to the governing body of the affected  
27 county or municipality and shall provide the taxpayer or its

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

17 (e) An appeal may be held in abeyance at the  
18 discretion of the judge or may be submitted for decision on a  
19 joint stipulation of facts without a hearing or as otherwise  
20 agreed by the parties. Otherwise, except as provided in  
21 Section 40-2B-9 (b), a hearing shall be conducted by the  
22 judge. Notice of the hearing shall be mailed to the taxpayer  
23 at the taxpayer's last known address, by either U.S. mail with  
24 delivery confirmation or certified U.S. mail, return receipt  
25 requested, or to the taxpayer's representative, if any, at the  
26 representative's last known address, by either U.S. mail with  
27 delivery confirmation or certified U.S. mail, return receipt

1 requested. Except as provided in the next sentence, notice of  
2 the hearing shall be mailed to the Department of Revenue by  
3 first class U.S. mail, by intragovernmental hand-mail, or  
4 otherwise delivered as provided by regulation. If the appeal  
5 involves a tax levied by or on behalf of a self-administered  
6 county or municipality, the Tax Appeals Commission shall  
7 instead promptly mail a copy of the notice of the hearing to  
8 the governing body of the affected county or municipality by  
9 either U.S. mail with delivery confirmation or certified U.S.  
10 mail. The judge shall conduct the hearing substantially as  
11 follows:

12 (1) Open the record and receive appearances.

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

17 (3) Interrogate witnesses if deemed necessary.

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

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

23 (f) A judge may enter a preliminary order directing  
24 one or more parties to take such action as deemed appropriate  
25 or referring any issue or issues in dispute to the Department  
26 of Revenue's Taxpayer Advocate for consideration if the issue  
27 or issues relate to a tax administered by the Department of

1 Revenue. A judge, after a hearing or after a case is otherwise  
2 submitted for decision, may issue an opinion and preliminary  
3 order, which shall include findings of fact and conclusions of  
4 law. The opinion and preliminary order may direct the  
5 department to recompute a taxpayer's liability or the amount  
6 of a refund due or for any party to take such action as  
7 specified in the preliminary order.

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

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



1           (i) Any party may apply for rehearing from any final  
2 order or opinion and preliminary order, provided, however, the  
3 application must be filed within 15 days from the date of  
4 entry of such order. The application for rehearing shall  
5 specify the reasons and supporting arguments why such order is  
6 incorrect and should be reconsidered. The timely filing of an  
7 application for rehearing from a final order shall suspend the  
8 time period for filing an appeal to circuit court. If an  
9 application for rehearing is timely filed, the judge shall  
10 thereafter issue a final or other order on rehearing, either  
11 with or without a hearing on the application, at the  
12 discretion of the judge. The time for filing a notice of  
13 appeal to circuit court shall begin anew on the date of entry  
14 of the final order on rehearing.

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

26           (k) The rules of evidence applicable in civil  
27 nonjury cases in the circuit courts of Alabama shall be

1 followed by the Tax Appeals Commission. Evidence not  
2 admissible thereunder may be admitted, however, in the  
3 discretion of the judge, if relevant, not unfairly prejudicial  
4 to any party, and necessary for the fair adjudication of the  
5 case. The judge may announce before or during a hearing that  
6 it shall not be necessary for either party to object to any  
7 testimony or evidence offered by a party, and any objections  
8 shall be preserved and may be made on appeal. The final order  
9 issued by the judge shall be based only on such evidence as is  
10 relevant and material. Documentary evidence may be received in  
11 copy form if there is no objection thereto or in the  
12 discretion of the judge. Official notice may be taken of any  
13 technical facts within the specialized knowledge of the judge.

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

22 (m) Any taxpayer upon application, and at the  
23 discretion of the judge, may be permitted to intervene in any  
24 dispute before the Tax Appeals Commission if that taxpayer has  
25 a personal interest in the outcome of the case as  
26 distinguished from a public interest and the taxpayer's  
27 interest is not otherwise adequately represented in the case.

1 Intervenor may also appeal to circuit court from a final or  
2 other appealable order, as provided herein for appeals.  
3 Parties interested in the outcome of any case before the Tax  
4 Appeals Commission, with the permission of the judge, may  
5 submit amicus briefs.

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

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

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

17 (3) As otherwise ordered by the judge.

18 §40-2B-10. Burden of proof in Tax Appeals Commission  
19 proceedings.

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

1 §40-2B-11. Hearings to be open to public; report of  
2 proceedings; exception; confidential information.

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

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

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

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

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

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

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

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

1 60-day appeal period. The Tax Appeals Commission shall  
2 thereafter prepare a record on appeal. The appeal shall be  
3 filed in the following circuit courts:

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

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

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

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

25 (1) Remit the amount of the final assessment  
26 determined to be due by the final order to the Department of

1 Revenue, or to the self-administered county or municipality,  
2 if applicable.

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

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

26 (4) File a pledge or collateral assignment of  
27 securities with the circuit court that constitute eligible

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

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

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

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

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

24 (2) If the circuit court determines that the  
25 taxpayer has not satisfied the requirements of subsection (b)  
26 or (c), the circuit court shall order that the taxpayer  
27 satisfy such requirements. The taxpayer may satisfy such



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

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

22 §40-2B-14. Publication of Tax Appeals Commission  
23 decisions.

24 Subject to Section 40-2B-9, the decisions determined  
25 to be of general public interest may be published and  
26 distributed by the Tax Appeals Commission, as prescribed by  
27 the chief judge. Provided that a decision may not be published

1 until either the time period for appealing the decision has  
2 expired or the Tax Appeals Commission has received a copy of  
3 the notice of appeal pursuant to Section 40-2B-13(b), in which  
4 case the fact that the decision has been appealed shall be  
5 noted on the first page of the published decision. A  
6 reasonable fee may be charged for the publication, as  
7 established from time to time by the chief judge.

8 §40-2B-15. Appointment and term of judges; maximum  
9 number; vacancy.

10 (a) The term of a judge of the Tax Appeals  
11 Commission shall be eight years, except as herein provided.  
12 The term of the first chief judge shall begin on October 1,  
13 2012.

14 (b) Additional or successor judges of the Tax  
15 Appeals Commission shall be nominated by a committee of six  
16 persons, except as provided below. The nominating committee  
17 shall provide the Governor with a list of three qualified  
18 candidates for each open or newly created Tax Appeals  
19 Commission judge's position. Within 45 days after receipt of  
20 the list, the Governor shall choose a nominee from that list  
21 of candidates and submit his or her name to the Senate  
22 Judiciary Committee for approval. The nominee's name, if  
23 approved by the Senate Judiciary Committee, shall then be  
24 submitted for approval by the full Senate. If the Senate fails  
25 to approve the nominee by the adjournment of the legislative  
26 session during which the Governor submits the nominee's name,  
27 the nominating committee shall promptly thereafter submit the

1 list of three qualified candidates to the Chief Justice of the  
2 Alabama Supreme Court, who shall choose a nominee from that  
3 list to serve as judge. The term of any new or successor judge  
4 shall begin on the first day of the month following the date  
5 of approval by the full Senate or selection by the Chief  
6 Justice of the Alabama Supreme Court.

7 (c) The nominating committee shall be organized  
8 within six months of the effective date of this act and shall  
9 consist of the following:

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

14 (2) The Commissioner of the Department of Revenue,  
15 or his or her designee.

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

25 (4) Except as otherwise provided in this  
26 subdivision, one member appointed by the Speaker of the House  
27 of Representatives, who shall be a representative of municipal

1 government. If more than 50 percent of the self-administered  
2 municipalities in this state have elected to divest the Tax  
3 Appeals Commission of jurisdiction pursuant to Section  
4 40-2B-25 as of October 1 of each year, the representative of  
5 municipal government shall be removed and the Director of  
6 Finance or his or her designee shall serve as a member of the  
7 nominating committee. If more than 50 percent of the  
8 self-administered counties and more than 50 percent of the  
9 self-administered municipalities have elected to divest the  
10 Tax Appeals Commission of jurisdiction pursuant to Section  
11 40-2B-25 as of October 1 of each year, there shall only be  
12 five members of the nominating committee, the fifth of which  
13 is the Director of Finance or his or her designee.

14 (5) Two members appointed by the President of the  
15 Alabama Circuit Judges Association, who shall be  
16 representatives of the taxpayers of the state but who shall  
17 not be practicing attorneys or employees or former employees  
18 of the Department of Revenue or municipal or county  
19 government.

20 The appointing authorities should take into  
21 consideration the racial, gender, geographic, urban/rural, and  
22 economic diversity of the state when selecting representatives  
23 for the nominating committee.

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

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

1 any meeting at which a quorum is present either in person, by  
2 written proxy, or by the written consent of all its members.  
3 For the purposes of this section, a quorum shall consist of a  
4 majority of the members of the nominating committee then  
5 serving.

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

1 judge is appointed as provided in subsection (b). If a  
2 petition for recall is timely submitted, but the Court of the  
3 Judiciary does not vote to recall the judge, the judge shall  
4 thereafter be automatically appointed to another eight-year  
5 term.

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

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

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

25 (a) Each Tax Appeals Commission judge shall be a  
26 United States citizen, domiciled in Alabama, and a member in  
27 good standing of the Alabama State Bar Association. The chief

1 judge must have at least 10 years' experience and an associate  
2 judge must have at least five years' experience, either in the  
3 active practice of law in Alabama, whether in the governmental  
4 or private sector, or in a judicial or quasi-judicial office  
5 such as an administrative law judge. The judge shall possess  
6 an acceptable judicial temperament and a high level of  
7 knowledge and degree of experience in the area of state and  
8 local taxation, as determined by the 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, 2012, 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 nominating  
9 committee. The judges shall receive no other monetary  
10 compensation for services except as authorized by subsection  
11 (b). This subsection shall neither increase nor decrease the  
12 salary received by the chief administrative law judge of the  
13 Department of Revenue, who shall become the initial chief  
14 judge of the Tax Appeals Commission pursuant to Section  
15 40-2B-18(a).

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

24 §40-2B-18. Chief judge; associate judges; functions.

25 (a) The initial chief judge of the Tax Appeals  
26 Commission shall be the chief administrative law judge of the  
27 Department of Revenue serving on September 30, 2012.

1       Thereafter, the individual who is nominated as chief judge by  
2       the nominating committee, appointed by the Governor, and  
3       approved by the Senate or appointed by the Chief Justice of  
4       the Alabama Supreme Court, as provided in Section 40-2B-15(b),  
5       shall serve as chief judge.

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

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

16              (d) If a judge of the Tax Appeals Commission dies,  
17       retires, or resigns, or is unable to serve as judge, or is  
18       removed from office for cause, the Chief Justice of the  
19       Supreme Court of Alabama, at the request of the nominating  
20       committee, may appoint a Tax Appeals Commission judge pro  
21       tempore, who must meet the qualifications for a Tax Appeals  
22       Commission judge set forth in Section 40-2B-16(a). Such  
23       appointment shall become effective the first day of the month  
24       following the submission of the appointment letter by the  
25       chief justice to the Governor's Office. Such judge pro tempore  
26       shall serve until such time as a successor judge is confirmed  
27       by the Senate, as provided herein. If the judge pro tempore is

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

16 §40-2B-19. Offices of Tax Appeals Commission;  
17 location of hearings.

18 The principal office of the Tax Appeals Commission  
19 shall be in Montgomery and in a building that is separate and  
20 apart from any building in which the Department of Revenue has  
21 an office, as selected by the chief judge. The Tax Appeals  
22 Commission may hold hearings in any county seat, in the  
23 discretion of the chief judge. If the appeal involves a tax  
24 levied by or on behalf of a self-administered county or  
25 municipality, the Tax Appeals Commission may hold the hearing  
26 in the county seat of the affected county or the county seat  
27 of the county in which the affected municipality is located.

1 The circuit court sitting in any county, without charge and  
2 upon reasonable notice from a judge of the Tax Appeals  
3 Commission, shall provide the Tax Appeals Commission with  
4 suitable rooms and facilities within the courthouse space  
5 assigned to the circuit court. The county commission shall  
6 have no obligation or responsibility to provide space or  
7 facilities. The Tax Appeals Commission may also hold hearings  
8 in the Department of Revenue's service centers located  
9 throughout the state.

10 §40-2B-20. Authority to contract and expend funds;  
11 budget of Tax Appeals Commission; limitation on activities of  
12 personnel.

13 (a) The Tax Appeals Commission, through the chief  
14 judge, may contract or enter into agreements with any private  
15 or governmental agency, including the Administrative Office of  
16 Courts or the Retirement Systems of Alabama, for the rental of  
17 office space, and the rental or purchase of equipment,  
18 administrative or other support services, supplies, and all  
19 other property or services necessary for the operation of the  
20 Tax Appeals Commission. The funds for the operation of the Tax  
21 Appeals Commission shall be administered by the Tax Appeals  
22 Commission, through the chief judge. With respect to the  
23 fiscal year ending September 30, 2013, there shall be  
24 transferred from the Revenue Department Administrative Fund to  
25 the Tax Appeals Commission the amount of four hundred  
26 twenty-five thousand dollars (\$425,000). The amount  
27 transferred from the Revenue Department Administrative Fund

1 shall be disbursed to the Tax Appeals Commission in four equal  
2 increments, at the beginning of each quarter of the fiscal  
3 year. Thereafter, the Tax Appeals Commission, through the  
4 chief judge, shall prepare an annual budget, and sufficient  
5 funds shall be appropriated annually by the Legislature from  
6 the Revenue Department Administrative Fund to be used  
7 exclusively for the operation of the Tax Appeals Commission.

8 (b) No employee of the Tax Appeals Commission or  
9 person serving as judge pro tempore shall act as an authorized  
10 representative or representative of the department before the  
11 Tax Appeals Commission while an employee or while serving as a  
12 judge pro tempore. Nor shall any former employee of the Tax  
13 Appeals Commission or former judge pro tempore act as an  
14 authorized representative, representative of the department,  
15 or otherwise participate in any case that was pending before  
16 the Tax Appeals Commission on the date of termination of that  
17 person's employment with or service on behalf of the Tax  
18 Appeals Commission. A former Tax Appeals Commission judge may  
19 represent a client before the Tax Appeals Commission in a  
20 legal, non-lobbying capacity, in a case that was not pending  
21 before the Tax Appeals Commission when the judge left office,  
22 to the same extent former members of the Alabama judiciary are  
23 allowed by Section 36-25-13.

24 §40-2B-21. Records.

25 The Tax Appeals Commission shall maintain an  
26 official docket, fee book, and other records as deemed

1 necessary by the chief judge. Such records may be maintained  
2 in electronic format.

3 §40-2B-22. Filing fees prohibited.

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

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

16 §40-2B-24. Department of Revenue allowed to  
17 acquiesce or nonacquiesce in Tax Appeals Commission and  
18 circuit court decisions.

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

23 (b) Acquiescence in a decision means acceptance by  
24 the Department of Revenue of the conclusion reached, but does  
25 not necessarily mean acceptance and approval of the reasons or  
26 rationale of the Tax Appeals Commission or circuit court for  
27 its conclusion.

1           §40-2B-25. Election by Self-Administered County or  
2 Municipality to Divest Jurisdiction of Tax Appeals Commission.

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

20           (b) Subject to the limitation imposed by subsection  
21 (e), the election-out under this section shall be made by  
22 serving a copy of the ordinance or resolution evidencing the  
23 election-out, adopted by the governing body of the  
24 self-administered county or municipality pursuant to this  
25 section, with the Tax Appeals Commission. Service may be  
26 accomplished by mailing a copy of the ordinance or resolution,  
27 certified by an appropriate official, by either U.S. mail with



1 delivery confirmation or certified U.S. mail, return receipt  
2 requested, by hand delivery, or by an expedited courier  
3 service to the Tax Appeals Commission's office. The Tax  
4 Appeals Commission shall promptly publish notice of the  
5 election-out pursuant to subsection (d), and the election  
6 shall be effective on the date that notice is published.  
7 Notwithstanding the foregoing, appeals of final assessments or  
8 denied refunds involving the electing county or municipality  
9 that were pending before the Tax Appeals Commission on the  
10 date that notice of the election-out is published shall  
11 continue to be heard and decided by the Tax Appeals Commission  
12 as if the election-out had not been made.

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

25 (d) At least once a month, the Tax Appeals  
26 Commission shall provide the Department of Revenue with a list  
27 of all self-administered counties and municipalities that have

1 elected-out pursuant to subsection (b), or that have filed a  
2 notice of revocation of their election-out pursuant to  
3 subsection (c). The Department of Revenue shall publish the  
4 list on its website and otherwise make available to the public  
5 in the same manner that the rates and administrators of  
6 certain county and municipal taxes are published by the  
7 Department of Revenue. The Tax Appeals Commission may also  
8 publish the list on its own website.

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

22 Section 3. The Code Commissioner shall review Titles  
23 11 and 40 and shall substitute "Alabama Tax Appeals  
24 Commission" for any reference to the Administrative Law  
25 Division of the Department of Revenue, and shall make any  
26 other similar amendments consistent herewith.

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

4           "§40-2A-3.

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

8           "~~(1) ADMINISTRATIVE LAW JUDGE. The chief~~  
9           ~~administrative law judge of the department, or any other~~  
10           ~~individual acting in that capacity as appointed by the~~  
11           ~~commissioner.~~

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

14           "(1) ASSOCIATE TAX APPEALS COMMISSION JUDGE. An  
15           Associate Judge, as defined in Section 40-2B-18(c), of the  
16           Alabama Tax Appeals Commission.

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

23           "(3) CHIEF TAX APPEALS COMMISSION JUDGE or CHIEF  
24           JUDGE. The Chief Judge, as defined in Section 40-2B-18(a), of  
25           the Alabama Tax Appeals Commission.

26           "(4) COMMISSIONER. The commissioner of the  
27           department or his or her delegate.

1           "(5) COMPTROLLER. The Comptroller of the State of  
2 Alabama.

3           "(6) DELEGATE. When used with reference to the  
4 commissioner means any officer or employee of the department  
5 duly authorized by the commissioner, directly or indirectly,  
6 by one or more redelegations of authority, to perform the  
7 function described in the context.

8           "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The  
9 Alabama Department of Revenue.

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

21           "(9) FINAL ASSESSMENT. The final notice of value,  
22 underpayment, or nonpayment of any tax administered by the  
23 department.

24           "(10) INTEREST. That amount computed under Section  
25 40-1-44, on any overpayment or underpayment of tax or under  
26 Section 40-2A-18 on a final assessment.

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

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

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

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

19           "(15) PETITION FOR REVIEW. A written document filed  
20 with the department in response to a preliminary assessment in  
21 which the taxpayer sets forth reasonably specific objections  
22 to ~~the~~ a preliminary assessment.

23           "(16) PRELIMINARY ASSESSMENT. The preliminary notice  
24 of value, ~~or~~ underpayment, or nonpayment of any tax  
25 administered by the department.

26           "(17) PRIVATE EXAMINING ~~AUDITING~~ OR COLLECTING FIRM.  
27 Any person in the business of collecting, through contract or

1 otherwise, local sales, use, rental, lodgings or other taxes  
2 or license fees for any county or municipality, or auditing  
3 any taxpayer, through the examination of books and records,  
4 for any county or municipality. The term shall not include any  
5 of the following:

6 "a. The Department of Revenue.

7 "b. A county or municipality that has entered into a  
8 contract or other arrangement to collect local sales, use,  
9 rental, lodgings or other taxes or license fees on behalf of  
10 another county or municipality, or to audit a taxpayer,  
11 through the examination of books and records, on behalf of  
12 another county or municipality.

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

20 "(18) PUBLICATION 1A. A written pamphlet to be  
21 distributed by the department to all taxpayers whose books and  
22 records are being examined by the department, at or before the  
23 commencement of an examination, explaining in simple and  
24 nontechnical terms, the role of the department and the rights  
25 of the taxpayer, ~~whose books and records are being examined by~~  
26 ~~the department during the examination and which shall be~~

1 promptly revised from time to time to reflect any changes in  
2 the applicable law or rules.

3 "(19) RETURN. Any report, document, or other  
4 statement required to be filed with the department for the  
5 purpose of paying, reporting, or determining the proper amount  
6 of value or tax due.

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

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

15 "a. A county or municipality that allows the  
16 department to administer a sales, use, rental, or lodgings tax  
17 which is levied by or on behalf of that county or  
18 municipality.

19 "b. A municipality or county that levies a gross  
20 receipts tax in the nature of a sales tax, as defined in  
21 subdivision (8). A county or municipality that both  
22 self-administers a sales, use, rental, or lodgings tax and  
23 allows the department to administer a sales, use, rental, or  
24 lodgings tax that is levied by or on behalf of the county or  
25 municipality is only a self-administered county or  
26 municipality with respect to those sales, use, rental, or  
27 lodgings taxes that the county or municipality administers

1       itself or for those taxes that it contracts for the  
2       collection.

3               "(22) TAX. Any amount, including applicable penalty  
4       and interest, levied or assessed against a taxpayer and which  
5       the department or any county, municipality, or their designees  
6       are required or authorized to administer under the provisions  
7       of Alabama law.

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

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

22              "~~(24)~~(25) TAXPAYER ADVOCATE. The person so  
23       designated from time to time by the commissioner to assist the  
24       taxpayers of the State of Alabama with regard to tax issues  
25       resulting from any taxes administered or collected by the  
26       department.



1           "~~(25)~~(26) TAXPAYER ASSISTANCE ORDER. A written order  
2 issued by the Taxpayer Advocate and approved by either the  
3 commissioner or assistant commissioner which, among other  
4 items, states the facts and grants relief to a taxpayer  
5 concerning an issue in dispute with the department with regard  
6 to tax issues resulting from any taxes administered or  
7 collected by the department or grants a waiver of penalties  
8 otherwise owed to the department by a defined class or group  
9 of taxpayers who are the subject of a declaration of natural  
10 disaster by the Governor.

11           "§40-2A-4.

12           "(a) Rights of the taxpayer.

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

18           "(1) For purposes of sections (a), (c), and (d), the  
19 term "department" shall include the Department of Revenue, a  
20 self-administered county or municipality, or a private  
21 examining or collecting firm, depending on whether the  
22 Department of Revenue, a self-administered county, or  
23 municipality, or private examining or collecting firm is  
24 conducting the examination of the taxpayer.

25           "(2) At or before the commencement of an examination  
26 of the books and records of a taxpayer, the department shall  
27 provide to the taxpayer the current version of Publication 1A.

1 Publication 1A shall provide, in simple and non-technical  
2 terms, a statement of the taxpayer's rights. Those rights  
3 include the right to be represented during an examination, an  
4 explanation of their appeal rights, and the right to know the  
5 criteria and procedures used to select taxpayers for an  
6 examination.

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

10 "a. A written description of the basis for the  
11 assessment and any penalty asserted with respect to the  
12 assessment.

13 "b. A written description of the method by which the  
14 taxpayer may request an administrative review of the  
15 preliminary assessment.

16 "(4) ~~At or before~~ Together with the issuance of a  
17 final assessment, the department shall inform the taxpayer by  
18 a written statement of his or her right to appeal to the  
19 ~~administrative law division~~ Tax Appeals Commission or to  
20 circuit court and shall include the written description  
21 required by subsection (2)a., as revised if necessary to  
22 reflect any changes since the issuance of the preliminary  
23 assessment.

24 "(5) Except in cases involving suspected criminal  
25 violations of the tax law or other criminal activity, the  
26 department shall conduct an examination of a taxpayer during  
27 regular business hours after providing reasonable notice to

1 the taxpayer. A taxpayer who refuses a proposed time for an  
2 examination on the grounds that the proposed examination would  
3 cause inconvenience or hardship must offer reasonable  
4 alternative times and dates for the examination.

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

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

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

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

15 "(b) Department responsibilities generally.

16 "(1) The commissioner shall appoint a Taxpayer  
17 Advocate from among the employees of the department. This  
18 officer shall receive and review inquiries or complaints  
19 concerning matters that have been pending before the  
20 department for an unreasonable length of time, or matters  
21 where the taxpayer has been unable to obtain a reasonable  
22 response after several attempts to communicate with the  
23 department employee assigned to the taxpayer's case, or his or  
24 her immediate superiors. In addition, this officer shall  
25 review and have the authority to waive a penalty for  
26 reasonable cause as provided in subsection (h) of Section  
27 40-2A-11, shall promptly review inquiries concerning release

1 of property levied upon, the erroneous filing of liens, the  
2 failure to release a lien for good cause, other matters  
3 complained of by a taxpayer or other affected party, or  
4 matters referred to him or her by a judge of the Tax Appeals  
5 Commission. The review process shall include consultation with  
6 the taxpayer or his or her authorized representative, and the  
7 self-administered county or municipality, if applicable,  
8 regarding the background for the inquiry, complaint, or  
9 request for waiver of penalty or other relief sought. The  
10 Taxpayer Advocate shall have no authority nor issue any ruling  
11 with regard to any taxes collected by or on behalf of a  
12 self-administered county or municipality.

13 "a. The Taxpayer Advocate shall, subject to the  
14 approval of the commissioner or the assistant commissioner,  
15 issue taxpayer assistance orders in the form and manner  
16 prescribed herein and by department regulations.

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

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

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

3 "d. At the request of the Tax Appeals Commission,  
4 the taxpayer advocate shall review a final order issued by the  
5 Tax Appeals Commission that was not appealed pursuant to  
6 Section 40-2B-13, if there is newly discovered evidence which  
7 by due diligence could not have been discovered in time to  
8 file an application for rehearing pursuant to Section  
9 40-2B-9(i), and may grant such relief as the taxpayer advocate  
10 deems appropriate.

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

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

22 "f.g. Taxpayer assistance orders shall not be  
23 subject to the confidentiality provisions of this title, and  
24 shall be maintained by the secretary of the department and  
25 shall be open to review upon written request. The Taxpayer  
26 Advocate shall have no authority nor issue any ruling with

1 regard to any taxes collected by or on behalf of a  
2 self-administered county or municipality.

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

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

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

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

19 "a. The basis of a production quota system for  
20 employees; or

21 "b. The basis for evaluating an employee's  
22 performance.

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

26 "(6) INSTALLMENT PAYMENTS.

1            "a. The commissioner is authorized to enter into  
2 written agreements to allow any taxpayer to pay any tax in  
3 installment payments if the commissioner determines that such  
4 an agreement will facilitate collection of ~~such~~ the tax.  
5 Notwithstanding the preceding sentence, such agreements shall  
6 be entered into only regarding a tax ~~that has been finally~~  
7 ~~assessed by the department and not appealed~~ liability  
8 resulting from a final assessment from which an appeal can no  
9 longer be taken, unless the right to appeal is waived by the  
10 taxpayer in writing, and such agreements shall not extend for  
11 a period exceeding ~~twelve~~ 12 months, provided, that any such  
12 agreement may be renewed at the discretion of the commissioner  
13 for succeeding periods not to exceed ~~twelve~~ 12 months. The  
14 commissioner shall only be authorized to enter such an  
15 agreement with regard to a tax administered or collected by  
16 the department.

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

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

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

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



1           "4. The financial condition of the taxpayer has  
2 significantly changed;

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

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

8           "c. The commissioner shall have sole authority or  
9 discretion to enter into or amend, modify, or terminate any  
10 installment payment agreement provided for herein. The  
11 commissioner shall promulgate regulations necessary for the  
12 implementation of this provision.

13           "d. Any self-administered county or municipality or  
14 any private examining or collecting firm shall have the same  
15 authority as provided to the commissioner by this subdivision  
16 relating to installment payments with respect to taxes  
17 administered or collected by the self-administered county, or  
18 municipality or the private examining or collecting firm.

19           "(c) Department failure to comply with this section.  
20 The failure of the department to comply with any provision of  
21 this section shall not prohibit the department from assessing  
22 any tax as provided in this chapter, nor excuse the taxpayer  
23 from timely complying with any time limitations under this  
24 chapter. However, if the department fails to substantially  
25 comply with the provisions of this section, the commissioner  
26 shall, upon application by the taxpayer or other good cause

1 shown, abate any penalties otherwise arising from the  
2 examination or assessment.

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

13 "§40-2A-5.

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

1 ruling. A revenue ruling shall constitute the department's  
2 interpretation of the law or regulations as applied to the  
3 facts contained in the request, but only pertaining to the  
4 particular facts described in the request, and only to the  
5 taxpayer making the request.

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

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

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

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

19 "(3) The law applied by the commissioner in the  
20 revenue ruling is changed in a manner to alter the  
21 commissioner's conclusions in the ruling and the change in the  
22 law is made effective as of the date of the ruling.

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

1           "(d) All revenue rulings issued by the department  
2 shall be published, maintained as a public record, and made  
3 available by the department for public inspection and copying,  
4 within a reasonable time following their issuance, at a  
5 reasonable cost to be determined by the department. Prior to  
6 publication, the department shall delete from the text of the  
7 ruling all names, addresses, titles, figures, dates, and other  
8 information which may identify the particular taxpayer who  
9 requested the ruling. If a revenue ruling contains trade  
10 secrets or other confidential information, the department  
11 shall, upon written request of the taxpayer, delete that  
12 information prior to publication.

13           "(e) Requests for revenue rulings shall be submitted  
14 in writing to the secretary in the form and manner as  
15 prescribed by department regulations, accompanied by a fee of  
16 two hundred dollars (\$200). The commissioner shall either  
17 issue or refuse to issue a ruling within 120 days after  
18 receipt of the request unless the taxpayer consents to an  
19 extension of time. If the commissioner refuses to issue a  
20 ruling within the time prescribed, the two hundred dollar  
21 (\$200) fee shall be refunded to the taxpayer. A request may be  
22 withdrawn at any time prior to the issuance of the requested  
23 ruling, in which case there shall be no refund of the two  
24 hundred dollar (\$200) fee. A taxpayer may request an expedited  
25 revenue ruling in the form and manner prescribed by department  
26 regulations, accompanied by a fee of three thousand dollars  
27 (\$3,000), which the commissioner shall issue within 30 days

1 after receipt of the request or shall promptly refund the  
2 filing fee to the taxpayer.

3 "(f) Revenue rulings shall be issued in the name of  
4 the commissioner.

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

1 governing body, the fee for issuance of the ruling shall be  
2 waived. If the requesting party is a taxpayer, the department  
3 shall, promptly upon receipt, forward a copy of the ruling  
4 request to the appropriate municipal or county governing body  
5 and shall consult with and accept written comments from  
6 representatives of the municipality or county prior to  
7 issuance of the ruling.

8 "§40-2A-7.

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

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

23 "(2) The department may examine and audit the  
24 records, books, or other relevant information maintained by  
25 any taxpayer or other person for the purpose of computing and  
26 determining the correct amount of value or correct amount of  
27 any tax, license, or fee administered by the department, or

1 for any other purpose necessary for the proper administration  
2 of any matter under the jurisdiction of the department.

3 "(3) A taxpayer, or any officer of a corporation or  
4 association, or partner of a partnership, manager of a  
5 manager-managed limited liability company, member of a  
6 member-managed limited liability company, or fiduciary of a  
7 trust, or other responsible individual of any entity under a  
8 duty to maintain books and records pursuant to this subsection  
9 who fails or refuses to maintain such records and books, or  
10 permit inspection, shall be subject to contempt proceedings in  
11 the circuit court of the judicial circuit in which the person  
12 resides or has a principal place of business, and upon proof  
13 of the fact to the court, may be punished for contempt as  
14 provided in cases of contempt in circuit court.

15 "(4) The department may summon any witness to appear  
16 and give testimony, and summon by subpoena duces tecum any  
17 records, books, or other information of any kind relating to  
18 any matter which the department has authority to administer.  
19 The witness may be summoned by subpoena issued by the  
20 secretary of the department, any circuit judge, any  
21 magistrate, or any district judge, in the name of the  
22 department, directed to any sheriff of Alabama and returnable  
23 to the department. The subpoena may be served in like manner  
24 as subpoenas issued out of any circuit court in Alabama, or  
25 the subpoena may be served by an authorized employee of the  
26 department or by either U.S. mail with delivery confirmation  
27 or certified mail, return receipt requested. A fee shall be

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

21 "(5) The department may issue forms and make  
22 reasonable regulations concerning any matter administered by  
23 the department. Regulations promulgated by the department  
24 shall be issued in accordance with the procedures set forth in  
25 the Alabama Administrative Procedure Act, Chapter 22 of Title  
26 41.



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

3           "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL  
4 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND  
5 FINAL ASSESSMENTS.

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

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

23           "c. All preliminary and final assessments issued by  
24 the department shall be executed as provided by regulations  
25 promulgated by the department.

26           "(2) TIME LIMITATION FOR ENTERING PRELIMINARY  
27 ASSESSMENT. Any preliminary assessment shall be entered within

1 three years from the due date of the return, or three years  
2 from the date the return is filed with the department,  
3 whichever is later, or if no return is required to be filed,  
4 within three years of the due date of the tax, except as  
5 follows:

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

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

15 "For purposes of this paragraph:

16 "1. The term taxable base means the gross income,  
17 gross proceeds from sales, gross receipts, net worth capital  
18 employed, or other amounts on which the tax paid with reported  
19 on the return is computed measured; provided, that for a  
20 corporation subject to the income tax imposed by Chapter 18 of  
21 this title, the term "taxable base" means the corporation's  
22 federal gross income multiplied by its Alabama apportionment  
23 factor for the same tax year, calculated pursuant to Chapter  
24 27 of this title; and

25 "2. In determining the amount omitted from the  
26 taxable base, there shall not be taken into account any amount  
27 which is omitted from the taxable base stated in the return if

1 the amount is disclosed in the return, or in a statement  
2 attached to the return, in a manner adequate to apprise the  
3 department of the nature and amount of the item. With respect  
4 to a corporation subject to the income tax imposed by Chapter  
5 18 of this title, an amount omitted from the taxable base  
6 shall not include any amounts for which the taxpayer has  
7 substantial authority supporting its position. For purposes of  
8 this subparagraph, the term "substantial authority" shall be  
9 defined by reference to 26 U.S.C. §6662, as in effect from  
10 time to time, as may be modified by department rule to conform  
11 to Alabama tax law.

12 "c. A preliminary assessment entered pursuant to  
13 Sections 40-29-72 and 40-29-73, may be entered within five  
14 years from the due date of the return on which the underlying  
15 tax is required to be reported or within five years of the  
16 date the return is filed, whichever is later.

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

1           "2. In the case of income received by a corporation  
2           contemplating dissolution, a preliminary assessment of any  
3           income tax shall be entered within 18 months after written  
4           request, by the corporation, filed after the return is made,  
5           but not after the expiration of three years from the due date  
6           of the return or three years from the date the return is filed  
7           with the department, whichever is later. This subparagraph  
8           shall not apply to any corporation unless dissolution is  
9           completed within 18 months of the date of the written notice.

10           "e. If a taxpayer has made the election provided in  
11           subsection (d) ~~or (e)~~ of Section 40-18-8, a preliminary  
12           assessment based on the gain realized as a result of the  
13           involuntary conversion ~~[in the case of subsection (d) of~~  
14           ~~Section 40-18-8]~~ or a rollover of gain on the sale of a  
15           personal residence ~~[as provided in subsection (e) of Section~~  
16           ~~40-18-8]~~ may be entered within three years from the date the  
17           taxpayer notified the department of the replacement of the  
18           property in accordance with subsection (d) ~~or (e)~~ of Section  
19           40-18-8, ~~as the case may be,~~ or of his or her intention not to  
20           replace the property.

21           "~~f. If a taxpayer has validly elected to have the~~  
22           ~~provisions of subdivision (a) (7) of Section 40-18-6 and~~  
23           ~~subsection (l) of Section 40-18-8 apply to an acquisition of~~  
24           ~~stock before January 1, 1985, any liability of the taxpayer~~  
25           ~~under this title, solely from amendment of its returns to be~~  
26           ~~consistent with that election may be assessed at any time~~

1 ~~within five years from the date on which the taxpayer filed~~  
2 ~~the amended returns with the department.~~

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

26 "1. Within the time period otherwise allowed by this  
27 section.

1           "2. If the taxpayer files an amended return as  
2 prescribed by and within the time specified in this  
3 subdivision, within one year following the date the amended  
4 return, as prescribed in this subdivision, was filed.

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

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

16           "Any tax assessed within the appropriate additional  
17 one year time period allowed by this subdivision shall be  
18 limited to those items changed on the federal income tax  
19 return or federal estate tax return that affect the income tax  
20 liability or the estate tax liability imposed by this title.

21           ~~"2. When a federal income tax return or federal~~  
22 ~~estate tax return is changed in any manner after it has been~~  
23 ~~filed with the Internal Revenue Service, other than by an~~  
24 ~~amended return, and the change results in an overpayment of~~  
25 ~~taxes imposed by this title, a petition for refund of the~~  
26 ~~overpayment may be filed within the later of one year after~~  
27 ~~the federal changes become final, or within the time allowed~~

1 ~~for the filing of a petition for refund as provided in this~~  
2 ~~chapter. The refund shall be limited to those items changed on~~  
3 ~~the federal income tax return or federal estate tax return~~  
4 ~~that affect the income tax liability or estate tax liability~~  
5 ~~imposed by this title.~~

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

13 "h.g. The running of the period of limitations  
14 provided herein for entering a preliminary assessment shall be  
15 suspended for the period that:

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

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

22 "i.h. The department and the taxpayer may, prior to  
23 the expiration of the period for entering a preliminary  
24 assessment or the filing of a petition for refund, agree in  
25 writing to extend the time provided for entering the  
26 assessment or filing the petition in this chapter. The tax may  
27 be assessed, or the petition for refund may be filed, at any

1 time prior to the expiration of the period agreed upon. The  
2 period agreed upon may be extended by subsequent agreements in  
3 writing made before the expiration of the period previously  
4 agreed upon.

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

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



1                   "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON  
2 TAXPAYER. The preliminary assessment entered by the  
3 department, or a copy thereof, shall be promptly mailed by the  
4 department to the taxpayer's last known address by either  
5 first class U.S. mail or certified mail with return receipt  
6 requested, but at the option of the department, the  
7 preliminary assessment may be delivered to the taxpayer by  
8 personal delivery or by U.S. mail with delivery confirmation.

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

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

23                   "b. If a written petition for review:

24                   "1. Is not timely filed, or

25                   "2. Is properly filed, and upon further review the  
26 department determines the preliminary assessment is due to be  
27 upheld in whole or in part, the department may make the

1 assessment final in the amount of tax due as computed by the  
2 department, with applicable interest and penalty computed to  
3 the date of entry of the final assessment.

4 "c. If a preliminary assessment is not made final by  
5 the department within three years from the date of entry, the  
6 taxpayer may appeal the preliminary assessment to the Tax  
7 Appeals Commission or to the appropriate circuit court as  
8 provided by subsection (b) (5) for an appeal of a final  
9 assessment. Any preliminary assessment that is outstanding as  
10 of October 1, 2012, and that was entered five or more years  
11 prior to that date, is void unless the preliminary assessment  
12 is made final or the department and the taxpayer agree in  
13 writing to extend the time period for entering a final  
14 assessment prior to October 1, 2012.

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

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

2           "a. A taxpayer may appeal to the Tax Appeals  
3 Commission from any final assessment entered by the department  
4 by filing a notice of appeal with the ~~Administrative Law~~  
5 ~~Division~~ Tax Appeals Commission within ~~30~~ 60 days from the  
6 date of entry of the final assessment, and the appeal, if  
7 timely filed, shall proceed as ~~herein~~ provided in Chapter 2B  
8 for appeals to the ~~Administrative Law Division~~ Tax Appeals  
9 Commission.

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

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

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

25           "(ii) File a supersedeas bond with the court ~~for~~ in  
26 an amount equal to 125 percent of the amount of the tax,  
27 interest, and any penalty shown on the final assessment. The

1 supersedeas bond shall be executed by a surety company  
2 licensed and authorized to do business in Alabama and shall be  
3 conditioned to pay the amount of tax, interest, and any  
4 penalties shown on the final assessment, plus applicable  
5 interest and any court costs relating to the appeal, payable  
6 to the department, or the self-administered county or  
7 municipality, if applicable.

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

23 "(iv) File a pledge or collateral assignment of  
24 securities with the circuit court that constitute eligible  
25 collateral under Chapter 14A, Title 41, in an amount equal to  
26 200 percent of the amount of the tax, interest, and penalty  
27 shown on the final assessment. The pledge or collateral

1 assignment shall be in favor of the department, or the  
2 self-administered county or municipality, if applicable, and  
3 conditioned to pay the assessment plus applicable interest and  
4 any court costs relating to the appeal.

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

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

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

26 "2. Notwithstanding subparagraph 1., should the  
27 circuit court determine that the taxpayer has not satisfied

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

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

14 "d.1. The ~~Administrative Law Division~~ Tax Appeals  
15 Commission, circuit court, or the appellate court on appeal  
16 may increase or decrease the assessment to reflect the correct  
17 amount due.

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

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

25 "(6) 30-DAY APPEAL PERIODS FOR INDIVIDUALS WHO FAIL  
26 TO FILE AN ALABAMA INCOME TAX RETURN. Notwithstanding the  
27 60-day appeal periods for preliminary assessments and final

1 assessments provided by subdivisions (4) and (5), in the case  
2 of an individual who is subject to Alabama income tax and who  
3 fails to file timely the return required by Chapter 18 of this  
4 title for a particular tax year, if the department enters a  
5 preliminary assessment against the taxpayer based on  
6 information received from the Internal Revenue Service with  
7 respect to that same tax year, the taxpayer shall have only 30  
8 days to file a petition for review pursuant to subdivision  
9 (4), and if the preliminary assessment is made final, the  
10 taxpayer shall have only 30 days to file a notice of appeal  
11 pursuant to subdivision (5).

12 "(c) Procedure governing petitions for refund;  
13 appeals therefrom.

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

1 the taxpayer who collected and paid over the tax to the  
2 department and the consumer/purchaser who paid the tax to the  
3 taxpayer. A direct petition may be filed by the taxpayer if  
4 the taxpayer never collected the tax from the  
5 consumer/purchaser, or if the tax has been credited or repaid  
6 to the consumer/purchaser by the taxpayer.

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

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

24 "b. Net operating loss carryback. In lieu of the  
25 periods provided in paragraph a., in the case of a net  
26 operating loss carryback, the period for filing a petition for  
27 refund, the department making an automatic refund or allowing



1 a credit shall be the period prescribed in 26 U.S.C. ~~Section~~  
2 §6511(d)(2) for the claiming of a credit or refund.

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

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

1 authorized representative's last known address. If the  
2 department fails to grant a refund within the time provided  
3 herein, the petition for refund shall be deemed to be denied.

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

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

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

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

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

25                   "(d) The Department of Revenue shall revise existing  
26 regulations or administrative guidance, or issue new

1 regulations or administrative guidance, as appropriate, in  
2 conformance with this section.

3 "(e) ~~This~~ The amendments made to this section by Act  
4 2007-504 shall apply to all appeals filed after June 15, 2007.  
5 Notwithstanding the prior sentence, in any appeal to a circuit  
6 court which ~~is~~ was pending on June 15, 2007, and in which a  
7 supersedeas bond was filed pursuant to, and in compliance  
8 with, the requirements of this section, for double the amount  
9 of the tax, interest, and any penalty shown on the final  
10 assessment, or for double the amount of the final order of the  
11 administrative law judge, such bond may be reduced to 125  
12 percent of such amount shown on the final assessment or in the  
13 final order of the administrative law judge.

14 "§40-2A-8.

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

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

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

1           "~~(b)~~(c) The department may proceed with the intended  
2 action if no appeal is filed by the taxpayer with the  
3 ~~administrative law division~~ Tax Appeals Commission within 30  
4 ~~days of the mailing of the notice by the department to the~~  
5 ~~taxpayer.~~ the time allowed under subsection (a). If a  
6 designated agent has failed to provide the department with a  
7 bond and any qualifying license as provided in Section  
8 32-8-34, the revocation of designated agent status by the  
9 department shall be effective immediately upon electronic  
10 notice through the system the designated agent uses to process  
11 applications for certificates of title or receipt of written  
12 notice of revocation, whether by U.S. mail or hand delivery.  
13 Otherwise, the revocation of a designated agent status shall  
14 be effective after the time for appeal under this section has  
15 expired. The revocation of any motor vehicle certificate of  
16 title or license by the department shall not be final until  
17 either the titled owner and lien holder, if any, consent to  
18 the revocation or the time for filing an appeal to the Tax  
19 Appeals Commission has expired. The department may obtain an  
20 injunction in the appropriate circuit court at any time  
21 enjoining a licensee or designated agent from continuing to  
22 operate under a disputed license or designated agent  
23 authority, if the continued operation may cause substantial  
24 loss of revenue, would cause substantial harm to the state or  
25 public, or for such other good reason as determined by the  
26 circuit court. The department may suspend the designated  
27 agent's access to process new applications for certificate of

1 title until such time as any outstanding title applications  
2 not properly filed by the designated agent are properly filed  
3 with the department.

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

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

16 "§40-2A-11.

17 "(a) Failure to timely file ~~return~~ certain returns.  
18 ~~If~~ Except as provided below, if a taxpayer fails to file any  
19 return required to be filed with the department on or before  
20 the date prescribed therefor, determined with regard to any  
21 extension of time for filing, there shall be assessed as a  
22 penalty the greater of an amount equal to 10 percent of any  
23 ~~additional~~ the correct amount of tax required to be paid with  
24 the return or fifty dollars (\$50). If the taxpayer is not  
25 required to pay any additional tax due with the return, the  
26 penalty imposed by this subsection shall not be assessed  
27 unless the department has first provided 30 days' written

1 notice to the taxpayer, at the last known address of the  
2 taxpayer, that the return has not been filed and the taxpayer  
3 fails or refuses to file the delinquent return within that  
4 time period. This subsection shall not apply to any individual  
5 income tax return or amended return filed with the department  
6 if the taxpayer claims thereon and is due a refund of income  
7 tax.

8 "(b) Failure to timely pay tax.

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

24 "(2) If a taxpayer fails to pay to the department  
25 any amount in respect of any tax required to be shown on any  
26 return, which is not so shown, within 30 calendar days from  
27 the date of the first written notice and demand therefore,



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

13 "(3) This subsection shall not apply to any failure  
14 to pay any estimated tax required to be paid by Sections  
15 40-18-80 and 40-18-80.1.

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

22 "For purposes of this subsection, the term  
23 "negligence" includes any failure to make a reasonable attempt  
24 to comply with ~~Title 40~~ this title or other statutes  
25 administered by the department, and the term "disregard"  
26 includes any careless, reckless, or intentional disregard of  
27 valid rules and regulations.

1           "(d) Underpayment due to fraud. If any part of any  
2 underpayment of tax required to be shown on a return is due to  
3 fraud, there shall be added to the tax an amount equal to ~~50~~  
4 75 percent of that portion of the underpayment which is  
5 attributable to fraud.

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

11           "(e) Frivolous return penalty. If a taxpayer files a  
12 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~  
13 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~  
14 ~~hundred fifty dollars (\$250)~~ one thousand dollars (\$1,000).

15           "(f) Frivolous appeal penalty. If any appeal to the  
16 ~~administrative law division~~ Tax Appeals Commission or circuit  
17 court is determined to be frivolous or primarily for the  
18 purpose of delay or to impede collection of any tax, a penalty  
19 of ~~two hundred fifty dollars (\$250)~~ one thousand dollars  
20 (\$1,000) or, at the discretion of the Tax Appeals Commission  
21 or circuit judge, up to 25 percent of the tax in question,  
22 whichever is greater, shall be assessed in addition to any tax  
23 due.

24           "(g) Failure to file partnership or Alabama S  
25 corporation returns. If a pass-through entity, as defined in  
26 Section 40-18-24.2, or an Alabama S corporation, as defined in  
27 Section 40-18-160(b)(1), fails to file the applicable

1 information return required by Section 40-18-28 or 40-18-39  
2 for any taxable year within the time prescribed therefor, the  
3 pass-through entity or corporation shall be liable for a  
4 penalty equal to the product of fifty dollars (\$50) multiplied  
5 by the number of members of the pass-through entity or  
6 shareholders of the Alabama S corporation, whichever is  
7 applicable, for each month, or fraction thereof, during which  
8 such failure continues, but not to exceed 12 months.

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

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

21 "(h)(j) Waiver of penalties. Notwithstanding the  
22 foregoing, no penalty under this title or Section ~~10-2B-15.02~~  
23 10A-2-15.02 shall be assessed, if reasonable cause exists; or  
24 if a penalty has been assessed, it shall be waived upon a  
25 determination of reasonable cause. Reasonable cause shall  
26 include, but not be limited to, those instances in which the

1 taxpayer has acted in good faith. The burden of proving  
2 reasonable cause shall be on the taxpayer.

3 ~~"(i)(k)~~ Discount sustained for ~~just causes~~  
4 reasonable cause. All other provisions of tax laws  
5 notwithstanding, either the ~~Commissioner of the Department of~~  
6 ~~Revenue~~ commissioner or the taxpayer advocate of the  
7 department, upon review of the circumstances involved, may  
8 authorize the continuance or reinstatement of a  
9 ~~statute-allowable~~ an otherwise allowable discount for timely  
10 payment or filing when timely payment ~~is made, but~~ or filing  
11 ~~is~~ was delayed for ~~just causes~~ reasonable cause.

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

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

18 "§40-18-27.

19 "(a) Effective for tax years beginning after  
20 December 31, 1997, every taxpayer having an adjusted gross  
21 income for the taxable year of more than one thousand eight  
22 hundred seventy-five dollars (\$1,875) if single or if married  
23 and not living with spouse, and of more than three thousand  
24 seven hundred fifty dollars (\$3,750) if married and living  
25 with spouse, shall each year file with the Department of  
26 Revenue a return stating specifically the items of gross  
27 income, the deductions and credits allowed by this chapter,

1 the place of residence, and post office address. If a husband  
2 and wife living together have an adjusted gross income of more  
3 than three thousand seven hundred fifty dollars (\$3,750), each  
4 shall file a return unless the income of each is included in a  
5 single joint return. If the taxpayer is unable to file a  
6 return, the return shall be filed by a duly authorized agent,  
7 a guardian, or other person charged with the care of the  
8 person or property of the taxpayer.

9 "(b) A taxpayer other than a resident shall not be  
10 entitled to the deductions authorized by Sections 40-18-15 and  
11 40-18-15.2 unless the taxpayer files a complete return showing  
12 the gross income of the taxpayer both from within and outside  
13 the state. Included on every income tax return shall be the  
14 name, and address, and social security number or Preparer  
15 Taxpayer Identification Number of the person who prepared the  
16 return. The taxpayer shall be held liable for any statement  
17 made by an agent of the taxpayer with reference to any  
18 information required by law to be furnished in connection with  
19 that tax return.

20 "(c) Returns filed on the basis of the calendar year  
21 shall be filed on or before April 15 following the close of  
22 the calendar year. Returns filed on the basis of a fiscal year  
23 shall be filed on or before the fifteenth day of the fourth  
24 month following the close of the fiscal year. The department  
25 may grant a reasonable extension of time for filing returns,  
26 under rules and regulations as it shall prescribe. Except in  
27 the case of taxpayers who are abroad, no extension shall be

1 for more than six months. If the taxpayer has requested an  
2 extension of time for the filing of a return, the period  
3 during which the return will be considered timely filed shall  
4 not expire until 10 days after the Department of Revenue mails  
5 to the taxpayer a rejection of the request for an extension of  
6 time for filing the return. The return must be signed or  
7 otherwise validated by both the taxpayer(s) and, if  
8 applicable, the tax return preparer under rules or regulations  
9 of the Department of Revenue and must contain a printed  
10 declaration that the return is filed under the penalties of  
11 perjury.

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

19 "(e) In the event a husband and wife file a joint  
20 return, the husband and wife shall be jointly and severally  
21 liable for the income tax shown on the return or as may be  
22 determined by the Department of Revenue to be due by them to  
23 the State of Alabama. Notwithstanding the foregoing, ~~an~~  
24 ~~innocent spouse~~ a husband or wife shall be relieved of certain  
25 liabilities to the same extent and in the same manner as  
26 ~~granted~~ allowed by the Internal Revenue Code for federal

1 income tax purposes, including 26 U.S.C. §§ 6015(b), 6015(c),  
2 and 6015(f), as amended from time to time."

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

6 Section 6. The provisions of this act are severable.  
7 If any part of this act is declared invalid or  
8 unconstitutional, that declaration shall not affect the part  
9 which remains.

10 Section 7. It is the intent of the Legislature that  
11 the existence, authority, and powers of the Administrative Law  
12 Division of the Department of Revenue shall remain in full  
13 force and effect until the Tax Appeals Commission created  
14 herein becomes fully operational on October 1, 2012, and that  
15 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8  
16 shall continue to be filed with and handled by the  
17 Administrative Law Division until that date. To that end, the  
18 repeal of Section 40-2A-9, and those portions of other  
19 sections of Titles 11 and 40 relating to the powers,  
20 authority, and duties of the Administrative Law Division and  
21 the administrative law judge, and the right of a taxpayer to  
22 appeal to the Administrative Law Division, shall not become  
23 effective until October 1, 2012. Notwithstanding the  
24 foregoing, the Tax Appeals Commission shall not have  
25 jurisdiction over any appeals regarding taxes levied by or on  
26 behalf of a self-administered county or municipality until  
27 October 1, 2013. The amendments to Section 40-2A-7(b)(2)f.,

1 Code of Alabama 1975, relating to amended returns due to  
2 federal audit changes, Section 40-2A-7(b)(2)b., Code of  
3 Alabama 1975, relating to the six-year statute of limitations  
4 for corporate income tax purposes, and Section 40-2A-11, Code  
5 of Alabama 1975, relating to civil penalties, by this act  
6 shall only apply to tax periods beginning on or after January  
7 1, 2013.

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



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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on Judiciary ..... 07-FEB-12

Read for the second time and placed on the calendar with 1 substitute and..... 22-MAR-12

Read for the third time and passed as amended..... 05-APR-12

Yeas 89, Nays 0, Abstains 0

Greg Pappas  
Clerk