

1 HB105
2 135452-3
3 By Representative DeMarco
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8 SYNOPSIS: Under existing law, the Alabama Taxpayers'
9 Bill of Rights and Uniform Revenue Procedures Act
10 governs the administrative procedures of the
11 Department of Revenue and local governments
12 relating to taxpayer's rights and responsibilities,
13 refunds, penalties, assessments, and appeals.

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

1 procedure for seeking an expedited revenue ruling
2 from the department, and allow the department to
3 issue revenue procedures applicable to a particular
4 industry or group of taxpayers.

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

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

25 This bill would also amend portions of
26 Chapters 2A and 18 of Title 40, Code of Alabama

1 1975, for purposes of conformity and to make
2 technical corrections.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To add Chapter 2B to Title 40 of the Code of Alabama
9 1975, to provide for the creation and operation of the Alabama
10 Tax Appeals Commission, to state that the intent of this act
11 is to adopt in large part the American Bar Association Model
12 State Administrative Tax Tribunal Act; to hear appeals of tax
13 and other matters administered by the Department of Revenue,
14 and certain taxes levied by or on behalf of self-administered
15 counties or municipalities that do not opt-out; to provide the
16 necessary funding for the first year of operations of the Tax
17 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,
18 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of
19 Alabama 1975, for purposes of conformity to the federal
20 Taxpayer's Bill of Rights, including broader "innocent spouse"
21 type relief and increased penalties for negligence, fraud, and
22 frivolous appeals or returns; to make technical corrections;
23 to require amended state income tax returns as a result of IRS
24 audit changes; to increase the amount of time a taxpayer has
25 to file an appeal of a preliminary or final assessment; and to
26 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 As part of the executive branch of state government,
22 there is hereby created an independent commission to be known
23 as the Alabama Tax Appeals Commission, also referred to herein
24 as the "Tax Appeals Commission." The Tax Appeals Commission
25 shall become fully operational on October 1, 2012. The Tax
26 Appeals Commission, in 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 §40-2B-2. Definitions.

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

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

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

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

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

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

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

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

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

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

19 (a) The Tax Appeals Commission shall have
20 jurisdiction to hear and determine all appeals pending before
21 the Department of Revenue's Administrative Law Division on
22 September 30, 2012, and all subsequent appeals filed with the
23 Tax Appeals Commission pursuant to Chapters 2A and 29 of this
24 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to
25 motor vehicles, or Section 40-2B-25, relating to
26 self-administered counties and municipalities, except as
27 follows:

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

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

12 (3) Any appeals regarding a sales, use, rental, or
13 lodgings tax levied or collected by or on behalf of a
14 self-administered county or municipality if the governing body
15 of the county or municipality has made an election under
16 Section 40-2B-25 to divest the Tax Appeals Commission of
17 jurisdiction over the dispute, challenge, or appeal.

18 (b) To provide for a proper transition from the
19 Administrative Law Division to the Tax Appeals Commission, the
20 Department of Revenue, on or before October 1, 2012, shall
21 transfer to the Tax Appeals Commission office furniture,
22 equipment, computers, and other tangible personal property
23 used by the Administrative Law Division, as well as all case
24 files, docket books, and all other documents and information,
25 in both tangible and intangible form, compiled, used, or
26 maintained by the Administrative Law Division. Further, any
27 appeals that are timely filed with the Administrative Law

1 Division after September 30, 2012, shall be deemed timely
2 filed with and transferred to the Tax Appeals Commission. The
3 Chief Administrative Law Judge of the Administrative Law
4 Division shall have and is hereby granted the power and
5 authority necessary to effect an orderly transition,
6 including, but not limited to, the power and authority to
7 execute binding contracts and commitments on behalf of the Tax
8 Appeals Commission with respect to employees, office space,
9 equipment, and other property, consistent with Sections
10 40-2B-16 and 40-2B-20.

11 §40-2B-4. Service of papers and process.

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

23 §40-2B-5. Timely mailed document considered to be
24 timely filed.

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

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

4 (2) Received by the Tax Appeals Commission on or
5 before the date due; or

6 (3) Received by the Tax Appeals Commission in
7 legible form by facsimile or electronic transmission on or
8 before the due date, if the original, signed document is
9 mailed or delivered to the Tax Appeals Commission within seven
10 days after receipt of the facsimile or electronic
11 transmission.

12 §40-2B-6. Issuance of subpoenas; administration of
13 oaths.

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

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

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

20 §40-2B-7. Hearings to be without a jury and de novo.

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

23 §40-2B-8. Notice to taxpayer of right to appeal to
24 Tax Appeals Commission.

25 The department shall notify a taxpayer of the right
26 to appeal to the Tax Appeals Commission, and the
27 jurisdictional requirements for perfecting the appeal. Such

1 notice shall be given with a final assessment, or with any
2 notice by the department informing the taxpayer that his or
3 her claim for refund has been denied in whole or in part, or
4 any notice by the department informing the taxpayer of any
5 act, proposed act, or refusal to act by the department from
6 which the taxpayer has a right to appeal to the Tax Appeals
7 Commission.

8 §40-2B-9. Procedures concerning appeals.

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

16 (b) Judges of the Tax Appeals Commission shall hear
17 and decide all appeals to the Tax Appeals Commission, as
18 assigned by the chief judge. A judge, without a hearing, may
19 dismiss any appeal, or grant appropriate relief to any party,
20 if a party fails or refuses to comply with any Tax Appeals
21 Commission regulation or statute concerning appeals before the
22 Tax Appeals Commission, or if any party fails or refuses to
23 comply with any preliminary order issued by a judge. The
24 judge, for good cause, may reinstate an appeal dismissed under
25 this subsection or withdraw an order granting relief, but only
26 if an application to reinstate the appeal or withdraw the
27 order is filed within 15 days from the date on which the order

1 dismissing the appeal or granting the relief was entered, or
2 on the judge's own motion within 90 days. A final order
3 dismissing an appeal or granting relief to a party may be
4 appealed to circuit court in the same manner and subject to
5 the same requirements as appeals from final or other
6 appealable orders of the Tax Appeals Commission.

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

17 (d) (1) Except as provided in subdivision (2), the
18 Tax Appeals Commission shall notify the legal division of the
19 Department of Revenue in writing that an appeal has been filed
20 and shall mail a copy of such notification to the taxpayer or
21 its authorized representative. The legal division shall file a
22 written answer with the Tax Appeals Commission within 60 days
23 from the date of issuance of the notice to the legal division.
24 The judge may allow the legal division additional time, not to
25 exceed 30 days, within which to file an answer, but only if
26 the legal division requests the extension within the 60-day
27 period provided by the preceding sentence. The answer shall

1 state the facts and the issues involved and the Department of
2 Revenue's position relating thereto. The judge may require the
3 Department of Revenue to file an amended answer if more
4 information is deemed necessary. A county or municipality may
5 consult with the legal division of the Department of Revenue
6 concerning any appeal that involves the county's or
7 municipality's tax that is administered by the Department of
8 Revenue.

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

1 county or municipality and its authorized representatives may
2 consult with the legal division of the Department of Revenue
3 concerning the appeal.

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

- 26 (1) Open the record and receive appearances.

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

5 (3) Interrogate witnesses if deemed necessary.

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

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

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

23 (g) A final order shall be entered by the judge
24 which, if deemed appropriate by the judge, shall contain
25 findings of fact and conclusions of law. The final order shall
26 provide appropriate relief under the circumstances, and,
27 unless altered or amended on appeal or rehearing, shall have

1 the same force and effect as a final order issued by a circuit
2 court in Alabama.

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

16 (i) Any party may apply for rehearing from any final
17 order or opinion and preliminary order, provided, however, the
18 application must be filed within 15 days from the date of
19 entry of such order. The application for rehearing shall
20 specify the reasons and supporting arguments why such order is
21 incorrect and should be reconsidered. The timely filing of an
22 application for rehearing from a final order shall suspend the
23 time period for filing an appeal to circuit court. If an
24 application for rehearing is timely filed, the judge shall
25 thereafter issue a final or other order on rehearing, either
26 with or without a hearing on the application, at the
27 discretion of the judge. The time for filing a notice of

1 appeal to circuit court shall begin anew on the date of entry
2 of the final order on rehearing.

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

14 (k) The rules of evidence applicable in civil
15 nonjury cases in the circuit courts of Alabama shall be
16 followed by the Tax Appeals Commission. Evidence not
17 admissible thereunder may be admitted, however, in the
18 discretion of the judge, if relevant, not unfairly prejudicial
19 to any party, and necessary for the fair adjudication of the
20 case. The judge may announce before or during a hearing that
21 it shall not be necessary for either party to object to any
22 testimony or evidence offered by a party, and any objections
23 shall be preserved and may be made on appeal. The final order
24 issued by the judge shall be based only on such evidence as is
25 relevant and material. Documentary evidence may be received in
26 copy form if there is no objection thereto or in the

1 discretion of the judge. Official notice may be taken of any
2 technical facts within the specialized knowledge of the judge.

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

11 (m) Any person upon application, and at the
12 discretion of the judge, may be permitted to intervene in any
13 dispute before the Tax Appeals Commission if that person's
14 rights are substantively affected by the outcome of the
15 proceeding and the person's interest is not otherwise
16 adequately represented in the case. Intervenors may also
17 appeal to circuit court from a final or other appealable
18 order, as provided herein for appeals. Parties interested in
19 the outcome of any case before the Tax Appeals Commission,
20 with the permission of the judge, may submit amicus briefs.

21 (n) All testimony, exhibits, documents, and other
22 materials submitted by a party or introduced into evidence at
23 a hearing before the Tax Appeals Commission, and all final and
24 other orders issued by the judge, shall be deemed public
25 information except:

1 (1) Information received from the Internal Revenue
2 Service that is restricted by law or agreement from
3 disclosure.

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

7 (3) As otherwise ordered by the judge.

8 §40-2B-10. Burden of proof in Tax Appeals Commission
9 proceedings.

10 On appeal to the Tax Appeals Commission, a final
11 assessment shall be prima facie correct, and the burden of
12 proof shall be on the taxpayer to prove that the assessment is
13 incorrect. In cases involving denied refunds, the burden shall
14 also be on the taxpayer to prove that a refund is due. The
15 judge shall have discretion to determine the party to proceed
16 first with the evidence in the case.

17 §40-2B-11. Hearings to be open to public; report of
18 proceedings; exception; confidential information.

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

22 (b) A judge may close a hearing to the public if, in
23 the discretion of the judge, trade secrets, federal or other
24 tax information, confidential business records, or other
25 confidential information may be disclosed during the hearing.
26 A judge may also issue protective orders concerning any
27 evidence involving trade secrets, federal or other tax

1 information, confidential business records, or other
2 confidential information. In determining whether a hearing
3 should be closed or a protective order issued, the judge shall
4 weigh the harm that may be suffered by the disclosing party
5 against any benefit received by the public as a result of the
6 disclosure. If the judge closes a hearing or issues a
7 protective order as requested by a party or refuses to close a
8 hearing or issue a requested protective order, the judge shall
9 issue an order to that effect. The order shall explain the
10 reasons why the request was granted or denied, as applicable.

11 (c) An order closing a hearing or granting a
12 protective order or an order denying same shall be considered
13 a final order for purposes of appeal to circuit court. A party
14 may appeal such an order to circuit court in the same manner
15 and subject to the same requirements as appeals from final
16 orders of the Tax Appeals Commission, except that if the case
17 involves a disputed final assessment, the final assessment
18 need not be paid, nor a supersedeas bond or other security
19 filed, in connection with the appeal. The Tax Appeals
20 Commission may stay the case on the merits until the issue is
21 finally resolved on appeal.

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

1 §40-2B-13. Appeals to circuit court; reviewing
2 authority and action on appeal.

3 (a) Other than an application for rehearing to the
4 Tax Appeals Commission, the exclusive remedy for review of any
5 final or other appealable order issued by the Tax Appeals
6 Commission shall be by appeal to the appropriate circuit
7 court.

8 (b) The taxpayer, an intervenor pursuant to Section
9 40-2B-9(m), a self-administered county or municipality whose
10 tax is within the jurisdiction of the Tax Appeals Commission,
11 or the Department of Revenue may appeal to circuit court from
12 a final or other appealable order issued by the Tax Appeals
13 Commission by filing a notice of appeal with the appropriate
14 circuit court within 60 days from the date the final or other
15 appealable order was entered. A copy of the notice of appeal
16 shall be submitted to the Tax Appeals Commission within the
17 60-day appeal period. The Tax Appeals Commission shall
18 thereafter prepare a record on appeal. The appeal shall be
19 filed in the following circuit courts:

20 (1) Any appeal by the Department of Revenue, a
21 self-administered county or municipality whose tax is within
22 the jurisdiction of the Tax Appeals Commission, or an
23 intervenor shall be filed with the circuit court of the county
24 in which the taxpayer resides or has a principal place of
25 business in Alabama.

26 (2) Any appeal by the taxpayer may be filed with the
27 Circuit Court of Montgomery County, Alabama, or with the

1 circuit court of the county in which the taxpayer resides or
2 has a principal place of business in Alabama.

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

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

14 (1) Remit the amount of the final assessment
15 determined to be due by the final order to the Department of
16 Revenue, or to the self-administered county or municipality,
17 if applicable.

18 (2) Execute a supersedeas bond, which shall be
19 executed by a surety company licensed to do business in
20 Alabama, in an amount equal to 125 percent of the amount
21 determined to be due by the final order, plus applicable
22 interest and any court costs relating to the appeal, payable
23 to the Department of Revenue, or to the self-administered
24 county or municipality, if applicable, and conditioned to pay
25 the amount determined to be due by the final order.

26 (3) File an irrevocable letter of credit with the
27 circuit court in an amount equal to 125 percent of the amount

1 determined to be due by the final order. The irrevocable
2 letter of credit shall be issued by a financial institution
3 designated as a qualified public depository by the Board of
4 Directors of the Security for Alabama Funds Enhancement (SAFE)
5 Program pursuant to Chapter 14A of Title 41. The Department of
6 Revenue, or the self-administered county or municipality, if
7 applicable, shall be named the beneficiary of the irrevocable
8 letter of credit. The irrevocable letter of credit shall be
9 conditioned to pay the amount determined to be due by the
10 final order, plus applicable interest and any court costs
11 relating to the appeal. A taxpayer may not issue an
12 irrevocable letter of credit as to an appeal by the same
13 taxpayer.

14 (4) File a pledge or collateral assignment of
15 securities with the circuit court that constitute eligible
16 collateral under Chapter 14A of Title 41, in an amount equal
17 to 200 percent of the amount determined to be due by the final
18 order. The pledge or collateral assignment shall be in favor
19 of the Department of Revenue, or the self-administered county
20 or municipality, if applicable, and conditioned to pay the
21 amount determined to be due by the final order, plus
22 applicable interest and any court costs relating to the
23 appeal.

24 (5) Show to the satisfaction of the clerk of the
25 circuit court to which the appeal is taken that the taxpayer
26 has a net worth, based on fair market value, of one hundred

1 thousand dollars (\$100,000), or less, including his or her
2 homestead.

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

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

7 b. That involves a final assessment, if either the
8 amount stated as due in the final order of the Tax Appeals
9 Commission is not timely paid in full, or a supersedeas bond,
10 irrevocable letter of credit, or pledge or collateral
11 assignment of securities is not timely filed as required in
12 subsection (c).

13 (2) If the circuit court determines that the
14 taxpayer has not satisfied the requirements of subsection (c),
15 the circuit court shall order that the taxpayer satisfy such
16 requirements. The taxpayer may satisfy such requirements at
17 any time within 30 days after service of the court order. No
18 order of dismissal for lack of jurisdiction shall be entered
19 within 30 days after service of the court order and no order
20 of dismissal shall thereafter be entered if such requirement
21 is satisfied within such 30-day period.

22 (e) The appeal to circuit court from a final or
23 other appealable order issued by the Tax Appeals Commission
24 shall be a trial de novo, except that the order shall be
25 presumed prima facie correct, and the burden shall be on the
26 appealing party to prove otherwise. The circuit court shall
27 hear the case by its own rules and shall decide all questions

1 of fact and law. The administrative record and transcript
2 shall be transmitted to the reviewing court as provided
3 herein, and shall be admitted into evidence in the trial de
4 novo, subject to the rights of either party to object to any
5 testimony or evidence in the administrative record or
6 transcript. With the consent of all parties, judicial review
7 may be on the administrative record and transcript. The
8 circuit court shall affirm, modify, or reverse the order of
9 the Tax Appeals Commission, with or without remanding the case
10 for further hearing, as justice may require.

11 §40-2B-14. Publication of Tax Appeals Commission
12 decisions.

13 Subject to Section 40-2B-9, the decisions determined
14 to be of general public interest may be published and
15 distributed by the Tax Appeals Commission, as prescribed by
16 the chief judge. Provided that a decision may not be published
17 until either the time period for appealing the decision has
18 expired or the Tax Appeals Commission has received a copy of
19 the notice of appeal pursuant to Section 40-2B-13(b), in which
20 case the fact that the decision has been appealed shall be
21 noted on the first page of the published decision. A
22 reasonable fee may be charged for the publication, as
23 established from time to time by the chief judge.

24 §40-2B-15. Appointment and term of judges; maximum
25 number; vacancy.

26 (a) The term of a judge of the Tax Appeals
27 Commission shall be eight years, except as herein provided.

1 The term of the first chief judge shall begin on October 1,
2 2012.

3 (b) Additional or successor judges of the Tax
4 Appeals Commission shall be nominated by a committee of six
5 persons, except as provided below. The nominating committee
6 shall provide the Governor with a list of three qualified
7 candidates for each open or newly created Tax Appeals
8 Commission judge's position. Within 45 days after receipt of
9 the list, the Governor shall choose a nominee from that list
10 of candidates and submit his or her name to the Senate
11 Judiciary Committee for approval. The nominee's name, if
12 approved by the Senate Judiciary Committee, shall then be
13 submitted for approval by the full Senate. If the Senate fails
14 to approve the nominee by the adjournment of the legislative
15 session during which the Governor submits the nominee's name,
16 the nominating committee shall promptly thereafter submit the
17 list of three qualified candidates to the Chief Justice of the
18 Alabama Supreme Court, who shall choose a nominee from that
19 list to serve as judge. The term of any new or successor judge
20 shall begin on the first day of the month following the date
21 of approval by the full Senate or selection by the Chief
22 Justice of the Alabama Supreme Court.

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

26 (1) One member in good standing with the Alabama
27 State Bar who has at least five years' experience in the

1 private practice of tax law in this state, to be appointed by
2 the State Bar President.

3 (2) The Commissioner of the Department of Revenue,
4 or his or her designee.

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

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

1 five members of the nominating committee, the fifth of which
2 is the Director of Finance or his or her designee.

3 (5) Two members appointed by the President of the
4 Alabama Circuit Judges Association, who shall be
5 representatives of the taxpayers of the state but who shall
6 not be practicing attorneys or employees or former employees
7 of the Department of Revenue or municipal or county
8 government.

9 The appointing authorities should take into
10 consideration the racial, gender, geographic, urban/rural, and
11 economic diversity of the state when selecting representatives
12 for the nominating committee.

13 (d) The appointing authorities shall submit to the
14 Governor's Office the name or names of the initial member or
15 members appointed to the nominating committee. The term of a
16 member of the nominating committee shall be six years, and
17 shall begin on the first day of the month following the
18 submission of the member's appointment letter by the
19 appointing authority to the Governor's Office. An appointing
20 authority may remove a sitting member or members previously
21 appointed by such authority and appoint another member or
22 members before the term of the sitting member or members has
23 expired, by filing notice of such action with the Governor's
24 Office. An appointing authority may also appoint a new or
25 replacement member if a sitting member dies, resigns, or is
26 otherwise unable to serve. The term of any new or replacement
27 member shall begin on the first day of the month following the

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

22 (e) Any sitting judge, at the end of his or her
23 term, shall be automatically appointed to a subsequent
24 eight-year term unless the judge is recalled in accordance
25 with this subsection. A recall may be initiated by the
26 Governor, Attorney General, or the Judicial Inquiry Commission
27 by submitting a petition for recall to the Chief Judge of the

1 Court of the Judiciary no more than 12 and no less than three
2 months before the end of a judge's current term. The petition
3 shall state the reasons why the judge should not serve another
4 eight-year term. A copy of the petition for recall shall be
5 simultaneously submitted to the chair of the nominating
6 committee. In such case, the nominating committee shall
7 provide an objective, written appraisal of the performance of
8 the sitting judge to the Chief Judge of the Court of the
9 Judiciary for use in determining the competency and fitness of
10 the judge, including a recommendation by the committee. If the
11 Court of the Judiciary votes to recall the judge, the judge is
12 not reappointed to another eight-year term, and a successor
13 judge shall be appointed as provided in subsection (b). The
14 term of the judge subject to the petition for recall shall be
15 extended during the pendency of the recall proceedings, and if
16 recalled, the judge shall continue to serve until a successor
17 judge is appointed as provided in subsection (b). If a
18 petition for recall is timely submitted, but the Court of the
19 Judiciary does not vote to recall the judge, the judge shall
20 thereafter be automatically appointed to another eight-year
21 term.

22 (f) There shall be no less than one nor more than
23 three judges serving at any one time. The initial judge of the
24 Tax Appeals Commission shall serve as chief judge. If the
25 chief judge determines that a second or third judge is
26 necessary, based on current and anticipated case load, the
27 chief judge shall so notify the nominating committee, and the

1 nominating committee shall thereafter determine whether a
2 second or third judge is necessary. If the nominating
3 committee agrees with the chief judge's determination, the
4 nominating committee shall commence proceedings under this
5 section to fill the additional position. The chief judge may,
6 with the advice and consent of the nominating committee,
7 eliminate an associate judge position if the current and
8 anticipated case load does not warrant the position.

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

12 §40-2B-16. Qualifications of Tax Appeals Commission
13 judge; oath; Tax Appeals Commission employees.

14 (a) Each Tax Appeals Commission judge shall be a
15 United States citizen, domiciled in Alabama, and a member in
16 good standing of the Alabama State Bar Association. The chief
17 judge must have at least 10 years' experience and an associate
18 judge must have at least five years' experience, either in the
19 active practice of law in Alabama, whether in the governmental
20 or private sector, or in a judicial or quasi-judicial office
21 such as an administrative law judge. The judge shall possess
22 an acceptable judicial temperament and a high level of
23 knowledge and degree of experience in the area of state and
24 local taxation, as determined by the nominating committee.

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

1 (c) Tax Appeals Commission judges shall be subject
2 to disciplinary proceedings before the Judicial Inquiry
3 Commission to the same extent as circuit judges. The Judicial
4 Inquiry Commission shall have the authority to remove any Tax
5 Appeals Commission judge from office, after notice and an
6 opportunity to be heard, for neglect of duty, inability to
7 perform duties, malfeasance in office, or other good cause.

8 (d) Tax Appeals Commission judges shall be
9 classified state employees as provided in Section 36-26-10. As
10 such, a judge, except for appointment, reconfirmation,
11 removal, and dismissal as provided in this chapter, shall be
12 entitled to all benefits and protections available to
13 classified state employees, including the right to participate
14 in any retirement benefit plan available to certain state
15 employees from time to time. A judge who is qualified and who
16 elects to participate in any such retirement plan, while
17 participating in the plan, shall retain the same status,
18 duties, authority, and rights as granted to Tax Appeals
19 Commission judges by this chapter. If a judge, while
20 participating in such plan, is not automatically reappointed
21 or not reappointed and reconfirmed to another term as herein
22 provided, the judge shall be considered as having been
23 involuntarily terminated for purposes of receiving any
24 retirement benefits and member contributions pursuant to the
25 retirement plan. If at the time of appointment, a judge is a
26 Merit System employee of the state, the judge shall be
27 entitled to carry over, continue, and retain any of the

1 benefits resulting from prior state employment. Tax Appeals
2 Commission judges shall also participate in the State
3 Employees' Retirement System.

4 (e) The chief judge may employ one Executive
5 Assistant III as an unclassified service state employee, as
6 provided in Section 36-26-10(c). All other Tax Appeals
7 Commission personnel shall be appointed or hired by the chief
8 judge, as necessary for the proper operation of the Tax
9 Appeals Commission, shall be state employees under the state
10 Merit System, and shall be entitled to all benefits and
11 protections available to state employees. The Executive
12 Assistant III employed in the Administrative Law Division as
13 of September 30, 2012, shall be transferred to the Tax Appeals
14 Commission, along with any other Merit System employees
15 employed by the Administrative Law Division on that date.

16 §40-2B-17. Judge's salary, expenses.

17 (a) The chief judge of the Tax Appeals Commission
18 shall receive such salary as is provided from time to time
19 within Pay Grade 88 of the compensation plan of the state
20 Merit System, as determined by the Governor with the advice of
21 the nominating committee. Associate judges shall receive such
22 salary as is provided from time to time within Pay Grade 84 of
23 the compensation plan of the state Merit System, as determined
24 by the chief judge with the advice of the nominating
25 committee. The judges shall receive no other monetary
26 compensation for services except as authorized by subsection
27 (b). This subsection shall neither increase nor decrease the

1 salary received by the chief administrative law judge of the
2 Department of Revenue, who shall become the initial chief
3 judge of the Tax Appeals Commission pursuant to Section
4 40-2B-18(a).

5 (b) When a judge or other Tax Appeals Commission
6 employee travels on Tax Appeals Commission business away from
7 the state capital, he or she shall be reimbursed as provided
8 for other state employees in Sections 36-7-20, 36-7-21,
9 36-7-22, and 36-7-24. The chief judge, at his or her
10 discretion, may direct and require any judge or other employee
11 of the Tax Appeals Commission to attend continuing legal
12 education or other training as necessary.

13 §40-2B-18. Chief judge; associate judges; functions.

14 (a) The initial chief judge of the Tax Appeals
15 Commission shall be the chief administrative law judge of the
16 Department of Revenue serving on September 30, 2012.
17 Thereafter, the individual who is nominated as chief judge by
18 the nominating committee, appointed by the Governor, and
19 approved by the Senate or appointed by the Chief Justice of
20 the Alabama Supreme Court, as provided in Section 40-2B-15(b),
21 shall serve as chief judge.

22 (b) The chief judge shall assign cases and otherwise
23 have authority over the operations of the Tax Appeals
24 Commission, including any associate judge. The chief judge
25 shall also have the discretion to order the Tax Appeals
26 Commission to hear cases en banc if there is more than one
27 judge sitting at that time.

1 (c) All judges of the Tax Appeals Commission, other
2 than the chief judge, shall be designated as associate judges,
3 and shall have the same authority and powers of the chief
4 judge, except as specified in this chapter.

5 (d) If a judge of the Tax Appeals Commission dies,
6 retires, or resigns, or is unable to serve as judge, or is
7 removed from office for cause, the Chief Justice of the
8 Supreme Court of Alabama, at the request of the nominating
9 committee, may appoint a Tax Appeals Commission judge pro
10 tempore, who must meet the qualifications for a Tax Appeals
11 Commission judge set forth in Section 40-2B-16(a). Such
12 appointment shall become effective the first day of the month
13 following the submission of the appointment letter by the
14 chief justice to the Governor's Office. Such judge pro tempore
15 shall serve until such time as a successor judge is confirmed
16 by the Senate, as provided herein. If the judge pro tempore is
17 appointed to fill the position of chief judge, he or she shall
18 be compensated at the rate provided herein for the chief
19 judge, and shall have and exercise all powers granted the
20 chief judge. Otherwise, a judge pro tempore shall be
21 compensated at the rate of an associate judge, and shall have
22 and exercise all the powers granted an associate judge. Such
23 compensation shall be paid out of the appropriation for the
24 Tax Appeals Commission. The chief judge may also appoint a
25 judge pro tempore to hear a special case or cases, as assigned
26 by the chief judge including in cases where a judge
27 disqualifies himself or herself on his or her own motion. Such

1 judge pro tempore must meet the qualifications set forth in
2 Section 40-2B-16(a), and shall be compensated at a rate
3 specified by the chief judge, but not at a rate that exceeds
4 any rate paid to an associate judge.

5 §40-2B-19. Offices of Tax Appeals Commission;
6 location of hearings.

7 The principal office of the Tax Appeals Commission
8 shall be in Montgomery, but the commission may hold hearings
9 in any county seat, in the discretion of the chief judge. If
10 the appeal involves a tax levied by or on behalf of a
11 self-administered county or municipality, the Tax Appeals
12 Commission may hold the hearing in the county seat of the
13 affected county or the county seat of the county in which the
14 affected municipality is located. The circuit court sitting in
15 any county, without charge and upon reasonable notice from a
16 judge of the Tax Appeals Commission, shall provide the Tax
17 Appeals Commission with suitable rooms and facilities within
18 the courthouse space assigned to the circuit court. The county
19 commission shall have no obligation or responsibility to
20 provide space or facilities. The Tax Appeals Commission may
21 also hold hearings in the Department of Revenue's service
22 centers located throughout the state.

23 §40-2B-20. Authority to contract and expend funds;
24 budget of Tax Appeals Commission; limitation on activities of
25 personnel.

26 (a) The Tax Appeals Commission, through the chief
27 judge, may contract or enter into agreements with any private

1 or governmental agency, including the Administrative Office of
2 Courts or the Retirement Systems of Alabama, for the rental of
3 office space, and the rental or purchase of equipment,
4 administrative or other support services, supplies, and all
5 other property or services necessary for the operation of the
6 Tax Appeals Commission. The funds for the operation of the Tax
7 Appeals Commission shall be administered by the Tax Appeals
8 Commission, through the chief judge. With respect to the
9 fiscal year ending September 30, 2013, there shall be
10 transferred from the Revenue Department Administrative Fund to
11 the Tax Appeals Commission the amount of four hundred
12 twenty-five thousand dollars (\$425,000). The amount
13 transferred from the Revenue Department Administrative Fund
14 shall be disbursed to the Tax Appeals Commission in four equal
15 increments, at the beginning of each quarter of the fiscal
16 year. Thereafter, the Tax Appeals Commission, through the
17 chief judge, shall prepare an annual budget, and sufficient
18 funds shall be appropriated annually by the Legislature from
19 the Revenue Department Administrative Fund to be used
20 exclusively for the operation of the Tax Appeals Commission.

21 (b) No employee of the Tax Appeals Commission or
22 person serving as judge pro tempore shall act as an authorized
23 representative or representative of the department before the
24 Tax Appeals Commission while an employee or while serving as a
25 judge pro tempore. Nor shall any former employee of the Tax
26 Appeals Commission or former judge pro tempore act as an
27 authorized representative, representative of the department,

1 or otherwise participate in any case that was pending before
2 the Tax Appeals Commission on the date of termination of that
3 person's employment with or service on behalf of the Tax
4 Appeals Commission. A former Tax Appeals Commission judge may
5 represent a client before the Tax Appeals Commission in a
6 legal, non-lobbying capacity, in a case that was not pending
7 before the Tax Appeals Commission when the judge left office,
8 to the same extent former members of the Alabama judiciary are
9 allowed by Section 36-25-13.

10 §40-2B-21. Records.

11 The Tax Appeals Commission shall maintain an
12 official docket, fee book, and other records as deemed
13 necessary by the chief judge. Such records may be maintained
14 in electronic format.

15 §40-2B-22. Filing fees prohibited.

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

18 §40-2B-23. Fees and expenses of witnesses. Any

19 witness subpoenaed by the Tax Appeals Commission on its own
20 motion to testify or produce records at a hearing before the
21 Tax Appeals Commission shall be entitled to receive from the
22 Tax Appeals Commission the fees and mileage provided in
23 Section 40-2A-7(a)(4). Any witness subpoenaed by the Tax
24 Appeals Commission at the request of a party to testify or
25 produce records at such a hearing shall be entitled to receive
26 from the requesting party the fees and mileage provided in
27 Section 40-2A-7(a)(4).

1 §40-2B-24. Department of Revenue allowed to
2 acquiesce or nonacquiesce in Tax Appeals Commission and
3 circuit court decisions.

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

8 (b) Acquiescence in a decision means acceptance by
9 the Department of Revenue of the conclusion reached, but does
10 not necessarily mean acceptance and approval of the reasons or
11 rationale of the Tax Appeals Commission or circuit court for
12 its conclusion.

13 §40-2B-25. Election by Self-Administered County or
14 Municipality to Divest Jurisdiction of Tax Appeals Commission.

15 (a) Unless a self-administered county or
16 municipality elects, in the manner prescribed below, to divest
17 the Tax Appeals Commission of jurisdiction over appeals of
18 final assessments or denied refunds in whole or in part, of
19 any sales, use, rental or lodgings taxes levied or collected
20 from time to time by or on behalf of the self-administered
21 county or municipality, a taxpayer may appeal a final
22 assessment or denied refund involving any such tax to the Tax
23 Appeals Commission in accordance with the procedures and
24 requirements provided in Section 40-2A-7 and this chapter. For
25 purposes of any appeal filed by a taxpayer pursuant to this
26 section, the term "department" as used in Section 40-2A-7
27 means the governing body of the applicable self-administered

1 county or municipality and not the Department of Revenue, and
2 the term "secretary" as used in Section 40-2A-7 means the
3 clerk of the governing body of the applicable
4 self-administered county or municipality.

5 (b) Subject to the limitation imposed by subsection
6 (e), the election-out under this section shall be made by
7 serving a copy of the ordinance or resolution evidencing the
8 election-out, adopted by the governing body of the
9 self-administered county or municipality pursuant to this
10 section, with the Tax Appeals Commission. Service may be
11 accomplished by mailing a copy of the ordinance or resolution,
12 certified by an appropriate official, by either U.S. mail with
13 delivery confirmation or certified U.S. mail, return receipt
14 requested, by hand delivery, or by an expedited courier
15 service to the Tax Appeals Commission's office. The Tax
16 Appeals Commission shall promptly publish notice of the
17 election-out pursuant to subsection (d), and the election
18 shall be effective on the date that notice is published.
19 Notwithstanding the foregoing, appeals of final assessments or
20 denied refunds involving the electing county or municipality
21 that were pending before the Tax Appeals Commission on the
22 date that notice of the election-out is published shall
23 continue to be heard and decided by the Tax Appeals Commission
24 as if the election-out had not been made.

25 (c) Subject to the limitation imposed by subsection
26 (e), an election-out may be revoked, prospectively, by the
27 governing body of the self-administered county or municipality

1 at any time by resolution or ordinance, a certified copy of
2 which shall be served on the Tax Appeals Commission in the
3 manner prescribed above. The revocation of an election-out
4 vests jurisdiction in the Tax Appeals Commission over all
5 appeals of final assessments or denied refunds, in whole or in
6 part, of the county's or municipality's sales, use, rental and
7 lodgings taxes that are entered or denied on or after the date
8 that notice of revocation is published by the Tax Appeals
9 Commission.

10 (d) At least once a month, the Tax Appeals
11 Commission shall provide the Department of Revenue with a list
12 of all self-administered counties and municipalities that have
13 elected-out pursuant to subsection (b), or that have filed a
14 notice of revocation of their election-out pursuant to
15 subsection (c). The Department of Revenue shall publish the
16 list on its website and otherwise make available to the public
17 in the same manner that the rates and administrators of
18 certain county and municipal taxes are published by the
19 Department of Revenue. The Tax Appeals Commission may also
20 publish the list on its own website.

21 (e) A self-administered county or municipality may
22 make only one election-out under subsection (b) or one
23 revocation under subsection (c) during each calendar year. If
24 an appeal is timely filed with the Tax Appeals Commission
25 after the notice of an election-out by the self-administered
26 county or municipality is published by the Tax Appeals
27 Commission, the appeal shall be deemed timely filed with and

1 transferred to the self-administered county or municipality.
2 If an appeal is timely filed with a self-administered county
3 or municipality after the notice of revocation by the
4 self-administered county or municipality is published by the
5 Tax Appeals Commission, the appeal shall be deemed timely
6 filed with and transferred to the Tax Appeals Commission.

7 Section 3. The Code Commissioner shall review Titles
8 11 and 40 and shall substitute "Alabama Tax Appeals
9 Commission" for any reference to the Administrative Law
10 Division of the Department of Revenue, and shall make any
11 other similar amendments consistent herewith.

12 Section 4. Sections 40-2A-3, 40-2A-4, 40-2A-5,
13 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of Alabama
14 1975, are amended to read as follows:

15 "§40-2A-3.

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

19 "~~(1) ADMINISTRATIVE LAW JUDGE. The chief~~
20 ~~administrative law judge of the department, or any other~~
21 ~~individual acting in that capacity as appointed by the~~
22 ~~commissioner.~~

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

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

1 "~~(3)~~ (2) AUTHORIZED REPRESENTATIVE. Any individual
2 with written authority or power of attorney to represent a
3 taxpayer before the department or the Tax Appeals Commission;
4 provided however, that nothing herein shall be construed as
5 entitling any such individual who is not a licensed attorney
6 to engage in the practice of law.

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

10 "(4) COMMISSIONER. The commissioner of the
11 department or his or her delegate.

12 "(5) COMPTROLLER. The Comptroller of the State of
13 Alabama.

14 "(6) DELEGATE. When used with reference to the
15 commissioner means any officer or employee of the department
16 duly authorized by the commissioner, directly or indirectly,
17 by one or more redelegations of authority, to perform the
18 function described in the context.

19 "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The
20 Alabama Department of Revenue.

21 "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES
22 TAX. A privilege or license tax, imposed by a municipality or
23 county, measured by gross receipts or gross proceeds of sale
24 and which: (i) was in effect on or before February 25, 1997,
25 or is an amendment to a tax which was in effect on that date;
26 (ii) is levied against those selling tangible personal
27 property at retail, those operating public places of amusement

1 or entertainment, those making street deliveries, and those
2 leasing or renting tangible personal property; and (iii) is
3 due and payable to a county or municipality monthly or
4 quarterly.

5 "(9) FINAL ASSESSMENT. The final notice of value,
6 underpayment, or nonpayment of any tax administered by the
7 department.

8 "(10) INTEREST. That amount computed under Section
9 40-1-44, on any overpayment or underpayment of tax or under
10 Section 40-2A-18 on a final assessment.

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

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

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

22 "(14) PETITION FOR REFUND. Any written request for a
23 refund of any tax previously paid, including ~~a request~~ in the
24 form of ~~an~~ any return or amended return. Unless otherwise
25 provided by law, the request shall include sufficient
26 information to identify the type and amount of tax overpaid,

1 the taxpayer, the period included, and the reasons for the
2 refund.

3 "(15) PETITION FOR REVIEW. A written document filed
4 with the department in response to a preliminary assessment in
5 which the taxpayer sets forth reasonably specific objections
6 to ~~the~~ a preliminary assessment.

7 "(16) PRELIMINARY ASSESSMENT. The preliminary notice
8 of value, or underpayment, or nonpayment of any tax
9 administered by the department.

10 "(17) PRIVATE EXAMINING ~~AUDITING~~ OR COLLECTING FIRM.
11 Any person in the business of collecting, through contract or
12 otherwise, local sales, use, rental, lodgings or other taxes
13 or license fees for any county or municipality, or auditing
14 any taxpayer, through the examination of books and records,
15 for any county or municipality. The term shall not include any
16 of the following:

17 "a. The Department of Revenue.

18 "b. A county or municipality that has entered into a
19 contract or other arrangement to collect local sales, use,
20 rental, lodgings or other taxes or license fees on behalf of
21 another county or municipality, or to audit a taxpayer,
22 through the examination of books and records, on behalf of
23 another county or municipality.

24 "c. A person or firm whose sole function and purpose
25 on behalf of a municipality or group of municipalities is to
26 collect delinquent insurance premium license fees levied by
27 that municipality or group of municipalities, and who has no

1 authority to determine the amount of license fee, interest,
2 court cost, or penalty owed to the municipality or group of
3 municipalities.

4 "(18) PUBLICATION 1A. A written pamphlet to be
5 distributed by the department to all taxpayers whose books and
6 records are being examined by the department, at or before the
7 commencement of an examination, explaining in simple and
8 nontechnical terms, the role of the department and the rights
9 of the taxpayer, ~~whose books and records are being examined by~~
10 ~~the department during the examination and~~ which shall be
11 promptly revised from time to time to reflect any changes in
12 the applicable law or rules.

13 "(19) RETURN. Any report, document, or other
14 statement required to be filed with the department for the
15 purpose of paying, reporting, or determining the proper amount
16 of value or tax due.

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

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

25 "a. A county or municipality that allows the
26 department to administer a sales, use, rental, or lodgings tax

1 which is levied by or on behalf of that county or
2 municipality.

3 "b. A municipality or county that levies a gross
4 receipts tax in the nature of a sales tax, as defined in
5 subdivision (8). A county or municipality that both
6 self-administers a sales, use, rental, or lodgings tax and
7 allows the department to administer a sales, use, rental, or
8 lodgings tax that is levied by or on behalf of the county or
9 municipality is only a self-administered county or
10 municipality with respect to those sales, use, rental, or
11 lodgings taxes that the county or municipality administers
12 itself or for those taxes that it contracts for the
13 collection.

14 "(22) TAX. Any amount, including applicable penalty
15 and interest, levied or assessed against a taxpayer and which
16 the department or any county, municipality, or their designees
17 are required or authorized to administer under the provisions
18 of Alabama law.

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

22 "~~(23)~~(24) TAXPAYER. Any person subject to or liable
23 for any state or local tax; any person required to file a
24 return with respect to, or to pay, or withhold and remit any
25 state or local tax or to report any information or value to
26 the department, a county, municipality, or its designee; or
27 any person required to obtain or holding any interest in any

1 license, permit, or certificate of title issued by the
2 department, a county, municipality, or its designee, or any
3 person that may be affected by any act or refusal to act by
4 the department, a county, municipality, or its designee, or to
5 keep any records required by this chapter.

6 ~~"(24)~~ (25) TAXPAYER ADVOCATE. The person so
7 designated from time to time by the commissioner to assist the
8 taxpayers of the State of Alabama with regard to tax issues
9 resulting from any taxes administered or collected by the
10 department.

11 ~~"(25)~~ (26) TAXPAYER ASSISTANCE ORDER. A written order
12 issued by the Taxpayer Advocate and approved by either the
13 commissioner or assistant commissioner which, among other
14 items, states the facts and grants relief to a taxpayer
15 concerning an issue in dispute with the department with regard
16 to tax issues resulting from any taxes administered or
17 collected by the department or grants a waiver of penalties
18 otherwise owed to the department by a defined class or group
19 of taxpayers who are the subject of a declaration of natural
20 disaster by the Governor.

21 "§40-2A-4.

22 "(a) Rights of the taxpayer.

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

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

10 "~~(3)~~(2) At or before the issuance of a preliminary
11 assessment, the department shall provide to the taxpayer in
12 simple and non-technical terms:

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

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

19 "~~(4)~~(3) ~~At or before~~ Together with the issuance of a
20 final assessment, the department shall inform the taxpayer by
21 a written statement of his or her right to appeal to the
22 ~~administrative law division~~ Tax Appeals Commission or to
23 circuit court and shall include the written description
24 required by subsection (2)a., as revised if necessary to
25 reflect any changes since the issuance of the preliminary
26 assessment.

1 "~~(5)~~(4) Except in cases involving suspected criminal
2 violations of the tax law or other criminal activity, the
3 department shall conduct an examination of a taxpayer during
4 regular business hours after providing reasonable notice to
5 the taxpayer. A taxpayer who refuses a proposed time for an
6 examination on the grounds that the proposed examination would
7 cause inconvenience or hardship must offer reasonable
8 alternative times and dates for the examination.

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

1 "~~(7)~~(6) A taxpayer shall be allowed to make an audio
2 recording of any in-person interview with any officer or
3 employee of the department relating to any examination or
4 investigation by the department, provided, however, the
5 taxpayer must give reasonable advance notice to the department
6 of his or her intent to record and the recording shall be at
7 the taxpayer's own expense and with the taxpayer's own
8 equipment. The department shall also be allowed to record any
9 interview if the taxpayer is recording the interview, or if
10 the department gives the taxpayer reasonable advance notice of
11 its intent to record the interview. The department shall
12 provide the taxpayer with a copy of the recording, but only if
13 the taxpayer provides reimbursement for the cost of the
14 transcript and reproduction of the copy. The cost shall be
15 reasonable as prescribed by regulations issued by the
16 department.

17 "~~(8)~~(7) This section shall not apply to criminal
18 investigations or investigations relating to the integrity of
19 any officer or employee of the department.

20 "(b) Department responsibilities generally.

21 "(1) The commissioner shall appoint a Taxpayer
22 Advocate from among the employees of the department. This
23 officer shall receive and review inquiries or complaints
24 concerning matters that have been pending before the
25 department for an unreasonable length of time, or matters
26 where the taxpayer has been unable to obtain a reasonable
27 response after several attempts to communicate with the

1 department employee assigned to the taxpayer's case, or his or
2 her immediate superiors. In addition, this officer shall
3 review and have the authority to waive a penalty for
4 reasonable cause as provided in subsection (h) of Section
5 40-2A-11, shall promptly review inquiries concerning release
6 of property levied upon, the erroneous filing of liens, the
7 failure to release a lien for good cause, other matters
8 complained of by a taxpayer or other affected party, or
9 matters referred to him or her by a judge of the Tax Appeals
10 Commission. The review process shall include consultation with
11 the taxpayer or his or her authorized representative regarding
12 the background for the inquiry, complaint, or request for
13 waiver of penalty or other relief sought. The Taxpayer
14 Advocate shall have no authority nor issue any ruling with
15 regard to any taxes collected by or on behalf of a
16 self-administered county or municipality.

17 "a. The Taxpayer Advocate shall, subject to the
18 approval of the commissioner or the assistant commissioner,
19 issue taxpayer assistance orders in the form and manner
20 prescribed herein and by department regulations.

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

1 "c. A taxpayer assistance order shall grant relief
2 as deemed appropriate, including the voiding of any
3 erroneously issued final assessment for a tax which was not a
4 debt due the state, granting of any refund due the taxpayer,
5 or abating an assessment of interest that has accrued because
6 of undue delay by department personnel.

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

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

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

26 "f.g. Taxpayer assistance orders shall not be
27 subject to the confidentiality provisions of this title, and

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

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

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

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

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

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

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

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

4 "(6) INSTALLMENT PAYMENTS.

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

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

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

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

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

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

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

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

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

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

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

11 "§40-2A-5.

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

1 facts contained in the request, but only pertaining to the
2 particular facts described in the request, and only to the
3 taxpayer making the request.

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

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

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

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

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

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

25 "(d) All revenue rulings issued by the department
26 shall be published, maintained as a public record, and made
27 available by the department for public inspection and copying,

1 within a reasonable time following their issuance, at a
2 reasonable cost to be determined by the department. Prior to
3 publication, the department shall delete from the text of the
4 ruling all names, addresses, titles, figures, dates, and other
5 information which may identify the particular taxpayer who
6 requested the ruling. If a revenue ruling contains trade
7 secrets or other confidential information, the department
8 shall, upon written request of the taxpayer, delete that
9 information prior to publication.

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

1 "(f) Revenue rulings shall be issued in the name of
2 the commissioner.

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

1 shall, promptly upon receipt, forward a copy of the ruling
2 request to the appropriate municipal or county governing body
3 and shall consult with and accept written comments from
4 representatives of the municipality or county prior to
5 issuance of the ruling.

6 "(h) Revenue rulings may also govern practices and
7 procedures applicable to the department or address an issue of
8 statewide importance affecting a particular industry in
9 Alabama, and in that event shall be called "revenue
10 procedures." Such revenue procedures may be requested by an
11 organization representing that industry, such as a trade
12 association, and no issuance fee shall be imposed. If the
13 revenue procedure applies to a tax levied by or on behalf of a
14 self-administered county or municipality, the department shall
15 consult with and accept written comments from representatives
16 of the affected county or municipality prior to issuance of
17 the revenue procedure.

18 "§40-2A-7.

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

21 "(1) In addition to all other recordkeeping
22 requirements otherwise set out in this title, taxpayers shall
23 keep and maintain an accurate and complete set of records,
24 books, and other information sufficient to allow the
25 department to determine the correct amount of value or correct
26 amount of any tax, license, permit, or fee administered by the
27 department, or other records or information as may be

1 necessary for the proper administration of any matters under
2 the jurisdiction of the department. The books, records, and
3 other information shall be open and available for inspection
4 by the department upon request at a reasonable time and
5 location.

6 "(2) The department may examine and audit the
7 records, books, or other relevant information maintained by
8 any taxpayer or other person for the purpose of computing and
9 determining the correct amount of value or correct amount of
10 any tax, license, or fee administered by the department, or
11 for any other purpose necessary for the proper administration
12 of any matter under the jurisdiction of the department.

13 "(3) A taxpayer, or any officer of a corporation or
14 association, or partner of a partnership, manager of a
15 manager-managed limited liability company, member of a
16 member-managed limited liability company, or fiduciary of a
17 trust, or other responsible individual of any entity under a
18 duty to maintain books and records pursuant to this subsection
19 who fails or refuses to maintain such records and books, or
20 permit inspection, shall be subject to contempt proceedings in
21 the circuit court of the judicial circuit in which the person
22 resides or has a principal place of business, and upon proof
23 of the fact to the court, may be punished for contempt as
24 provided in cases of contempt in circuit court.

25 "(4) The department may summon any witness to appear
26 and give testimony, and summon by subpoena duces tecum any
27 records, books, or other information of any kind relating to

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

1 to hear, and if appropriate, to grant a motion to quash the
2 subpoena. This subdivision shall not apply to any appeal
3 pending before the Tax Appeals Commission.

4 "(5) The department may issue forms and make
5 reasonable regulations concerning any matter administered by
6 the department. Regulations promulgated by the department
7 shall be issued in accordance with the procedures set forth in
8 the Alabama Administrative Procedure Act, Chapter 22 of Title
9 41.

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

12 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL
13 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND
14 FINAL ASSESSMENTS.

15 "a. If the department determines that the amount of
16 any tax as reported on a return is incorrect, or if no return
17 is filed, or if the department is required to determine value,
18 the department may calculate the correct tax or value based on
19 the most accurate and complete information reasonably
20 obtainable by the department. The department may thereafter
21 enter a preliminary assessment for the correct tax or value,
22 including any applicable penalty and interest.

23 "b. Where the amount of tax or value reported on a
24 return is undisputed by the department, or the taxpayer
25 consents in writing to the amount of any deficiency,
26 determination of value, or preliminary assessment in writing
27 as provided by regulation, the department may immediately

1 enter a final assessment for the amount of the tax or value,
2 plus applicable penalty and interest; provided, the department
3 may at any time enter a final jeopardy assessment pursuant to
4 Sections 40-17A-12, 40-29-90, and 40-29-91.

5 "c. All preliminary and final assessments issued by
6 the department shall be executed as provided by regulations
7 promulgated by the department.

8 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
9 ASSESSMENT. For purposes of the three-year statute of
10 limitations provided by this subdivision, the term "return"
11 refers to the original return required to be filed with the
12 department pursuant to Title 40 or any other statutes
13 administered by the department. An amended return that
14 modifies or supplements an original return shall not extend or
15 renew the three-year limitations period, except as otherwise
16 provided by this subdivision. Any preliminary assessment shall
17 be entered within three years from the due date of the return,
18 or three years from the date the return is filed with the
19 department, whichever is later, or if no return is required to
20 be filed, within three years of the due date of the tax,
21 except as follows:

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

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

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

4 "For purposes of this paragraph:

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

14 "2. In determining the amount omitted from the
15 taxable base, there shall not be taken into account any amount
16 which is omitted from the taxable base stated in the return if
17 the amount is disclosed in the return, or in a statement
18 attached to the return, in a manner adequate to apprise the
19 department of the nature and amount of the item. With respect
20 to a corporation subject to the income tax imposed by Chapter
21 18 of this title, an amount omitted from the taxable base
22 shall not include any amounts for which the taxpayer has
23 substantial authority supporting its position. For purposes of
24 this subparagraph and Section 40-2A-11(c)(2), the term
25 "substantial authority" shall be defined by reference to 26
26 U.S.C. §6662, as in effect from time to time, as may be
27 modified by department rule to conform to Alabama tax law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 "j. The three-year statute of limitations provided
9 by this subdivision for entering a preliminary assessment
10 shall be extended by 30 days for the benefit of a
11 self-administered county or municipality, in cases where the
12 department has audited a taxpayer and additional sales, use,
13 rental, or lodgings tax was found to be due, and the taxpayer
14 likewise owes the tax to the self-administered county or
15 municipality for the same tax period or periods.

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

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

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

1 a written petition for review with the department within ~~30~~ 60
2 days from the date of entry of the preliminary assessment
3 setting out the specific objections to the preliminary
4 assessment. Notwithstanding the time limitations imposed by
5 subsection (c) (2), the petition for review may also request a
6 refund limited to any overpayment of tax with respect to the
7 items changed in the preliminary assessment. If a petition for
8 review is timely filed, or if the department otherwise deems
9 it necessary, the department shall schedule a conference with
10 the taxpayer for the purpose of allowing the taxpayer and the
11 department to present their respective positions, discuss any
12 omissions or errors, and to attempt to agree upon any changes
13 or modifications to their respective positions.

14 "b. If a written petition for review:

15 "1. Is not timely filed, or

16 "2. Is properly filed, and upon further review the
17 department determines the preliminary assessment is due to be
18 upheld in whole or in part, the department may make the
19 assessment final in the amount of tax due as computed by the
20 department, with applicable interest and penalty computed to
21 the date of entry of the final assessment. If upon further
22 review, the department determines that the taxpayer is due a
23 refund for the period or periods involved in the preliminary
24 assessment, the refund shall be granted and paid in accordance
25 with subsection (c) (4).

26 "c. If a preliminary assessment is not made final by
27 the department within three years from the date of entry, the

1 taxpayer may appeal the preliminary assessment to the Tax
2 Appeals Commission or to the appropriate circuit court as
3 provided by subsection (b) (5) for an appeal of a final
4 assessment. Any preliminary assessment that is outstanding as
5 of October 1, 2012, and that was entered five or more years
6 prior to that date, is void unless the preliminary assessment
7 is made final or the department and the taxpayer agree in
8 writing to extend the time period for entering a final
9 assessment prior to October 1, 2012.

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

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

24 "a. A taxpayer may appeal to the Tax Appeals
25 Commission from any final assessment entered by the department
26 by filing a notice of appeal with the ~~Administrative Law~~
27 ~~Division~~ Tax Appeals Commission and the secretary of the

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

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

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

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

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

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

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

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

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

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

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

23 "2. Notwithstanding subparagraph 1., should the
24 circuit court determine that the taxpayer has not satisfied
25 the requirements of subparagraph b.2., the circuit court shall
26 order that the taxpayer satisfy such requirements. The
27 taxpayer may satisfy such requirements at any time within 30

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

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

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

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

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

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

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

9 "(c) Procedure governing petitions for refund;
10 appeals therefrom.

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

1 the taxpayer never collected the tax from the
2 consumer/purchaser, or if the tax has been credited or repaid
3 to the consumer/purchaser by the taxpayer.

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

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

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

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

16 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
17 REVIEW OF REFUND CLAIM; TIME LIMITATIONS. The department shall
18 either grant or deny a petition for refund within six months
19 from the date the petition is filed, unless the period is
20 extended by written agreement of the taxpayer and the
21 department. Upon review, the department may consider all facts
22 and issues relevant to the items changed or adjustments at
23 issue in the taxpayer's petition for refund and may thereafter
24 increase or decrease the requested refund. Alternatively, if
25 the department determines that additional tax is due as a
26 result of the petition for refund, it may enter a preliminary
27 assessment limited to the tax due on those items changed in

1 the petition for refund, so long as such preliminary
2 assessment is entered within six months from the date the
3 petition for refund is filed, or within the time limits
4 otherwise provided in subdivision (b) (2) whichever period
5 expires last. The taxpayer and his or her authorized
6 representative, if applicable, shall be notified of the
7 department's decision concerning the petition for refund by
8 either first class United States U.S. mail, or by certified
9 U.S. mail, return receipt requested, or by U.S. mail with
10 delivery confirmation, sent to the taxpayer's or the
11 authorized representative's last known address. If the
12 department fails to grant a refund within the time provided
13 herein, the petition for refund shall be deemed to be denied.

14 "(4) PROCEDURES IF REFUNDS GRANTED; CREDIT OF
15 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a
16 petition is granted in whole or in part, or the department ~~or,~~
17 the ~~Administrative Law Division~~ Tax Appeals Commission, or a
18 court otherwise determines that a refund is due, the
19 overpayment shall be refunded to the taxpayer by the state,
20 county, municipality, or other entity to which the overpayment
21 was distributed. If the department determines that a refund is
22 due, the amount of the overpayment plus accrued interest may
23 first be credited by the department against any outstanding
24 ~~final tax liabilities due and owing by the taxpayer to the~~
25 ~~department~~ tax due as reported by a taxpayer on a return, any
26 outstanding tax liability resulting from a final assessment
27 from which an appeal can no longer be taken, or any

1 outstanding tax liability that has been affirmed on appeal by
2 the Tax Appeals Commission or by a circuit or appellate court
3 in Alabama and from which no further appeal can be taken, and
4 the balance of any overpayment shall, subject to the setoff
5 provisions of Article 3 of Chapter 18, be refunded to the
6 taxpayer. If any refund or part thereof is credited to any
7 other tax by the department, the department shall provide a
8 written detailed statement to the taxpayer showing the amount
9 of overpayment, the amount credited for payment to other
10 taxes, and the amount refunded.

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

12 "a. A taxpayer may appeal from the denial in whole
13 or in part of a petition for refund by filing a notice of
14 appeal with the ~~Administrative Law Division~~ Tax Appeals
15 Commission within two years from the date the petition is
16 denied, ~~and the appeal, if.~~ If timely filed, the appeal shall
17 proceed as ~~hereinafter~~ provided in Chapter 2B for appeals to
18 the ~~Administrative Law Division~~ Tax Appeals Commission.

19 "b. In lieu of appealing to the ~~Administrative Law~~
20 ~~Division~~ Tax Appeals Commission, the taxpayer may appeal from
21 the denial in whole or in part of a petition for refund by
22 filing a notice of appeal with the Circuit Court in Montgomery
23 County, Alabama, or the circuit court of the county in which
24 the taxpayer resides or has a principal place of business in
25 Alabama, as appropriate, by filing the notice of appeal within
26 two years from the date the petition is denied. The circuit
27 court shall hear the appeal according to its own rules and

1 procedures and shall determine the correct amount of refund
2 due, if any.

3 "c. If an appeal is not filed with the
4 ~~Administrative Law Division~~ Tax Appeals Commission or the
5 appropriate circuit court within two years of the date the
6 petition is denied, ~~then~~ the appeal shall be dismissed for
7 lack of jurisdiction.

8 "(d) The Department of Revenue shall revise existing
9 regulations or administrative guidance, or issue new
10 regulations or administrative guidance, as appropriate, in
11 conformance with this section.

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

23 "§40-2A-8.

24 "(a) The department shall notify a taxpayer in
25 writing of any act or proposed act or refusal to act
26 concerning the denial or revocation of a license, permit, or
27 certificate of title concerning which the taxpayer has any

1 interest. The notice must be mailed by either first-class U.S.
2 mail or certified U.S. mail or U.S. mail with delivery
3 confirmation to the taxpayer's last known address, or to the
4 last known address of the taxpayer's authorized
5 representative, if applicable. Any taxpayer aggrieved by any
6 act or proposed act or refusal to act by the department shall
7 be entitled to file a notice of appeal from such act or
8 proposed act or refusal to act with the ~~administrative law~~
9 ~~division~~ Tax Appeals Commission. Such notice of appeal must be
10 filed within ~~30~~ 60 days of the date notice of such act or
11 refusal to act is mailed to the taxpayer, and such appeal, if
12 timely filed, shall proceed as herein provided for appeals to
13 the ~~administrative law division.~~ Tax Appeals Commission. Any
14 taxpayer aggrieved by any act, proposed act, or refusal to act
15 by the department, who is not issued written notice by the
16 department of his or her right to appeal, shall have 60 days
17 from actual notice of such act, proposed act, or refusal to
18 act in which to appeal to the Tax Appeals Commission. The
19 burden shall be on the taxpayer in such cases to prove that
20 the appeal was filed within 60 days of actual notice. If any
21 matter is timely appealed to the Tax Appeals Commission
22 pursuant to this section, the commission, in its discretion,
23 may remand or refer the matter to the department or the
24 department's Taxpayer Advocate for review before proceeding
25 with the appeal.

26 "(b) A taxpayer may elect to file a notice of appeal
27 with the Tax Appeals Commission regarding a notice of proposed

1 adjustment issued by the department affecting the taxpayer's
2 net operating loss deductions or carryovers for purposes of
3 the taxes imposed by Chapters 16 and 18 of this title. Such
4 notice of appeal shall be filed within the time period
5 prescribed in subsection (a), and the Tax Appeals Commission
6 shall have jurisdiction to determine the amount of the
7 taxpayer's net operating loss deductions or carryovers for the
8 tax periods in question.

9 ~~"(b)(c)~~ The department may proceed with the intended
10 action if no appeal is filed by the taxpayer with the
11 ~~administrative law division~~ Tax Appeals Commission within 30
12 ~~days of the mailing of the notice by the department to the~~
13 ~~taxpayer.~~ the time allowed under subsection (a). If a
14 designated agent has failed to provide the department with a
15 bond and any qualifying license as provided in Section
16 32-8-34, the revocation of designated agent status by the
17 department shall be effective immediately upon electronic
18 notice through the system the designated agent uses to process
19 applications for certificates of title or receipt of written
20 notice of revocation, whether by U.S. mail or hand delivery.
21 Otherwise, the revocation of a designated agent status shall
22 be effective after the time for appeal under this section has
23 expired. The revocation of any motor vehicle certificate of
24 title or license by the department shall not be final until
25 either the titled owner and lien holder, if any, consent to
26 the revocation or the time for filing an appeal to the Tax
27 Appeals Commission has expired. The department may obtain an

1 injunction in the appropriate circuit court at any time
2 enjoining a licensee or designated agent from continuing to
3 operate under a disputed license or designated agent
4 authority, if the continued operation may cause substantial
5 loss of revenue, would cause substantial harm to the state or
6 public, or for such other good reason as determined by the
7 circuit court. The department may suspend the designated
8 agent's access to process new applications for certificate of
9 title until such time as any outstanding title applications
10 not properly filed by the designated agent are properly filed
11 with the department.

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

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

24 "§40-2A-11.

25 "(a) Failure to timely file ~~return~~ certain returns.
26 ~~If~~ Except as provided below, if a taxpayer fails to file any
27 return required to be filed with the department on or before

1 the date prescribed therefor, determined with regard to any
2 extension of time for filing, there shall be assessed as a
3 penalty the greater of an amount equal to 10 percent of any
4 ~~additional~~ the correct amount of tax required to be paid with
5 the return or fifty dollars (\$50). If the taxpayer is not
6 required to pay any additional tax due with the return, the
7 penalty imposed by this subsection shall not be assessed
8 unless the department has first provided 30 days' written
9 notice to the taxpayer, at the last known address of the
10 taxpayer, that the return has not been filed and the taxpayer
11 fails or refuses to file the delinquent return within that
12 time period. This subsection shall not apply to any individual
13 income tax return or amended return filed with the department
14 if the taxpayer claims thereon and is due a refund of income
15 tax.

16 "(b) Failure to timely pay tax.

17 "(1) If a taxpayer fails to pay to the department
18 the amount of tax shown as due on a return required to be
19 filed on or before the date prescribed for payment of the tax,
20 determined with regard to any extension of time for payment,
21 there shall be added as a penalty one percent of the net
22 amount of the tax due if the failure to pay is for not more
23 than one month, with an additional one percent for each
24 additional month or fraction thereof during which failure to
25 pay continues, not exceeding 25 percent in the aggregate. In
26 lieu of the penalty provided in the immediately preceding
27 sentence, for any tax for which a monthly or quarterly return

1 is required, or for which no return is required, the
2 department shall add a failure to timely pay penalty of 10
3 percent of the unpaid amount shown as tax due on the return or
4 the amount stated in the notice and demand.

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

21 "(3) This subsection shall not apply to any failure
22 to pay any estimated tax required to be paid by Sections
23 40-18-80 and 40-18-80.1.

24 "(c) Underpayment due to negligence or substantial
25 understatement. ~~If any part of~~ If this subsection applies to
26 any portion of an underpayment of tax required to be shown on
27 a return, there shall be added to the tax an amount equal to

1 20 percent of the portion of the underpayment to which this
2 subsection applies. This subsection shall apply to the portion
3 of any underpayment of tax is due to negligence or disregard
4 of rules or regulations, there shall be added to the tax an
5 amount equal to five percent of that part of the tax
6 attributable to negligence or disregard of rules or
7 regulations. which is attributable to one or more of the
8 following:

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

16 "(2) Any substantial understatement of income tax.
17 With respect to the income taxes imposed by Chapter 18 of this
18 title, for purposes of this subdivision, the term
19 "understatement" means the excess of the amount of tax
20 required to be shown on the return for the tax period, over
21 the amount of tax which is actually shown as due on the
22 return, provided that the amount of understatement of tax
23 shall be reduced by the portion of the understatement which is
24 attributable to (i) the tax treatment of any item by the
25 taxpayer if there is or was substantial authority for such
26 treatment or (ii) any item if the relevant facts affecting the
27 item's tax treatment are adequately disclosed in the return or

1 in a statement attached to the return and there is a
2 reasonable basis for the tax treatment of such item. The term
3 "substantial understatement" means the amount of
4 understatement of tax that exceeds the greater of five
5 thousand dollars (\$5,000) or 20 percent of the tax required to
6 be shown on the return for the tax period.

7 "(d) Underpayment due to fraud. If any part of any
8 underpayment of tax required to be shown on a return is due to
9 fraud, there shall be added to the tax an amount equal to ~~50~~
10 75 percent of that portion of the underpayment which is
11 attributable to fraud.

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

17 "(e) Frivolous return penalty. If a taxpayer files a
18 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~
19 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~
20 ~~hundred fifty dollars (\$250)~~ one thousand dollars (\$1,000).

21 "(f) Frivolous appeal penalty. If any appeal to the
22 ~~administrative law division~~ Tax Appeals Commission or circuit
23 court is determined to be frivolous or primarily for the
24 purpose of delay or to impede collection of any tax, a penalty
25 of ~~two hundred fifty dollars (\$250)~~ one thousand dollars
26 (\$1,000) or, at the discretion of the Tax Appeals Commission
27 or circuit judge, up to 25 percent of the tax in question,

1 whichever is greater, shall be assessed in addition to any tax
2 due.

3 "(g) Failure to file partnership or Alabama S
4 corporation returns. If a pass-through entity, as defined in
5 Section 40-18-24.2, or an Alabama S corporation, as defined in
6 Section 40-18-160(b)(1), fails to file the applicable
7 information return required by Section 40-18-28 or 40-18-39
8 for any taxable year within the time prescribed therefor, the
9 pass-through entity or corporation shall be liable for a
10 penalty equal to the product of fifty dollars (\$50) multiplied
11 by the number of members of the pass-through entity or
12 shareholders of the Alabama S corporation, whichever is
13 applicable, for each month, or fraction thereof, during which
14 such failure continues, but not to exceed 12 months.

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

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

1 "~~(h)~~(j) Waiver of penalties. Notwithstanding the
2 foregoing, no penalty under this title or Section 10-2B-15.02
3 shall be assessed, if reasonable cause exists; or if a penalty
4 has been assessed, it shall be waived upon a determination of
5 reasonable cause. Reasonable cause shall include, but not be
6 limited to, those instances in which the taxpayer has acted in
7 good faith. The burden of proving reasonable cause shall be on
8 the taxpayer.

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

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

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

24 "§40-18-27.

25 "(a) Effective for tax years beginning after
26 December 31, 1997, every taxpayer having an adjusted gross
27 income for the taxable year of more than one thousand eight

1 hundred seventy-five dollars (\$1,875) if single or if married
2 and not living with spouse, and of more than three thousand
3 seven hundred fifty dollars (\$3,750) if married and living
4 with spouse, shall each year file with the Department of
5 Revenue a return stating specifically the items of gross
6 income, the deductions and credits allowed by this chapter,
7 the place of residence, and post office address. If a husband
8 and wife living together have an adjusted gross income of more
9 than three thousand seven hundred fifty dollars (\$3,750), each
10 shall file a return unless the income of each is included in a
11 single joint return. If the taxpayer is unable to file a
12 return, the return shall be filed by a duly authorized agent,
13 a guardian, or other person charged with the care of the
14 person or property of the taxpayer.

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

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

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

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

25 "(e) In the event a husband and wife file a joint
26 return, the husband and wife shall be jointly and severally
27 liable for the income tax shown on the return or as may be

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

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

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

15 Section 7. It is the intent of the Legislature that
16 the existence, authority, and powers of the Administrative Law
17 Division of the Department of Revenue shall remain in full
18 force and effect until the Tax Appeals Commission created
19 herein becomes fully operational on October 1, 2012, and that
20 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8
21 shall continue to be filed with and handled by the
22 Administrative Law Division until that date. To that end, the
23 repeal of Section 40-2A-9, and those portions of other
24 sections of Titles 11 and 40 relating to the powers,
25 authority, and duties of the Administrative Law Division and
26 the administrative law judge, and the right of a taxpayer to
27 appeal to the Administrative Law Division, shall not become

1 effective until October 1, 2012. Notwithstanding the
2 foregoing, the Tax Appeals Commission shall not have
3 jurisdiction over any appeals regarding taxes levied by or on
4 behalf of a self-administered county or municipality until
5 October 1, 2013. The amendments to Section 40-2A-7(b)(2)f.,
6 Code of Alabama 1975, relating to amended returns due to
7 federal audit changes, Section 40-2A-7(b)(2)b., Code of
8 Alabama 1975, relating to the six-year statute of limitations
9 for corporate income tax purposes, and Section 40-2A-11, Code
10 of Alabama 1975, relating to civil penalties, by this act
11 shall only apply to tax periods beginning on or after January
12 1, 2013.

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