

1 SB20
2 171723-2
3 By Senator Melson
4 RFD: Finance and Taxation General Fund
5 First Read: 08-SEP-15

1 SB20

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4 ENROLLED, An Act,

5 To enact the Alabama Tax Delinquency Amnesty Act of
6 2016; to provide for definitions; to require the Department of
7 Revenue to establish a tax amnesty program as provided for in
8 this Bill; to provide for terms and conditions of the program;
9 to provide for the disposition of the monies collected
10 pursuant to the tax amnesty program; to provide for an
11 effective date; and to provide for related matters.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This Act shall be known as and may be
14 cited as the "Alabama Tax Delinquency Amnesty Act of 2016".

15 Section 2. Definitions. As used in this bill, the
16 following terms have the meaning ascribed to them in this
17 Section, except when the context clearly indicates otherwise:

18 (1) "Commissioner" means the Commissioner of the
19 Department of Revenue.

20 (2) "Contact" or "Contacted" means previous contact
21 of any kind by the Department or an agent of the Department
22 within five years prior to the initial written request for
23 amnesty. This includes returns filed for the tax types
24 included in the application for tax periods beginning before
25 the look-back period. Contact includes, but is not limited to,

1 with regard to potential liability for the type of tax
2 identified in the amnesty application: receipt of a nexus
3 questionnaire, an audit or notice of audit, payment of tax,
4 registration for tax, registration with the Secretary of
5 State, request for extension of time to file, making a payment
6 of estimated tax, filing a return, and non-compliance issued
7 in response to an application for a certificate of good
8 standing or a certificate of compliance by the taxpayer, or on
9 behalf of the taxpayer.

10 (3) "Courier" means a messenger other than the
11 United States Postal Service that delivers parcels, packages,
12 and the like, containing returns, reports, and other documents
13 or payments.

14 (4) "Department" means the Department of Revenue.

15 (5) "Look-back Period" means the last three full tax
16 years (or 36 months) of tax returns which are delinquent.

17 (6) "Postmark" means an official mark made by the
18 United States Postal Service on a piece of mail to cancel the
19 stamp and to indicate the place and date of sending.

20 (7) "Tax period" means any period for which a tax
21 return is required by law to be filed with the department.

22 (8) "Taxpayer" means any individual or entity
23 subject to any tax imposed by any law of the state of Alabama,
24 payable to the state of Alabama, and collected by the
25 department.

1 Section 3. (A) The department shall develop and
2 implement a tax amnesty program in accordance with the
3 provisions of this bill. The Commissioner may provide by
4 regulation as necessary for the administration and
5 implementation of this amnesty program. The Commissioner shall
6 publicize the tax amnesty program in order to maximize the
7 public awareness of and participation in the program. The
8 Commissioner may, for purpose of publicizing the tax amnesty
9 program, contract with any advertising agency within or
10 outside this state and use public service announcements,
11 pamphlets, mail notices, and print, television, and radio
12 announcements. Such publications shall include increasing
13 public awareness that the tax amnesty program will provide
14 amnesty for sales and use tax due on internet, mail order, or
15 other purchases made from out-of-state vendors for which
16 Alabama sales or use tax was not charged at the time of
17 purchase. In furthering the collections of amnesty, the
18 Commissioner may procure amnesty program administration
19 services on a fee basis; however, the fee shall not exceed ten
20 percent of the total dollars collected.

21 (B) The amnesty program shall be effective for a
22 period of at least two months duration in 2016 occurring prior
23 to August 31, 2016. The tax amnesty program shall apply to all
24 taxes administered by the department except for motor fuel
25 taxes, penalties imposed by § 40-29-73, and penalties for

1 failure to submit information reports that are not based on an
2 underpayment of tax.

3 (C) Notwithstanding the provisions of any other Act
4 or other provisions of law to the contrary, and except as
5 provided in Subsection (B), the following taxes are eligible
6 for amnesty:

7 (1) Taxes due prior to January 1, 2015; or

8 (2) Taxes for taxable periods that began before
9 January 1, 2015.

10 (D) Participation in the amnesty program shall be
11 conditioned upon the agreement of the taxpayer that the right
12 to protest or initiate an administrative or judicial
13 proceeding is barred. The agreement shall only apply to the
14 specific tax and the tax period for which amnesty is granted.

15 (E) Amnesty will be granted only for eligible taxes
16 to eligible taxpayers who apply for amnesty during the amnesty
17 period on forms prescribed by the Commissioner and who pay all
18 of the tax, all fees and costs, if applicable, and any
19 interest due upon filing the amnesty application. A standard
20 look-back period, as defined in this Act, will apply for all
21 tax types eligible for amnesty. If the taxpayer has collected
22 any tax without remitting such tax to the Department, the
23 look-back period will be extended to include all periods, back
24 to the point of collection. The Commissioner shall reserve the
25 right to require taxpayers to file tax returns with the

1 amnesty application. Notwithstanding the provisions of any
2 other Act or other provisions of law to the contrary, if the
3 amnesty application is approved during the amnesty period the
4 Commissioner shall waive one-half of the interest and all of
5 the penalties associated with the tax periods for which
6 amnesty is applied. An amnesty payment or application
7 submitted in a properly addressed envelope with sufficient
8 postage delivered by the United States Postal Service is
9 deemed paid or received on the date it is postmarked. An
10 amnesty payment or application delivered by courier or
11 taxpayer is deemed paid or received on the date it is
12 delivered to the department's headquarters or a regional
13 office. No installment agreements will be entered into for tax
14 periods that are approved for amnesty.

15 (F) Ineligible taxpayers. Amnesty shall not be
16 granted to taxpayers who have been contacted by the
17 department, who are parties to any criminal investigation or
18 criminal litigations in any court of the United States or the
19 state of Alabama pending on the effective date of this Act for
20 nonpayment, delinquency, or fraud in relation to any state tax
21 imposed by a law of the state of Alabama and administered by
22 the department. Further, a taxpayer who delivers or discloses
23 any false or fraudulent application, document, return, or
24 other statement to the department in connection with an
25 amnesty application shall be ineligible for amnesty and shall

1 be subject of the fraud penalty under Section 40-2A-11(d),
2 Code of Alabama 1975, or a penalty of ten thousand dollars,
3 whichever is greater.

4 (1) Amnesty applications shall include a written
5 waiver of all rights, restrictions, and delays for assessing,
6 collecting, or protesting taxes and interest due as set forth
7 in Title 40, Chapter 2A and Chapter 2B of the Code of Alabama,
8 1975. The filing of such applications shall make the tax,
9 interest, and penalty immediately due and payable; subject to
10 the notice and due process procedures provided for by law;
11 ineligible for refund, credit, or claim against the state; and
12 ineligible for redetermination; however, a taxpayer shall be
13 eligible for a refund or credit if the overpayment arises
14 after the amnesty application is submitted and is attributable
15 to a properly claimed Alabama net operating loss or
16 attributable to an adjustment made by the Internal Revenue
17 Service to the taxpayer's federal income tax, and the taxpayer
18 provides notice of the adjustment to the Commissioner within
19 sixty days of receipt of the adjustment from the Internal
20 Revenue Service. A taxpayer who files an application for
21 amnesty retains all administrative and judicial rights of
22 appeal with respect to any additional tax assessed by the
23 department.

1 (G) No interest shall be paid on refunds for those
2 amounts previously collected by the department from the
3 taxpayer for a tax period for which amnesty is granted.

4 (H) Post amnesty collection penalty. If, following
5 the termination of the tax amnesty period, the Commissioner
6 issues a deficiency assessment for a period for which amnesty
7 was taken, the Commissioner shall have the authority to impose
8 penalties and institute civil proceedings or criminal
9 proceedings as authorized by law only with respect to the
10 difference between the amount shown on the amnesty application
11 and the correct amount of tax due. The Commissioner may by
12 regulation impose after the expiration of the tax amnesty
13 period a cost of collection penalty not to exceed twenty
14 percent of any additional deficiency assessed for any taxable
15 period for which amnesty was taken. This penalty shall be in
16 addition to all other applicable penalties, fees, or costs.
17 The Commissioner shall have the right to waive any or all of
18 the collection penalty when it is demonstrated that any of the
19 deficiency of the taxpayer was not due to negligence,
20 intentional disregard of administrative rules and regulations,
21 or fraud. The imposition of penalties or civil proceedings or
22 criminal proceedings shall not invalidate the amnesty that was
23 previously granted. No penalty shall be imposed if the
24 deficiency results from an adjustment made by the Internal
25 Revenue Service to the taxpayer's federal income tax and the

1 taxpayer provides written notice of the adjustment to the
2 Commissioner within sixty days of receipt of the adjustment
3 from the Internal Revenue Service or if the taxpayer's
4 application for amnesty was based on a proposed assessment or
5 notice of assessment.

6 (I) For taxable periods beginning on or after
7 January 1, 2016, and before December 31, 2023, taxpayers that
8 participate in the amnesty and later fail to comply with
9 anypayment or filing provision administered by the
10 Commissioner shall be subject to the negligence penalty under
11 Section 40-2A-11(c), Code of Alabama 1975, or a penalty of one
12 hundred dollars, whichever is greater.

13 Section 4. (A) The Commissioner shall also retain an
14 amount not to exceed two hundred fifty thousand dollars for
15 advertising expenses from monies collected from taxes paid
16 pursuant to this Act. Such amount is hereby appropriated to
17 the Department and shall be in addition to any and all other
18 funds heretofore or hereafter appropriated, for the fiscal
19 year beginning October 1, 2015.

20 (B) After satisfaction of the requirements of
21 Subsection A of this Section, all remaining monies collected
22 pursuant to this bill shall be paid into the state treasury
23 and placed in the appropriate state funds for the specific tax
24 collected pursuant to current law.

1 Section 5. This Act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB20
Senate 10-SEP-15
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 14-SEP-15

By: Senator Melson