

1 HB46
2 182671-3
3 By Representative Scott
4 RFD: State Government
5 First Read: 07-FEB-17
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1
2 ENROLLED, An Act,

3 To require tax preparers to include their federal
4 preparer tax identification number on Alabama income tax
5 returns prepared; to provide penalties for violations; ensure
6 that business privilege tax returns are due at the same time
7 as the corresponding federal income tax return, for financial
8 institutions the due date will correspond with the Alabama
9 excise tax return due date; Section 12 of Act 99-665, as
10 amended by Act 2000-705, is codified by this bill as part of
11 Section 40-14A-22, these changes include, but are not limited
12 to, codifying the maximum business privilege tax amount for a
13 Real Estate Investment Trust (REIT); the name of the Taxpayer
14 Advocate is being changed to the Taxpayer Assistance Officer,
15 and allows for multiple Taxpayer Assistance Officers.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. A new Article is hereby added to the Code
18 of Alabama 1975, and shall be known and may be cited as the
19 "Alabama Taxpayer Protection and Assistance Act."

20 Section 2. The Alabama Taxpayer Protection and
21 Assistance Act is enacted to protect consumers by establishing
22 a mechanism to ensure that qualified individuals provide tax
23 preparation services in Alabama.

24 Section 3. When used in this act, the following
25 terms shall have the following meanings:

1 (1) DEPARTMENT. The Alabama Department of Revenue.

2 (2) INCOME TAX RETURN PREPARER.

3 (a) A person who prepares for compensation, or who
4 employs one or more persons to prepare for compensation, any
5 income tax return or claim for refund, required to be filed
6 pursuant to Title 40, Chapter 18, Code of Alabama 1975. The
7 preparation of a substantial portion of a return or claim for
8 refund shall be treated as the preparation of that return or
9 claim for refund.

10 (b) A person is not an income tax preparer if all he
11 or she solely performs the following duties:

12 1. furnishes typing, reproducing, or other
13 mechanical assistance;

14 2. prepares returns or claims for refunds for the
15 employer by whom he or she is regularly and continuously
16 employed, or for an affiliate of that employer, including a
17 subchapter K entity for which he or she prepares a return;

18 3. prepares as a fiduciary, returns or claims for
19 refunds for any person; or

20 4. prepares claims for refunds for a taxpayer in
21 response to any notice of deficiency issued to that taxpayer
22 or in response to any waiver of restriction after the
23 commencement of an audit of that taxpayer or of another
24 taxpayer if a determination in the audit of the other taxpayer

1 directly or indirectly affects the tax liability of the
2 taxpayer whose claims he or she is preparing.

3 (3) PERSON. An individual, firm, proprietorship,
4 association, corporation, or another entity.

5 (4) PTIN. Preparer Tax Identification Number issued
6 by the Internal Revenue Service and referenced in Internal
7 Revenue Service Notice 2011-6.

8 Section 4. No person may provide tax preparation
9 services for Alabama income tax returns, unless an IRS issued
10 Preparer Tax Identification Number is provided by such
11 preparer when submitting a return and signing as a paid
12 preparer.

13 Section 5. Duties of the Department.

14 (a) For taxable years beginning on or after January
15 1, 2018, the Department shall, by rule, require any income tax
16 return preparer, as defined in this act, to include his or her
17 PTIN on any tax return prepared by the income tax return
18 preparer and filed under Title 40, Chapter 18, Code of Alabama
19 1975, or any claim for refund of tax imposed by Title 40,
20 Chapter 18, Code of Alabama 1975.

21 (b) The Department shall develop and by rule
22 implement a program using the PTIN as an oversight mechanism
23 to assess returns, to identify high error rates, patterns of
24 suspected fraud, and unsubstantiated basis for tax positions
25 by income tax return preparers.

1 (c) The Department shall, by rule, establish formal
2 and regular communication protocols with the Commissioner of
3 the Internal Revenue Service to share and exchange PTIN
4 information on income tax return preparers who are suspected
5 of fraud, disciplined, or barred from filing tax returns with
6 the Department or the Internal Revenue Service. The Department
7 may, by rule, establish additional communication protocols
8 with other states to exchange similar enforcement or
9 discipline information.

10 Section 6. Enforcement.

11 (a) The Department may investigate the actions of
12 any income tax return preparer filing Alabama income tax
13 returns and may bar or suspend an income tax return preparer
14 from filing returns with the Department for good cause,
15 subject to the appeal rights under Chapter 2A of Title 40.

16 (b) In addition to all other penalties provided by
17 law, any person violating this act by failing to provide his
18 or her PTIN shall pay a civil penalty to the Department in the
19 amount of \$50 per offense, but not to exceed \$25,000 per
20 calendar year; however, no penalty shall be imposed if the
21 failure is due to reasonable cause and not due to willful
22 neglect, as determined by the Department.

23 Section 7. Section 40-14A-22 is hereby amended as
24 follows:

25 "§40-14A-22.

1 "(a) Levy of tax. There is hereby levied an annual
 2 privilege tax on every corporation, limited liability entity,
 3 and disregarded entity doing business in Alabama, or
 4 organized, incorporated, qualified, or registered under the
 5 laws of Alabama. The tax shall accrue as of January 1 of every
 6 taxable year, or in the case of a taxpayer organized,
 7 incorporated, qualified, or registered during the year, or
 8 doing business in Alabama for the first time, as of the date
 9 the taxpayer is organized, incorporated, registered, or
 10 qualifies to do business, or begins to do business in Alabama,
 11 as the case may be. The taxpayer shall be liable for the tax
 12 levied by this article for each year beginning before the
 13 taxpayer has been dissolved or otherwise ceased to exist or
 14 has withdrawn or forfeited its qualification to do business in
 15 Alabama. The amount of the tax due shall be determined by
 16 multiplying the taxpayer's net worth in Alabama by the rate
 17 determined in subsection (b).

18 "(b) Rate of tax. For all taxable years of taxpayers
 19 that begin after December 31, 1999, the rate of tax shall be
 20 as set forth below.

21 If taxable
 22 income of the
 23 taxpayer is:

24 at least but less The tax rate

than shall be

25		\$1	\$0.25 per \$1,000
26	\$1	\$200,000	\$1.00 per \$1,000
27	\$200,000	\$500,000	\$1.25 per \$1,000
28	\$500,000	\$2,500,000	\$1.50 per \$1,000
29	\$2,500,000		\$1.75 per \$1,000

30 "(c) Minimum tax. Except as provided in subsection
 31 (f), the privilege tax levied by this article on certain
 32 corporations, business trusts, limited liability entities, and
 33 disregarded entities shall not be less than \$100.

34 "(d) Maximum tax.

35 "(1) Except as provided in subdivision (2), the
 36 privilege tax levied by this article shall not exceed \$15,250
 37 for any taxpayer for the taxable year beginning January 1,
 38 2000. For each taxable year thereafter, the maximum tax shall
 39 not exceed \$15,000 for any taxpayer, except as provided in
 40 subdivision (2).

1 "(2) With respect to any (i) financial institution
2 groups as defined in subsection (f) (1); (ii) insurance
3 company that is subject to the premium taxes levied by Chapter
4 4A of Title 27; and (iii) corporation, company, limited
5 liability entity, or association whose property is assessed
6 for taxation pursuant to the provisions of Chapter 21 and is
7 ~~also~~ obligated to serve the general public, but is not subject
8 to the Alabama Corporate Income tax, the privilege tax levied
9 by this article shall not exceed \$3,000,000, for any taxpayer
10 or, for a financial institution group, for the financial
11 institution group as a whole each year except as provided in
12 subsection (e). ~~With respect to any real estate investment~~
13 ~~trust as defined in Chapter 13 of Title 10, the privilege tax~~
14 ~~levied by this article shall not exceed \$500,000, for any~~
15 ~~taxpayer each year except as provided in subsection (e).~~ The
16 privilege tax levied by this article on any electing family
17 limited liability entity shall not exceed \$500.

18 "The privilege tax levied by this article on any
19 corporation organized as a not-for-profit corporation that
20 does not engage in any business other than holding title to
21 property and paying the expenses thereof, including, without
22 limitation, a property owners' association or a corporation
23 organized solely to hold title to property on a temporary
24 basis, shall not exceed \$100.

1 "(e) Short taxable years. If any taxpayer's taxable
2 year is less than 12 months because the taxpayer is
3 incorporated or organized within the taxable year, or if any
4 foreign corporation or foreign limited liability entity
5 qualifies, registers, or begins to do business in this state
6 within the taxable year or converts to a taxable year other
7 than the calendar year, the amount of the tax levied by this
8 article shall be determined in the manner specified in this
9 article but apportioned to the short taxable year in same
10 proportion as the number of days in the short taxable year
11 bears to 365, but in no event less than \$100 nor more than the
12 applicable amount specified in subsection (d).

13 "(f) Minimum taxes for financial institution groups.

14 "(1) For purposes of this subsection, the following
15 terms shall mean:

16 "a. Affiliated Group. (i) One or more chains of
17 corporations or limited liability entities connected through
18 the ownership of stock or ownership interests with a common
19 parent which is a corporation or limited liability entity, but
20 only if the common parent owns directly stock or ownership
21 interests meeting the requirements of item (ii) in at least
22 one of the other corporations or limited liability entities,
23 and only if stock or ownership interests meeting the
24 requirements of item (ii) in each of the corporations or
25 limited liability entities (except the common parent) is owned

1 directly by one or more of the other corporations or limited
2 liability entities. (ii) The ownership of stock or ownership
3 interests of any corporation or limited liability entity meets
4 the requirements of this paragraph if it possesses at least 80
5 percent of the total voting power or capital and profits
6 interest of the corporation or limited liability entity.

7 "b. Financial Institution. The meaning given in
8 Section 40-16-1.

9 "c. Financial Institution Group. All taxpayers in an
10 affiliated group where at least one member of the group is a
11 financial institution that is subject to the provisions of
12 Chapter 16. In the event a financial institution taxpayer is
13 not a member of an affiliated group, that financial
14 institution shall be treated as a financial institution group.

15 "(2) To the extent that the members of a financial
16 institution group have different taxable years, the group
17 shall be deemed, for purposes of the business privilege tax
18 ~~and corporate shares tax~~ levied by ~~Articles~~ Article 2 and 3,
19 to have a calendar taxable year.

20 "(3) Taxpayers who are members of a financial
21 institution group shall complete their ~~corporate shares tax~~
22 ~~and~~ business privilege tax returns without regard to this
23 subsection. Those taxpayers shall submit their returns
24 together, and the minimum tax amount provided in subdivision
25 (5) shall apply to the aggregate business privilege tax ~~and~~

1 ~~corporate shares tax~~ liability of the group. To the extent
2 that the minimum amount provided in subdivision (5) applies to
3 determine the liability of the group, each taxpayer which is a
4 member of the group shall be liable for that portion of the
5 group liability which is equal to the amount multiplied by the
6 ratio of the taxpayer's liability without regard to this
7 subsection over the liability of the group without regard to
8 this subsection. Upon the annual election of the common
9 parent, a financial institution group may file a single
10 return, executed by the common parent of that financial
11 institution group. The return shall be completed as if the
12 financial institution group were a single taxpayer. Each
13 member of the financial institution group shall be jointly and
14 severally liable for the group's business privilege tax and
15 corporate shares tax liabilities.

16 " (4) ~~For the taxable year beginning January 1, 2000,~~
17 ~~the tax returns of all members of a financial institution~~
18 ~~group shall be due July 10, 2000. For taxable years beginning~~
19 ~~after December 31, 2000, the tax returns for all members of a~~
20 ~~financial institution group shall be due March 15 of the~~
21 ~~taxable year. The tax returns for all members of a financial~~
22 ~~institution group shall be due no later than the corresponding~~
23 ~~Alabama financial institution excise tax return due date.~~
24 Extensions for filing these returns shall not be granted for
25 more than six months. ~~beyond September 15 of the taxable year.~~

1 ~~For the return due July 10, 2000, any corporate shares taxes~~
2 ~~and business privilege taxes accrued and paid by any member of~~
3 ~~the financial institution group before July 10, 2000, shall be~~
4 ~~applied against the minimum tax amount provided in subdivision~~
5 ~~(5).~~

6 "(5) For taxable years beginning on or after January
7 1, 2000, the minimum aggregate business privilege ~~and~~
8 ~~corporate shares taxes~~ tax levied by ~~Articles~~ Article 2 ~~and 3~~
9 on all members of a financial institution group shall be:

10 "a. For financial institutions with total deposits
11 inside Alabama of less than one billion dollars
12 (\$1,000,000,000) within that financial institution group, as
13 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
14 immediately preceding taxable year, the tax rate shall be
15 \$.125 per one thousand dollars (\$1,000) of such deposits. For
16 deposit rate purposes for all future periods, the deposits
17 shall in no event be less than the deposits listed as of June
18 30, 1999.

19 "b. For financial institutions with total deposits
20 inside Alabama of one billion dollars (\$1,000,000,000) or
21 greater up to and including six billion dollars
22 (\$6,000,000,000) within that financial institution group, as
23 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
24 immediately preceding taxable year, the tax rate shall be \$.17
25 per one thousand dollars (\$1,000) of such deposits. For

1 deposit rate purposes for all future periods, the deposits
2 shall in no event be less than the deposits listed as of June
3 30, 1999.

4 "c. For financial institutions with total deposits
5 inside Alabama greater than six billion dollars
6 (\$6,000,000,000) within that financial institution group, as
7 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
8 immediately preceding taxable year, the tax rate shall be
9 \$.225 per one thousand dollars (\$1,000) of such deposits. For
10 deposit rate purposes for all future periods, the deposits
11 shall in no event be less than the deposits listed as of June
12 30, 1999.

13 "d. Provided, however, that in the case of a
14 financial institution group that, as of June 30, 1999, (i) had
15 total deposits of less than one billion dollars
16 (\$1,000,000,000) and (ii) derived at least a majority of its
17 deposits, as reported to FDIC, OTS, or NCUSIF, that were
18 booked to one or more branches or offices located within
19 Alabama from account holders whose addresses of record on the
20 books of the financial institution group were outside the
21 State of Alabama, the phrase "total deposits in Alabama," for
22 purposes of calculating the minimum aggregate business
23 privilege ~~and shares tax~~ levied by ~~Articles~~ Article 2 ~~and 3~~
24 for all taxable years beginning on and after January 1, 2000,
25 shall only include deposits of account holders whose addresses

1 of record on the books of the financial institution group are
2 inside the State of Alabama.

3 "e. In the event a financial institution group sells
4 Alabama deposits to another financial institution group that
5 reports those deposits in Alabama for purposes of Act
6 2000-705, those deposits shall not be taxed more than once
7 pursuant to the provisions of Act 2000-705 in the same taxable
8 year. The liability for such taxes shall be the responsibility
9 of the purchaser, and the tax base for the selling group shall
10 be adjusted accordingly.

11 "f. In the event an existing financial institution
12 group reports deposits in any year less than 96.5 percent of
13 the deposits reported as of June 30, 1999, the alternative
14 minimum tax shall be based on the deposits reported as of June
15 30, 1999. In the event an existing financial institution group
16 reports deposits in any year more than 96.5 percent of the
17 deposits reported as of June 30, 1999, the alternative minimum
18 tax shall be based on the deposits reported for that taxable
19 year. For financial institutions coming into existence after
20 June 30, 1999, the deposits upon which the alternative minimum
21 tax is based shall not be less than the deposits reported the
22 first full year that financial institution reported deposits
23 to the FDIC, OTS, or NCUSIF."

24 Section 8. Section 40-14A-25 is hereby amended as
25 follows:

1 "§40-14A-25.

2 "(a) Every taxpayer shall file a privilege tax
3 return, which shall include the public record disclosures
4 required by Section 10-2B-16.22, with the department for every
5 taxable year for which it is subject to the tax levied by this
6 article. A disregarded entity that is owned by an individual,
7 general partnership, or other entity not subject to the tax
8 levied by this article shall file a return and pay the tax
9 levied on it by this article. Except as provided in Section
10 40-14A-22(f) (4), the return required by this section is due
11 ~~not no~~ later than the corresponding federal income tax return
12 as required to be filed as provided under federal law.~~March 15~~
13 ~~of the taxable year for all taxpayers except limited liability~~
14 ~~entities for which the due date of the return shall be April~~
15 ~~15 of the taxable year, or, in In the case of a taxpayer's~~
16 ~~initial return, 30 days two and one half months after the~~
17 ~~taxpayer comes into existence, qualifies or registers to do~~
18 ~~business, or commences doing business in Alabama as the case~~
19 ~~may be. For all taxable years beginning after December 31,~~
20 ~~2000, a corporation shall file the return required by this~~
21 ~~section not later than two and one half months after the~~
22 ~~beginning of the corporation's taxable year; a limited~~
23 ~~liability entity shall file the return required by this~~
24 ~~section not later than three and one half months after the~~
25 ~~beginning of the limited liability entity's taxable year; and~~

1 a A disregarded entity that is required to file a return by
2 this section shall file the return not later than the time its
3 owner is required to file its return. If a taxpayer is
4 required to change its taxable year pursuant to the previous
5 sentence, then it shall file a return for the short taxable
6 year beginning January 1, 2001, and ending on the day before
7 the beginning of its new taxable year, and the return shall be
8 filed ~~not~~ no later than the corresponding federal income tax
9 return as required to be filed as provided under federal law.
10 ~~two and one-half months, if a corporation, and three and~~
11 ~~one-half months, if a limited liability entity, after the~~
12 ~~beginning of its new taxable year.~~ In cases where receivers,
13 trustees in bankruptcy, or assignees are operating the
14 property or business of taxpayers, those receivers, trustees,
15 or assignees shall file returns for the taxpayers in the same
16 manner and form as the taxpayers are required to file returns.
17 Any tax due on the basis of returns filed by receivers,
18 trustees, or assignees shall be collected in the same manner
19 as if collected from the taxpayers for whose business or
20 property they have custody and control. The department may
21 grant a reasonable extension of time for filing returns under
22 rules and regulations prescribed by the department. No
23 extension shall be for more than six months.

24 "(b) The tax provided in this article shall be
25 reported on forms and in the manner as prescribed by the

1 department. The failure to receive a form from the department
2 shall not relieve a taxpayer from liability for any tax,
3 penalty, or interest otherwise due. The tax due, as reported,
4 shall constitute an admitted liability for that amount. The
5 department may compute and assess additional tax, penalty, and
6 interest against a taxpayer as provided in Chapter 2A.
7 Interest on overpayments of business privilege tax will be
8 computed and paid in the manner provided in Section
9 40-1-44(b)(1)b.

10 "(c) A corporation that is a member of an Alabama
11 affiliated group that has elected to file a consolidated
12 return pursuant to Section 40-18-39 or Section 40-16-3(b), if
13 it is subject to the tax imposed by this article, shall file a
14 separate return reporting and paying tax on its net worth
15 without regard to other members of the affiliated group."

16 Section 9. The Code Commissioner, pursuant to
17 Section 29-7-8, Code of Alabama 1975, shall change all
18 references to the Taxpayer Advocate in Title 40, Chapter 2A,
19 to Taxpayer Assistance Officer or Taxpayer Assistance
20 Officers.

21 Section 10. The Department shall adopt rules to
22 assist with the implementation and enforcement of this act.

23 Section 11. If any part of this act is declared
24 invalid or unconstitutional, that declaration shall not affect
25 the part which remains.

1 Section 12. All laws or parts of laws which conflict
2 with this act are hereby repealed.

3 Section 13. This act shall become effective for tax
4 returns due on or after January 1, 2018, following its passage
5 and approval by the Governor, or upon its otherwise becoming
6 law.

