

1 HB137
2 188949-4
3 By Representative Johnson (K)
4 RFD: Fiscal Responsibility
5 First Read: 09-JAN-18

1
2 ENROLLED, An Act,

3 Relating to taxation; enact the Alabama Tax
4 Delinquency Amnesty Act of 2018; to require the Department of
5 Revenue to establish a tax amnesty program; to provide for
6 terms and conditions of the program; and to provide for the
7 disposition of the monies collected pursuant to the tax
8 amnesty program.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known as and may be
11 cited as the Alabama Tax Delinquency Amnesty Act of 2018.

12 Section 2. Definitions.

13 For the purposes of this act, the following terms
14 have the following meanings:

15 (1) COMMISSIONER. The Commissioner of the Department
16 of Revenue.

17 (2) CONTACT or CONTACTED. Previous contact of any
18 kind with the department, or an agent of the department,
19 within two years prior to submitting an initial amnesty
20 application. The term includes returns filed for the tax types
21 included in the application for tax periods beginning before
22 the look-back period. The term includes, but is not limited
23 to, with regard to potential liability for the type of tax
24 identified in the amnesty application, any of the following:

25 a. An audit or notice of audit.

1 b. Payment of tax.

2 c. Registration for tax.

3 d. Request for extension of time to file.

4 e. Making a payment of estimated tax.

5 f. Filing a return.

6 g. Non-compliance issued in response to an
7 application for a certificate of good standing or a
8 certificate of compliance by the taxpayer or on behalf of the
9 taxpayer.

10 (3) COURIER. A messenger other than the United
11 States Postal Service that delivers parcels, packages, or
12 similar items containing returns, reports, and other documents
13 or payments.

14 (4) DEPARTMENT. The Department of Revenue.

15 (5) LOOK-BACK PERIOD. The last three full tax years
16 or 36 months of eligible tax returns that are delinquent.

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

20 (7) TAX PERIOD. Any period for which a tax return is
21 required by law to be filed with the department.

22 (8) TAXPAYER. An individual or entity subject to a
23 tax imposed by this state, payable to this state, and
24 collected by the department.

25 Section 3. General criteria.

1 (a) The department shall develop and implement a tax
2 amnesty program in accordance with this act. The commissioner
3 may adopt rules necessary for the implementation and
4 administration of the program. The commissioner shall
5 publicize the program in order to maximize public awareness of
6 and participation in the program. The commissioner may
7 publicize the program by contracting with any advertising
8 agency within or outside the state and use public service
9 announcements, pamphlets, mail notices, and print, television,
10 and radio announcements. The publications shall operate to
11 increase public awareness that the program will provide
12 amnesty for taxpayers who have not been contacted by the
13 department in the past two years concerning the tax type for
14 which amnesty is being applied.

15 (b) The tax amnesty program shall be effective for
16 the period beginning July 1, 2018, and ending on September 30,
17 2018. The program shall apply to all taxes administered by the
18 department except for motor fuel, motor vehicle, and property
19 taxes.

20 Section 4. Eligibility.

21 (a) Notwithstanding any provision of law to the
22 contrary, and except as provided in subsection (b) of Section
23 3, the following taxes are eligible for amnesty:

24 (1) Taxes due prior to January 1, 2017.

1 (2) Taxes for taxable periods that began before
2 January 1, 2017.

3 (b) Participation in the amnesty program shall be
4 conditioned upon the agreement of the taxpayer to waive any
5 right to protest or initiate an administrative or judicial
6 proceeding. The agreement shall apply only to the specific tax
7 and the tax period for which amnesty is granted.

8 (c) Amnesty may be granted only for eligible taxes
9 to eligible taxpayers who have not been contacted by the
10 department in the past two years concerning the tax type for
11 which amnesty has been applied and who apply for amnesty
12 during the amnesty period prescribed by this act. Amnesty
13 applications must be submitted in an electronic manner as
14 prescribed by the department.

15 (d) Amnesty applications shall include a written
16 waiver of all rights, restrictions, delays for assessing,
17 collecting, or protesting taxes and interest due as set forth
18 in Chapter 2A and Chapter 2B of Title 40 of the Code of
19 Alabama 1975. The filing of the applications shall make the
20 applicable tax ineligible for refund, credit, or claim against
21 the state and ineligible for redetermination. A taxpayer shall
22 be eligible for a refund or credit if the overpayment arises
23 after the amnesty application is submitted and is attributable
24 to a properly claimed Alabama net operating loss or an
25 adjustment made by the Internal Revenue Service to the

1 taxpayer's federal income tax, and the taxpayer provides
2 notice of the adjustment to the commissioner within 60 days of
3 receipt of the adjustment from the Internal Revenue Service. A
4 taxpayer who files an application for amnesty retains all
5 administrative and judicial rights of appeal with respect to
6 any additional tax assessed by the department.

7 Section 5. Waiver of interest and penalties;
8 look-back periods.

9 Notwithstanding any provision of law to the
10 contrary, the commissioner shall waive all of the interest and
11 penalties associated with the tax periods for which amnesty is
12 granted. A limited look-back period shall apply separately to
13 each tax type. If the taxpayer has collected any tax without
14 remitting the tax to the department, the look-back period will
15 be extended to include all periods, back to the point of
16 collection.

17 Section 6. Ineligible taxpayers.

18 Tax amnesty may not be granted to a taxpayer under
19 any of the following circumstances:

20 (1) The taxpayer is a party to a criminal
21 investigation or criminal litigation in a court of the United
22 States or this state pending on the effective date of this act
23 for nonpayment, delinquency, or fraud in relation to any state
24 tax imposed by this state and administered by the department.

1 (2) The taxpayer has delivered or disclosed a false
2 or fraudulent application, document, return, or other
3 statement to the department in connection with an amnesty
4 application.

5 (3) The taxpayer has been issued a final assessment
6 in which the appeal period has ended pursuant to Section
7 40-2A-7, Code of Alabama 1975.

8 (4) The taxpayer has entered into a voluntary
9 disclosure agreement with the department before December 31,
10 2017.

11 (5) The taxpayer has been granted amnesty for the
12 tax type as part of the Alabama Tax Delinquency Amnesty Act of
13 2016, Chapter 29A of Title 40, Code of Alabama 1975.

14 Section 7. Amnesty requirements.

15 (a) An eligible taxpayer who is granted amnesty for
16 an eligible tax type shall comply with all of the following
17 requirements:

18 (1) Submit to the department by November 15, 2018,
19 all applicable returns, supporting documentation, and the full
20 payment of the tax. No payment plans will be entered into for
21 taxes that are approved for amnesty. An amnesty payment or
22 return submitted in a properly addressed envelope with
23 sufficient postage delivered by the United States Postal
24 Service is deemed paid or received on the date it is
25 postmarked. An amnesty payment or return delivered by courier

1 or taxpayer is deemed paid or received on the date it is
 2 delivered to the department's headquarters or a regional
 3 office.

4 (2) Include the current year return with the amnesty
 5 returns filed for the eligible tax type. Penalties for failure
 6 to timely file a return and failure to timely pay in
 7 accordance with subsections (a) and (b) of Section 40-2A-11,
 8 Code of Alabama 1975, respectively, shall be waived. Waiver of
 9 interest does not apply to current year returns.

10 (b) No interest shall be paid on refunds for a tax
 11 period for which amnesty is granted.

12 (c) If the taxpayer complies with the provisions of
 13 this act, the taxpayer is deemed to be in compliance with the
 14 department for the tax type for which amnesty was granted.

15 (d) If the approved taxpayer fails to fulfill all
 16 the requirements of this section, the amnesty agreement shall
 17 be deemed null and void.

18 Section 8. Penalties.

19 (a) (1) For taxable periods beginning on or after
 20 January 1, 2017, and before December 31, 2024, taxpayers that
 21 are granted amnesty and later fail to comply with any payment
 22 or filing provision administered by the department shall be
 23 subject to the penalty for underpayment due to negligence
 24 under subsection (c) of Section 40-2A-11, Code of Alabama

1 1975, or a civil penalty of one hundred dollars (\$100),
2 whichever is greater.

3 (2) A taxpayer who delivers or discloses a false or
4 fraudulent application, document, return, or other statement
5 to the department in connection with an amnesty application is
6 subject to the penalty for underpayment due to fraud under
7 subsection (d) of Section 40-2A-11, Code of Alabama 1975, or a
8 civil penalty of ten thousand dollars (\$10,000), whichever is
9 greater.

10 (b) Following the termination of the tax amnesty
11 period, if the commissioner issues a deficiency assessment for
12 a period for which amnesty was taken, the commissioner may
13 impose penalties and institute civil or criminal proceedings
14 as authorized by law only with respect to the difference
15 between the amount shown on the amnesty application and the
16 correct amount of tax due. The commissioner may impose by
17 rule, after the expiration of the tax amnesty period, a cost
18 of collection penalty not to exceed twenty percent of any
19 additional deficiency assessed for any taxable period for
20 which amnesty was taken. This penalty shall be in addition to
21 all other applicable penalties, fees, or costs. The
22 commissioner may waive any or all of the collection penalty
23 when it is demonstrated that any deficiency of the taxpayer
24 was not due to negligence, intentional disregard of
25 administrative rules, or fraud. The imposition of penalties or

1 civil or criminal proceedings shall not invalidate the amnesty
2 that was previously granted. No penalty shall be imposed if
3 the deficiency results from an adjustment made by the Internal
4 Revenue Service to the taxpayer's federal income tax and the
5 taxpayer provides written notice of the adjustment to the
6 commissioner within 60 days of receipt of the adjustment from
7 the Internal Revenue Service or if the taxpayer's application
8 for amnesty was based on a proposed assessment or notice of
9 assessment.

10 Section 9. Distribution of proceeds.

11 (a) The Department shall retain an amount not to
12 exceed two hundred fifty thousand dollars (\$250,000) for
13 advertising, programming, and other amnesty related expenses
14 from monies collected from taxes paid pursuant to this act.
15 The amount is hereby appropriated to the department and shall
16 be in addition to any and all other funds appropriated for the
17 fiscal year beginning October 1, 2017.

18 (b) After satisfaction of the requirements of
19 subsection (a), all remaining monies collected pursuant to
20 this act shall be paid into the State Treasury and placed in
21 the appropriate state funds for the specific tax collected
22 pursuant to state law.

23 Section 10. This act shall become effective
24 immediately following its passage and approval by the
25 Governor, or its otherwise becoming law.

