

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

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8 SYNOPSIS: This bill would provide for an amnesty
9 program for all taxes administered by the
10 Department of Revenue except motor fuel taxes,
11 motor vehicle taxes, and property taxes.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 Relating to taxation; enact the Alabama Tax
18 Delinquency Amnesty Act of 2018; to require the Department of
19 Revenue to establish a tax amnesty program; to provide for
20 terms and conditions of the program; and to provide for the
21 disposition of the monies collected pursuant to the tax
22 amnesty program.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 Section 2. Definitions.

1 For the purposes of this act, the following terms
2 have the following meanings:

3 (1) COMMISSIONER. The Commissioner of the Department
4 of Revenue.

5 (2) CONTACT or CONTACTED. Previous contact of any
6 kind with the department, or an agent of the department,
7 within two years prior to submitting an initial amnesty
8 application. The term includes returns filed for the tax types
9 included in the application for tax periods beginning before
10 the look-back period. The term includes, but is not limited
11 to, with regard to potential liability for the type of tax
12 identified in the amnesty application, any of the following:

13 a. An audit or notice of audit.

14 b. Payment of tax.

15 c. Registration for tax.

16 d. Request for extension of time to file.

17 e. Making a payment of estimated tax.

18 f. Filing a return.

19 g. Non-compliance issued in response to an
20 application for a certificate of good standing or a
21 certificate of compliance by the taxpayer or on behalf of the
22 taxpayer.

23 (3) COURIER. A messenger other than the United
24 States Postal Service that delivers parcels, packages, or
25 similar items containing returns, reports, and other documents
26 or payments.

27 (4) DEPARTMENT. The Department of Revenue.

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

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

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

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

11 Section 3. General criteria.

12 (a) The department shall develop and implement a tax
13 amnesty program in accordance with this act. The commissioner
14 may adopt rules necessary for the implementation and
15 administration of the program. The commissioner shall
16 publicize the program in order to maximize public awareness of
17 and participation in the program. The commissioner may
18 publicize the program by contracting with any advertising
19 agency within or outside the state and use public service
20 announcements, pamphlets, mail notices, and print, television,
21 and radio announcements. The publications shall operate to
22 increase public awareness that the program will provide
23 amnesty for taxpayers who have not been contacted by the
24 department in the past two years concerning the tax type for
25 which amnesty is being applied.

26 (b) The tax amnesty program shall be effective for
27 the period beginning July 1, 2018, and ending on September 30,

1 2018. The program shall apply to all taxes administered by the
2 department except for motor fuel, motor vehicle, and property
3 taxes.

4 Section 4. Eligibility.

5 (a) Notwithstanding any provision of law to the
6 contrary, and except as provided in subsection (b) of Section
7 3, the following taxes are eligible for amnesty:

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

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

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

16 (c) Amnesty may be granted only for eligible taxes
17 to eligible taxpayers who have not been contacted by the
18 department in the past two years concerning the tax type for
19 which amnesty has been applied and who apply for amnesty
20 during the amnesty period prescribed by this act. Amnesty
21 applications must be submitted in an electronic manner as
22 prescribed by the department.

23 (d) Amnesty applications shall include a written
24 waiver of all rights, restrictions, delays for assessing,
25 collecting, or protesting taxes and interest due as set forth
26 in Chapter 2A and Chapter 2B of Title 40 of the Code of
27 Alabama 1975. The filing of the applications shall make the

1 applicable tax ineligible for refund, credit, or claim against
2 the state and ineligible for redetermination. A taxpayer shall
3 be eligible for a refund or credit if the overpayment arises
4 after the amnesty application is submitted and is attributable
5 to a properly claimed Alabama net operating loss or an
6 adjustment made by the Internal Revenue Service to the
7 taxpayer's federal income tax, and the taxpayer provides
8 notice of the adjustment to the commissioner within 60 days of
9 receipt of the adjustment from the Internal Revenue Service. A
10 taxpayer who files an application for amnesty retains all
11 administrative and judicial rights of appeal with respect to
12 any additional tax assessed by the department.

13 Section 5. Waiver of interest and penalties;
14 look-back periods.

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

23 Section 6. Ineligible taxpayers.

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

26 (1) The taxpayer is a party to a criminal
27 investigation or criminal litigation in a court of the United

1 States or this state pending on the effective date of this act
2 for nonpayment, delinquency, or fraud in relation to any state
3 tax imposed by this state and administered by the department.

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

8 (3) The taxpayer has been issued a final assessment
9 in which the appeal period has ended pursuant to Section
10 40-2A-7, Code of Alabama 1975.

11 (4) The taxpayer has entered into a voluntary
12 disclosure agreement with the department before December 31,
13 2017.

14 (5) The taxpayer has been granted amnesty for the
15 tax type as part of the Alabama Tax Delinquency Amnesty Act of
16 2016, Chapter 29A of Title 40, Code of Alabama 1975.

17 Section 7. Amnesty requirements.

18 (a) An eligible taxpayer who is granted amnesty for
19 an eligible tax type shall comply with all of the following
20 requirements:

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

1 postmarked. An amnesty payment or return delivered by courier
2 or taxpayer is deemed paid or received on the date it is
3 delivered to the department's headquarters or a regional
4 office.

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

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

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

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

19 Section 8. Penalties.

20 (a) (1) For taxable periods beginning on or after
21 January 1, 2017, and before December 31, 2024, taxpayers that
22 are granted amnesty and later fail to comply with any payment
23 or filing provision administered by the department shall be
24 subject to the penalty for underpayment due to negligence
25 under subsection (c) of Section 40-2A-11, Code of Alabama
26 1975, or a civil penalty of one hundred dollars (\$100),
27 whichever is greater.

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

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

1 taxpayer provides written notice of the adjustment to the
2 commissioner within 60 days of receipt of the adjustment from
3 the Internal Revenue Service or if the taxpayer's application
4 for amnesty was based on a proposed assessment or notice of
5 assessment.

6 Section 9. Distribution of proceeds.

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

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

19 Section 10. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.