

1 SB63
2 189158-3
3 By Senator Livingston
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 09-JAN-18

2
3
4 ENGROSSED

5
6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Section 40-2A-3, Code of Alabama 1975,
12 relating to definitions; to amend Section 40-2A-7, Code of
13 Alabama 1975, to eliminate jointly filed petitions for refund.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 40-2A-3 and 40-2A-7, Code of
16 Alabama 1975, is amended to read as follows:

17 "§40-2A-3.

18 "For the purposes of this chapter and Chapter 2B,
19 the following terms shall have the following meanings:

20 "(1) ASSOCIATE ALABAMA TAX TRIBUNAL JUDGE. An
21 associate judge as defined in Section 40-2B-2.

22 "(2) AUTHORIZED REPRESENTATIVE. Any individual,
23 including, but not limited to, an attorney or certified public
24 accountant with written authority or power of attorney to
25 represent a taxpayer before the department or the Alabama Tax
26 Tribunal; provided however, that nothing herein shall be

1 construed as entitling any such individual who is not a
2 licensed attorney to engage in the practice of law.

3 "(3) CHIEF ALABAMA TAX TRIBUNAL JUDGE or CHIEF
4 JUDGE. The chief judge as defined in Section 40-2B-2.

5 "(4) COMMISSIONER. The commissioner of the
6 department or his or her delegate.

7 "(5) COMPTROLLER. The Comptroller of the State of
8 Alabama.

9 "(6) DELEGATE. When used with reference to the
10 commissioner means any officer or employee of the department
11 duly authorized by the commissioner, directly or indirectly,
12 by one or more redelegations of authority, to perform the
13 function described in the context.

14 "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The
15 Alabama Department of Revenue.

16 "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES
17 TAX. A privilege or license tax, imposed by a municipality or
18 county, measured by gross receipts or gross proceeds of sale
19 and which: (i) was in effect on or before February 25, 1997,
20 or is an amendment to a tax which was in effect on that date;
21 (ii) is levied against those selling tangible personal
22 property at retail, those operating places of amusement or
23 entertainment, those making street deliveries, and those
24 leasing or renting tangible personal property; and (iii) is
25 due and payable to a county or municipality monthly or
26 quarterly.

1 "(9) FINAL ASSESSMENT. The final notice of value,
2 underpayment, or nonpayment of any tax administered by the
3 department.

4 "(10) INTEREST. That amount computed under Section
5 40-1-44, on any overpayment or underpayment of tax or under
6 Section 40-2A-18 on a final assessment.

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

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

15 "(13) PERSON. Any individual, association, estate,
16 trust, partnership, corporation, or other entity of any kind.

17 "(14) PETITION FOR REFUND. Any written request for a
18 refund of any tax previously paid, including in the form of an
19 amended return. Unless otherwise provided by law, the request
20 shall include sufficient information to identify the type and
21 amount of tax overpaid, the taxpayer, the consumer/purchaser,
22 the period included, and the reasons for the refund.

23 "(15) PETITION FOR REVIEW. A written document filed
24 with the department in response to a preliminary assessment in
25 which the taxpayer sets forth reasonably specific objections
26 to the preliminary assessment.

1 "(16) PRELIMINARY ASSESSMENT. The preliminary notice
2 of value or underpayment of any tax administered by the
3 department.

4 "(17) PRIVATE AUDITING OR COLLECTING FIRM. Any
5 person in the business of collecting, through contract or
6 otherwise, local sales, use, rental, lodgings or other taxes
7 or license fees for any county or municipality, or auditing
8 any taxpayer, through the examination of books and records,
9 for any county or municipality. The term shall also be
10 referred to as a third-party auditing firm, a third-party
11 collecting firm, or a third-party administrator. The term
12 shall not include any of the following:

13 "a. The Department of Revenue.

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

20 "c. A person or firm whose sole function and purpose
21 on behalf of a municipality or group of municipalities is to
22 collect delinquent insurance premium license fees levied by
23 that municipality or group of municipalities, and who has no
24 authority to determine the amount of license fee, interest,
25 court cost, or penalty owed to the municipality or group of
26 municipalities.

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

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

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

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

22 "a. A county or municipality that allows the
23 department to administer a sales, use, rental, or lodgings tax
24 which is levied by or on behalf of that county or
25 municipality.

26 "b. A municipality or county that levies a gross
27 receipts tax in the nature of a sales tax, as defined in

1 subdivision (8). A county or municipality that both
2 self-administers a sales, use, rental, or lodgings tax and
3 allows the department to administer a sales, use, rental, or
4 lodgings tax that is levied by or on behalf of the county or
5 municipality is only a self-administered county or
6 municipality with respect to those sales, use, rental, or
7 lodgings taxes that the county or municipality administers
8 itself or for those taxes that it contracts for the
9 collection.

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

15 "(23) ALABAMA TAX TRIBUNAL. The Alabama Tax Tribunal
16 as described in Chapter 2B.

17 "(24) TAXPAYER. Any person subject to or liable for
18 any state or local tax; any person required to file a return
19 with respect to, or to pay, or withhold and remit any state or
20 local tax or to report any information or value to the
21 department, a county, municipality, or its designee; or any
22 person required to obtain or holding any interest in any
23 license, permit, or certificate of title issued by the
24 department, a county, municipality, or its designee, or any
25 person that may be affected by any act or refusal to act by
26 the department, a county, municipality, or its designee, or to
27 keep any records required by this chapter.

1 "(25) TAXPAYER ADVOCATE. The person so designated
2 from time to time by the commissioner to assist the taxpayers
3 of the State of Alabama with regard to tax issues resulting
4 from any taxes administered or collected by the department.

5 "(26) TAXPAYER ASSISTANCE ORDER. A written order
6 issued by the Taxpayer Advocate and approved by either the
7 commissioner or assistant commissioner which, among other
8 items, states the facts and grants relief to a taxpayer
9 concerning an issue in dispute with the department with regard
10 to tax issues resulting from any taxes administered or
11 collected by the department."

12 "§40-2A-7.

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

15 "(1) In addition to all other recordkeeping
16 requirements otherwise set out in this title, taxpayers shall
17 keep and maintain an accurate and complete set of records,
18 books, and other information sufficient to allow the
19 department to determine the correct amount of value or correct
20 amount of any tax, license, permit, or fee administered by the
21 department, or other records or information as may be
22 necessary for the proper administration of any matters under
23 the jurisdiction of the department. The books, records, and
24 other information shall be open and available for inspection
25 by the department upon request at a reasonable time and
26 location.

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

8 "(3) A taxpayer, or any officer of a corporation or
9 association, or partner of a partnership, or fiduciary of a
10 trust, or responsible individual of any entity under a duty to
11 maintain books and records pursuant to this subsection who
12 fails or refuses to maintain such records and books, or permit
13 inspection, shall be subject to contempt proceedings in the
14 circuit court of the judicial circuit in which the person
15 resides or has a principal place of business, and upon proof
16 of the fact to the court, may be punished for contempt as
17 provided in cases of contempt in circuit court.

18 "(4) The department may summon any witness to appear
19 and give testimony, and summon by subpoena duces tecum any
20 records, books, or other information of any kind relating to
21 any matter which the department has authority to administer.
22 The witness may be summoned by subpoena issued by the
23 secretary of the department, any circuit judge, any
24 magistrate, or any district judge, in the name of the
25 department, directed to any sheriff of Alabama and returnable
26 to the department. The subpoena may be served in like manner
27 as subpoenas issued out of any circuit court, or the subpoena

1 may be served by an authorized employee of the department or
2 by either U.S. mail with delivery confirmation or certified
3 mail, return receipt requested. A fee shall be paid to banking
4 institutions, other similar entities, or any other person
5 except the taxpayer, for copying, searching for, reproducing,
6 and transporting any records, books, papers, or other
7 documents requested or subpoenaed by the department and to
8 persons who are required to appear as a witness equal to the
9 fee authorized to be paid by the Internal Revenue Service for
10 similar services or appearances pursuant to Section 7610 of
11 the Internal Revenue Code of 1986, as amended. If any witness
12 has been subpoenaed to appear and testify or appear and
13 produce records, books, or other information, and fails or
14 refuses to appear or testify or to produce the books, records,
15 or other information, that witness shall be subject to
16 contempt proceedings in the circuit court of the judicial
17 circuit in which the witness resides, and upon proof of the
18 fact to a circuit court may be punished for contempt as is
19 provided in cases of contempt in circuit court.

20 "(5) The department may issue forms and make
21 reasonable regulations concerning any matter administered by
22 the department. Regulations promulgated by the department
23 shall be issued in accordance with the procedures set forth in
24 the Alabama Administrative Procedure Act, Chapter 22 of Title
25 41.

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

1 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL
2 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND
3 FINAL ASSESSMENTS.

4 "a. If the department determines that the amount of
5 any tax as reported on a return is incorrect, or if no return
6 is filed, or if the department is required to determine value,
7 the department may calculate the correct tax or value based on
8 the most accurate and complete information reasonably
9 obtainable by the department. The department may thereafter
10 enter a preliminary assessment for the correct tax or value,
11 including any applicable penalty and interest.

12 "b. Where the amount of tax or value reported on a
13 return is undisputed by the department, or the taxpayer
14 consents to the amount of any deficiency, determination of
15 value, or preliminary assessment in writing as provided by
16 regulation, the department may immediately enter a final
17 assessment for the amount of the tax or value, plus applicable
18 penalty and interest; provided, the department may at any time
19 enter a final jeopardy assessment pursuant to Sections
20 40-17A-12, 40-29-90, and 40-29-91.

21 "c. All preliminary and final assessments issued by
22 the department shall be executed as provided by regulations
23 promulgated by the department.

24 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
25 ASSESSMENT. Any preliminary assessment shall be entered within
26 three years from the due date of the return, or three years
27 from the date the return is filed with the department,

1 whichever is later, or if no return is required to be filed,
2 within three years of the due date of the tax, except as
3 follows:

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

7 "b. A preliminary assessment may be entered within
8 six years from the due date of the return or six years from
9 the date the return is filed with the department, whichever is
10 later, if the taxpayer omits from the taxable base an amount
11 properly includable therein which is in excess of 25 percent
12 of the amount of the taxable base stated in the return.

13 "For purposes of this paragraph:

14 "1. The term taxable base means the gross income,
15 gross proceeds from sales, gross receipts, net worth, or other
16 amounts on which the tax paid with the return is computed; and

17 "2. In determining the amount omitted from the
18 taxable base, there shall not be taken into account any amount
19 which is omitted from the taxable base stated in the return if
20 the amount is disclosed in the return, or in a statement
21 attached to the return, in a manner adequate to apprise the
22 department of the nature and amount of the item.

23 "c. A preliminary assessment entered pursuant to
24 Sections 40-29-72 and 40-29-73, may be entered within five
25 years from the due date of the return on which the underlying
26 tax is required to be reported or within five years of the
27 date the return is filed, whichever is later.

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

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

20 "e. If a taxpayer has made the election provided in
21 subsection (d) or (e) of Section 40-18-8, a preliminary
22 assessment based on the gain realized as a result of the
23 involuntary conversion [in the case of subsection (d) of
24 Section 40-18-8] or a rollover of gain on the sale of a
25 personal residence [as provided in subsection (e) of Section
26 40-18-8] may be entered within three years from the date the
27 taxpayer notified the department of the replacement of the

1 property in accordance with subsection (d) or (e) of Section
2 40-18-8, as the case may be, or of his or her intention not to
3 replace the property.

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

12 "g.1. When the Internal Revenue Service changes the
13 amount of federal income tax or federal estate tax in any
14 manner and the change results in an increase in additional
15 income tax or estate tax owed under this title, the department
16 may, at any time within one year after the department is
17 notified or otherwise learns that the change has become final,
18 enter a preliminary assessment for additional tax due. The
19 department shall be allowed to assess the tax within the time
20 period otherwise allowed by this section. Any tax assessed
21 within the additional one year period allowed shall be limited
22 to those items changed on the federal income tax return or
23 federal estate tax return that affect the income tax liability
24 or the estate tax liability imposed by this title.

25 "2. When a federal income tax return or federal
26 estate tax return is changed in any manner after it has been
27 filed with the Internal Revenue Service, other than by an

1 amended return, and the change results in an overpayment of
2 taxes imposed by this title, a petition for refund of the
3 overpayment may be filed within the later of one year after
4 the federal changes become final, or within the time allowed
5 for the filing of a petition for refund as provided in this
6 chapter. The refund shall be limited to those items changed on
7 the federal income tax return or federal estate tax return
8 that affect the income tax liability or estate tax liability
9 imposed by this title.

10 "3. For purposes of this subdivision, the date that
11 a federal change becomes final is the date on which the
12 taxpayer and the Internal Revenue Service formally agree to
13 the changes, or the date of any administrative or judicial
14 order, judgment, or decree from which no further appeal was or
15 may be taken.

16 "h. The running of the period of limitations
17 provided herein for entering a preliminary assessment shall be
18 suspended for the period that:

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

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

25 "i. The department and the taxpayer may, prior to
26 the expiration of the period for entering a preliminary
27 assessment or the filing of a petition for refund, agree in

1 writing to extend the time provided for entering the
2 assessment or filing the petition in this chapter. The tax may
3 be assessed, or the petition for refund may be filed, at any
4 time prior to the expiration of the period agreed upon. The
5 period agreed upon may be extended by subsequent agreements in
6 writing made before the expiration of the period previously
7 agreed upon.

8 "j. Additional tax may be assessed by the department
9 within any applicable period allowed above, even though a
10 preliminary or final assessment has been previously entered by
11 the department against the same taxpayer for the same or a
12 portion of the same tax period. No taxpayer, however, shall be
13 subject to unnecessary examination or investigation, and only
14 one inspection of a taxpayer's books and records relating to
15 each type of tax administered by the department shall be made
16 for each taxable year, unless the taxpayer requests otherwise
17 or unless the commissioner after investigation, notifies the
18 taxpayer in writing that an additional inspection is
19 necessary. The commissioner shall promulgate regulations
20 consistent with those followed by the Internal Revenue Service
21 with respect to second inspection of a taxpayer's books and
22 records.

23 "k. The three-year statute of limitations provided
24 by this subdivision for entering a preliminary assessment
25 shall be extended as provided in the following sentence, for
26 the benefit of a self-administered county or municipality, in
27 cases where: 1. the department has audited a taxpayer and has

1 entered a final assessment against the taxpayer for additional
2 sales, use, rental, or lodgings tax; 2. the taxpayer owes the
3 same type of tax to the self-administered county or
4 municipality for the same tax period or periods; and 3. the
5 taxpayer or its authorized representative has not contacted
6 the county or municipality or its private auditing firm,
7 pursuant to its voluntary disclosure program, prior to the
8 date of entry of the final assessment. In such cases, the
9 statute of limitations shall not expire until the earlier of
10 six months from the date of entry of the final assessment or
11 60 days following the date of mailing or transmittal by
12 electronic mail by the department to the self-administered
13 county or municipality or its private auditing firm of a copy
14 of the notice of final assessment and any attachments thereto.
15 Any tax assessed by the self-administered county or
16 municipality within the additional time period allowed by this
17 subdivision shall be limited to those items changed or
18 adjustments included in the final assessment entered by the
19 department. The Alabama Tax Tribunal, during the months of
20 January and July of each year, shall publish a list of pending
21 appeals and the tax or taxes at issue.

22 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON
23 TAXPAYER. The preliminary assessment entered by the
24 department, or a copy thereof, shall be promptly mailed by the
25 department to the taxpayer's last known address by either
26 first class U.S. mail or certified mail with return receipt
27 requested, but at the option of the department, the

1 preliminary assessment may be delivered to the taxpayer by
2 personal service.

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

5 "a. If a taxpayer disagrees with a preliminary
6 assessment as entered by the department, the taxpayer may file
7 a written petition for review with the department within 30
8 days from the date of mailing or personal service, whichever
9 occurs earlier, of the preliminary assessment setting out the
10 specific objections to the preliminary assessment. If a
11 petition for review is timely filed, or if the department
12 otherwise deems it necessary, the department shall schedule a
13 conference with the taxpayer for the purpose of allowing the
14 taxpayer and the department to present their respective
15 positions, discuss any omissions or errors, and to attempt to
16 agree upon any changes or modifications to their respective
17 positions.

18 "b. If a written petition for review:

19 "1. Is not timely filed, or

20 "2. Is properly filed, and upon further review the
21 department determines the preliminary assessment is due to be
22 upheld in whole or in part, the department may make the
23 assessment final in the amount of tax due as computed by the
24 department, with applicable interest and penalty computed to
25 the date of entry of the final assessment.

26 "c. If a preliminary assessment is not withdrawn or
27 made final by the department within five years from the date

1 of entry, the taxpayer may appeal the preliminary assessment
2 to the Alabama Tax Tribunal or to the appropriate circuit
3 court as provided by subsection (b) (5) for an appeal of a
4 final assessment.

5 "d. The final assessment entered by the department,
6 or a copy thereof, shall be mailed by the department to the
7 taxpayer's last known address (i) by either first class U.S.
8 mail or certified mail with return receipt requested in the
9 case of assessments of tax of five hundred dollars (\$500) or
10 less or (ii) by certified mail with return receipt requested
11 in the case of assessments of tax of more than five hundred
12 dollars (\$500). In either case and at the option of the
13 department, the final assessment, or a copy thereof, may be
14 delivered to the taxpayer by personal service.

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

16 "a. A taxpayer may appeal to the Alabama Tax
17 Tribunal from any final assessment entered by the department
18 by filing a notice of appeal with the Alabama Tax Tribunal
19 within 30 days from the date of mailing or personal service,
20 whichever occurred earlier, of the final assessment, and the
21 appeal, if timely filed, shall proceed as herein provided in
22 Chapter 2B for appeals to the Alabama Tax Tribunal.

23 "b.1. In lieu of the appeal under paragraph a., at
24 the option of the taxpayer, the taxpayer may appeal from any
25 final assessment to the Circuit Court of Montgomery County,
26 Alabama, or to the circuit court of the county in which the
27 taxpayer resides or has a principal place of business in

1 Alabama, as appropriate, by filing notice of appeal within 30
2 days from the date of mailing or personal service, whichever
3 occurs earlier, of the final assessment with both the
4 secretary of the department and the clerk of the circuit court
5 in which the appeal is filed.

6 "2. If the appeal is to circuit court, the taxpayer,
7 also within the 30-day period allowed for appeal, shall do one
8 of the following:

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

11 "(ii) File a supersedeas bond with the court for 125
12 percent of the amount of the tax, interest, and any penalty
13 shown on the final assessment. The supersedeas bond shall be
14 executed by a surety company licensed and authorized to do
15 business in Alabama and shall be conditioned to pay the amount
16 of tax, interest, and any penalties shown on the final
17 assessment, plus applicable interest and any court costs
18 relating to the appeal, payable to the department, or the
19 self-administered county or municipality, if applicable.

20 "(iii) File an irrevocable letter of credit with the
21 circuit court in an amount equal to 125 percent of the amount
22 of the tax, interest, and any penalty shown on the final
23 assessment. The irrevocable letter of credit shall be issued
24 by a financial institution designated as a qualified public
25 depository by the Board of Directors of the Security for
26 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter
27 14A, Title 41. The department or the self-administered county

1 or municipality, if applicable, shall be named the beneficiary
2 of the irrevocable letter of credit. The irrevocable letter of
3 credit shall be conditioned to pay the assessment plus
4 applicable interest and any court costs relating to the
5 appeal. The taxpayer may not issue an irrevocable letter of
6 credit as to a final assessment entered against the same
7 taxpayer.

8 "(iv) File a pledge or collateral assignment of
9 securities with the circuit court that constitute eligible
10 collateral under Chapter 14A, Title 41, in an amount equal to
11 200 percent of the amount of the tax, interest, and penalty
12 shown on the final assessment. The pledge or collateral
13 assignment shall be in favor of the department or the
14 self-administered county or municipality, if applicable, and
15 conditioned to pay the assessment plus applicable interest and
16 any court costs relating to the appeal.

17 "(v) Show to the satisfaction of the clerk of the
18 circuit court to which the appeal is taken that the taxpayer
19 has a net worth, on the basis of fair market value, of two
20 hundred fifty thousand dollars (\$250,000) or less, including
21 his or her homestead.

22 "3. A taxpayer may appeal a final assessment to
23 either the Alabama Tax Tribunal or to circuit court as
24 provided herein, even though the taxpayer has paid the tax in
25 issue prior to taking the appeal.

26 "c.1. The filing of the notice of appeal with the
27 Alabama Tax Tribunal or, in the case of appeals to the circuit

1 court, the filing of the notice of appeal with both the
2 secretary of the department and the clerk of the circuit court
3 in which the appeal is filed and also the payment of the
4 assessment in full and applicable interest or the filing of a
5 supersedeas bond, an irrevocable letter of credit, or a pledge
6 or collateral assignment of securities as provided herein, are
7 jurisdictional. Except as set forth in subparagraph 2., if
8 such prerequisites are not satisfied within the time provided
9 for appeal, the appeal shall be dismissed for lack of
10 jurisdiction.

11 "2. Notwithstanding subparagraph 1., should the
12 circuit court determine that the taxpayer has not satisfied
13 the requirements of subparagraph b.2., the circuit court shall
14 order that the taxpayer satisfy such requirements. The
15 taxpayer may satisfy such requirements at any time within 30
16 days after service of the court order. No order of dismissal
17 for lack of jurisdiction shall be entered within 30 days after
18 service of the court order, and no order of dismissal shall
19 thereafter be entered if such requirement is satisfied within
20 such 30-day period.

21 "3. On appeal to the circuit court or to the Alabama
22 Tax Tribunal, the final assessment shall be prima facie
23 correct, and the burden of proof shall be on the taxpayer to
24 prove the assessment is incorrect.

25 "d.1. The Alabama Tax Tribunal, circuit court, or
26 the appellate court on appeal may increase or decrease the
27 assessment to reflect the correct amount due.

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

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

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

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

1 taxes pursuant to Chapter 23, and any transient occupancy tax
2 pursuant to Chapter 26, a petition may be filed by the
3 consumer/purchaser who paid the tax directly to the taxpayer
4 that collected the tax ~~taxpayer if the taxpayer never~~
5 ~~collected the tax from the consumer/purchaser, or by the~~
6 ~~taxpayer if the tax has been credited or repaid to the~~
7 ~~consumer/purchaser by the taxpayer taxpayer remitted in excess~~
8 ~~of the tax due, however never collected the tax from the~~
9 ~~consumer/purchaser, or by the taxpayer if the~~
10 ~~consumer/purchaser paid the tax directly to the taxpayer,~~
11 provided that a refund shall not be paid to the taxpayer until
12 after the tax has been credited or repaid to the
13 consumer/purchaser by the taxpayer. The Department may adopt
14 rules and establish procedures regarding petitions for refund,
15 including establishing procedures for claiming such refunds on
16 an annual basis when the amount of a refund is less than
17 twenty-five dollars (\$25.00) and offsetting any state use tax
18 liability against any refund otherwise due prior to paying a
19 refund.

20 " (2) TIME LIMITATION FOR FILING PETITION FOR REFUND;
21 AUTOMATIC REFUND.

22 "a. Generally. A petition for refund shall be filed
23 with the department or an automatic refund issued pursuant to
24 Section 40-29-71, or a credit allowed, within (i) three years
25 from the date that the return was filed, or (ii) two years
26 from the date of payment of the tax, whichever is later, or,
27 if no return was timely filed, two years from the date of

1 payment of the tax. For purposes of this paragraph, taxes paid
2 through withholding or by estimated payment shall be deemed
3 paid on the original due date of the return.

4 "b. Net Operating Loss Carryback. In lieu of the
5 periods provided in paragraph a., in the case of a net
6 operating loss carryback, the period for filing a petition for
7 refund, the department making an automatic refund or allowing
8 a credit shall be the period prescribed in 26 U.S.C. Section
9 6511(d) (2) for the claiming of a credit or refund.

10 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
11 TIME LIMITATIONS. The department shall either grant or deny a
12 petition for refund within six months from the date the
13 petition is filed, unless the period is extended by written
14 agreement of the taxpayer and the department. The taxpayer
15 shall be notified of the department's decision concerning the
16 petition for refund by first class mail, or by either United
17 States mail with delivery confirmation or by certified mail,
18 return receipt requested, sent to the taxpayer's last known
19 address. If the department fails to grant a refund within the
20 time provided herein, the petition for refund shall be deemed
21 to be denied.

22 "(4) PROCEDURED IF REFUNDS GRANTED; CREDIT OF
23 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a
24 petition is granted, or the department, the Alabama Tax
25 Tribunal, or a court otherwise determines that a refund is
26 due, the overpayment shall be refunded to the taxpayer by the
27 state, county, municipality, or other entity to which the

1 overpayment was distributed. If the department determines that
2 a refund is due, the amount of overpayment plus accrued
3 interest may first be credited by the department against any
4 outstanding final tax liabilities due and owing by the
5 taxpayer to the department, and the balance of any overpayment
6 shall, subject to the setoff provisions of Article 3 of
7 Chapter 18, be refunded to the taxpayer. If any refund or part
8 thereof is credited to any other tax by the department, the
9 department shall provide a written detailed statement to the
10 taxpayer showing the amount of overpayment, the amount
11 credited for payment to other taxes, and the amount refunded.

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

13 "a. A taxpayer may appeal from the denial in whole
14 or in part of a petition for refund by filing a notice of
15 appeal with the Alabama Tax Tribunal within two years from the
16 date the petition is denied, and the appeal, if timely filed,
17 shall proceed as hereinafter provided for appeals to the
18 Alabama Tax Tribunal.

19 "b. In lieu of appealing to the Alabama Tax
20 Tribunal, the taxpayer may appeal from the denial of a
21 petition for refund by filing a notice of appeal with the
22 Circuit Court in Montgomery County, Alabama, or the circuit
23 court of the county in which the taxpayer resides or has a
24 principal place of business in Alabama, as appropriate, by
25 filing the notice of appeal within two years from the date the
26 petition is denied. The circuit court shall hear the appeal

1 according to its own rules and procedures and shall determine
2 the correct amount of refund due, if any.

3 "c. If an appeal is not filed with the Alabama Tax
4 Tribunal or the circuit court within two years of the date the
5 petition is denied, then the appeal shall be dismissed for
6 lack of jurisdiction.

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

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

22 Section 2. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or upon its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 09-JAN-18

Read for the second time and placed on the calen-
dar..... 25-JAN-18

Read for the third time and passed as amended 01-FEB-18

Yeas 22
Nays 0

Patrick Harris,
Secretary.