

1 HB4  
2 200313-1  
3 By Representative Holmes  
4 RFD: Fiscal Responsibility  
5 First Read: 04-FEB-20  
6 PFD: 07/23/2019

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8 SYNOPSIS: This bill would repeal various state taxes  
9 and levy instead a comprehensive consumption tax.  
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11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
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15 To repeal the following provisions of the Code of  
16 Alabama 1975: Chapter 18 of Title 40, Sections 40-27-1.1, and  
17 40-31-1-through 40-31-4, regarding the income tax; Chapter 9F  
18 of Title 40, regarding the tax credits for rehabilitation of  
19 historic structures; Chapter 16 of Title 40, regarding the  
20 financial institutions excise tax; Chapter 14 of Title 40,  
21 regarding the corporation tax; Sections 40-14A-1 through  
22 40-14A-2, 40-14A-21 through 40-14A-29, and 40-14A-41 through  
23 40-14A-43, regarding the business privilege tax; Chapter 23 of  
24 Title 40, regarding the sales and use and contractor's gross  
25 receipts taxes; Sections 40-15-1 through 40-15-19, regarding  
26 estate and gift tax; Sections 40-15A-1 through 40-15A-14,  
27 regarding the generation-skipping transfer tax; Chapter 22 of

1 Title 40, regarding recording taxes; Sections 40-12-220  
2 through 40-12-227, regarding the leasing and rental tax;  
3 Chapter 31 of Title 40, regarding the facilitating business  
4 rapid response to declared disasters act; Sections 40-21-80  
5 through 40-21-107, regarding the utilities gross receipts tax  
6 and utility service use tax; Sections 40-21-50 through  
7 40-21-64, regarding the public utility license tax and  
8 hydroelectric tax; Chapter 26 of Title 40, regarding transient  
9 occupancy tax; and Chapter 4A, of Title 27, regarding  
10 insurance premium taxes; Chapter 14 of Title 40, regarding  
11 certified capital company insurance premium tax credits; to  
12 repeal Section 40-2A-17, regarding the Alabama Taxpayer's Bill  
13 of Rights; Section 40-2-25, regarding audits and examinations;  
14 and to replace them with a broad-based consumption tax; to  
15 also amend Sections 40-2A-4 and 40-2A-18, Code of Alabama  
16 1975, regarding the Taxpayer's Bill of Rights.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Short Title. This act shall be known and  
19 may be cited as the "Alabama Economic Freedom Act."

20 Section 2. Findings of the Alabama Legislature

21 (a) Findings Relating to Alabama Income Tax. The  
22 Alabama Legislature finds that the Alabama income tax:

23 (1) retards economic growth and has reduced the  
24 standard of living of the Alabama public;

25 (2) impedes the competitiveness of Alabama's  
26 industry;

1 (3) reduces savings and investment in Alabama by  
2 taxing income multiple times;

3 (4) slows the capital formation necessary for real  
4 wages to steadily increase;

5 (5) impedes innovation and lowers productivity;

6 (6) imposes unacceptable and unnecessary  
7 administrative and compliance costs on individual and business  
8 taxpayers;

9 (7) is unfair and inequitable;

10 (8) unnecessarily intrudes upon the privacy and  
11 civil rights of Alabama's citizens;

12 (9) hides the true cost of government by embedding  
13 taxes in the costs of everything Alabamians buy;

14 (10) is not being complied with at satisfactory  
15 levels and therefore raises the tax burden on law abiding  
16 citizens; and

17 (11) impedes upward social mobility.

18 (b) Findings Relating to Existing Sales and Use Tax.  
19 The Alabama Legislature finds that the Alabama sales and use  
20 tax:

21 (1) has too many exceptions which are unfair,  
22 increase complexity and distort the economy;

23 (2) taxes business inputs which results in a hidden  
24 tax and reduces investment in Alabama; and

25 (3) has a disproportionately adverse impact on lower  
26 income Alabama.

1 (c) Findings Relating to the Estate and Inheritance  
2 Tax. The Alabama Legislature finds that the Alabama estate and  
3 inheritance tax;

4 (1) forces family businesses and farms to be sold by  
5 the family to pay such taxes;

6 (2) discourages capital formation and  
7 entrepreneurship;

8 (3) fosters the continued dominance of large  
9 enterprises over small family-owned companies and farms; and

10 (4) imposes unacceptably high tax planning costs on  
11 small businesses and farms.

12 (d) Findings Relating to the Consumption Tax. The  
13 Alabama Legislature finds further that a broad-based single  
14 rate consumption tax on goods and services purchased for final  
15 consumption:

16 (1) is simpler and more fair than the sales and use  
17 tax in place;

18 (2) will promote savings and investment;

19 (3) will promote fairness;

20 (4) will promote economic growth;

21 (5) will raise the standard of living;

22 (6) will increase investment;

23 (7) will enhance productivity and competitiveness;

24 (8) will reduce administrative burdens on the  
25 Alabama taxpayer;

26 (9) will improve upward social mobility;

27 (10) will exempt the poor from tax; and

1           (11) will respect the privacy interests and civil  
2 rights of taxpayers.

3           Section 3. Effective January 1, 2020, the following  
4 provisions of the Code of Alabama 1975 are hereby expressly  
5 repealed:

6           Chapter 18 of Title 40, Sections 40-27-1.1, and  
7 40-31-1 through 40-31-4, regarding the income tax; Chapter 9F  
8 of Title 40, regarding the tax credits for rehabilitation of  
9 historic structures; Chapter 16 of Title 40, regarding the  
10 financial institutions excise tax; Chapter 14 of Title 40,  
11 regarding the corporation tax; Sections 40-14A-1 through  
12 40-14A-2, 40-14A-21 through 40-14A-29, and 40-14A-41 through  
13 40-14A-43, regarding the business privilege tax; Sections  
14 40-15-1 through 40-15-19, regarding estate and gift tax;  
15 Sections 40-15A-1 through 40-15A-14, regarding the  
16 generation-skipping transfer tax; Chapter 22 of Title 40,  
17 regarding recording taxes; Sections 40-12-220 through  
18 40-12-227, regarding the leasing and rental tax; Chapter 31 of  
19 Title 40, regarding the facilitating business rapid response  
20 to declared disasters act; Sections 40-21-80 through  
21 40-21-107, regarding the utilities gross receipts tax and  
22 utility service use tax; Sections 40-21-50 through 40-21-64,  
23 regarding the public utility license tax and hydroelectric  
24 tax; Chapter 26 of Title 40, regarding transient occupancy  
25 tax; and Chapter 4A, of Title 27, regarding insurance premium  
26 taxes; Chapter 15B of Title 40, regarding certified capital  
27 company insurance premium tax credits; Section 40-2A-17,

1 regarding the Taxpayer's Bill of Rights; and 40-2-25,  
2 regarding audits and examinations.

3 Section 4. Chapter 23 of Title 40, Code of Alabama  
4 1975, regarding sales and use taxes, is repealed.

5 Section 5. Chapter 23A of Title 40, is added to the  
6 Code of Alabama 1975, to read as follows:

7 §40-23A-1 Principles of interpretation

8 (a) In General. Any court, the Commissioner of  
9 Revenue and his delegates, and any other authority shall  
10 consider the purposes of this chapter (as set forth in  
11 subsection (b)) as the primary aid in statutory construction.

12 (b) Purposes. The purposes of this chapter are as  
13 follows:

14 (1) To raise revenue needed by the State of Alabama  
15 in a manner consistent with the other purposes of this  
16 chapter.

17 (2) To tax all consumption of goods and services in  
18 Alabama once, without exception, but only once.

19 (3) To prevent double, multiple, or cascading  
20 taxation.

21 (4) To simplify the tax law and reduce the  
22 administration costs of, and the costs of compliance with, the  
23 tax law.

24 (5) To provide for the administration of the tax law  
25 in a manner that respects privacy, due process, individual  
26 rights when interacting with the government, the presumption

1 of innocence in criminal proceedings, and the presumption of  
2 lawful behavior in civil proceedings.

3 (c) Secondary Aids to Statutory Construction. As a  
4 secondary aid in statutory construction, any court, the  
5 commissioner and his delegates, and any other authority shall  
6 consider;

7 (1) the common law canons of statutory construction;

8 (2) the meaning and construction of concepts and  
9 terms used in Title 40 as in effect before the effective date  
10 of this Act; and

11 (3) construe any ambiguities in this Act in favor of  
12 reserving powers to the people.

13 (d) Resolution of Conflicts. Whenever Chapter 23A is  
14 inconsistent with any other chapter of this title, Chapter 23A  
15 shall govern with respect to the administration and collection  
16 of the taxes imposed by Chapter 23A.

17 §40-23A-2 Definitions

18 (a) The following terms shall have the following  
19 meanings for purposes of this chapter:

20 (1) AFFILIATED FIRMS. A firm is affiliated with  
21 another if 1 firm owns 50 percent or more of;

22 a. the voting shares in a corporation, or

23 b. the capital interests of a business firm that is  
24 not a corporation.

25 (2) COMMISSIONER. The individual appointed by the  
26 Governor as state Commissioner of Revenue pursuant to section  
27 40-2-40 and his or her delegates.

1           (3) DESIGNATED COMMERCIAL PRIVATE COURIER SERVICE. A  
2 firm designated as such by the commissioner, upon application  
3 of the firm, if the firm;

- 4           a. provides its services to the general public,
- 5           b. records electronically to its data base kept in  
6 the regular course of its business the date on which an item  
7 was given to such firm for delivery, and
- 8           c. has been operating for at least 1 year.

9           (4) EDUCATION AND TRAINING. Tuition for primary,  
10 secondary, or postsecondary level education, and job-related  
11 training courses. Such term does not include room, board,  
12 sports activities, recreational activities, hobbies, games,  
13 arts or crafts or cultural activities.

14           (5) GROSS PAYMENTS. Payments for taxable property or  
15 services including taxes imposed by this chapter.

16           (6) INTANGIBLE PROPERTY.

17           a. IN GENERAL. Copyrights, trademarks, patents,  
18 goodwill, financial instruments, securities, commercial paper,  
19 debts, notes and bonds, and other property deemed intangible  
20 at common law.

21           b. CERTAIN TYPES OF PROPERTY. Does not include  
22 tangible personal property (or rents or leaseholds of any term  
23 thereon), real property (or rents or leaseholds of any term  
24 thereon) and computer software.

25           (7) PERSON. The definition contained in section  
26 40-1-1(8).

1 (8) PRODUCE, PROVIDE, RENDER, OR SELL TAXABLE  
2 PROPERTY OR SERVICES.

3 a. A taxable property or service is used to produce,  
4 provide, render, or sell a taxable property or service if such  
5 property or service is purchased by a person engaged in a  
6 trade or business for the purpose of employing or using such  
7 taxable property or service in the production, provision,  
8 rendering, or sale of other taxable property or services in  
9 the ordinary course of that trade or business.

10 b. Taxable property or services used in a trade or  
11 business for the purpose of research, experimentation,  
12 testing, and development shall be treated as used to produce,  
13 provide, render, or sell taxable property or services.

14 c. Taxable property or services purchased by an  
15 insurer on behalf of an insured shall be treated as used to  
16 produce, provide, render, or sell taxable property or services  
17 if the premium for the insurance contract giving rise to the  
18 insurer's obligation was subject to tax pursuant to section  
19 40-23A-71 (relating to financial intermediation services).

20 d. Education and training shall be treated as  
21 services used to produce, provide, render, or sell taxable  
22 property or services.

23 (9) REGISTERED SELLER. The term registered seller  
24 means a person registered pursuant to section 40-23A-43.

25 (10) RESPONSIBLE OFFICERS AND PARTNERS. For purposes  
26 of section 40-23A-45 (m), the term responsible officers and  
27 partners means:

1           a. in the case of a corporation, any officer who is  
2 the President, the Chief Executive Officer, a Vice-President,  
3 the Secretary, the Treasurer, the Chief Financial Officer or  
4 serves a similar function for the corporation;

5           b. in the case of a partnership, any partner other  
6 than limited partners;

7           c. in the case of a limited liability company, any  
8 officer serving the function of a corporate President or Chief  
9 Executive Officer, Treasurer or Chief Financial Officer or  
10 Secretary and any member actively engaged in the management of  
11 the company.

12           (11) TAXABLE EMPLOYER.

13           a. The term taxable employer includes:

- 14           1. any household employing domestic servants, and  
15           2. any government except for government enterprises  
16 (as defined in §40-23A-64).

17           b. The term taxable employer does not include any  
18 employer which is:

- 19           1. engaged in a trade or business,  
20           2. a not-for-profit organization (as defined in  
21 section 40-23A-66), or

22           c. a government enterprise (as defined in section  
23 40-23A-64).

24           (12) CROSS REFERENCE. For rules relating to  
25 collection and remittance of tax on wages by taxable  
26 employers, see section 40-23A-15(b) (2).

1           (13) TAX INCLUSIVE FAIR MARKET VALUE. The fair  
2 market value of taxable property or services plus the tax  
3 imposed by this chapter.

4           (14) TAXABLE PROPERTY OR SERVICE.

5           a. GENERAL RULE. The term taxable property or  
6 service means:

7           1. any property (including leaseholds of any term or  
8 rents with respect to such property) but excluding

9           2. intangible property, and

10          3. used property, and

11          4. any service (including any financial  
12 intermediation services as determined by section 40-23A-71).

13          b. SERVICE. For purposes of subparagraph (A), the  
14 term service:

15          1. shall include any service performed by an  
16 employee for which the employee is paid wages or a salary by a  
17 taxable employer, and

18          2. shall not include any service performed by an  
19 employee for which the employee is paid wages or a salary-

20           (i) by an employer in the regular course of the  
21 employer's trade or business,

22           (ii) by an employer that is a not-for-profit  
23 organization (as defined in section 40-23A-66),

24           (iii) by an employer that is a government enterprise  
25 (as defined in section 40-23A-64), and

26           (iv) by taxable employers to employees directly  
27 providing education and training.

1 (15) USED PROPERTY.

2 a. property on which the tax imposed by this chapter  
3 has been collected and for which no credit has been allowed  
4 under section 40-23A-22, 40-23A-23, or 40-23A-26, or

5 b. property that was held other than for a business  
6 purpose (as defined in section 40-23A-4) on December 31, 2020.

7 (16) WAGES AND SALARY. The terms wages and salary  
8 mean all compensation paid for employment service including  
9 cash compensation, employee benefits, disability insurance, or  
10 wage replacement insurance payments, unemployment compensation  
11 insurance, workers' compensation insurance, and the fair  
12 market value of any other consideration paid by an employer to  
13 an employee in consideration for employment services rendered.

14 (b) Cross References.

15 (1) For the definition of business purposes, see  
16 section 40-23A-4.

17 (2) For the definition of insurance contract, see  
18 section 40-23A-26(e).

19 (3) For the definition of qualified family, see  
20 section 40-23A-32.

21 (4) For the definition of monthly poverty level, see  
22 section 40-23A-33.

23 (5) For the definition of large seller, see section  
24 40-23A-42(e)(3).

25 (6) For the definition of hobby activities, see  
26 section 40-23A-61.

1 (7) For the definition of gaming sponsor, section  
2 40-23A-62(a).

3 (8) For the definition of a chance, see section  
4 40-23A-62(b).

5 (9) For the definition of government enterprise, see  
6 section 40-23A-64(b).

7 (10) For the definition of mixed use property, see  
8 section 40-23A-65.

9 (11) For the definition of qualified not-for-profit  
10 organization, see section 40-23A-66.

11 (12) For the definition of financial intermediation  
12 services, see section §40-23A-71.

13 §40-23A-3 Imposition of consumption tax.

14 (a) In General. There is hereby imposed a tax on the  
15 use or consumption in the State of Alabama of taxable property  
16 or services.

17 (b) Rate. The rate of tax is eight and three one  
18 hundredths percent of the gross payments for the taxable  
19 property or service.

20 (c) Liability for Tax.

21 (1) IN GENERAL. The person using or consuming  
22 taxable property or services in the State of Alabama is liable  
23 for the tax imposed by this section, except as provided in  
24 paragraph (2) of this subsection.

25 (2) EXCEPTION WHERE TAX PAID TO SELLER. A person  
26 using or consuming a taxable property or service in the State  
27 of Alabama is not liable for the tax imposed by this section

1 if the person pays the tax to a person selling the taxable  
2 property or service and receives from such person a  
3 purchaser's receipt within the meaning of section 40-23A-49.

4 §40-23A-4 Intermediate and out-of-state sales.

5 (a) In General. For purposes of this chapter

6 (1) BUSINESS PURPOSES. No tax shall be imposed under  
7 section 40-23A-3 on any taxable property or service purchased  
8 for a business purpose in a trade or business.

9 (2) INVESTMENT PURPOSE. No tax shall be imposed  
10 under section 40-23A-3 on any taxable property or service  
11 purchased for an investment purpose and held exclusively for  
12 an investment purpose.

13 (b) Business Purposes. For purposes of this section,  
14 the term purchased for a business purpose in a trade or  
15 business means purchased by a person engaged in a trade or  
16 business and used in that trade or business

17 (1) for resale,

18 (2) to produce, provide, render, or sell taxable  
19 property or services, or

20 (3) in furtherance of other bona fide business  
21 purposes.

22 (c) Investment Purposes. For purposes of this  
23 section, the term purchased for an investment purpose means  
24 property purchased exclusively for purposes of appreciation or  
25 the production of income but not entailing more than minor  
26 personal efforts.

1                   §40-23A-5 Rules relating to collection and  
2 remittance of tax.

3                   (a) Liability for Collection and Remittance of the  
4 Tax. Except as provided otherwise by this section, any tax  
5 imposed by this chapter shall be collected and remitted by the  
6 seller of taxable property or services (including financial  
7 intermediation services).

8                   (b) Tax To Be Remitted by Purchaser in Certain  
9 Circumstances.

10                   (1) IN GENERAL. In the case of taxable property or  
11 services purchased outside of the State of Alabama and brought  
12 into the State of Alabama for use or consumption in the State  
13 of Alabama, the purchaser shall remit the tax imposed by  
14 section 40-23A-3.

15                   (2) CERTAIN WAGES OR SALARY. In the case of wages or  
16 salary paid by a taxable employer which are taxable services,  
17 the employer shall remit the tax imposed by section 40-23A-3.

18                   (c) Conversion of Business or Out-of-State Property  
19 or Services. Property or services purchased for a business  
20 purpose in a trade or business, for an investment purpose or  
21 for sale outside of the State of Alabama and sold untaxed  
22 pursuant to section 40-23A-3 that is subsequently converted to  
23 personal use in the State of Alabama shall be deemed purchased  
24 at the time of conversion and shall be subject to the tax  
25 imposed by section 40-23A-3 at the fair market value of the  
26 converted property as of the date of conversion. The tax shall  
27 be due as if the property had been sold at the fair market

1 value during the month of conversion. The person using or  
2 consuming the converted property is liable for and shall remit  
3 the tax.

4 (d) Barter Transactions. If gross payment for  
5 taxable property or services is made in other than money, then  
6 the person responsible for collecting and remitting the tax  
7 shall remit the tax in money as if gross payment had been made  
8 in money at the tax inclusive fair market value of the taxable  
9 property or services purchased.

10 §40-23A-21 Credits and refunds.

11 (a) In General. Each person shall be allowed a  
12 credit with respect to the taxes imposed by section 40-23A-13  
13 for each month in an amount equal to the sum of:

14 (1) such person's business use conversion credit  
15 pursuant to section 40-23A-22 for such month,

16 (2) such person's intermediate and out-of-state  
17 sales credit pursuant to section 40-23A-23 for such month,

18 (3) the administration credit pursuant to section  
19 40-23A-24 for such month,

20 (4) the bad debt credit pursuant to section  
21 40-23A-25 for such month,

22 (5) the insurance proceeds credit pursuant to  
23 section 40-23A-26 for such month,

24 (6) the transitional inventory credit pursuant to  
25 section 40-23A-82, and

26 (7) any amount paid in excess of the amount due.

1 (b) Credits Not Additive. Only one credit may be  
2 taken with respect to any particular gross payment.

3 §40-23A-22 Business use conversion credit.

4 (a) In General. For purposes of section 40-23A-21, a  
5 person's business use conversion credit for any month is the  
6 aggregate of the amounts determined under subsection (b) with  
7 respect to taxable property and services

8 (1) on which tax was imposed by this chapter (and  
9 actually paid), and

10 (2) which commenced to be 95 percent or more used  
11 during such month for business purposes (within the meaning of  
12 section 40-23A-4).

13 (b) Amount of Credit. The amount determined under  
14 this paragraph with respect to any taxable property or service  
15 is the lesser of

16 (1) the product of

17 a. the rate imposed by section 40-23A-3, and

18 b. the quotient that is

19 1. the fair market value of the property or service  
20 when its use is converted, divided by

21 2. the quantity that is one minus the tax rate  
22 imposed by section 40-23A-3, or

23 (2) the amount of tax paid with respect to such  
24 taxable property or service, including the amount, if any,  
25 determined in accordance with section 40-23A-65 (relating to  
26 mixed use property).

1                   §40-23A-23 Intermediate and out-of-state sales  
2 credit.

3                   For purposes of section 40-23A-21, a person's  
4 intermediate and out-of-state sales credit is the amount of  
5 consumption tax paid on the purchase of any taxable property  
6 or service purchased for

7                   (1) a business purpose in a trade or business (as  
8 defined in section 40-23A-4), or

9                   (2) for use or consumption outside the State of  
10 Alabama.

11                   §40-23A-24 Administration credit.

12                   (a) In General. Every person filing a timely monthly  
13 report (with regard to extensions) in compliance with section  
14 40-23A-42 shall be entitled to a taxpayer administrative  
15 credit equal to the greater of

16                   (1) \$200, or

17                   (2) one-quarter of 1 percent of the tax remitted.

18                   (b) Limitation. The credit allowed under this  
19 section shall not exceed 20 percent of the tax due to be  
20 remitted prior to the application of any credit or credits  
21 permitted by section 40-23A-21.

22                   §40-23A-25 Bad debt credit.

23                   (a) Financial Intermediation Services. Any person  
24 who has experienced a bad debt (other than unpaid invoices  
25 within the meaning of subsection (b)) shall be entitled to a  
26 credit equal to the product of

27                   (1) the rate imposed by section 40-23A-3, and

1 (2) the quotient that is  
2 a. the amount of the bad debt (as defined in section  
3 40-23A-72), divided by  
4 b. the quantity that is one minus the rate imposed  
5 by section 40-23A-3.

6 (b) Unpaid Invoices. Any person electing the accrual  
7 method pursuant to section 40-23A-44 that has with respect to  
8 a transaction

9 (1) invoiced the tax imposed by section 40-23A-3,

10 (2) remitted the invoiced tax,

11 (3) actually delivered the taxable property or  
12 performed the taxable services invoiced, and

13 (4) not been paid 180 days after date the invoice  
14 was due to be paid, shall be entitled to a credit equal to the  
15 amount of tax remitted and unpaid by the purchaser.

16 (c) Subsequent Payment. Any payment made with  
17 respect to a transaction subsequent to a section 40-23A-25  
18 credit being taken with respect to that transaction shall be  
19 subject to tax in the month the payment was received as if a  
20 tax inclusive sale of taxable property and services in the  
21 amount of the payment had been made.

22 (d) Partial Payments. Partial payments shall be  
23 treated as pro rata payments of the underlying obligation and  
24 shall be allocated proportionately

25 (1) for fully taxable payments, between payment for  
26 the taxable property and service and tax, and

1 (2) for partially taxable payments, among payment  
2 for the taxable property and service, tax and other payment.

3 (e) Related Parties. The credit provided by this  
4 section shall not be available with respect to sales made to  
5 related parties. For purposes of this section, related party  
6 means affiliated firms (as defined in section 40-23A-2(a)(1))  
7 and family members.

8 §40-23A-26 Insurance proceeds credit.

9 (a) In General. A person receiving a payment from an  
10 insurer by virtue of an insurance contract shall be entitled  
11 to a credit in an amount determined by subsection (b), less  
12 any amount paid to the insured by the insurer pursuant to  
13 subsection (c), if the entire premium (except that portion  
14 allocable to the investment account of the underlying policy)  
15 for the insurance contract giving rise to the insurer's  
16 obligation to make a payment to the insured was subject to the  
17 tax imposed by this chapter and said tax was paid.

18 (b) Credit Amount. The amount of the credit shall be  
19 the product of

20 (1) the rate imposed by section 40-23A-3, and

21 (2) the quotient that is

22 a. the amount of the payment made by the insurer to  
23 the insured, divided by

24 b. the quantity that is one minus the rate imposed  
25 by section 40-23A-3.

26 (c) Administrative Option. The credit determined in  
27 accordance with subsection (b) shall be paid by the insurer to

1 the insured and the insurer shall be entitled to the credit in  
2 lieu of the insured, except that the insurer may elect, in a  
3 form prescribed by the commissioner, to not pay the credit and  
4 require the insured to make application for the credit. In the  
5 event of such election, the insurer shall provide to the  
6 commissioner and the insured the name and tax identification  
7 number of the insurer and of the insured and indicate the  
8 proper amount of the credit.

9 (d) Coordination With Respect to Exemption. If  
10 taxable property or services purchased by an insurer on behalf  
11 of an insured are purchased free of tax by virtue of section  
12 40-23A-2(a)(8)(C), then the credit provided by this section  
13 shall not be available with respect to that purchase.

14 (e) Insurance Contract. For purposes of subsection  
15 (a), the term insurance contract shall include a life  
16 insurance contract, a health insurance contract, a property  
17 and casualty loss insurance contract, a general liability  
18 insurance contract, a marine insurance contract, a fire  
19 insurance contract, an accident insurance contract, a  
20 disability insurance contract, a long-term care insurance  
21 contract, and an insurance contract that provides a  
22 combination of these types of insurance.

23 §40-23A-27 Refunds.

24 (a) Registered Sellers. If a registered seller files  
25 a monthly tax report with an overpayment, then, upon  
26 application by the registered seller in a form prescribed by  
27 the commissioner, the overpayment shown on the report shall be

1 refunded to the registered seller within 60 days of receipt of  
2 said application. In the absence of such application, the  
3 overpayment may be carried forward, without interest, by the  
4 person entitled to the credit.

5 (b) Other Persons. If a person other than a  
6 registered seller has an overpayment for any month, then, upon  
7 application by the person in a form prescribed by the  
8 commissioner, the credit balance due shall be refunded to the  
9 person within 60 days of receipt of said application.

10 (c) Interest. No interest shall be paid on any  
11 balance due from the commissioner under this subsection for  
12 any month if such balance due is paid within 60 days after the  
13 application for refund is received. Balances due not paid  
14 within 60 days after the application for refund is received  
15 shall bear interest from the date of application. Interest  
16 shall be paid at the Federal short-term rate (as defined in  
17 section 40-23A-50).

18 §40-23A-31 Family consumption allowance.

19 Each qualified family shall be eligible to receive a  
20 consumption tax rebate each month. The consumption tax rebate  
21 shall be in an amount equal to the product of:

- 22 (1) the rate of tax imposed by section 40-23A-3, and
- 23 (2) the monthly poverty level.

24 §40-23A-32 qualified family.

25 (a) General Rule. For purposes of this chapter, the  
26 term qualified family shall mean one or more family members  
27 sharing a common residence. All family members sharing a

1 common residence shall be considered as part of 1 qualified  
2 family.

3 (b) Family Size Determination.

4 (1) IN GENERAL. To determine the size of a qualified  
5 family for purposes of this chapter, family members shall mean

6 a. an individual,

7 b. the individual's spouse,

8 c. all lineal ancestors and descendants of said  
9 individual (and such individual's spouse),

10 d. all legally adopted children of such individual  
11 (and such individual's spouse), and

12 e. all children under legal guardianship of such  
13 individual (or such individual's spouse).

14 (2) IDENTIFICATION REQUIREMENTS. In order for a  
15 person to be counted as a member of the family for purposes of  
16 determining the size of the qualified family, such person must

17 a. have a bona fide Social Security number; and

18 b. be a lawful resident of both

19 1. the United States, and

20 2. the State of Alabama.

21 (c) Children Living Away From Home.

22 (1) STUDENTS LIVING AWAY FROM HOME. Any person who  
23 was a registered student during not fewer than 5 months in a  
24 calendar year while living away from the common residence of a  
25 qualified family but who receives over 50 percent of such  
26 person's support during a calendar year from members of the  
27 qualified family shall be included as part of the family unit

1 whose members provided said support for purposes of this  
2 chapter.

3 (2) CHILDREN OF DIVORCED OR SEPARATED PARENTS. If a  
4 child's parents are divorced or legally separated, a child for  
5 purposes of this chapter shall be treated as part of the  
6 qualified family of the custodial parent. In cases of joint  
7 custody, the custodial parent for purposes of this chapter  
8 shall be the parent that has custody of the child for more  
9 than one-half of the time during a given calendar year. A  
10 parent entitled to be treated as the custodial parent pursuant  
11 to this paragraph may release this claim to the other parent  
12 if said release is in writing.

13 (d) Annual Registration. In order to receive the  
14 family consumption allowance provided by section 40-23A-31, a  
15 qualified family must register with the commissioner in a form  
16 prescribed by the commissioner. The annual registration form  
17 shall provide:

18 (1) the name of each family member who shared the  
19 qualified family's residence on the family determination date,

20 (2) the Social Security number of each family member  
21 on the family determination date who shared the qualified  
22 family's residence on the family determination date,

23 (3) the family member or family members to whom the  
24 family consumption allowance should be paid,

25 (4) a certification that all listed family members  
26 are lawful residents of the United States,

1                   (5) a certification that all listed family members  
2 are lawful residents of Alabama,

3                   (6) a certification that all family members sharing  
4 the common residence are listed,

5                   (7) a certification that no family members were  
6 incarcerated on the family determination date (within the  
7 meaning of subsection (1)), and

8                   (8) the address of the qualified family. Said  
9 registration shall be signed by all members of the qualified  
10 family that have attained the age of 21 years as of the date  
11 of filing.

12                   (e) Registration Not Mandatory. Registration is not  
13 mandatory for any qualified family.

14                   (f) Effect of Failure To Provide Annual  
15 Registration. Any qualified family that fails to register in  
16 accordance with this section within 30 days of the family  
17 determination date, shall cease receiving the monthly family  
18 consumption allowance in the month beginning 90 days after the  
19 family determination date.

20                   (g) Effect of Curing Failure To Provide Annual  
21 Registration. Any qualified family that failed to timely make  
22 its annual registration in accordance with this section but  
23 subsequently cures its failure to register, shall be entitled  
24 to up to 6 months of lapsed consumption tax rebate payments.  
25 No interest on lapsed payment amount shall be paid.

1 (h) Effective Date of Annual Registrations. Annual  
2 registrations shall take effect for the month beginning 90  
3 days after the family registration date.

4 (i) Effective Date of Revised Registrations. A  
5 revised registration made pursuant to section 40-23A-35 shall  
6 take effect for the first month beginning 60 days after the  
7 revised registration was filed. The existing registration  
8 shall remain in effect until the effective date of the revised  
9 registration.

10 (j) Determination of Registration Filing Date. An  
11 annual or revised registration shall be deemed filed when

12 (1) deposited in the United States mail, postage  
13 prepaid, to the designated address of the Department of  
14 Revenue;

15 (2) delivered and accepted at the designated offices  
16 of the Department of Revenue; or

17 (3) provided to a designated commercial private  
18 courier service for delivery within 2 days to the commissioner  
19 at the designated address of the Department of Revenue.

20 (k) Proposed Registration To Be Provided. Thirty or  
21 more days before the family registration date, the  
22 commissioner shall mail to the address shown on the most  
23 recent rebate registration or change of address notice filed  
24 pursuant to section 40-23A-35(d) a proposed registration that  
25 may be simply signed by the appropriate family members if  
26 family circumstances have not changed.

1           (1) Incarcerated Individuals. An individual shall  
2 not be eligible under this chapter to be included as a member  
3 of any qualified family if that individual

4           (1) is incarcerated in a local, State, or Federal  
5 jail, prison, mental hospital, or other institution on the  
6 family determination date, and

7           (2) is scheduled to be incarcerated for 6 months or  
8 more in the 12-month period following the effective date of  
9 the annual registration or the revised registration of said  
10 qualified family.

11           (m) Family Determination Date. The family  
12 determination date is a date assigned to each family by the  
13 commissioner for purposes of determining qualified family size  
14 and other information necessary for the administration of this  
15 chapter. The commissioner shall promulgate regulations  
16 regarding the issuance of family determination dates. In the  
17 absence of any regulations, the family determination date for  
18 all families shall be October 1. The commissioner may assign  
19 family determination dates for administrative convenience.  
20 Permissible means of assigning family determination dates  
21 include a method based on the birth dates of family members.

22           (n) Cross Reference. For penalty for filing false  
23 rebate claim, see section 40-23A-45(i).

24           §40-23A-33 Monthly poverty level.

25           (a) In General. The monthly poverty level for any  
26 particular month shall be one-twelfth of the annual poverty

1 level. For purposes of this section the annual poverty level  
2 shall be the sum of:

3 (1) the annual level determined by the Department of  
4 Health and Human Services poverty guidelines required by  
5 sections 652 and 673(2) of the Omnibus Reconciliation Act of  
6 1981 for a particular family size, and

7 (2) in case of families that include a married  
8 couple, the annual marriage penalty elimination amount.

9 (b) Annual Marriage Penalty Elimination Amount. The  
10 annual marriage penalty elimination amount shall be the amount  
11 that is:

12 (1) the amount that is two times the annual level  
13 determined by the Department of Health and Human Services  
14 poverty guidelines required by sections 652 and 673(2) of the  
15 Omnibus Reconciliation Act of 1981 for a family of one, less

16 (2) the annual level determined by the Department of  
17 Health and Human Services poverty guidelines required by  
18 sections 652 and 673(2) of the Omnibus Reconciliation Act of  
19 1981 for a family of two.

20 §40-23A-34 Rebate mechanism.

21 (a) General Rule. The Department of Revenue shall  
22 provide a monthly consumption tax rebate to duly registered  
23 qualified families in an amount determined in accordance with  
24 Section 40-23A-31.

25 (b) Persons Receiving Rebate. The payments shall be  
26 made to the persons designated by the qualifying family in the  
27 annual or revised registration for each qualified family in

1 effect with respect to the month for which payment is being  
2 made. Payments may only be made to persons 18 years or older.  
3 If more than 1 person is designated in a registration to  
4 receive the rebate, then the rebate payment shall be divided  
5 evenly between or among those persons designated.

6 (c) When Rebates Mailed. Rebates shall be mailed on  
7 or before the first business day of the month for which the  
8 rebate is being provided.

9 (d) Smartcards and Direct Electronic Deposit  
10 Permissible. The commissioner may provide rebates in the form  
11 of smartcards that carry cash balances in their memory for use  
12 in making purchases at retail establishments or by direct  
13 electronic deposit.

14 §40-23A-35 Change in family circumstances.

15 (a) General Rule. In the absence of the filing of a  
16 revised registration in accordance with this chapter, the  
17 common residence of the qualified family, marital status and  
18 number of persons in a qualified family on the family  
19 registration date shall govern determinations required to be  
20 made under this chapter for purposes of the following calendar  
21 year.

22 (b) No Double Counting. In no event shall any person  
23 be considered part of more than 1 qualified family.

24 (c) Revised Registration Permissible. A qualified  
25 family may file a revised registration for purposes of section  
26 40-23A-32(d) to reflect a change in family circumstances. A  
27 revised registration form shall provide

1 (1) the name of each family member who shared the  
2 qualified family's residence on the filing date of the revised  
3 registration,

4 (2) the Social Security number of each family member  
5 who shared the qualified family's residence on the filing date  
6 of the revised registration,

7 (3) the family member or family members to whom the  
8 family consumption allowance should be paid,

9 (4) a certification that all listed family members  
10 are lawful residents of the United States,

11 (5) a certification that all listed family members  
12 are lawful residents of the State of Alabama,

13 (6) a certification that all family members sharing  
14 the common residence are listed,

15 (7) a certification that no family members were  
16 incarcerated on the family determination date (within the  
17 meaning of section 40-23A-32(M)), and

18 (8) the address of the qualified family. Said  
19 revised registration shall be signed by all members of the  
20 qualified family that have attained the age of 21 years as of  
21 the filing date of the revised registration.

22 (d) Change of Address. A change of address for a  
23 qualified family may be filed with the commissioner at any  
24 time and shall not constitute a revised registration.

25 (e) Revised Registration Not Mandatory. Revised  
26 registrations reflecting changes in family status are not  
27 mandatory.

1 §40-23A-41 Destination determination.

2 Destination Generally. The tax imposed by this  
3 chapter is a destination principle tax. This section shall  
4 govern for purposes of determining whether the destination of  
5 taxable property and services is within or without of the  
6 State of Alabama.

7 (a) Tangible Personal Property. Except as provided  
8 in subsection (g) (relating to certain leases), the destination  
9 of tangible personal property shall be the State or territory  
10 in which the property was first delivered to the purchaser  
11 (including agents and authorized representatives).

12 (b) Real Property. The destination of real property,  
13 or rents or leaseholds on real property, shall be the State or  
14 territory in which the real property is located.

15 (c) Other Property. The destination of any other  
16 taxable property shall be the residence of the purchaser.

17 (d) Services.

18 (1) GENERAL RULE. The destination of services shall  
19 be the State or territory in which the use or consumption of  
20 the services occurred. Allocation of service invoices relating  
21 to more than one jurisdiction shall be on the basis of time or  
22 another method determined by regulation.

23 (2) TELECOMMUNICATIONS SERVICES. The destination of  
24 telecommunications services shall be the residence of the  
25 purchaser. Telecommunications services include telephone,  
26 telegraph, beeper, radio, cable television, satellite, and  
27 computer on-line or network services.

1           (3) TRANSPORTATION SERVICES. For transportation  
2 services where all of the final destinations are within the  
3 State of Alabama, the destination of transportation services  
4 shall be the State of Alabama. For transportation services  
5 where the final destination or origin of the trip is without  
6 the State of Alabama, the service amount shall be deemed 50  
7 percent attributable to the Alabama destination or origin.

8           (4) ELECTRICAL SERVICE. The destination of  
9 electrical services shall be the residence of the purchaser.

10          (f) Financial Intermediation Services. The  
11 destination of financial intermediation services shall be the  
12 residence of the purchaser.

13          (g) Rents Paid for the Lease of Tangible Property.

14          (1) GENERAL RULE. Except as provided in paragraph  
15 (2), the destination of rents paid for the lease of tangible  
16 property and leaseholds on such property shall be where the  
17 property is located while in use.

18          (2) LAND VEHICLES; AIRCRAFT, WATER CRAFT. The  
19 destination of rental and lease payments on land vehicles,  
20 aircraft and water craft shall be:

21           a. in the case of rentals and leases of a term of 1  
22 month or less, the location where the land vehicle, aircraft,  
23 or water craft was originally delivered to the renter or  
24 lessee; and

25           b. in the case of rentals and leases of a term  
26 greater than 1 month, the residence of the renter or lessee.

27           §40-23A-42 Monthly reports and payments.

1 (a) Tax Reports and Filing Dates.

2 (1) IN GENERAL. On or before the 15th day of each  
3 month, each person who is:

4 a. liable to collect and remit the tax imposed by  
5 this chapter by reason of section 40-23A-5(a), or

6 b. liable to pay tax imposed by this chapter which  
7 is not collected pursuant to section 40-23A-5(a), shall submit  
8 to the commissioner (in a form prescribed by the commissioner)  
9 a report relating to the previous calendar month.

10 (2) CONTENTS OF REPORT. The report required under  
11 paragraph (1) shall set forth

12 a. the gross payments (as defined in section  
13 40-23A-2(a)(5)),

14 b. the tax collected under section 40-23A-3 in  
15 connection with such payments,

16 c. the amount and type of any credit claimed, and

17 d. other information reasonably required by the  
18 commissioner for the administration, collection, and  
19 remittance of the tax imposed by this chapter.

20 (b) Tax Payments Date.

21 (1) GENERAL RULE. The tax imposed by this chapter  
22 during any calendar month is due and shall be paid to the  
23 Department of Revenue on or before the 15th day of the  
24 succeeding month.

25 (2) CROSS REFERENCE. See subsection (e) relating to  
26 remitting of separate segregated funds for sellers that are  
27 not small sellers.

1 (c) Extensions for Filing Reports.

2 (1) AUTOMATIC EXTENSIONS FOR NOT MORE THAN 30 DAYS.

3 On application, an extension of not more than 30 days to file  
4 reports under subsection (a) shall be automatically granted.

5 (2) OTHER EXTENSIONS. On application, extensions of  
6 30 to 60 days to file such reports shall be liberally granted  
7 by the commissioner for reasonable cause. Extensions greater  
8 than 60 days may be granted by the commissioner to avoid  
9 hardship.

10 (3) NO EXTENSION FOR PAYMENT OF TAXES.

11 Notwithstanding paragraphs (1) and (2), no extension shall be  
12 granted with respect to the time for paying or remitting the  
13 taxes under this chapter.

14 (d) Telephone Reporting of Violations. The  
15 commissioner shall establish a system under which a violation  
16 of this chapter can be brought to the attention of the  
17 commissioner for investigation through the use of a toll-free  
18 telephone number and otherwise.

19 (e) Separate Segregated Accounts.

20 (1) IN GENERAL. Any registered seller that is not a  
21 small seller shall deposit all sales taxes collected pursuant  
22 to this chapter in a particular week in a separate segregated  
23 account maintained at a bank or other financial institution  
24 within 3 business days of the end of such week. Said  
25 registered seller shall also maintain in that account  
26 sufficient funds to meet the bank or financial institution

1 minimum balance requirements, if any, and to pay account fees  
2 and costs.

3 (2) SMALL SELLER. For purposes of this subsection, a  
4 small seller is any person that has not collected \$5,000 or  
5 more of the taxes imposed by this chapter in any of the  
6 previous 12 months.

7 (3) LARGE SELLERS. Any seller that has collected  
8 \$50,000 or more of the taxes imposed by this chapter in any of  
9 the previous 12 months is a large seller. A large seller shall  
10 remit to the commissioner the entire balance of deposited  
11 taxes in its separate segregated account on the first business  
12 day following the end of the calendar week. The commissioner  
13 may by regulation require the electronic transfer of funds due  
14 from large sellers.

15 (4) WEEK. For purposes of this subsection, the term  
16 week shall mean the seven-day period ending on a Friday.

17 (f) Determination of Report Filing Date. A report  
18 filed pursuant to subsection (a) shall be deemed filed when

19 (1) deposited in the United States mail, postage  
20 prepaid, addressed to the designated office of the Department  
21 of Revenue,

22 (2) delivered and accepted at the designated office  
23 of the Department of Revenue,

24 (3) provided to a designated commercial private  
25 courier service for delivery within two days to the designated  
26 office of the Department of Revenue, or

27 (4) by other means permitted by the commissioner.

1 (g) Security Requirements. A large seller (within  
2 the meaning of subsection (e) (3)) shall be required to provide  
3 security in an amount equal to the greater of \$100,000 or one  
4 and one-half times the seller's average monthly tax liability  
5 during the previous 6 calendar months. Security may be a cash  
6 bond, a bond from a surety company approved by the  
7 commissioner, a certificate of deposit, or a State or United  
8 States Treasury bond. A bond qualifying under this subsection  
9 must be a continuing instrument for each calendar year (or  
10 portion thereof) that the bond is in effect. The bond must  
11 remain in effect until the surety or sureties are released and  
12 discharged. Failure to provide security in accordance with  
13 this section shall result in revocation of the seller's  
14 section 40-23A-43 registration. If a person who has provided  
15 security pursuant to this subsection

16 (1) fails to pay an amount indicated in a final  
17 notice (within the meaning of section 40-23A-56(d)) of an  
18 amount due under this chapter,

19 (2) no Taxpayer Assistance Order is in effect  
20 relating to the amount due,

21 (3) either the time for filing an appeal pursuant to  
22 section 40-23A-54 has passed or the appeal was denied, and

23 (4) the amount due is not being litigated in any  
24 judicial forum, then the security or part of the security, as  
25 the case may be, may be forfeited in favor of the commissioner  
26 to the extent of such tax due (plus interest if any).

1           (h) Rewards Program. The commissioner is authorized  
2 to maintain a program of awards wherein individuals that  
3 assist the commissioner in discovering or prosecuting tax  
4 fraud may be remunerated.

5           §40-23A-43 Registration.

6           (a) In General. Any person liable to collect and  
7 remit taxes pursuant to section 40-23A-5 (a) who is engaged in  
8 a trade or business shall register as a seller with the  
9 commissioner.

10          (b) Affiliated Firms. Affiliated firms shall be  
11 treated as 1 person for purposes of this section. Affiliated  
12 firms may elect, upon giving notice to the commissioner in a  
13 form prescribed by the commissioner, to treat separate firms  
14 as separate persons for purposes of this chapter.

15          (c) Designation of Tax Matters Person. Every person  
16 registered pursuant to subsection (a) shall designate a tax  
17 matters person who shall be an individual whom the  
18 commissioner may contact regarding tax matters. Each person  
19 registered must provide notice of a change in the identity of  
20 the tax matters person within 30 days of said change.

21          (d) Effect of Failure To Register. Any person that  
22 is required to register and who fails to do so is prohibited  
23 from selling taxable property or services. The commissioner  
24 may bring an action seeking a temporary restraining order, an  
25 injunction, or such other order as may be appropriate to  
26 enforce this section.

27          §40-23A-44 Accounting.

1 (a) Cash Method To Be Used Generally. Registered  
2 sellers and other persons shall report transactions using the  
3 cash method of accounting unless an election to use the  
4 accrual method of accounting is made pursuant to subsection  
5 (b).

6 (b) Election To Use Accrual Method. A person may  
7 elect with respect to a calendar year to remit taxes and  
8 report transactions with respect to the month where a sale was  
9 invoiced and accrued.

10 (c) Cross Reference. See section 40-23A-25 for rules  
11 relating to bad debts for sellers electing the accrual method.

12 §40-23A-45 Penalties.

13 (a) Failure To Register. Each person who is required  
14 to register pursuant to section 40-23A-43 but fails to do so  
15 prior to notification by the commissioner shall be liable for  
16 a penalty of \$500.

17 (b) Reckless or Willful Failure To Collect Tax.

18 (1) CIVIL PENALTY; FRAUD. Each person who is  
19 required to and recklessly or willfully fails to collect taxes  
20 imposed by this chapter shall be liable for a penalty equal to  
21 the greater of \$500 or 20 percent of tax not collected.

22 (2) CRIMINAL PENALTY. Each person who is required to  
23 and willfully fails as part of a trade or business to collect  
24 taxes imposed by this chapter may be fined an amount up to the  
25 amount determined in accordance with paragraph (1) or  
26 imprisoned for a period of not more than one year or both.

1 (c) Reckless or Willful Assertion of Invalid  
2 Exemption.

3 (1) CIVIL PENALTY; FRAUD. Each person who recklessly  
4 or willfully asserts an invalid intermediate or out-of-state  
5 sales exemption from the taxes imposed by this chapter shall  
6 be liable for a penalty equal to the greater of \$500 or 20  
7 percent of the tax not collected or remitted.

8 (2) CRIMINAL PENALTY. Each person who willfully  
9 asserts an invalid intermediate or out-of-state sales  
10 exemption from the taxes imposed by this chapter may be fined  
11 an amount up to the amount determined in accordance with  
12 paragraph (1) or imprisoned for a period of not more than one  
13 year or both.

14 (d) Reckless or Willful Failure To Remit Tax  
15 Collected.

16 (1) CIVIL PENALTY; FRAUD. Each person who is  
17 required to and recklessly or willfully fails to remit taxes  
18 imposed by this chapter and collected from purchasers shall be  
19 liable for a penalty equal to the greater of \$1,000 or 50  
20 percent of the tax not remitted.

21 (2) CRIMINAL PENALTY. Each person who willfully  
22 fails to remit taxes imposed by this chapter and collected  
23 from purchasers may be fined an amount up to the amount  
24 determined in accordance with paragraph (1) or imprisoned for  
25 a period of not more than two years or both.

26 (e) Reckless or Willful Failure To Pay Tax. Each  
27 person who is required to and recklessly or willfully fails to

1 pay taxes imposed by this chapter shall be liable for a  
2 penalty equal to the greater of \$500 or 20 percent of the tax  
3 not paid.

4 (f) Penalty for Late Filing.

5 (1) IN GENERAL. In the case of a failure by any  
6 person who is required to and fails to file a report required  
7 by section 40-23A-42 on or before the due date (determined  
8 with regard to any extension) for such report, such person  
9 shall pay a penalty for each month or fraction thereof that  
10 said report is late equal to the greater of

11 a. \$50, or

12 b. 0.5 percent of the gross payments required to be  
13 shown on the report.

14 (2) INCREASED PENALTY ON RETURNS FILED AFTER WRITTEN  
15 INQUIRY. The amount of the penalty under paragraph (1) shall  
16 be doubled with respect to any report filed after a written  
17 inquiry with respect to such report is received by the  
18 taxpayer from commissioner.

19 (3) LIMITATION. The penalty imposed under this  
20 subsection shall not exceed 12 percent.

21 (4) EXCEPTIONS.

22 a. REASONABLE CAUSE. No penalty shall be imposed  
23 under this subsection with respect to any failure if it is  
24 shown that such failure is due to reasonable cause.

25 b. OTHER WAIVER AUTHORITY. In addition to penalties  
26 not imposed by reason of subparagraph (i), the commissioner,  
27 on application, shall waive the penalty imposed by paragraph

1 (1) once per registered person per 24-month period. The  
2 preceding sentence shall not apply to a penalty determined  
3 under paragraph (2).

4 (g) Penalty for Willfully or Recklessly Accepting a  
5 False Intermediate or Export Sales Certificate. A person who  
6 willingly or recklessly accepts a false intermediate or  
7 out-of-state sales certificate shall pay a penalty equal to 20  
8 percent of the tax not collected by reason of said acceptance.

9 (h) Penalty for Late Remittance of Taxes.

10 (1) IN GENERAL. A person who is required to timely  
11 remit taxes imposed by this chapter and remits taxes more than  
12 1 month after such taxes are due shall pay a penalty equal to  
13 1 percent per month (or fraction thereof) from the due date.

14 (2) LIMITATION. The penalty imposed under this  
15 subsection shall not exceed 24 percent.

16 (3) REDUCTION FOR REASONABLE CAUSE. The penalty  
17 imposed under paragraph (1) with respect to any late  
18 remittance shall be reduced by half if it is shown that such  
19 late remittance is due to reasonable cause.

20 (i) Penalty for Filing False Rebate Claim.

21 (1) CIVIL PENALTY; FRAUD. A person who willingly or  
22 recklessly files a false claim for a family consumption  
23 allowance rebate (within the meaning of 40-23A-31) shall

24 a. pay a penalty equal to the greater of \$500 or 50  
25 percent of the claimed annual rebate amount not actually due,  
26 and

1           b. repay any rebates received as a result of the  
2 false rebate claim (together with interest).

3           (2) CRIMINAL PENALTY. A person who willingly files a  
4 false claim for a family consumption allowance rebate (within  
5 the meaning of 40-23A-31) may be fined an amount up to the  
6 amount determined in accordance with paragraph (1) or  
7 imprisoned for a period not more than one year or both.

8           (j) Penalty for Bad Check. If any check or money  
9 order in payment of any amount receivable under this chapter  
10 is not duly paid, in addition to other penalties provided by  
11 law, the person who tendered such check shall pay a penalty  
12 equal to the greater of:

13                 (1) \$25, or

14                 (2) two percent of the amount of such check.

15           (k) Penalty for Failure To Maintain a Separate  
16 Segregated Account. Any person required to maintain a separate  
17 segregated account pursuant to section 40-23A-42(e) that fails  
18 to maintain such a separate segregated account shall pay a  
19 penalty of \$500.

20           (1) Penalty for Failure To Deposit Collected Taxes  
21 in a Separate Segregated Account. Any person required to  
22 deposit collected taxes into a separate segregated account  
23 maintained pursuant to section 40-23A-42(e) that fails to  
24 timely deposit said taxes into the separate segregated account  
25 shall pay a penalty equal to one percent of the amount  
26 required to be deposited. The penalty imposed by the previous  
27 sentence shall be tripled unless said taxes have been

1 deposited in the separate segregated account or remitted to  
2 the commissioner within 16 days of the date said deposit was  
3 due.

4 (m) Joint and Several Liability for Tax Matters  
5 Person and Responsible Officers or Partners. The tax matters  
6 person (designated pursuant to section 40-23A-43(c)) and  
7 responsible officers or partners of a firm shall be jointly  
8 and severally liable for the tax imposed by this chapter and  
9 penalties imposed by this chapter.

10 (n) Right of Contribution. If more than 1 person is  
11 liable with respect to any tax or penalty imposed by this  
12 chapter, each person who paid such tax or penalty shall be  
13 entitled to recover from other persons who are liable for such  
14 tax or penalty an amount equal to the excess of the amount  
15 paid by such person over such person's proportionate share of  
16 the tax or penalty in accordance with regulations promulgated  
17 by the commissioner. Said regulations may take culpability  
18 into account when allocating liability for tax or penalty  
19 among responsible officers or partners.

20 (o) Civil Penalties and Criminal Fines Not  
21 Exclusive.

22 (1) CIVIL PENALTY. The fact that a civil penalty has  
23 been imposed shall not prevent the imposition of a criminal  
24 fine.

25 (2) CRIMINAL FINE. The fact that a criminal fine has  
26 been imposed shall not prevent the imposition of a civil  
27 penalty.

1 (p) Confidentiality. Any person who violates the  
2 requirements relating to confidentiality of tax information  
3 (as provided in section 40-23-56) may be fined up to \$10,000  
4 or imprisoned for a period of not more than 1 year, or both.

5 §40-23A-46 Burden of persuasion and burden of  
6 production.

7 In all disputes concerning taxes imposed by this  
8 chapter, the person engaged in a dispute with the commissioner  
9 shall have the burden of production of documents and records  
10 but the commissioner shall have the burden of persuasion. In  
11 all disputes concerning an exemption claimed by a purchaser,  
12 if the seller has on file an intermediate sale or out-of-state  
13 sale certificate from the purchaser and did not have  
14 reasonable cause to believe that the certificate was  
15 improperly provided by the purchaser with respect to such  
16 purchase, then the burden of production of documents and  
17 records relating to that exemption shall rest with the  
18 purchaser and not with the seller.

19 §40-23A-47 Summons, examinations, audits, etc.

20 (a) Summons. Persons are subject to administrative  
21 summons by the commissioner for records, documents, and  
22 testimony required by the commissioner to accurately determine  
23 liability for tax under this chapter. A summons shall be  
24 served by the commissioner by an attested copy delivered in  
25 hand to the person to whom it is directed or left at his last  
26 known address. The summons shall describe with reasonable  
27 certainty what is sought.

1           (b) Examinations and Audits. The commissioner has  
2 the authority to conduct at a reasonable time and place  
3 examinations and audits of persons who are or may be liable to  
4 collect and remit tax imposed by this chapter and to examine  
5 the books, papers, records, or other data of such persons  
6 which may be relevant or material to the determination of tax  
7 due.

8           (c) Limitation on Authority in Case of Referral. No  
9 administrative summons may be issued by the commissioner and  
10 no action be commenced to enforce an administrative summons  
11 with respect to any person if a referral to the Attorney  
12 General's Office is in effect with respect to such person  
13 relating to a tax imposed by this chapter. Such referral is in  
14 effect with respect to any person if the commissioner has  
15 recommended to the Attorney General's Office that a grand jury  
16 investigation of such person or a criminal prosecution of such  
17 person that contemplates criminal sanctions under this  
18 chapter. A referral shall be terminated when

19           (1) Attorney General's Office notifies commissioner  
20 that he will not

21           a. prosecute such person for any offense connected  
22 with the tax laws,

23           b. authorize a grand jury investigation of such  
24 person with respect to such offense, or

25           c. continue such a grand jury investigation, or

1                   (2) a final disposition has been made of any  
2 criminal proceeding connected with tax laws against such  
3 person.

4                   §40-23A-48 Records.

5                   Any person liable to remit taxes pursuant to this  
6 chapter shall keep records (including a record of all section  
7 40-23A-49 receipts provided, complete records of intermediate  
8 and out-of-state sales, including purchaser's intermediate and  
9 out-of-state sales certificates and tax number and the net of  
10 tax amount of purchase) sufficient to determine the amounts  
11 reported, collected, and remitted for a period of 6 years  
12 after the latter of the filing of the report for which the  
13 records formed the basis or when the report was due to be  
14 filed. Any purchaser who purchased taxable property or  
15 services but did not pay tax by reason of asserting an  
16 intermediate and out-of-state sales exemption shall keep  
17 records sufficient to determine whether said exemption was  
18 valid for a period of seven years after the purchase of  
19 taxable property or services.

20                   §40-23A-49 Tax to be separately stated and charged.

21                   (a) In General. For each purchase of taxable  
22 property or services for which a tax is imposed by section  
23 40-23A-3, the seller shall charge the tax imposed by section  
24 40-23A-3 separately from the purchase price. For purchase of  
25 taxable property or services for which a tax is imposed by  
26 section 40-23A-3, the seller shall provide to the purchaser a  
27 receipt for each transaction that includes:

- 1 (1) the property or services price exclusive of tax;
- 2 (2) the amount of tax paid;
- 3 (3) the property or service price inclusive of tax;
- 4 (4) the tax rate (the amount of tax paid (per
- 5 paragraph (2)) divided by the property or service price
- 6 inclusive of tax (per paragraph (3)));
- 7 (5) the date that the good or service was sold;
- 8 (6) the name of the vendor; and
- 9 (7) the vendor registration number.

10 (b) Vending Machine Exception. The requirements of  
11 subsection (a) shall be inapplicable in the case of sales by  
12 vending machines. Vending machines for purposes of this  
13 subsection are machines

14 (1) that dispense taxable property in exchange for  
15 coins or currency; and

16 (2) that sell no single item exceeding \$10 per unit  
17 in price.

18 (c) Financial Intermediation Services Exception. The  
19 requirements of subsection (a) shall be inapplicable in the  
20 case of sales financial intermediation service. Receipts shall  
21 be issued when the tax is imposed (in accordance with section  
22 40-23-73 (relating to timing of tax on financial  
23 intermediation services)).

24 §40-23A-50 Applicable interest rate.

25 (a) In General.

26 (1) FEDERAL SHORT-TERM RATE. In the case of a debt  
27 instrument, investment, financing lease, or account with a

1 term of not over 3 years, the applicable interest rate is the  
2 Federal short-term rate as determined by the United States  
3 Secretary of the Treasury.

4 (2) FEDERAL MID-TERM RATE. In the case of a debt  
5 instrument, investment, financing lease, or account with a  
6 term of over three years but not over nine years, the  
7 applicable interest rate is the Federal mid-term rate as  
8 determined by the United States Secretary of the Treasury.

9 (3) FEDERAL LONG-TERM RATE. In the case of a debt  
10 instrument, investment, financing lease, or account with a  
11 term of over 9 years, the applicable interest rate is the  
12 Federal long-term rate as determined by the United States  
13 Secretary of the Treasury.

14 (b) Determination of Rates. The commissioner shall  
15 publish the applicable rate monthly. Should the United States  
16 Secretary of the Treasury cease to determine or to publish the  
17 relevant federal interest rates, then the commissioner shall  
18 determine and publish the applicable rate using the same  
19 methodology used by the Secretary, as nearly as is practical,  
20 prior to the Secretary discontinuing said determination or  
21 publication.

22 (c) Interest on Past Due Taxes. The amount of  
23 interest due to be paid by the taxpayer with respect to past  
24 due taxes imposed by this chapter shall be determined by the  
25 rate determined in accordance with section 40-23A-41.

26 §40-23A-51 Collections.

1           The proceeds of the tax paid pursuant to section  
2 40-23A-3, shall be collected by the Department, which shall  
3 retain the amount necessary to fund the administrative costs  
4 of collecting and implementing the tax. The balance of the  
5 proceeds shall be distributed as follows:

6           (1) Eighty percent to the State Treasury and  
7 allocated:

8           a. Seventy-nine percent to the Education Trust Fund;

9           b. Eleven and one-half percent to the State General  
10 Fund; and

11           c. Nine and one-half percent to be allocated and  
12 apportioned among the entities and funds that receive proceeds  
13 from any of the taxes being repealed under the provisions of  
14 this act. The Department of Finance shall determine the  
15 appropriate percentage of the proceeds to be allocated to each  
16 of the entities and funds based on the amounts distributed to  
17 the entities and funds from the taxes being repealed by this  
18 act in the fiscal year concluding immediately prior to January  
19 1, 2020.

20           (2) Twenty percent to the State Treasury and  
21 allocated:

22           a. Forty percent to each county in the state on a  
23 prorated basis according to population as determined in the  
24 most recent federal census prior to distribution; and

25           b. Sixty percent to each municipality in the state  
26 on a prorated basis according to population as determined in  
27 the most recent federal census prior to distribution.

1 §40-23A-52 Power to levy, etc.

2 (a) In General. The commissioner may levy and seize  
3 property, garnish wages or salary and file liens to collect  
4 amounts due under this chapter, pursuant to enforcement of:

5 (1) a judgment duly rendered by a court of law;

6 (2) an amount due if the taxpayer has failed to  
7 exercise his appeals rights under section 40-23A-54; or

8 (3) an amount due if the appeals process determined  
9 that an amount remained due and the taxpayer has failed to  
10 timely petition a court for relief.

11 (b) Exemption From Levy, Seizure, and Garnishments.  
12 There shall be exempt from levy, seizure, and garnishment or  
13 penalty in connection with any tax imposed by this chapter:

14 (1) wearing apparel, school books, fuel, provisions,  
15 furniture, personal effects, tools of a trade or profession,  
16 livestock in a household up to an aggregate value of \$15,000;  
17 and

18 (2) monthly money income equal to 150 percent of the  
19 monthly poverty level (as defined in section 40-23A-33).

20 (c) Liens To Be Timely Released. Subject to such  
21 reasonable regulations as the commissioner may provide, any  
22 lien imposed with respect to a tax imposed by this chapter  
23 shall be released not later than 30 days after:

24 (1) the liability was satisfied or became  
25 unenforceable; or

26 (2) a bond was accepted as security.

27 §40-23A-53 Taxpayer Advocate.

1 Cross Reference. See section 40-2A-4.

2 §40-23A-54 Appeals.

3 Cross Reference. See section 40-2B-2.

4 §40-23A-55 Attorneys' and accountancy fees.

5 In all disputes concerning taxes imposed by this  
6 chapter, the person engaged in a dispute with the commissioner  
7 shall be entitled to reasonable attorneys' fees, accountancy  
8 fees, and other reasonable professional fees incurred in  
9 direct relation to the dispute unless the commissioner  
10 establishes that its position was substantially justified.

11 §40-23A-56 Taxpayer rights.

12 Cross Reference. See section 40-2A-4.

13 §40-23A-57 Installment agreements; compromises.

14 Cross Reference. See section 40-2A-4.

15 §40-23A-58 Bankruptcy.

16 No addition to tax shall be made under section  
17 40-23A-45 with respect to a period during which a case is  
18 pending under Title 11, United States Code (1) if such tax was  
19 incurred by the estate and the failure occurred pursuant to an  
20 order of the court finding probable insufficiency of funds of  
21 the estate to pay administrative expenses; or (2) if (a) such  
22 tax was incurred by the debtor before the earlier of the order  
23 for relief or (in the involuntary case) the appointment of a  
24 trustee; and (b) the petition was filed before the due date  
25 prescribed by law (including extensions) for filing a return  
26 of such tax, or the date for making the addition to tax occurs  
27 on or after the date the petition was filed.

1 §40-23A-61 Hobby activities.

2 (a) Hobby Activities. Neither the exemption afforded  
3 by section 40-23A-4 for neither intermediate sales nor the  
4 credits available pursuant to section 40-23A-22 or section  
5 40-23A-23 shall be available for any taxable property or  
6 service purchased for use in an activity if that activity is  
7 not engaged in for-profit.

8 (b) Status Deemed. If the activity has received  
9 gross payments for the sale of taxable property or services  
10 that exceed the sum of:

11 (1) taxable property and services purchased;

12 (2) wages and salary paid; and

13 (3) taxes (of any type) paid,

14 in two or more of the most recent 3 calendar years  
15 during which it operated then the business activity shall be  
16 conclusively deemed to be engaged in for profit.

17 §40-23A-62 Gaming activities.

18 (a) Registration. Any person selling one or more  
19 chances is a gaming sponsor and shall register, in a form  
20 prescribed by the commissioner, with the commissioner as a  
21 gaming sponsor provided that a not-for-profit organization  
22 (with the meaning of section 40-23A-66) that has gross  
23 receipts from the sale of chances of less than \$5,000 during  
24 any calendar year shall not be required to register.

25 (b) Chance Defined. For purposes of this section,  
26 the term chance means a lottery ticket, a raffle ticket,  
27 chips, other tokens, a bet or bets placed, a wager or wagers

1 placed, or any similar device where the purchase of the right  
2 gives rise to an obligation by the gaming sponsor to pay upon  
3 the occurrence of:

4 (1) a random or unpredictable event; or

5 (2) an event over which neither the gaming sponsor  
6 nor the person purchasing the chance has control over the  
7 outcome.

8 (c) Chances Not Taxable Property or Service.

9 Notwithstanding any other provision in this chapter, a chance  
10 is not taxable property or services for purposes of section  
11 40-23A-3.

12 (d) Tax on Gaming Services Imposed. A tax is hereby  
13 imposed on the taxable gaming services of a gaming sponsor at  
14 the same rate as the tax imposed by section 40-23A-3. This tax  
15 shall be paid and remitted by the gaming sponsor. The tax  
16 shall be remitted by the 15th day of each month with respect  
17 to taxable gaming services during the previous calendar month.  
18 A not-for-profit organization (with the meaning of section  
19 40-23A-66) that has gross receipts from the sale of chances of  
20 less than \$5,000 during any calendar year shall not be  
21 required to remit the tax imposed by this section.

22 (e) Taxable Gaming Services Defined. For purposes of  
23 this section, the term taxable gaming services means:

24 (1) gross receipts of the gaming sponsor from the  
25 sale of chances, minus

26 (2) the sum of:

1           a. total gaming payoffs to chance purchasers (or  
2 their designees); and

3           b. gaming specific taxes (other than the tax imposed  
4 by this section) imposed by the Federal, State, or local  
5 government.

6           §40-23A-63 Government Purchases.

7           (a) Government Purchases.

8           (1) PURCHASES BY THE FEDERAL GOVERNMENT. Purchases  
9 by the Federal Government of taxable property and services  
10 shall be subject to the tax imposed by §40-23A-3.

11           (2) PURCHASE BY STATE GOVERNMENTS AND THEIR  
12 POLITICAL SUBDIVISIONS. Purchase by State governments and  
13 their political subdivisions of taxable property and services  
14 shall be subject to the tax imposed by §40-23A-3.

15           (b) Cross References. For purchases by government  
16 enterprises see §40-23A-64.

17           §40-23A-64 Government Enterprises.

18           (a) Government Enterprises To Collect and Remit  
19 Taxes on Sales. Nothing in this chapter shall be construed to  
20 exempt any Federal, State, or local governmental unit or  
21 political subdivision operating a government enterprise from  
22 collecting and remitting tax imposed by this chapter on any  
23 sale of taxable property or services. Government enterprises  
24 shall comply with all duties imposed by this chapter and shall  
25 be liable for penalties and subject to enforcement action in  
26 the same manner as private persons that are not government  
27 enterprises.

1           (b) Government Enterprise. Any entity owned or  
2 operated by a Federal, State, or local governmental unit or  
3 political subdivision that receives gross payments from  
4 private persons is a government enterprise, except that a  
5 government-owned entity shall not become a government  
6 enterprise for purposes of this section unless in any quarter  
7 it has revenues from selling taxable property or services that  
8 exceed \$2,500.

9           (c) Government Enterprises Intermediate Sales.

10           (1) IN GENERAL. Government enterprises shall not be  
11 subject to tax on purchases that would not be subject to tax  
12 pursuant to section 40-23A-4 if the government enterprise were  
13 a private enterprise.

14           (2) EXCEPTION. Government enterprises may not use  
15 the exemption afforded to serve as a conduit for tax-free  
16 purchases by government units that would otherwise be subject  
17 to taxation on purchases pursuant to section 40-23A-63.  
18 Transfers of taxable property or services purchased exempt  
19 from tax from a government enterprise to such government unit  
20 shall be taxable.

21           (d) Separate Books of Account. Any government  
22 enterprise must maintain books of account, separate from the  
23 nonenterprise government accounts, maintained in accordance  
24 with generally accepted accounting principles.

25           (e) Trade or Business. A government enterprise shall  
26 be treated as a trade or business for purposes of this  
27 chapter.

1 (f) Enterprise Subsidies Constitute Taxable  
2 Purchase. A transfer of funds to a government enterprise by a  
3 government entity without full consideration shall constitute  
4 a taxable government purchase with the meaning of section  
5 40-23A-63 to the extent that the transfer of funds exceeds the  
6 fair market value of the consideration.

7 §40-23A-65 Mixed use property.

8 (a) Mixed Use Property or Service.

9 (1) MIXED USE PROPERTY OR SERVICE DEFINED. For  
10 purposes of this section, the term mixed use property or  
11 service is a taxable property or taxable service used for both  
12 taxable use or consumption and for a purpose that would not be  
13 subject to tax pursuant to section 40-23A-4(a) (1).

14 (2) TAXABLE THRESHOLD. Mixed use property or service  
15 shall be subject to tax notwithstanding section 40-23A-4(a) (1)  
16 unless such property or service is used more than 95 percent  
17 for purposes that would give rise to an exemption pursuant to  
18 section 40-23A-4(a) (1) during each calendar year (or portions  
19 thereof) it is owned.

20 (3) MIXED USE PROPERTY OR SERVICES CREDIT. A person  
21 registered pursuant to section 40-23A-43 is entitled to a  
22 business use conversion credit (pursuant to section 40-23A-22)  
23 equal to the product of

24 a. the mixed use property amount;

25 b. the business use ratio; and

26 c. the rate of tax imposed by section 40-23A-3.

1                   (4) MIXED USE PROPERTY AMOUNT. The mixed use  
2 property amount for each month (or fraction thereof) in which  
3 the property was owned shall be:

4                   a. one-three-hundred-sixtieth of the gross payments  
5 for real property for 360 months or until the property is  
6 sold;

7                   b. one-eighty-fourth of the gross payments for  
8 tangible personal property for 84 months or until the property  
9 is sold;

10                  c. one-sixtieth of the gross payments for vehicles  
11 for 60 months or until the property is sold; or

12                  d. for other types of taxable property or services,  
13 a reasonable amount or in accordance with regulations  
14 prescribed by the commissioner.

15                   (5) BUSINESS USE RATIO. For purposes of this  
16 section, the term business use ratio means the ratio of  
17 business use to total use for a particular calendar month (or  
18 portion thereof if the property was owned for only part of  
19 said calendar month). For vehicles, the business use ratio  
20 will be the ratio of business purpose miles to total miles in  
21 a particular calendar month. For real property, the business  
22 use ratio is the ratio of floor space used primarily for  
23 business purposes to total floor space in a particular  
24 calendar month. For tangible personal property (except for  
25 vehicles), the business use ratio is the ratio of total time  
26 used for business purposes to total time used in a particular  
27 calendar year. For other property or services, the business

1 ratio shall be calculated using a reasonable method.

2 Reasonable records must be maintained to support a person's  
3 business use of the mixed use property or service.

4 (b) Timing of Business Use Conversion Credit Arising  
5 Out of Ownership of Mixed Use Property. A person entitled to a  
6 credit pursuant to subsection (a) (3) arising out of the  
7 ownership of mixed use property must account for the mixed use  
8 on a calendar year basis, and may file for the credit with  
9 respect to mixed use property in any month following the  
10 calendar year giving rise to the credit.

11 (c) Cross Reference. For business use conversion  
12 credit, see section 40-23A-22.

13 §40-23A-66 Not-for-Profit organizations.

14 (a) Not-for-Profit Organizations. Dues,  
15 contributions, and similar payments to qualified  
16 not-for-profit organizations shall not be considered gross  
17 payments for taxable property or services for purposes of this  
18 chapter.

19 (b) Definition. For purposes of this section, the  
20 term qualified not-for-profit organization means a  
21 not-for-profit organization organized and operated exclusively

22 (1) for religious, charitable, scientific, testing  
23 for public safety, literary, or educational purposes;

24 (2) as civic leagues or social welfare  
25 organizations;

26 (3) as labor, agricultural, or horticultural  
27 organizations;

1           (4) as chambers of commerce, business leagues, or  
2 trade associations; or

3           (5) as fraternal beneficiary societies, orders, or  
4 associations; no part of the net earnings of which inures to  
5 the benefit of any private shareholder or individual.

6           (c) Qualification Certificates. Upon application in  
7 a form prescribed by the commissioner, the commissioner shall  
8 provide qualification certificates to qualified not-for-profit  
9 organizations.

10           (d) Taxable Transactions. If a qualified  
11 not-for-profit organization provides taxable property or  
12 services in connection with contributions, dues, or similar  
13 payments to the organization, then it shall be required to  
14 treat the provision of said taxable property or services as a  
15 purchase taxable pursuant to this chapter at the fair market  
16 value of said taxable property or services.

17           (e) Exemptions. Taxable property and services  
18 purchased by a qualified not-for-profit organization shall be  
19 eligible for exemption if purchased for resale or in  
20 connection with a trade or business operated by the qualified  
21 not-for-profit organization.

22           §40-23A-71 Determination of financial intermediation  
23 services amount.

24           (a) Financial Intermediation Services. For purposes  
25 of this chapter

26           (1) IN GENERAL. The term financial intermediation  
27 services means the sum of

1 a. explicitly charged fees for financial  
2 intermediation services, and

3 b. implicitly charged fees for financial  
4 intermediation services.

5 (2) EXPLICITLY CHARGED FEES FOR FINANCIAL  
6 INTERMEDIATION SERVICES. The term explicitly charged fees for  
7 financial intermediation services includes

8 a. brokerage fees;

9 b. explicitly stated banking, loan origination,  
10 processing, documentation, credit check fees, or other similar  
11 fees;

12 c. safe-deposit box fees;

13 d. insurance premiums, to the extent such premiums  
14 are not allocable to the investment account of the underlying  
15 insurance policy;

16 e. trustees' fees; and

17 f. other financial services fees (including mutual  
18 fund management, sales, and exit fees).

19 (3) IMPLICITLY CHARGED FEES FOR FINANCIAL  
20 INTERMEDIATION SERVICES.

21 a. IN GENERAL. The term implicitly charged fees for  
22 financial intermediation services includes the gross imputed  
23 amount in relation to any underlying interest-bearing  
24 investment, account, or debt.

25 b. GROSS IMPUTED AMOUNT. For purposes of  
26 subparagraph (ii), the term gross imputed amount means

1           1. with respect to any underlying interest-bearing  
2 investment or account, the product of

3           (i) the excess (if any) of the basic interest rate  
4 (as defined in section 40-23A-75) over the rate paid on such  
5 investment; and

6           (ii) the amount of the investment or account; and

7           2. with respect to any underlying interest-bearing  
8 debt, the product of

9           (i) the excess (if any) of the rate paid on such  
10 debt over the basic interest rate (as defined in section  
11 40-23A-75); and

12           (ii) the amount of the debt.

13           (b) Seller of Financial Intermediation Services. For  
14 purposes of section 40-23A-5, the seller of financial  
15 intermediation services shall be:

16           (1) in the case of explicitly charged fees for  
17 financial intermediation services, the person who receives the  
18 gross payments for the charged financial intermediation  
19 services;

20           (2) in the case of implicitly charged fees for  
21 financial intermediation services with respect to any  
22 underlying interest-bearing investment or account, the person  
23 making the interest payments on the interest-bearing  
24 investment or account; and

25           (3) in the case of implicitly charged fees for  
26 financial intermediation services with respect to any

1 interest-bearing debt, the person receiving the interest  
2 payments on the interest-bearing debt.

3 §40-23A-72 Bad debts.

4 (a) In General. For purposes of section 40-23A-25, a  
5 bad debt shall be a business debt that becomes wholly or  
6 partially worthless to the payee.

7 (b) Business Loan. For purposes of subsection (a), a  
8 business loan or debt is a bona fide loan or debt made for a  
9 business purpose that both parties intended be repaid.

10 (c) Determination of Worthlessness.

11 (1) IN GENERAL. No loan or debt shall be considered  
12 wholly or partially worthless unless it has been in arrears  
13 for 180 days or more, except that if a debt is discharged  
14 wholly or partially in bankruptcy before 180 days has elapsed,  
15 then it shall be deemed wholly or partially worthless on the  
16 date of discharge.

17 (2) DETERMINATION BY HOLDER. A loan or debt that has  
18 been in arrears for 180 days or more may be deemed wholly or  
19 partially worthless by the holder unless a payment schedule  
20 has been entered into between the debtor and the lender.

21 (d) Cross Reference. See section 40-23A-25 for tax  
22 on subsequent payments.

23 §40-23A-73 Timing of tax on financial intermediation  
24 services.

25 The tax on financial intermediation services  
26 provided by section 40-23A-71 with respect to an underlying  
27 investment account or debt shall be imposed and collected with

1 the same frequency that statements are rendered by the  
2 financial institution in connection with the investment  
3 account or debt but not less frequently than quarterly.

4 §40-23A-74 Financing leases.

5 (a) Definition. For purposes of this section, the  
6 term financing lease means any lease under which the lessee  
7 has the right to acquire the property for 50 percent or less  
8 of its fair market value at the end of the lease term.

9 (b) General Rule. Financing leases shall be taxed in  
10 the method set forth in this section.

11 (c) Determination of Principal and Interest  
12 Components of Financing Lease. The Commissioner shall  
13 promulgate rules for disaggregating the principal and interest  
14 components of a financing lease. The principal amount shall be  
15 determined to the extent possible by examination of the  
16 contemporaneous sales price or prices of property the same or  
17 similar as the leased property.

18 (d) Alternative Method. In the event that  
19 contemporaneous sales prices or property the same or similar  
20 as the leased property are not available, the principal and  
21 interest components of a financing lease shall be  
22 disaggregated using the applicable interest rate (as defined  
23 in section 40-23A-50) plus 4 percent.

24 (e) Principal Component. The principal component of  
25 the financing lease shall be subject to tax as if a purchase  
26 in the amount of the principal component had been made on the  
27 day on which said lease was executed.

1 (f) Interest Component. The financial intermediation  
2 services amount with respect to the interest component of the  
3 financing lease shall be subject to tax under this chapter.

4 (g) Coordination. If the principal component and  
5 financial intermediation services amount with respect to the  
6 interest component of a lease have been taxed pursuant to this  
7 section, then the gross lease or rental payments shall not be  
8 subject to additional tax.

9 §40-23A-75 Basic interest rate.

10 For purposes of this chapter, the basic interest  
11 rate with respect to a debt instrument, investment, financing  
12 lease, or account shall be the applicable interest rate (as  
13 determined in section 40-23A-50). For debt instruments,  
14 investments, or accounts of contractually fixed interest, the  
15 applicable interest rate of the month of issuance shall apply.  
16 For debt instruments, investments, or accounts of variable  
17 interest rates and which have no reference interest rate, the  
18 applicable interest shall be the Federal short-term interest  
19 rate for each month. For debt instruments, investments, or  
20 accounts of variable interest rates and which have a reference  
21 interest rate, the applicable interest shall be the applicable  
22 interest rate for the reference interest rate for each month.

23 §40-23A-76 Out-of-state financial intermediation  
24 services.

25 (a) Special Rules Relating to Out-of-State  
26 Financial Intermediation Services. Financial intermediation  
27 services shall be deemed as used or consumed within the State

1 of Alabama if the person purchasing the services is a resident  
2 of the State of Alabama.

3 (b) Designation of Tax Representative. Any person  
4 that provides financial intermediation services to Alabama  
5 residents must, as a condition of lawfully providing such  
6 services, designate, in a form prescribed by the commissioner,  
7 a tax representative for purposes of this chapter. The tax  
8 representative shall be responsible for ensuring that the  
9 taxes imposed by this chapter are collected and remitted and  
10 shall be jointly and severally liable for collecting and  
11 remitting these taxes. The commissioner may require reasonable  
12 bond of the tax representative. The commissioner may bring an  
13 action seeking a temporary restraining order, an injunction,  
14 or such other order as may be appropriate to enforce this  
15 section.

16 §40-23A-81 Additional matters.

17 (a) Intangible Property Antiavoidance Rule.  
18 Notwithstanding section 40-23A-2, the sale of a copyright or  
19 trademark shall be treated as the sale of taxable services  
20 (within the meaning of section 40-23A-3) if the substance of  
21 the sales of copyright or trademark constituted the sale of  
22 the services that produced the copyrighted material or the  
23 trademark.

24 (b) De Minimis Payments. Up to \$1,000 of gross  
25 payments per calendar year shall be exempt from the tax  
26 imposed by this chapter if:

1           (1) made by a person not in connection with a trade  
2 or business at any time during such calendar year prior to  
3 making said gross payments, and

4           (2) made to purchase any taxable property or service  
5 which is brought into Alabama by such person for use or  
6 consumption by such person in Alabama.

7           (c) De Minimis Sales. Up to \$5,000 per calendar year  
8 of gross payments shall be exempt from the tax imposed by this  
9 chapter if received

10           (1) by a person not in connection with a trade or  
11 business during such calendar year prior to the receipt of  
12 said gross payments; and

13           (2) in connection with a casual or isolated sale.

14           (d) De Minimis Sale of Financial Intermediation  
15 Services. Up to \$10,000 per calendar year of gross payments  
16 received by a person from the sale of financial intermediation  
17 services (as determined in accordance with section 40-23A-71)  
18 shall be exempt from the tax imposed by this chapter. The  
19 exemption provided by this subsection is in addition to other  
20 exemptions afforded by this chapter. The exemption provided by  
21 this subsection shall not be available to large sellers (as  
22 defined in section 40-23A-42(e)(3)).

23           (e) Proxy Buying Taxable. If a registered person  
24 provides taxable property or services to a person either as a  
25 gift, prize, reward, or as remuneration for employment, and  
26 such taxable property or services were not previously subject  
27 to tax then the provision of such taxable property or services

1 by the registered person shall be deemed the conversion of  
2 such taxable property or services to personal use subject to  
3 tax pursuant to section 40-23A-5(c) at the tax inclusive fair  
4 market value of such taxable property or services.

5 (f) Substance Over Form. The substance of a  
6 transaction will prevail over its form if:

7 (1) the transaction has no bona fide economic  
8 purpose; and

9 (2) is designed to evade tax imposed by this  
10 chapter.

11 (g) Certain Employee Discounts Taxable.

12 (1) EMPLOYEE DISCOUNT. For purposes of this  
13 subsection, the term employee discount means an employer's  
14 offer of taxable property or services for sale to its  
15 employees or their families (within the meaning of section  
16 40-23A-32) for less than the offer of such taxable property or  
17 services to the general public.

18 (2) EMPLOYEE DISCOUNT AMOUNT. For purposes of this  
19 subsection, the employee discount amount is the amount by  
20 which taxable property or services are sold pursuant to an  
21 employee discount below the amount for which such taxable  
22 property or services would have been sold to the general  
23 public.

24 (3) TAXABLE AMOUNT. If the employee discount amount  
25 exceeds 20 percent of the price that the taxable property or  
26 services would have been sold to the general public, then the  
27 sale of such taxable property or services by the employer

1 shall be deemed the conversion of such taxable property or  
2 services to personal use and tax shall be imposed on the  
3 taxable employee discount amount. The taxable employee  
4 discount amount shall be:

- 5 a. the employee discount amount, minus
- 6 b. 20 percent of the amount for which said taxable  
7 property or services would have been sold to the general  
8 public.

9 (h) Saturday, Sunday, or Legal Holiday. When the  
10 last day prescribed for performing any act required by this  
11 chapter falls on a Saturday, Sunday, or legal holiday, the  
12 performance of such act shall be considered timely if it is  
13 performed on the next day which is not a Saturday, Sunday, or  
14 legal holiday.

15 §40-23A-82 Transition matters.

16 (a) Inventory.

17 (1) QUALIFIED INVENTORY. Inventory held by a trade  
18 or business on the close of business on December 31, 2019,  
19 shall be qualified inventory if it is sold:

- 20 a. before December 31, 2020;
- 21 b. by a registered person; and
- 22 c. subject to the tax imposed by this chapter.

23 (2) COSTS. For purposes of this section, qualified  
24 inventory shall have the cost that it had for Federal income  
25 tax purposes for the trade or business as of December 31, 2019  
26 (including any amounts capitalized by reason of section 263A

1 of the Internal Revenue Code of 1986 as in effect on December  
2 31, 2019).

3 (3) TRANSITIONAL INVENTORY CREDIT. The trade or  
4 business which held the qualified inventory on the close of  
5 business on December 31, 2019, shall be entitled to a  
6 transitional inventory credit equal to the cost of the  
7 qualified inventory (determined in accordance with paragraph  
8 (2)) times the rate of tax imposed by section 40-23A-3.

9 (4) TIMING OF CREDIT. The credit provided under  
10 paragraph (3) shall be allowed with respect to the month when  
11 the inventory is sold subject to the tax imposed by this  
12 chapter. Said credit shall be reported as an intermediate and  
13 out-of-state sales credit and the person claiming said credit  
14 shall attach supporting schedules in the form that the  
15 Commissioner may prescribe.

16 (b) Work-in-Process. For purposes of this section,  
17 inventory shall include work-in-process.

18 (c) Qualified Inventory Held by Businesses Not  
19 Selling Said Qualified Inventory at Retail.

20 (1) IN GENERAL. Qualified inventory held by  
21 businesses that sells said qualified inventory not subject to  
22 tax pursuant to section 40-23A-4 (a) shall be eligible for the  
23 transitional inventory credit only if that business (or a  
24 business that has successor rights pursuant to paragraph (2))  
25 receives certification in a form satisfactory to the  
26 Commissioner that the qualified inventory was subsequently  
27 sold subject to the tax imposed by this chapter.

1 (2) TRANSITIONAL INVENTORY CREDIT RIGHT MAY BE SOLD.

2 The business entitled to the transitional inventory credit may  
3 sell the right to receive said transitional inventory credit  
4 to the purchaser of the qualified inventory that gave rise to  
5 the credit entitlement. Any purchaser of such qualified  
6 inventory (or property or services into which the qualified  
7 inventory has been incorporated) may sell the right to said  
8 transitional inventory credit to a subsequent purchaser of  
9 said qualified inventory (or property or services into which  
10 the qualified inventory has been incorporated).

11 §40-23A-83 Phase-out of administration of repealed  
12 taxes.

13 (a) Appropriations. Appropriations for any expenses  
14 of the Department of Revenue including processing tax returns  
15 with respect to the taxes repealed by this Act, revenue  
16 accounting, and management for years after fiscal year 2022  
17 are not authorized.

18 (b) Records. Records related to the administration  
19 of taxes repealed by this Act shall be destroyed by the end of  
20 fiscal year 2022, except that any records necessary to support  
21 ongoing litigation with respect to taxes owed or refunds due  
22 shall be retained until final disposition of such litigation.

23 Section 6. 40-2A-4 and 40-2A-18, Code of Alabama  
24 1975, are hereby amended as follows:

25 "§40-2A-4.

26 "(a) Rights of the taxpayer.

1           "(1) For purposes of this subsection and subsections  
2           (c) and (d), the term "department" shall include the  
3           Department of Revenue, a self-administered county or  
4           municipality, or a private examining or collecting firm,  
5           depending on whether the Department of Revenue, a  
6           self-administered county or municipality, or private examining  
7           or collecting firm is conducting the examination of the  
8           taxpayer.

9           "(2) At or before the commencement of an examination  
10          of the books and records of a taxpayer, the department shall  
11          provide to the taxpayer the current version of Publication 1A.  
12          Publication 1A shall provide, in simple and non-technical  
13          terms, a statement of the taxpayer's rights. Those rights  
14          include the right to be represented during an examination, an  
15          explanation of their appeal rights, and the right to know the  
16          criteria and procedures used to select taxpayers for an  
17          examination.

18          "(3) At or before the issuance of a preliminary  
19          assessment, the department shall provide to the taxpayer in  
20          simple and non-technical terms:

21                 "a. A written description of the basis for the  
22                 assessment and any penalty asserted with respect to the  
23                 assessment.

24                 "b. A written description of the method by which the  
25                 taxpayer may request an administrative review of the  
26                 preliminary assessment.

1           "(4) At or before the issuance of a final  
2 assessment, the department shall inform the taxpayer by a  
3 written statement of his or her right to appeal to the Alabama  
4 Tax Tribunal or to circuit court.

5           "(5) Except in cases involving suspected criminal  
6 violations of the tax law or other criminal activity, the  
7 department shall conduct an examination of a taxpayer during  
8 regular business hours after providing reasonable notice to  
9 the taxpayer. A taxpayer who refuses a proposed time for an  
10 examination on the grounds that the proposed examination would  
11 cause inconvenience or hardship must offer reasonable  
12 alternative times and dates for the examination.

13           "(6) At all stages of an examination or the  
14 administrative review of the examination, and in any appeal to  
15 the Alabama Tax Tribunal, a taxpayer is entitled to be  
16 assisted or represented, at his own expense, by an authorized  
17 representative. The department shall prescribe a form by which  
18 the taxpayer may designate a person to represent him or her in  
19 the conduct of any proceedings, including collection  
20 proceedings, resulting from actions of the department. In the  
21 absence of this form, the department or the Alabama Tax  
22 Tribunal may accept such other evidence that a person is the  
23 authorized representative of a taxpayer as it considers  
24 appropriate. This provision shall not be construed as  
25 authorizing the practice of law before the department, Alabama  
26 Tax Tribunal, or any court in this state by a person who is  
27 not a licensed attorney.

1           "(7) A taxpayer shall be allowed to make an audio  
2 recording of any in-person interview with any officer or  
3 employee of the department relating to any examination or  
4 investigation by the department, provided, however, the  
5 taxpayer must give reasonable advance notice to the department  
6 of his or her intent to record and the recording shall be at  
7 the taxpayer's own expense and with the taxpayer's own  
8 equipment. The department shall also be allowed to record any  
9 interview if the taxpayer is recording the interview, or if  
10 the department gives the taxpayer reasonable advance notice of  
11 its intent to record the interview. The department shall  
12 provide the taxpayer with a copy of the recording, but only if  
13 the taxpayer provides reimbursement for the cost of the  
14 transcript and reproduction of the copy. The cost shall be  
15 reasonable as prescribed by regulations issued by the  
16 department.

17           "(8) This section shall not apply to criminal  
18 investigations or investigations relating to the integrity of  
19 any officer or employee of the department.

20           "(b) Department responsibilities generally.

21           ~~"(1) The commissioner shall appoint a Taxpayer  
22 Advocate from among the employees of the department. This  
23 officer shall receive and review inquiries or complaints  
24 concerning matters that have been pending before the  
25 department for an unreasonable length of time, or matters  
26 where the taxpayer has been unable to obtain a reasonable  
27 response after several attempts to communicate with the~~

1 ~~department employee assigned to the taxpayer's case, or his or~~  
2 ~~her immediate superiors. In addition, this officer shall~~  
3 ~~review and have the authority to waive a penalty for~~  
4 ~~reasonable cause as provided in subsection (h) of Section~~  
5 ~~40-2A-11, shall promptly review inquiries concerning release~~  
6 ~~of property levied upon, the erroneous filing of liens, the~~  
7 ~~failure to release a lien for good cause, or other matters~~  
8 ~~complained of by a taxpayer or other affected party. The~~  
9 ~~Taxpayer Advocate shall have no authority nor issue any ruling~~  
10 ~~with regard to any taxes collected by or on behalf of a~~  
11 ~~self-administered county or municipality. The Taxpayer~~  
12 ~~Advocate or his designee shall have the authority to issue~~  
13 ~~taxpayer assistance orders in the form and manner prescribed~~  
14 ~~herein and by department regulations. The Taxpayer Advocate or~~  
15 ~~his designee shall not be disciplined or adversely affected~~  
16 ~~for the issuance of taxpayer assistance orders unless a~~  
17 ~~pattern of issuing taxpayer assistance orders that are~~  
18 ~~manifestly unreasonable is proven by clear and convincing~~  
19 ~~evidence in an administrative hearing by a preponderance of~~  
20 ~~the evidence. A finding against taxpayer advocate or his~~  
21 ~~designee shall be subject to de novo review by a court of~~  
22 ~~competent jurisdiction. A taxpayer assistance order may only~~  
23 ~~be rescinded or modified by the taxpayer advocate or his~~  
24 ~~designee, by the commissioner (without delegation) or by the~~  
25 ~~general counsel of the Department of Revenue (without~~  
26 ~~delegation) upon a finding that the collection activity is~~  
27 ~~justified by clear and convincing evidence.~~

1           "a. The Taxpayer Advocate shall, subject to the  
2 approval of the commissioner or the assistant commissioner,  
3 issue taxpayer assistance orders in the form and manner  
4 prescribed herein and by department regulations.

5           "b. Notwithstanding any statute of limitation or  
6 other provision in this title, a taxpayer assistance order may  
7 declare that any tax, including a final assessment, was  
8 erroneously assessed or reported and is not a liability due  
9 the state, or that a petition for refund was erroneously  
10 denied by the department.

11           "c. A taxpayer assistance order shall grant relief  
12 as deemed appropriate, including the voiding of any  
13 erroneously issued final assessment for a tax which was not a  
14 debt due the state, granting of any refund due the taxpayer,  
15 or abating an assessment of interest that has accrued because  
16 of undue delay by department personnel.

17           "d. At the request of the Alabama Tax Tribunal, the  
18 taxpayer advocate shall review a final order issued by the  
19 Alabama Tax Tribunal that was not appealed pursuant to Section  
20 40-2B-2, if there is newly discovered evidence which by due  
21 diligence could not have been discovered in time to file an  
22 application for rehearing pursuant to Section 40-2B-2, and may  
23 propose relief as the taxpayer advocate deems appropriate and  
24 approved by the commissioner or the assistant commissioner.

25           "e. All taxpayer assistance orders shall be dated  
26 and signed by the Taxpayer Advocate and approved either by the  
27 commissioner or the assistant commissioner, and shall state

1 the underlying facts, the reasons for granting relief, and the  
2 relief granted. Any taxpayer assistance order may, for good  
3 cause, be modified or rescinded in writing by the Taxpayer  
4 Advocate and either the commissioner or the assistant  
5 commissioner.

6 "f. The Taxpayer Advocate shall have full access to  
7 department personnel, books, and records subject, however, to  
8 the confidentiality restrictions imposed by this chapter.

9 "g. Taxpayer assistance orders shall not be subject  
10 to the confidentiality provisions of this title, and shall be  
11 maintained by the secretary of the department and shall be  
12 open to review upon written request. The Taxpayer Advocate  
13 shall have no authority nor issue any ruling with regard to  
14 any taxes collected by or on behalf of a self-administered  
15 county or municipality.

16 "h. The commissioner shall make an annual report to  
17 the Legislature of all taxpayer assistance orders approved in  
18 accordance with the provisions of this section and Sections  
19 40-2A-2 and 40-2A-3. Such report shall contain the total  
20 amount of relief granted and the types of taxes for which  
21 relief was granted.

22 "(2) The department shall maintain a continuing  
23 education program to train employees of the department and to  
24 provide them with a current knowledge of state and applicable  
25 federal tax laws.

26 "(3) In addition to any other information provided  
27 by law, the commissioner shall include in the department's

1 annual report information about the number or kind of audits  
2 or assessments conducted in the year covered by the report.

3 "(4) The department shall not use the amounts of  
4 taxes assessed by an employee of the department as:

5 "a. The basis of a production quota system for  
6 employees; or

7 "b. The basis for evaluating an employee's  
8 performance.

9 "(5) The department shall establish procedures for  
10 monitoring the performance of department employees which may  
11 include the use of evaluations obtained from taxpayers.

12 "(6) INSTALLMENT PAYMENTS.

13 "a. The commissioner is authorized to enter into  
14 written agreements to allow any taxpayer to pay any tax in  
15 installment payments if the commissioner determines that such  
16 agreement will facilitate collection of such tax.

17 Notwithstanding the preceding sentence, such agreements shall  
18 be entered into only regarding a tax that has been finally  
19 assessed by the department and not appealed, and such  
20 agreements shall not extend for a period exceeding 12 months,  
21 provided, that any such agreement may be renewed at the  
22 discretion of the commissioner for succeeding periods not to  
23 exceed 12 months. The commissioner shall only be authorized to  
24 enter such an agreement with regard to a tax administered or  
25 collected by the department.

26 "b. The commissioner may terminate, alter, or modify  
27 any agreement entered into hereunder if:

1           "1. Information provided by the taxpayer to the  
2 commissioner prior to the date of such agreement was  
3 inaccurate or incomplete;

4           "2. The taxpayer fails to pay any installment at the  
5 time such installment payment is due under such agreement;

6           "3. The taxpayer fails to pay any other tax  
7 liability due the department at the time such liability is  
8 due, unless the taxpayer has appealed such other liability  
9 pursuant to the terms of this chapter;

10          "4. The financial condition of the taxpayer has  
11 significantly changed;

12          "5. The taxpayer fails to provide a financial  
13 condition update as requested by the commissioner; or

14          "6. The commissioner believes that collection of any  
15 tax to which an agreement under this provision relates is in  
16 jeopardy.

17          "c. The commissioner shall have sole authority or  
18 discretion to enter into or amend, modify, or terminate any  
19 installment payment agreement provided for herein. The  
20 commissioner shall promulgate regulations necessary for the  
21 implementation of this provision.

22          "d. Any self-administered county or municipality  
23 shall have the same authority as provided to the commissioner  
24 by this subdivision relating to installment payments with  
25 respect to taxes administered or collected by the  
26 self-administered county or municipality.

1           "(c) Department failure to comply with this section.  
2           The failure of the department to comply with any provision of  
3           this section shall not prohibit the department from assessing  
4           any tax as provided in this chapter, nor excuse the taxpayer  
5           from timely complying with any time limitations under this  
6           chapter. However, if the department fails to substantially  
7           comply with the provisions of this section, the commissioner  
8           shall, upon application by the taxpayer or other good cause  
9           shown, abate any penalties otherwise arising from the  
10          examination or assessment.

11           "(d) Abatement of penalty. The department shall  
12          abate any penalty attributable to erroneous written advice  
13          furnished to a taxpayer by an employee of the department.  
14          However, this section shall apply only if the department  
15          employee provided the written advice in good faith while  
16          acting in his or her official capacity, the written advice was  
17          reasonably relied on by the taxpayer and was in response to a  
18          specific written request of the taxpayer, and the penalty did  
19          not result from the taxpayer's failure to provide adequate or  
20          accurate information.

21           "(e) Confidentiality of Tax Information.

22           "(1) IN GENERAL. All reports and report information  
23          provided to the commissioner pursuant to this Title shall be  
24          confidential and except as authorized by this chapter

25           "a. no officer or employee (including former  
26          officers and employees) of the State of Alabama; and

1           "b. no other person who has had access to returns or  
2 return information shall disclose any report or report  
3 information obtained by him in any manner in connection with  
4 his service as such officer or employee or otherwise.

5           "(2) DESIGNEES. The commissioner may, subject to  
6 such requirements as the commissioner may impose, disclose the  
7 report and report information of a person to that person or  
8 persons as that person may designate to receive said  
9 information or return.

10           "(3) INCOMPETENCY. The commissioner may, subject to  
11 such requirements as the commissioner may impose, disclose the  
12 report and report information to the committee, trustee, or  
13 guardian of a person who is incompetent.

14           "(4) DECEASED PERSONS. The commissioner may disclose  
15 the report and report information to the decedent's

16           "a. personal representative, administrator,  
17 executor, estate trustee, or

18           "b. heir at law, next of kin, or beneficiary under a  
19 will who has a material interest that will be affected by the  
20 information.

21           "(5) BANKRUPTCY. The commissioner may disclose the  
22 report and report information to a person's trustee in  
23 bankruptcy.

24           "(6) COURT ORDER. The commissioner may disclose the  
25 report and report information in compliance with a court  
26 order.

1           "(7) LEGISLATURE. Upon written request from the  
2 Chairman of the Committee on Ways and Means (General Fund) of  
3 the House of Representatives or the Chairman of the Committee  
4 on Finance (General Fund) of the Senate , the commissioner  
5 shall disclose the report and report information, except that  
6 any report or report information that can be associated with  
7 or otherwise identify a particular person shall be furnished  
8 to such committee only when sitting in closed executive  
9 session unless such person otherwise consents in writing to  
10 such disclosure.

11           "(8) WAIVER OF PRIVACY RIGHTS. A person may waive  
12 confidentiality rights provided by this section. Such waiver  
13 must be in writing.

14           "(9) INTERNAL USE. Disclosure of the report or  
15 report information by officers or employees of Department of  
16 Revenue to other officers or employees of the Department of  
17 Revenue in the ordinary course of tax administration  
18 activities shall not constitute unlawful disclosure of the  
19 report or report information.

20           "(10) STATISTICAL USE. Upon request of the Governor,  
21 the Commissioner shall furnish such reports and report  
22 information to such officers and employees of the State of  
23 Alabama as the Governor may prescribe by regulation or  
24 executive order for the purposes of, and only to the extent  
25 necessary, statistical activities authorized by law.

26           "§40-2A-18.

1           "Interest on any final assessment accrues from the  
2 date of entry of the final assessment on the total amount of  
3 its components including tax, interest, and any penalty, as  
4 one lump sum amount. The preceding sentence is a restatement  
5 of current law as it applies to interest accrual after final  
6 assessment. Notwithstanding any provision of Act 2001-1088,  
7 this section shall apply to all open tax years as of the  
8 effective date of Act 2001-1088 and for all subsequent tax  
9 years. Interest on amounts due to, or owed by, the  
10 Commissioner pursuant to Chapter 23 shall be governed by  
11 Chapter 23.

12           Section 7. A new Section 40-5-48 is hereby enacted  
13 as follows:

14           §40-5-48

15           Resolution of Conflicts.

16           Whenever Chapter 23 is inconsistent with this  
17 chapter, Chapter 23 shall govern with respect to the  
18 administration and collection of the taxes imposed by chapter  
19 23."

20           Section 8. A new section 40-29-122 is hereby enacted  
21 as follows:

22           §40-29-122

23           Resolution of Conflicts.

24           Whenever Chapter 23 is inconsistent with this  
25 chapter, Chapter 23 shall govern with respect to the  
26 administration and collection of the taxes imposed by Chapter  
27 23."

1                   Section 9. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.