

1 SB21  
2 171057-1  
3 By Senator Melson  
4 RFD: Finance and Taxation General Fund  
5 First Read: 03-AUG-15

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8 SYNOPSIS: This bill would provide for an amnesty  
9 program for all taxes administered by the Alabama  
10 Department of Revenue, except the motor fuel tax,  
11 for tax years 2015, 2016, and 2017.  
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13 A BILL  
14 TO BE ENTITLED  
15 AN ACT  
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17 To enact the Alabama Tax Delinquency Amnesty Act of  
18 2015; to provide for definitions; to require the Department of  
19 Revenue to establish a tax amnesty program; to provide for  
20 terms and conditions of the program; to provide for the  
21 disposition of the monies collected pursuant to the program;  
22 to provide for an effective date; and to provide for related  
23 matters.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. This act shall be known as and may be  
26 cited as the Alabama Tax Delinquency Amnesty Act of 2015.

1           Section 2. Definitions. As used in this act, the  
2 following terms have the meanings ascribed to them in this  
3 section, except when the context clearly indicates otherwise:

4           (1) COMMISSION. The Commissioner of the Department  
5 of Revenue.

6           (2) COURIER. A messenger other than the United  
7 States Postal Service that delivers parcels, packages, and the  
8 like, containing returns, reports, and other documents or  
9 payments.

10          (3) DEPARTMENT. The Department of Revenue.

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

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

16          (6) TAXPAYER. Any individual or entity subject to  
17 any tax imposed by any law of the State of Alabama, payable to  
18 the State of Alabama, and collected by the department.

19          Section 3. (a) The department shall develop and  
20 implement a tax amnesty program in accordance with this act.  
21 The commissioner shall provide by regulation as necessary for  
22 the administration and implementation of the program. The  
23 commissioner shall publicize the program in order to maximize  
24 the public awareness of and participation in the program. The  
25 commissioner, for purposes of publicizing the program, may  
26 contract with any advertising agency within or outside this

1 state and use public service announcements, pamphlets, mail  
2 notices, and print, television, and radio announcements. The  
3 publications shall include increasing public awareness that  
4 the program will provide amnesty for sales and use tax due on  
5 Internet, mail order, or other purchases made from  
6 out-of-state vendors for which Alabama sales or use tax was  
7 not charged at the time of purchase. In furthering the  
8 collections of payments under the program, the commissioner  
9 may procure amnesty program administration services on a fee  
10 basis; however, the fee may not exceed 10 percent of the total  
11 dollars collected.

12 (b) The amnesty program shall be effective for a  
13 period of at least two months in 2015 occurring prior to  
14 December 31, 2015; for a period of at least one month in 2016,  
15 occurring between July 1, 2016, and December 31, 2016; and for  
16 a period of at least one month in 2017, occurring between July  
17 1, 2017, and December 31, 2017, all at the discretion of the  
18 commissioner. The tax amnesty program shall apply to all taxes  
19 administered by the department except for penalties for  
20 failure to submit information reports that are not based on an  
21 underpayment of tax.

22 (c) Notwithstanding the terms of provisions of any  
23 other provision of law to the contrary, and except as provided  
24 in subsection (b), the following taxes are eligible for the  
25 amnesty program:

1           (1) Taxes due prior to January 1, 2015, for which  
2 the department has issued an individual or a business proposed  
3 assessment, notice of assessment, bill, notice, or demand for  
4 payment not later than May 31, 2015; or

5           (2) Taxes for taxable periods that began before  
6 January 1, 2015.

7           (d) Participation in the amnesty program shall be  
8 conditioned upon the agreement of the taxpayer that the right  
9 to protest or initiate an administrative or judicial  
10 proceeding is barred. The agreement shall only apply to the  
11 specific tax and the tax period for which amnesty is granted.

12           (e) Amnesty for matters under examination and in  
13 litigation are subject to the following rules:

14           (1) Taxpayers involved in field audits or litigation  
15 that participate in the amnesty program shall agree to abide  
16 by the department's interpretation of the law with respect to  
17 issues involved in the audit or litigation resolved through  
18 amnesty for all taxable periods beginning in 2016, 2017, and  
19 2018 for the taxpayers participating in the 2015 amnesty  
20 period; for all taxable periods beginning in 2017, 2018, and  
21 2019 for taxpayers participating in the 2016 amnesty period;  
22 and for all taxable periods beginning in 2018, 2019, and 2020  
23 for taxpayers participating in the 2017 amnesty period.

24 Taxpayers shall agree to abide by the department's  
25 interpretation of the law at the time the returns for these  
26 periods are filed. Failure to abide by the department's

1 interpretation of the law for these periods shall subject the  
2 taxpayer to the negligence penalty under Section 40-2A-11(c)  
3 of the Code of Alabama 1975.

4 (2) Taxpayers involved in litigation that elect to  
5 participate in the amnesty program shall agree to pay all  
6 costs of litigation up until the effective date of the  
7 agreement.

8 (3) Taxpayers electing to participate in the amnesty  
9 program who have paid under protest and filed suit in  
10 accordance with Sections 40-2A-9 and 40-2B-2 of the Code of  
11 Alabama 1975, shall agree that upon approval of their amnesty  
12 application, the department shall release their payment from  
13 escrow and apply it in accordance with the term of the amnesty  
14 agreement. Any refund resulting from the application of the  
15 payment shall be made in accordance with subsection (j). The  
16 application for amnesty shall be subject to subdivisions (1)  
17 and (2).

18 (f) Taxpayers with existing liens on their property,  
19 both movable and immovable, filed pursuant to Section 40-1-2  
20 of the Code of Alabama 1975, are eligible for amnesty;  
21 however, taxpayers are required to pay any and all lien fees  
22 associated with the tax periods for which amnesty is applied.

23 (g) Amnesty may be granted only for eligible taxes  
24 to eligible taxpayers who apply for amnesty during an amnesty  
25 period on forms prescribed by the commissioner and who pay all  
26 of the tax, all fees and costs, if applicable, and any

1 interest due upon filing the amnesty application. The amnesty  
2 application for taxpayers involved in field audits or  
3 litigation shall include all issues and all eligible periods  
4 involved in the audit or litigation. The commissioner shall  
5 reserve the right to require taxpayers to file tax returns  
6 with the amnesty application. Notwithstanding the terms of any  
7 other provision of law to the contrary, if the amnesty  
8 application is approved during the 2015 amnesty period, the  
9 commissioner shall waive one-half of the interest and all of  
10 the penalties associated with the tax periods for which  
11 amnesty is applied. If the amnesty application is approved  
12 during the 2016 amnesty period, the commissioner shall waive  
13 15 percent of all the penalties associated with the tax  
14 periods for which amnesty is applied, but no interest may be  
15 waived. If the amnesty application is approved during the 2017  
16 amnesty period, the commissioner shall waive 10 percent of all  
17 of the penalties associated with the tax periods for which  
18 amnesty is applied, but no interest shall be waived. An  
19 amnesty payment or application submitted in a properly  
20 addressed envelope with sufficient postage delivered by the  
21 United States Postal Service is deemed paid or received on the  
22 date it is postmarked. An amnesty payment or application  
23 delivered by courier or taxpayer is deemed paid or received on  
24 the date it is delivered to the department's headquarters or a  
25 regional office. An installment agreement may not be entered  
26 into for payments under the amnesty program.

1           (h) Amnesty may not be granted to taxpayers who are  
2 parties to any criminal investigation or criminal litigations  
3 in any court of the United States or the State of Alabama  
4 pending on the effective date of this act for nonpayment,  
5 delinquency, or fraud in relation to any state tax imposed by  
6 a law of the State of Alabama and administered by the  
7 department. Further, a taxpayer who delivers or discloses any  
8 false or fraudulent application, document, return, or other  
9 statement to the department in connection with an amnesty  
10 application shall be ineligible for amnesty and shall be  
11 subject of the fraud penalty under Section 40-2A-11(d) of the  
12 Code of Alabama 1975, or a penalty of ten thousand dollars  
13 (\$10,000), whichever is greater.

14           (i) Amnesty program applications shall include a  
15 written waiver of all rights, restrictions, and delays for  
16 assessing, collecting, or protesting taxes and interest due as  
17 set forth in Chapter 2A and Chapter 2B of Title 40 of the Code  
18 of Alabama 1975. The filing of an amnesty application shall  
19 make the tax, interest, and penalty: Immediately due and  
20 payable; subject to the notice and due process procedures  
21 provided for by law; ineligible for refund, credit, or claim  
22 against the state; and ineligible for redetermination, except,  
23 a taxpayer shall be eligible for a refund or credit if the  
24 overpayment arises after the amnesty application is submitted  
25 and is attributable to a properly claimed Alabama net  
26 operating loss or attributable to an adjustment made by the

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

8 (j) No interest shall be paid on refunds for those  
9 amounts previously collected by the department from the  
10 taxpayer for a tax period for which amnesty is granted.

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

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

10 (1) For taxable periods beginning on or after  
11 January 1, 2016, and before December 31, 2023, taxpayers that  
12 participate in the amnesty program and later fail to comply  
13 with any payment or filing provision administered by the  
14 commissioner shall be subject to the negligence penalty under  
15 Section 40-2A-11(c) of the Code of Alabama 1975, or a penalty  
16 of one hundred dollars (\$100), whichever is greater.

17 Section 4. (a) The commissioner shall retain from  
18 the monies collected under this act an amount equal to all  
19 penalties waived under this act, an amount equal to the costs  
20 for contractual information technology and amnesty program  
21 administration services, and an amount equal to any collection  
22 fee, legal fee, or any other fee the department incurs that is  
23 associated with granting amnesty. The commissioner shall also  
24 retain an amount not to exceed two hundred fifty thousands  
25 dollars (\$250,000) for advertising expenses from monies  
26 collected from taxes paid pursuant to this act.

1                   (b) After satisfaction of the requirements of  
2 subsection (a), all remaining monies collected pursuant to  
3 this act shall be paid into the State Treasury and placed in  
4 the appropriate state funds for the specific tax collected  
5 pursuant to current law.

6                   Section 5. This act shall become effective  
7 immediately following its passage and approval by the  
8 Governor, or its otherwise becoming law.