

1 HB427
2 126763-7
3 By Representative DeMarco
4 RFD: Judiciary
5 First Read: 31-MAR-11

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8 SYNOPSIS: Under existing law, the Alabama Taxpayers'
9 Bill of Rights and Uniform Revenue Procedures Act
10 governs the administrative procedures of the
11 Department of Revenue and local governments
12 relating to taxpayer's rights and responsibilities,
13 refunds, penalties, assessments, and appeals.

14 This bill would amend the act to conform in
15 several respects to the federal Taxpayer's Bill of
16 Rights, including broader "innocent spouse" type
17 relief, and make technical corrections to remove
18 ambiguities and conflicts. This bill would require
19 certain state tax income returns to be filed as a
20 result of IRS audit changes, consistent with the
21 Multistate Tax Commission's model statute, and
22 increase a taxpayer's penalties for fraud,
23 negligence, and frivolous appeals or returns,
24 consistent with federal law. This bill would
25 increase the time period in which a taxpayer has to
26 file an appeal of a preliminary or final
27 assessment. This bill would establish a new

1 procedure for seeking an expedited revenue ruling
2 from the department, and allow the department to
3 issue revenue procedures applicable to a particular
4 industry or group of taxpayers.

5 This bill would specifically state that it
6 is the intent of this bill to adopt in Alabama the
7 American Bar Association Model State Administrative
8 Tax Tribunal Act.

9 This bill would abolish the Administrative
10 Law Division of the Department of Revenue, and
11 provide for the creation and operation of a new,
12 independent state agency, the Alabama Tax Appeals
13 Commission, to hear appeals of tax and other
14 matters administered by the Department of Revenue,
15 and appeals related to certain local taxes levied
16 by or on behalf of self-administered counties or
17 municipalities, unless the governing body
18 elects-out. The bill would transfer office
19 furniture, equipment, computers and other property
20 from the Department of Revenue to the Tax Appeals
21 Commission, and also transfer from the Revenue
22 Department Administrative Fund and from the State
23 General Fund the necessary funds for the first year
24 of operation of the Tax Appeals Commission.

25 This bill would also amend portions of
26 Chapters 2A and 18 of Title 40, Code of Alabama
27 1975, for purposes of conformity and to make

1 technical corrections. The bill would also clarify
2 the intent of the Legislature in response to the
3 Alabama Court of Civil Appeals' 2009 decision in
4 Rheem Manufacturing Company v. State Department of
5 Revenue regarding the authority of the Alabama Tax
6 Appeals Commission to address all arguments related
7 to a taxpayer's refund claim in order to allow
8 substantial justice.

9
10 A BILL

11 TO BE ENTITLED

12 AN ACT

13
14 To add Chapter 2B to Title 40 of the Code of Alabama
15 1975, to provide for the creation and operation of the Alabama
16 Tax Appeals Commission, to state that the intent of this act
17 is to adopt in Alabama the American Bar Association Model
18 State Administrative Tax Tribunal Act; to hear appeals of tax
19 and other matters administered by the Department of Revenue,
20 and certain taxes levied by or on behalf of self-administered
21 counties or municipalities that do not opt-out; to provide the
22 necessary funding for the first year of operations of the Tax
23 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,
24 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-10, 40-2A-11, and 40-18-27,
25 Code of Alabama 1975, for purposes of conformity to the
26 federal Taxpayer's Bill of Rights, including broader "innocent
27 spouse" type relief and increased penalties for negligence,

1 fraud, and frivolous appeals or returns; to make technical
2 corrections; to require amended state income tax returns as a
3 result of IRS audit changes; to increase the amount of time a
4 taxpayer has to file an appeal of a preliminary or final
5 assessment; and to abolish the Administrative Law Division of
6 the Department of Revenue, including repealing Section
7 40-2A-9, Code of Alabama 1975.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. In order to increase public confidence in
10 the fairness of Alabama's tax system, the state shall provide
11 an independent agency, with tax expertise, to resolve disputes
12 between the Department of Revenue, or certain
13 self-administered counties and municipalities, and taxpayers,
14 prior to requiring the payment of the amounts in issue or the
15 posting of a bond, but after the taxpayer has had a full
16 opportunity to attempt settlement with the Department of
17 Revenue or with a self-administered county or municipality
18 that has not elected-out based, among other issues, on the
19 hazards of litigation. By establishing an independent tax
20 tribunal within the executive branch of government, this act
21 shall provide taxpayers with a means of resolving
22 controversies that ensures both the appearance and the reality
23 of due process and fundamental fairness. To that end, Chapter
24 2B of Title 40 of the Code of Alabama 1975, by this act shall
25 be known and may be cited as the Alabama Tax Appeals
26 Commission Act of 2011.

1 It is the intent of the Legislature to adopt in
2 Alabama the American Bar Association Model State
3 Administrative Tax Tribunal Act.

4 It is the intent of the Legislature that this act
5 foster the settlement or other resolution of tax disputes to
6 the greatest extent possible and, in cases in which litigation
7 is necessary, to provide taxpayers with a fair, independent,
8 pre-payment procedure to resolve a dispute with the Department
9 of Revenue or, in certain cases, a self-administered county or
10 municipality. Further, this act is intended to clarify the
11 authority of the Alabama Tax Appeals Commission to address all
12 arguments related to a taxpayer's refund claim in order to
13 allow substantial justice, thereby overruling the decision of
14 the Alabama Court of Civil Appeals in Rheem Manufacturing
15 Company v. State Department of Revenue, 33 So. 3d 1 (Ala. Civ.
16 App. 2009).

17 It is also the intent of the Legislature to amend
18 the existing Alabama Taxpayers' Bill of Rights provisions,
19 which apply to both the Department of Revenue and
20 self-administered counties and municipalities as a result of
21 the Local Tax Procedures Act of 1998, to conform more closely
22 to current federal law and to provide additional safeguards to
23 taxpayers during the audit and appeals process. To that end,
24 the provisions of this act and existing Chapter 2A of Title 40
25 of the Code of Alabama 1975, shall be known and may be cited
26 as the Alabama Taxpayers' Bill of Rights II.

1 Section 2. Chapter 2B is added to Title 40 of the
2 Code of Alabama 1975, to read as follows:

3 CHAPTER 2B

4 CREATION AND OPERATION OF THE ALABAMA TAX APPEALS
5 COMMISSION

6 §40-2B-1. Alabama Tax Appeals Commission.

7 As part of the executive branch of state government,
8 there is hereby created an independent commission to be known
9 as the Alabama Tax Appeals Commission, also referred to herein
10 as the "Tax Appeals Commission." The Tax Appeals Commission
11 shall become fully operational on October 1, 2011. The Tax
12 Appeals Commission, in cases within its jurisdiction:

13 (1) Is a commission of limited and special
14 jurisdiction.

15 (2) Possesses the same powers and may exercise all
16 ordinary and extraordinary legal and equitable remedies
17 available in the circuit courts with respect to tax cases, as
18 prescribed herein, including the interpretation and
19 application of constitutional principles, and such additional
20 remedies as may be assigned to it by the Legislature, but may
21 not declare a statute or ordinance in violation of either a
22 federal or state constitutional provision.

23 §40-2B-2. Definitions.

24 (a) The definitions provided for in Section 40-2A-3
25 shall also apply to this chapter, except as provided in this
26 section. For purposes of this chapter, the following terms
27 shall have the following meanings:

1 (1) The term "Department of Revenue" means the
2 Alabama Department of Revenue, and does not include the
3 governing body of any self-administered county or
4 municipality.

5 (2) The term "U.S. mail with delivery confirmation"
6 means a delivery service available through the U.S. Postal
7 Service that provides the sender with the date, zip code, and
8 time the article was delivered or the time delivery was
9 attempted.

10 (b) For purposes of this chapter, if a
11 self-administered county or municipality has not elected out
12 of this chapter pursuant to Section 40-2B-25, the following
13 terms shall have the following meanings:

14 (1) The term "taxpayer" shall include a person, as
15 defined in Section 40-2A-3, when paying a sales, use, rental,
16 or lodgings tax to, or being assessed or examined by, a
17 self-administered county or municipality or its agent.

18 (2) The term "department" shall include the
19 governing body of each self-administered county or
20 municipality that has not elected out.

21 (3) The term "secretary" shall include the clerk of
22 the applicable self-administered county or municipality that
23 has not elected out.

24 (4) The term "tax" shall mean and refer to a sales,
25 use, rental, or lodgings tax levied by or on behalf of a
26 self-administered county or municipality that has not elected
27 out.

1 §40-2B-3. Jurisdiction and initial organization of
2 the Tax Appeals Commission.

3 (a) The Tax Appeals Commission shall have
4 jurisdiction to hear and determine all appeals pending before
5 the Department of Revenue's Administrative Law Division on
6 September 30, 2011, and all subsequent appeals filed with the
7 Tax Appeals Commission pursuant to Chapters 2A and 29 of this
8 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to
9 motor vehicles, or Section 40-2B-25, relating to
10 self-administered counties and municipalities, except as
11 follows:

12 (1) Appeals filed directly with the circuit court
13 either from a final assessment entered by the department, or
14 from the department's denial in whole or in part of a claim
15 for refund.

16 (2) The determination and assessment of ad valorem
17 taxes on real and personal property, which is administered by
18 the various counties of the State of Alabama, except that
19 appeals from final assessments of value of property of public
20 utilities under Chapter 21 may be heard by the Tax Appeals
21 Commission in accordance with the procedures set forth in this
22 chapter.

23 (3) Any appeals regarding a sales, use, rental, or
24 lodgings tax levied or collected by or on behalf of a
25 self-administered county or municipality if the governing body
26 of the county or municipality has made an election under

1 Section 40-2B-25 to divest the Tax Appeals Commission of
2 jurisdiction over the dispute, challenge, or appeal.

3 (b) To provide for a proper transition from the
4 Administrative Law Division to the Tax Appeals Commission, the
5 Department of Revenue, on or before October 1, 2011, shall
6 transfer to the Tax Appeals Commission office furniture,
7 equipment, computers, and other tangible personal property
8 used by the Administrative Law Division, as well as all case
9 files, docket books, and all other documents and information,
10 in both tangible and intangible form, compiled, used, or
11 maintained by the Administrative Law Division. Further, any
12 appeals that are timely filed with the Administrative Law
13 Division after September 30, 2011, shall be deemed timely
14 filed with and transferred to the Tax Appeals Commission. The
15 Chief Administrative Law Judge of the Administrative Law
16 Division shall have and is hereby granted the power and
17 authority necessary to effect an orderly transition,
18 including, but not limited to, the power and authority to
19 execute binding contracts and commitments on behalf of the Tax
20 Appeals Commission with respect to employees, office space,
21 equipment, and other property, consistent with Sections
22 40-2B-16 and 40-2B-20.

23 §40-2B-4. Service of papers and process.

24 Except concerning notices to the Department of
25 Revenue from the Tax Appeals Commission, or as otherwise
26 provided in this chapter, the Tax Appeals Commission shall
27 mail any final order in which a judgment is entered or

1 affirmed or any notice of hearing by either U.S. mail with
2 delivery confirmation or certified U.S. mail, return receipt
3 requested, to the taxpayer's last known address, or if the
4 taxpayer has an authorized representative, to the authorized
5 representative's last known address. All other orders or
6 documents may, at the Tax Appeals Commission's discretion, be
7 mailed by first class U.S. mail.

8 §40-2B-5. Timely mailed document considered to be
9 timely filed.

10 Any notice of appeal, application for rehearing, or
11 other document required by law to be timely filed with the Tax
12 Appeals Commission shall be deemed timely filed if:

13 (1) Timely mailed or delivered in accordance with
14 Section 40-1-45 and Department of Revenue regulations
15 pertinent thereto;

16 (2) Received by the Tax Appeals Commission on or
17 before the date due; or

18 (3) Received by the Tax Appeals Commission in
19 legible form by facsimile or electronic transmission on or
20 before the due date, if the original, signed document is
21 mailed or delivered to the Tax Appeals Commission within seven
22 days after receipt of the facsimile or electronic
23 transmission.

24 §40-2B-6. Issuance of subpoenas; administration of
25 oaths.

26 (a) A judge of the Tax Appeals Commission shall have
27 the authority to issue subpoenas, on his or her own motion or

1 at the request of a party, requiring any person whose
2 testimony may be relevant to an appeal to appear and give
3 testimony, either at a deposition or a hearing before the
4 judge. If a person is subpoenaed to testify at a deposition at
5 the request of a party, that party shall bear the cost of
6 transcription of the deposition and the fees and mileage
7 provided in Section 40-2A-7(a)(4). The judge shall also have
8 discretion to issue subpoenas duces tecum requiring the
9 production of any document or other evidence relevant to the
10 appeal. Such subpoenas or subpoenas duces tecum shall be
11 issued in the name of the Tax Appeals Commission, signed by a
12 judge of the Tax Appeals Commission, and may be served either
13 in the same manner as subpoenas issued by a circuit court, or
14 by either U.S. mail with delivery confirmation or certified
15 U.S. mail, return receipt requested. If any person has been
16 subpoenaed to appear and testify or appear and produce
17 documents or other information, and fails or refuses to appear
18 or testify or to produce such documents or other information,
19 such person shall be subject to contempt proceedings, if
20 instituted by a petition for contempt issued by a judge of the
21 Tax Appeals Commission, in the circuit court of the judicial
22 circuit in which such person resides, and upon proof of such
23 fact to the circuit court, may be punished for contempt as is
24 provided in cases of contempt in circuit court. Such proof of
25 contempt may be evidenced by an affidavit of a judge of the
26 Tax Appeals Commission. Likewise, such circuit court shall

1 have jurisdiction to hear, and if appropriate, to grant a
2 motion to quash such subpoena.

3 (b) Any judge, or any employee of the Tax Appeals
4 Commission as designated in writing by the chief judge, may
5 administer oaths.

6 §40-2B-7. Hearings to be without a jury and de novo.

7 All appeals to the Tax Appeals Commission shall be
8 tried without a jury and shall be de novo.

9 §40-2B-8. Notice to taxpayer of right to appeal to
10 Tax Appeals Commission.

11 The department shall notify a taxpayer of the right
12 to appeal to the Tax Appeals Commission, and the
13 jurisdictional requirements for perfecting the appeal. Such
14 notice shall be given with a final assessment, or with any
15 notice by the department informing the taxpayer that his or
16 her claim for refund has been denied in whole or in part, or
17 any notice by the department informing the taxpayer of any
18 act, proposed act, or refusal to act by the department from
19 which the taxpayer has a right to appeal to the Tax Appeals
20 Commission.

21 §40-2B-9. Procedures concerning appeals.

22 (a) The purpose of this section is to establish
23 uniform procedures concerning appeals to the Tax Appeals
24 Commission and to establish the authority and responsibilities
25 of the judges of the Tax Appeals Commission concerning those
26 appeals. This section shall be liberally construed to provide

1 for the fair, efficient, and complete resolution of all
2 matters in dispute.

3 (b) Judges of the Tax Appeals Commission shall hear
4 and decide all appeals to the Tax Appeals Commission, as
5 assigned by the chief judge. A judge, without a hearing, may
6 dismiss any appeal, or grant appropriate relief to any party,
7 if a party fails or refuses to comply with any Tax Appeals
8 Commission regulation or statute concerning appeals before the
9 Tax Appeals Commission, or if any party fails or refuses to
10 comply with any preliminary order issued by a judge. The
11 judge, for good cause, may reinstate an appeal dismissed under
12 this subsection or withdraw an order granting relief, but only
13 if an application to reinstate the appeal or withdraw the
14 order is filed within 15 days from the date on which the order
15 dismissing the appeal or granting the relief was entered, or
16 on the judge's own motion within 90 days. A final order
17 dismissing an appeal or granting relief to a party may be
18 appealed to circuit court in the same manner and subject to
19 the same requirements as appeals from final or other
20 appealable orders of the Tax Appeals Commission.

21 (c) The notice of appeal filed with the Tax Appeals
22 Commission shall identify the final assessment, denied refund,
23 or other act or refusal to act by the department which is the
24 subject of the appeal, the position of the appealing party,
25 the basis on which relief should be granted, and the relief
26 sought. A notice of appeal that does not include all of the
27 above information shall be sufficient to invoke the

1 jurisdiction of the Tax Appeals Commission. The judge may
2 require a taxpayer to file an amended notice of appeal if more
3 information is deemed necessary.

4 (d) (1) Except as provided in subdivision (2), the
5 Tax Appeals Commission shall notify the legal division of the
6 Department of Revenue in writing that an appeal has been filed
7 and shall mail a copy of such notification to the taxpayer or
8 its authorized representative. The legal division shall file a
9 written answer with the Tax Appeals Commission within 60 days
10 from the date of issuance of the notice to the legal division.
11 The judge may allow the legal division additional time, not to
12 exceed 30 days, within which to file an answer, but only if
13 the legal division requests the extension within the 60-day
14 period provided by the preceding sentence. The answer shall
15 state the facts and the issues involved and the Department of
16 Revenue's position relating thereto. The judge may require the
17 Department of Revenue to file an amended answer if more
18 information is deemed necessary. A county or municipality may
19 consult with the legal division of the Department of Revenue
20 concerning any appeal that involves the county's or
21 municipality's tax that is administered by the Department of
22 Revenue.

23 (2) If the appeal involves a tax levied by or on
24 behalf of a self-administered county or municipality, the Tax
25 Appeals Commission shall promptly mail a copy of the notice of
26 appeal by either U.S. mail with delivery confirmation or
27 certified U.S. mail to the governing body of the affected

1 county or municipality and shall provide the taxpayer or its
2 authorized representative with written notification of the
3 date the copy was mailed to the governing body. The affected
4 county or municipality shall file a written answer with the
5 Tax Appeals Commission within 60 days of the date of mailing
6 the notice of appeal to the affected county or municipality.
7 The judge may allow the county or municipality additional
8 time, not to exceed 30 days, within which to file an answer,
9 but only if the county or municipality requests the extension
10 within the 60-day period provided by the preceding sentence.
11 The answer shall state the facts and the issues involved and
12 the county's or municipality's position relating thereto. The
13 judge may require the county or municipality to file an
14 amended answer if more information is deemed necessary. The
15 county or municipality and its authorized representatives may
16 consult with the legal division of the Department of Revenue
17 concerning the appeal.

18 (e) An appeal may be held in abeyance at the
19 discretion of the judge or may be submitted for decision on a
20 joint stipulation of facts without a hearing or as otherwise
21 agreed by the parties. Otherwise, except as provided in
22 Section 40-2B-9 (b), a hearing shall be conducted by the
23 judge. Notice of the hearing shall be mailed to the taxpayer
24 at the taxpayer's last known address, by either U.S. mail with
25 delivery confirmation or certified U.S. mail, return receipt
26 requested, or to the taxpayer's representative, if any, at the
27 representative's last known address, by either U.S. mail with

1 delivery confirmation or certified U.S. mail, return receipt
2 requested. Except as provided in the next sentence, notice of
3 the hearing shall be mailed to the Department of Revenue by
4 first class U.S. mail, by intragovernmental hand-mail, or
5 otherwise delivered as provided by regulation. If the appeal
6 involves a tax levied by or on behalf of a self-administered
7 county or municipality, the Tax Appeals Commission shall
8 instead promptly mail a copy of the notice of the hearing to
9 the governing body of the affected county or municipality by
10 either U.S. mail with delivery confirmation or certified U.S.
11 mail. The judge shall conduct the hearing substantially as
12 follows:

13 (1) Open the record and receive appearances.

14 (2) Receive testimony and exhibits presented by the
15 parties. All testimony shall be under oath, and any person
16 testifying under oath shall be subject to the perjury
17 provisions of Section 13A-10-102.

18 (3) Interrogate witnesses if deemed necessary.

19 (4) Require oral arguments and the submission of
20 briefs and other authorities if deemed necessary.

21 (5) Continue or reopen the hearing as deemed
22 necessary for a fair, efficient, and complete resolution of
23 the matter or matters in dispute.

24 (f) A judge may enter a preliminary order directing
25 one or more parties to take such action as deemed appropriate
26 or referring any issue or issues in dispute to the Department
27 of Revenue's Taxpayer Advocate for consideration if the issue

1 or issues relate to a tax administered by the Department of
2 Revenue. A judge, after a hearing or after a case is otherwise
3 submitted for decision, may issue an opinion and preliminary
4 order, which shall include findings of fact and conclusions of
5 law. The opinion and preliminary order may direct the
6 department to recompute a taxpayer's liability or the amount
7 of a refund due or for any party to take such action as
8 specified in the preliminary order.

9 (g) A final order shall be entered by the judge
10 which, if deemed appropriate by the judge, shall contain
11 findings of fact and conclusions of law. The final order shall
12 provide appropriate relief under the circumstances, and,
13 unless altered or amended on appeal or rehearing, shall have
14 the same force and effect as a final order issued by a circuit
15 court in Alabama.

16 (h) If a preliminary order, an opinion and
17 preliminary order, or a final order involves a tax levied by
18 or on behalf of a self-administered county or municipality and
19 is within the jurisdiction of the Tax Appeals Commission, the
20 Tax Appeals Commission shall mail a copy of the order to the
21 governing body of the affected county or municipality and, if
22 applicable, its authorized representative, by either U.S. mail
23 with delivery confirmation or certified U.S. mail return
24 receipt requested, within three days of the date of entry. The
25 failure of the Tax Appeals Commission, however, to timely mail
26 a copy of an order to the affected municipality or county, or

1 the failure of the municipality or county to receive the
2 order, shall not affect the validity of the order.

3 (i) Any party may apply for rehearing from any final
4 order or opinion and preliminary order, provided, however, the
5 application must be filed within 15 days from the date of
6 entry of such order. The application for rehearing shall
7 specify the reasons and supporting arguments why such order is
8 incorrect and should be reconsidered. The timely filing of an
9 application for rehearing from a final order shall suspend the
10 time period for filing an appeal to circuit court. If an
11 application for rehearing is timely filed, the judge shall
12 thereafter issue a final or other order on rehearing, either
13 with or without a hearing on the application, at the
14 discretion of the judge. The time for filing a notice of
15 appeal to circuit court shall begin anew on the date of entry
16 of the final order on rehearing.

17 (j) All hearings before the Tax Appeals Commission
18 shall be recorded by a qualified court reporter. The
19 proceedings shall be transcribed at the request of either the
20 department, the taxpayer, the affected self-administered
21 county or municipality, or the Tax Appeals Commission, with
22 the expense of transcription to be paid by the requesting
23 party. The record of the proceedings shall be maintained by
24 the Tax Appeals Commission for at least five years. Upon
25 appeal to circuit court, the Tax Appeals Commission shall
26 submit the record on appeal, including any transcript, to the
27 circuit court for use in the appeal.

1 (k) The rules of evidence applicable in civil
2 nonjury cases in the circuit courts of Alabama shall be
3 followed by the Tax Appeals Commission. Evidence not
4 admissible thereunder may be admitted, however, in the
5 discretion of the judge, if relevant, not unfairly prejudicial
6 to any party, and necessary for the fair adjudication of the
7 case. The judge may announce before or during a hearing that
8 it shall not be necessary for either party to object to any
9 testimony or evidence offered by a party, and any objections
10 shall be preserved and may be made on appeal. The final order
11 issued by the judge shall be based only on such evidence as is
12 relevant and material. Documentary evidence may be received in
13 copy form if there is no objection thereto or in the
14 discretion of the judge. Official notice may be taken of any
15 technical facts within the specialized knowledge of the judge.

16 (l) A taxpayer or a self-administered county or
17 municipality may be represented before the Tax Appeals
18 Commission by an authorized representative. If a taxpayer or a
19 self-administered county or municipality or their authorized
20 representative fails to appear at a hearing after proper
21 service of notice, the judge may dismiss the appeal with
22 prejudice, reset the matter for a subsequent hearing, or
23 proceed with the hearing.

24 (m) Any person upon application, and at the
25 discretion of the judge, may be permitted to intervene in any
26 dispute before the Tax Appeals Commission if that person's
27 rights are or may be affected by the outcome of the proceeding

1 and the person's interest is not otherwise adequately
2 represented in the case. Intervenors may also appeal to
3 circuit court from a final or other appealable order, as
4 provided herein for appeals. Parties interested in the outcome
5 of any case before the Tax Appeals Commission, with the
6 permission of the judge, may submit amicus briefs.

7 (n) All testimony, exhibits, documents, and other
8 materials submitted by a party or introduced into evidence at
9 a hearing before the Tax Appeals Commission, and all final and
10 other orders issued by the judge, shall be deemed public
11 information except:

12 (1) Information received from the Internal Revenue
13 Service that is restricted by law or agreement from
14 disclosure.

15 (2) Other information or records required by law not
16 to be disclosed or which is the subject of a protective order
17 issued pursuant to Section 40-2B-11(b).

18 (3) As otherwise ordered by the judge.

19 §40-2B-10. Burden of proof in Tax Appeals Commission
20 proceedings.

21 On appeal to the Tax Appeals Commission, a final
22 assessment shall be prima facie correct, and the burden of
23 proof shall be on the taxpayer to prove that the assessment is
24 incorrect. In cases involving denied refunds, the burden shall
25 also be on the taxpayer to prove that a refund is due. The
26 judge shall have discretion to determine the party to proceed
27 first with the evidence in the case.

1 §40-2B-11. Hearings to be open to public; report of
2 proceedings; exception; confidential information.

3 (a) Hearings before the Tax Appeals Commission shall
4 be open to the public, except as provided in subsections (b)
5 and (c).

6 (b) A judge may close a hearing to the public if, in
7 the discretion of the judge, trade secrets, federal or other
8 tax information, confidential business records, or other
9 confidential information may be disclosed during the hearing.
10 A judge may also issue protective orders concerning any
11 evidence involving trade secrets, federal or other tax
12 information, confidential business records, or other
13 confidential information. In determining whether a hearing
14 should be closed or a protective order issued, the judge shall
15 weigh the harm that may be suffered by the disclosing party
16 against any benefit received by the public as a result of the
17 disclosure. If the judge closes a hearing or issues a
18 protective order as requested by a party or refuses to close a
19 hearing or issue a requested protective order, the judge shall
20 issue an order to that effect. The order shall explain the
21 reasons why the request was granted or denied, as applicable.

22 (c) An order closing a hearing or granting a
23 protective order or an order denying same shall be considered
24 a final order for purposes of appeal to circuit court. A party
25 may appeal such an order to circuit court in the same manner
26 and subject to the same requirements as appeals from final
27 orders of the Tax Appeals Commission, except that if the case

1 involves a disputed final assessment, the final assessment
2 need not be paid, nor a supersedeas bond or other security
3 filed, in connection with the appeal. The Tax Appeals
4 Commission may stay the case on the merits until the issue is
5 finally resolved on appeal.

6 §40-2B-12. Authority to issue regulations. The Tax
7 Appeals Commission, through the chief judge, is authorized to
8 issue regulations governing procedures and practice before the
9 Tax Appeals Commission, and matters of internal organization
10 and operation. Such regulations shall be issued in accordance
11 with Chapter 22 of Title 41.

12 §40-2B-13. Appeals to circuit court; reviewing
13 authority and action on appeal.

14 (a) Other than an application for rehearing to the
15 Tax Appeals Commission, the exclusive remedy for review of any
16 final or other appealable order issued by the Tax Appeals
17 Commission shall be by appeal to the appropriate circuit
18 court.

19 (b) The taxpayer, an intervenor pursuant to Section
20 40-2B-9(m), a self-administered county or municipality whose
21 tax is within the jurisdiction of the Tax Appeals Commission,
22 or the Department of Revenue may appeal to circuit court from
23 a final or other appealable order issued by the Tax Appeals
24 Commission by filing a notice of appeal with the appropriate
25 circuit court within 60 days from the date the final or other
26 appealable order was entered. A copy of the notice of appeal
27 shall be submitted to the Tax Appeals Commission within the

1 60-day appeal period. The Tax Appeals Commission shall
2 thereafter prepare a record on appeal. The appeal shall be
3 filed in the following circuit courts:

4 (1) Any appeal by the Department of Revenue, a
5 self-administered county or municipality whose tax is within
6 the jurisdiction of the Tax Appeals Commission, or an
7 intervenor shall be filed with the circuit court of the county
8 in which the taxpayer resides or has a principal place of
9 business in Alabama.

10 (2) Any appeal by the taxpayer may be filed with the
11 Circuit Court of Montgomery County, Alabama, or with the
12 circuit court of the county in which the taxpayer resides or
13 has a principal place of business in Alabama.

14 (3) Notwithstanding subdivisions (1) and (2), if the
15 taxpayer does not reside in Alabama or have a principal place
16 of business in Alabama, any appeal by the taxpayer, the
17 Department of Revenue, a self-administered county or
18 municipality whose tax is within the jurisdiction of the Tax
19 Appeals Commission, or an intervenor shall be filed with the
20 Circuit Court of Montgomery County, Alabama.

21 (c) If the appeal to circuit court pursuant to
22 subsection (b) is by a taxpayer from a final order involving a
23 final assessment, the taxpayer, within the 60-day appeal
24 period, shall do one of the following:

25 (1) Remit the amount of the final assessment
26 determined to be due by the final order to the Department of

1 Revenue, or to the self-administered county or municipality,
2 if applicable.

3 (2) Execute a supersedeas bond, which shall be
4 executed by a surety company licensed to do business in
5 Alabama, in an amount equal to 125 percent of the amount
6 determined to be due by the final order, plus applicable
7 interest and any court costs relating to the appeal, payable
8 to the Department of Revenue, or to the self-administered
9 county or municipality, if applicable, and conditioned to pay
10 the amount determined to be due by the final order.

11 (3) File an irrevocable letter of credit with the
12 circuit court in an amount equal to 125 percent of the amount
13 determined to be due by the final order. The irrevocable
14 letter of credit shall be issued by a financial institution
15 designated as a qualified public depository by the Board of
16 Directors of the Security for Alabama Funds Enhancement (SAFE)
17 Program pursuant to Chapter 14A of Title 41. The Department of
18 Revenue, or the self-administered county or municipality, if
19 applicable, shall be named the beneficiary of the irrevocable
20 letter of credit. The irrevocable letter of credit shall be
21 conditioned to pay the amount determined to be due by the
22 final order, plus applicable interest and any court costs
23 relating to the appeal. A taxpayer may not issue an
24 irrevocable letter of credit as to an appeal by the same
25 taxpayer.

26 (4) File a pledge or collateral assignment of
27 securities with the circuit court that constitute eligible

1 collateral under Chapter 14A of Title 41, in an amount equal
2 to 200 percent of the amount determined to be due by the final
3 order. The pledge or collateral assignment shall be in favor
4 of the Department of Revenue, or the self-administered county
5 or municipality, if applicable, and conditioned to pay the
6 amount determined to be due by the final order, plus
7 applicable interest and any court costs relating to the
8 appeal.

9 (5) Show to the satisfaction of the clerk of the
10 circuit court to which the appeal is taken that the taxpayer
11 has a net worth, based on fair market value, of one hundred
12 thousand dollars (\$100,000), or less, including his or her
13 homestead.

14 (d) (1) Except as provided in subdivision (2), the
15 circuit court shall dismiss any appeal:

16 a. That is not timely filed with the circuit court
17 and the Tax Appeals Commission as herein provided.

18 b. That involves a final assessment, if either the
19 amount stated as due in the final order of the Tax Appeals
20 Commission is not timely paid in full, or a supersedeas bond,
21 irrevocable letter of credit, or pledge or collateral
22 assignment of securities is not timely filed as required in
23 subsection (c).

24 (2) If the circuit court determines that the
25 taxpayer has not satisfied the requirements of subsection (c),
26 the circuit court shall order that the taxpayer satisfy such
27 requirements. The taxpayer may satisfy such requirements at

1 any time within 30 days after service of the court order. No
2 order of dismissal for lack of jurisdiction shall be entered
3 within 30 days after service of the court order and no order
4 of dismissal shall thereafter be entered if such requirement
5 is satisfied within such 30-day period.

6 (e) The appeal to circuit court from a final or
7 other appealable order issued by the Tax Appeals Commission
8 shall be a trial de novo, except that the order shall be
9 presumed prima facie correct, and the burden shall be on the
10 appealing party to prove otherwise. The circuit court shall
11 hear the case by its own rules and shall decide all questions
12 of fact and law. The administrative record and transcript
13 shall be transmitted to the reviewing court as provided
14 herein, and shall be admitted into evidence in the trial de
15 novo, subject to the rights of either party to object to any
16 testimony or evidence in the administrative record or
17 transcript. With the consent of all parties, judicial review
18 may be on the administrative record and transcript. The
19 circuit court shall affirm, modify, or reverse the order of
20 the Tax Appeals Commission, with or without remanding the case
21 for further hearing, as justice may require.

22 §40-2B-14. Publication of Tax Appeals Commission
23 decisions.

24 Subject to Section 40-2B-9, the decisions determined
25 to be of general public interest may be published and
26 distributed by the Tax Appeals Commission, as prescribed by
27 the chief judge. Provided that a decision may not be published

1 until either the time period for appealing the decision has
2 expired or the Tax Appeals Commission has received a copy of
3 the notice of appeal pursuant to Section 40-2B-13(b), in which
4 case the fact that the decision has been appealed shall be
5 noted on the first page of the published decision. A
6 reasonable fee may be charged for the publication, as
7 established from time to time by the chief judge.

8 §40-2B-15. Appointment and term of judges; maximum
9 number; vacancy.

10 (a) The term of a judge of the Tax Appeals
11 Commission shall be six years, except as herein provided. The
12 term of the first chief judge shall begin on October 1, 2011.

13 (b) Additional or successor judges of the Tax
14 Appeals Commission shall be nominated by a committee of seven
15 persons, except as provided below. The nominating committee
16 shall provide the Governor with a list of three qualified
17 candidates for each open or newly created Tax Appeals
18 Commission judge's position. Within 45 days after receipt of
19 the list, the Governor shall choose a nominee from that list
20 of candidates and submit his or her name to the Senate
21 Judiciary Committee for approval. The nominee's name, if
22 approved by the Senate Judiciary Committee, shall then be
23 submitted for approval by the full Senate. If the Senate fails
24 to approve the nominee by the adjournment of the legislative
25 session during which the Governor submits the nominee's name,
26 the nominating committee shall promptly thereafter submit to
27 the Governor the name of a qualified candidate to fill the

1 list of three nominees. The new nominee may be the same person
2 previously nominated by the Governor. The Governor shall
3 promptly thereafter choose and submit a nominee for approval
4 by the Senate Judiciary Committee and the full Senate in
5 accordance with the above procedure. The above procedure shall
6 be repeated until a nominee is approved by the Senate. The
7 term of any new or successor judge shall begin on the first
8 day of the month following the date of approval by the full
9 Senate.

10 (c) The nominating committee shall be organized
11 within six months of the effective date of this act and shall
12 consist of the following:

13 (1) One member in good standing with the Alabama
14 State Bar Association who has at least five years' experience
15 in the private practice of tax law in this state, to be
16 appointed by the State Bar in consultation with the chair of
17 the Tax Section of the State Bar.

18 (2) The Commissioner of the Department of Revenue,
19 or his or her designee.

20 (3) Two members appointed by the Lieutenant
21 Governor, one of whom shall be a representative of either a
22 municipal or county government.

23 (4) Two members appointed by the Speaker of the
24 House of Representatives, one of whom shall be a
25 representative of the business community or a practicing
26 certified public accountant.

27 (5) One member appointed by the Attorney General.

1 (d) The appointing authorities shall submit to the
2 Governor's Office the name or names of the initial member or
3 members appointed to the nominating committee. The term of a
4 member of the nominating committee shall be six years, and
5 shall begin on the first day of the month following the
6 submission of the member's appointment letter by the
7 appointing authority to the Governor's Office. An appointing
8 authority may remove a sitting member or members previously
9 appointed by such authority and appoint another member or
10 members before the term of the sitting member or members has
11 expired, by filing notice of such action with the Governor's
12 Office. An appointing authority may also appoint a new or
13 replacement member if a sitting member dies, resigns, or is
14 otherwise unable to serve. The term of any new or replacement
15 member shall begin on the first day of the month following the
16 submission to the Governor's Office of the appointment letter
17 naming the new or replacement member to the committee. Members
18 of the nominating committee shall serve without compensation
19 or reimbursement for expenses. The nominating committee shall
20 appoint a chair and secretary from among themselves and adopt
21 rules and procedures for the conduct of its meetings and other
22 business of the nominating committee. The secretary shall
23 maintain the permanent records of the nominating committee. A
24 copy of all appointment letters submitted by an appointing
25 authority to the Governor's Office shall be mailed or
26 otherwise delivered to the secretary of the nominating
27 committee, once a secretary is appointed. The committee may

1 conduct private meetings, as deemed appropriate by the
2 committee, but only in compliance with applicable laws. The
3 nominating committee shall compile a list of three nominees by
4 majority vote and shall otherwise act by a majority vote at
5 any meeting at which a quorum is present either in person, by
6 written proxy, or by the written consent of all its members.
7 For the purposes of this section, a quorum shall consist of a
8 majority of the members of the nominating committee then
9 serving.

10 (e) Any sitting judge, at the end of his or her
11 term, shall be automatically appointed to a subsequent
12 six-year term unless the judge is recalled in accordance with
13 this subsection. A recall may be initiated by the Governor or
14 the nominating committee submitting a petition for recall to
15 the Chair of the Senate Judiciary Committee no more than 12
16 and no less than three months before the end of a judge's
17 current term. The petition shall state the reasons why the
18 judge should not serve another six-year term. If the petition
19 is submitted by the Governor, a copy shall be simultaneously
20 submitted to the chair of the nominating committee. In such
21 case, the nominating committee shall provide an objective,
22 written appraisal of the performance of the sitting judge to
23 the Chair of Senate Judiciary Committee for use in determining
24 the competency and fitness of the judge, including a
25 recommendation by the committee. If the Senate Judiciary
26 Committee votes to recall the judge, the petition for recall
27 shall be embodied in the form of a resolution and submitted

1 for a vote by the Senate. If two-thirds of the members of the
2 Senate vote to recall the judge, the judge is not reappointed
3 to another six-year term, and a successor judge shall be
4 appointed as provided in subsection (b). The term of the judge
5 subject to the petition for recall shall be extended during
6 the pendency of the recall proceedings, and if recalled, the
7 judge shall continue to serve until a successor judge is
8 appointed as provided in subsection (b). If a petition for
9 recall is timely submitted, but the Senate Judiciary Committee
10 does not vote to recall the judge during the current
11 legislative session, or if the Senate is not in session when
12 the petition for recall is submitted, during the subsequent
13 regular or any extraordinary legislative session, or the
14 Senate does not vote to recall the judge by a two-thirds vote
15 within the same time period, the judge shall thereafter be
16 automatically appointed to another six-year term.

17 (f) There shall be no less than one nor more than
18 three judges serving at any one time. The initial judge of the
19 Tax Appeals Commission shall serve as chief judge. If the
20 chief judge determines that a second or third judge is
21 necessary, based on current and anticipated case load, the
22 chief judge shall so notify the nominating committee, and the
23 nominating committee shall thereafter determine whether a
24 second or third judge is necessary. If the nominating
25 committee agrees with the chief judge's determination, the
26 nominating committee shall commence proceedings under this
27 section to fill the additional position. The chief judge may,

1 with the advice and consent of the nominating committee,
2 eliminate an associate judge position if the current and
3 anticipated case load does not warrant the position.

4 (g) If a Tax Appeals Commission judge's position
5 becomes vacant, the vacancy shall be filled according to the
6 method set forth in subsection (b).

7 §40-2B-16. Qualifications of Tax Appeals Commission
8 judge; oath; Tax Appeals Commission employees.

9 (a) Each Tax Appeals Commission judge shall be a
10 United States citizen, domiciled in Alabama, and a member in
11 good standing of the Alabama State Bar Association. The chief
12 judge must have at least 10 years' experience and an associate
13 judge must have at least five years' experience, either in the
14 active practice of law in Alabama, whether in the governmental
15 or private sector, or in a judicial or quasi-judicial office
16 such as an administrative law judge. The judge shall possess
17 an acceptable judicial temperament and a high level of
18 knowledge and degree of experience in the area of state and
19 local taxation, as determined by the nominating committee.

20 (b) Before entering upon the duties of office, the
21 judge shall take and subscribe to an oath or affirmation for
22 the faithful discharge of his or her duties.

23 (c) Tax Appeals Commission judges shall be subject
24 to disciplinary proceedings before the Judicial Inquiry
25 Commission to the same extent as circuit judges. The Judicial
26 Inquiry Commission shall have the authority to remove any Tax
27 Appeals Commission judge from office, after notice and an

1 opportunity to be heard, for neglect of duty, inability to
2 perform duties, malfeasance in office, or other good cause.

3 (d) Tax Appeals Commission judges shall be
4 classified state employees as provided in Section 36-26-10. As
5 such, a judge, except for appointment, reconfirmation,
6 removal, and dismissal as provided in this chapter, shall be
7 entitled to all benefits and protections available to
8 classified state employees, including the right to participate
9 in any retirement benefit plan available to certain state
10 employees from time to time. A judge who is qualified and who
11 elects to participate in any such retirement plan, while
12 participating in the plan, shall retain the same status,
13 duties, authority, and rights as granted to Tax Appeals
14 Commission judges by this chapter. If a judge, while
15 participating in such plan, is not automatically reappointed
16 or not reappointed and reconfirmed to another term as herein
17 provided, the judge shall be considered as having been
18 involuntarily terminated for purposes of receiving any
19 retirement benefits and member contributions pursuant to the
20 retirement plan. If at the time of appointment, a judge is a
21 Merit System employee of the state, the judge shall be
22 entitled to carry over, continue, and retain any of the
23 benefits resulting from prior state employment. Tax Appeals
24 Commission judges shall also participate in the State
25 Employees' Retirement System.

26 (e) The chief judge may employ one Executive
27 Assistant III as an unclassified service state employee, as

1 provided in Section 36-26-10(c). All other Tax Appeals
2 Commission personnel shall be appointed or hired by the chief
3 judge, as necessary for the proper operation of the Tax
4 Appeals Commission, shall be state employees under the state
5 Merit System, and shall be entitled to all benefits and
6 protections available to state employees. The Executive
7 Assistant III employed in the Administrative Law Division as
8 of September 30, 2011, shall be transferred to the Tax Appeals
9 Commission, along with any other Merit System employees
10 employed by the Administrative Law Division on that date.

11 §40-2B-17. Judge's salary, expenses.

12 (a) The chief judge of the Tax Appeals Commission
13 shall receive such salary as is provided from time to time
14 within Pay Grade 88 of the compensation plan of the state
15 Merit System, as determined by the Governor with the advice of
16 the nominating committee. Associate judges shall receive such
17 salary as is provided from time to time within Pay Grade 84 of
18 the compensation plan of the state Merit System, as determined
19 by the chief judge with the advice of the nominating
20 committee. The judges shall receive no other monetary
21 compensation for services except as authorized by subsection
22 (b). This subsection shall neither increase nor decrease the
23 salary received by the chief administrative law judge of the
24 Department of Revenue, who shall become the initial chief
25 judge of the Tax Appeals Commission pursuant to Section
26 40-2B-18(a).

1 (b) When a judge or other Tax Appeals Commission
2 employee travels on Tax Appeals Commission business away from
3 the state capital, he or she shall be reimbursed as provided
4 for other state employees in Sections 36-7-20, 36-7-21,
5 36-7-22, and 36-7-24. The chief judge, at his or her
6 discretion, may direct and require any judge or other employee
7 of the Tax Appeals Commission to attend continuing legal
8 education or other training as necessary.

9 §40-2B-18. Chief judge; associate judges; functions.

10 (a) The initial chief judge of the Tax Appeals
11 Commission shall be the chief administrative law judge of the
12 Department of Revenue serving on September 30, 2011.
13 Thereafter, the individual who is nominated as chief judge by
14 the nominating committee, appointed by the Governor, and
15 approved by the Senate, as provided in Section 40-2B-15(b),
16 shall serve as chief judge.

17 (b) The chief judge shall assign cases and otherwise
18 have authority over the operations of the Tax Appeals
19 Commission, including any associate judge. The chief judge
20 shall also have the discretion to order the Tax Appeals
21 Commission to hear cases en banc if there is more than one
22 judge sitting at that time.

23 (c) All judges of the Tax Appeals Commission, other
24 than the chief judge, shall be designated as associate judges,
25 and shall have the same authority and powers of the chief
26 judge, except as specified in this chapter.

1 (d) If a judge of the Tax Appeals Commission dies,
2 retires, or resigns, or is unable to serve as judge, or is
3 removed from office for cause, the Chief Justice of the
4 Supreme Court of Alabama, at the request of the nominating
5 committee, may appoint a Tax Appeals Commission judge pro
6 tempore, who must meet the qualifications for a Tax Appeals
7 Commission judge set forth in Section 40-2B-16(a). Such
8 appointment shall become effective the first day of the month
9 following the submission of the appointment letter by the
10 chief justice to the Governor's Office. Such judge pro tempore
11 shall serve until such time as a successor judge is confirmed
12 by the Senate, as provided herein. If the judge pro tempore is
13 appointed to fill the position of chief judge, he or she shall
14 be compensated at the rate provided herein for the chief
15 judge, and shall have and exercise all powers granted the
16 chief judge. Otherwise, a judge pro tempore shall be
17 compensated at the rate of an associate judge, and shall have
18 and exercise all the powers granted an associate judge. Such
19 compensation shall be paid out of the appropriation for the
20 Tax Appeals Commission. The chief judge may also appoint a
21 judge pro tempore to hear a special case or cases, as assigned
22 by the chief judge including in cases where a judge
23 disqualifies himself or herself on his or her own motion. Such
24 judge pro tempore must meet the qualifications set forth in
25 Section 40-2B-16(a), and shall be compensated at a rate
26 specified by the chief judge, but not at a rate that exceeds
27 any rate paid to an associate judge.

1 §40-2B-19. Offices of Tax Appeals Commission;
2 location of hearings.

3 The principal office of the Tax Appeals Commission
4 shall be in Montgomery, but the commission may hold hearings
5 in any county seat, in the discretion of the chief judge. If
6 the appeal involves a tax levied by or on behalf of a
7 self-administered county or municipality, the Tax Appeals
8 Commission may hold the hearing in the county seat of the
9 affected county or the county seat of the county in which the
10 affected municipality is located. The circuit court sitting in
11 any county, without charge and upon reasonable notice from a
12 judge of the Tax Appeals Commission, shall provide the Tax
13 Appeals Commission with suitable rooms and facilities within
14 the courthouse space assigned to the circuit court. The county
15 commission shall have no obligation or responsibility to
16 provide space or facilities. The Tax Appeals Commission may
17 also hold hearings in the Department of Revenue's service
18 centers located throughout the state.

19 §40-2B-20. Authority to contract and expend funds;
20 budget of Tax Appeals Commission; limitation on activities of
21 personnel.

22 (a) The Tax Appeals Commission, through the chief
23 judge, may contract or enter into agreements with any private
24 or governmental agency, including the Administrative Office of
25 Courts or the Retirement Systems of Alabama, for the rental of
26 office space, and the rental or purchase of equipment,
27 administrative or other support services, supplies, and all

1 other property or services necessary for the operation of the
2 Tax Appeals Commission. The funds for the operation of the Tax
3 Appeals Commission shall be administered by the Tax Appeals
4 Commission, through the chief judge. With respect to the
5 fiscal year ending September 30, 2012, there shall be
6 transferred from the Revenue Department Administrative Fund to
7 the Tax Appeals Commission the amount of four hundred
8 twenty-five thousand dollars (\$425,000). The amount
9 transferred from the Revenue Department Administrative Fund
10 shall be disbursed to the Tax Appeals Commission in four equal
11 increments, at the beginning of each quarter of the fiscal
12 year. Thereafter, the Tax Appeals Commission, through the
13 chief judge, shall prepare an annual budget, and sufficient
14 funds shall be appropriated annually by the Legislature from
15 the Revenue Department Administrative Fund to be used
16 exclusively for the operation of the Tax Appeals Commission.

17 (b) No employee of the Tax Appeals Commission or
18 person serving as judge pro tempore shall act as an authorized
19 representative or representative of the department before the
20 Tax Appeals Commission while an employee or while serving as a
21 judge pro tempore. Nor shall any former employee of the Tax
22 Appeals Commission or former judge pro tempore act as an
23 authorized representative, representative of the department,
24 or otherwise participate in any case that was pending before
25 the Tax Appeals Commission on the date of termination of that
26 person's employment with or service on behalf of the Tax
27 Appeals Commission. A former Tax Appeals Commission judge may

1 represent a client before the Tax Appeals Commission in a
2 legal, non-lobbying capacity, in a case that was not pending
3 before the Tax Appeals Commission when the judge left office,
4 to the same extent former members of the Alabama judiciary are
5 allowed by Section 36-25-13.

6 §40-2B-21. Records.

7 The Tax Appeals Commission shall maintain an
8 official docket, fee book, and other records as deemed
9 necessary by the chief judge. Such records may be maintained
10 in electronic format.

11 §40-2B-22. Filing fees prohibited.

12 No filing fee shall be imposed for any appeal filed
13 with the Tax Appeals Commission.

14 §40-2B-23. Fees and expenses of witnesses. Any
15 witness subpoenaed by the Tax Appeals Commission on its own
16 motion to testify or produce records at a hearing before the
17 Tax Appeals Commission shall be entitled to receive from the
18 Tax Appeals Commission the fees and mileage provided in
19 Section 40-2A-7(a)(4). Any witness subpoenaed by the Tax
20 Appeals Commission at the request of a party to testify or
21 produce records at such a hearing shall be entitled to receive
22 from the requesting party the fees and mileage provided in
23 Section 40-2A-7(a)(4).

24 §40-2B-24. Department of Revenue allowed to
25 acquiesce or nonacquiesce in Tax Appeals Commission and
26 circuit court decisions.

1 (a) The commissioner or deputy commissioner may
2 state and periodically publish the Department of Revenue's
3 acquiescence or nonacquiescence to indicate its position on
4 decisions of the Tax Appeals Commission or a circuit court.

5 (b) Acquiescence in a decision means acceptance by
6 the Department of Revenue of the conclusion reached, but does
7 not necessarily mean acceptance and approval of the reasons or
8 rationale of the Tax Appeals Commission or circuit court for
9 its conclusion.

10 §40-2B-25. Election by Self-Administered County or
11 Municipality to Divest Jurisdiction of Tax Appeals Commission.

12 (a) Unless a self-administered county or
13 municipality elects, in the manner prescribed below, to divest
14 the Tax Appeals Commission of jurisdiction over appeals of
15 final assessments or denied refunds in whole or in part, of
16 any sales, use, rental or lodgings taxes levied or collected
17 from time to time by or on behalf of the self-administered
18 county or municipality, a taxpayer may appeal a final
19 assessment or denied refund involving any such tax to the Tax
20 Appeals Commission in accordance with the procedures and
21 requirements provided in Section 40-2A-7 and this chapter. For
22 purposes of any appeal filed by a taxpayer pursuant to this
23 section, the term "department" as used in Section 40-2A-7
24 means the governing body of the applicable self-administered
25 county or municipality and not the Department of Revenue, and
26 the term "secretary" as used in Section 40-2A-7 means the

1 clerk of the governing body of the applicable
2 self-administered county or municipality.

3 (b) Subject to the limitation imposed by subsection
4 (e), the election-out under this section shall be made by
5 serving a copy of the ordinance or resolution evidencing the
6 election-out, adopted by the governing body of the
7 self-administered county or municipality pursuant to this
8 section, with the Tax Appeals Commission. Service may be
9 accomplished by mailing a copy of the ordinance or resolution,
10 certified by an appropriate official, by either U.S. mail with
11 delivery confirmation or certified U.S. mail, return receipt
12 requested, by hand delivery, or by an expedited courier
13 service to the Tax Appeals Commission's office. The Tax
14 Appeals Commission shall promptly publish notice of the
15 election-out pursuant to subsection (d), and the election
16 shall be effective on the date that notice is published.
17 Notwithstanding the foregoing, appeals of final assessments or
18 denied refunds involving the electing county or municipality
19 that were pending before the Tax Appeals Commission on the
20 date that notice of the election-out is published shall
21 continue to be heard and decided by the Tax Appeals Commission
22 as if the election-out had not been made.

23 (c) Subject to the limitation imposed by subsection
24 (e), an election-out may be revoked, prospectively, by the
25 governing body of the self-administered county or municipality
26 at any time by resolution or ordinance, a certified copy of
27 which shall be served on the Tax Appeals Commission in the

1 manner prescribed above. The revocation of an election-out
2 vests jurisdiction in the Tax Appeals Commission over all
3 appeals of final assessments or denied refunds, in whole or in
4 part, of the county's or municipality's sales, use, rental and
5 lodgings taxes that are entered or denied on or after the date
6 that notice of revocation is published by the Tax Appeals
7 Commission.

8 (d) At least once a month, the Tax Appeals
9 Commission shall provide the Department of Revenue with a list
10 of all self-administered counties and municipalities that have
11 elected-out pursuant to subsection (b), or that have filed a
12 notice of revocation of their election-out pursuant to
13 subsection (c). The Department of Revenue shall publish the
14 list on its website and otherwise make available to the public
15 in the same manner that the rates and administrators of
16 certain county and municipal taxes are published by the
17 Department of Revenue. The Tax Appeals Commission may also
18 publish the list on its own website.

19 (e) A self-administered county or municipality may
20 make only one election-out under subsection (b) or one
21 revocation under subsection (c) during each calendar year. If
22 an appeal is timely filed with the Tax Appeals Commission
23 after the notice of an election-out by the self-administered
24 county or municipality is published by the Tax Appeals
25 Commission, the appeal shall be deemed timely filed with and
26 transferred to the self-administered county or municipality.
27 If an appeal is timely filed with a self-administered county

1 or municipality after the notice of revocation by the
2 self-administered county or municipality is published by the
3 Tax Appeals Commission, the appeal shall be deemed timely
4 filed with and transferred to the Tax Appeals Commission.

5 Section 3. The Code Commissioner shall review Titles
6 11 and 40 and shall substitute "Alabama Tax Appeals
7 Commission" for any reference to the Administrative Law
8 Division of the Department of Revenue, and shall make any
9 other similar amendments consistent herewith.

10 Section 4. Sections 40-2A-3, 40-2A-4, 40-2A-5,
11 40-2A-7, 40-2A-8, 40-2A-10, 40-2A-11, and 40-18-27, Code of
12 Alabama 1975, are amended to read as follows:

13 "§40-2A-3.

14 "~~For~~ Except as otherwise specifically provided or
15 limited, for the purposes of this chapter and Chapter 2B, the
16 following terms shall have the following meanings:

17 "~~(1) ADMINISTRATIVE LAW JUDGE. The chief~~
18 ~~administrative law judge of the department, or any other~~
19 ~~individual acting in that capacity as appointed by the~~
20 ~~commissioner.~~

21 "~~(2) ADMINISTRATIVE LAW DIVISION. The administrative~~
22 ~~law division of the department.~~

23 "(1) ASSOCIATE TAX APPEALS COMMISSION JUDGE. An
24 Associate Judge, as defined in Section 40-2B-18(c), of the
25 Alabama Tax Appeals Commission.

26 "~~(3)~~ (2) AUTHORIZED REPRESENTATIVE. Any individual
27 with written authority or power of attorney to represent a

1 taxpayer before the department or the Tax Appeals Commission;
2 provided however, that nothing herein shall be construed as
3 entitling any such individual who is not a licensed attorney
4 to engage in the practice of law.

5 "(3) CHIEF TAX APPEALS COMMISSION JUDGE or CHIEF
6 JUDGE. The Chief Judge, as defined in Section 40-2B-18(a), of
7 the Alabama Tax Appeals Commission.

8 "(4) COMMISSIONER. The commissioner of the
9 department or his or her delegate.

10 "(5) COMPTROLLER. The Comptroller of the State of
11 Alabama.

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

17 "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The
18 Alabama Department of Revenue.

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

1 due and payable to a county or municipality monthly or
2 quarterly.

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

6 "(10) INTEREST. That amount computed under Section
7 40-1-44, on any overpayment or underpayment of tax or under
8 Section 40-2A-18 on a final assessment.

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

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

17 "(13) PERSON. Any individual, association, estate,
18 trust, partnership, limited liability company, corporation,
19 real estate investment trust, or other entity of any kind.

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

1 "(15) PETITION FOR REVIEW. A written document filed
2 with the department in response to a preliminary assessment in
3 which the taxpayer sets forth reasonably specific objections
4 to ~~the~~ a preliminary assessment.

5 "(16) PRELIMINARY ASSESSMENT. The preliminary notice
6 of value, ~~or~~ underpayment, or nonpayment of any tax
7 administered by the department.

8 "(17) PRIVATE EXAMINING ~~AUDITING~~ OR COLLECTING FIRM.
9 Any person in the business of collecting, through contract or
10 otherwise, local sales, use, rental, lodgings or other taxes
11 or license fees for any county or municipality, or auditing
12 any taxpayer, through the examination of books and records,
13 for any county or municipality. The term shall not include any
14 of the following:

15 "a. The Department of Revenue.

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

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

1 court cost, or penalty owed to the municipality or group of
2 municipalities.

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

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

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

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

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

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

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

17 "(23) TAX APPEALS COMMISSION. The Alabama Tax
18 Appeals Commission, as described in Chapter 2B (commencing
19 with Section 40-2B-1).

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

1 person that may be affected by any act or refusal to act by
2 the department, a county, municipality, or its designee, or to
3 keep any records required by this chapter.

4 ~~"(24)~~ (25) TAXPAYER ADVOCATE. The person so
5 designated from time to time by the commissioner to assist the
6 taxpayers of the State of Alabama with regard to tax issues
7 resulting from any taxes administered or collected by the
8 department.

9 ~~"(25)~~ (26) TAXPAYER ASSISTANCE ORDER. A written order
10 issued by the Taxpayer Advocate and approved by either the
11 commissioner or assistant commissioner which, among other
12 items, states the facts and grants relief to a taxpayer
13 concerning an issue in dispute with the department with regard
14 to tax issues resulting from any taxes administered or
15 collected by the department or grants a waiver of penalties
16 otherwise owed to the department by a defined class or group
17 of taxpayers who are the subject of a declaration of natural
18 disaster by the Governor.

19 "§40-2A-4.

20 "(a) Rights of the taxpayer.

21 ~~"(1) For purposes of this section, the term~~
22 ~~"taxpayer" shall only mean a taxpayer whose books and records~~
23 ~~are subject to examination by the department, and shall not~~
24 ~~include any taxpayer regarding taxes collected or examined by~~
25 ~~a self-administered county or municipality.~~

26 ~~"(2)~~ (1) At or before the commencement of an
27 examination of the books and records of a taxpayer, the

1 department shall provide to the taxpayer the current version
2 of Publication 1A. Publication 1A shall provide, in simple and
3 non-technical terms, a statement of the taxpayer's rights.
4 Those rights include the right to be represented during an
5 examination, an explanation of their appeal rights, and the
6 right to know the criteria and procedures used to select
7 taxpayers for an examination.

8 ~~"(3)~~ (2) At or before the issuance of a preliminary
9 assessment, the department shall provide to the taxpayer in
10 simple and non-technical terms:

11 "a. A written description of the basis for the
12 assessment and any penalty asserted with respect to the
13 assessment.

14 "b. A written description of the method by which the
15 taxpayer may request an administrative review of the
16 preliminary assessment.

17 ~~"(4)~~ (3) ~~At or before~~ Together with the issuance of a
18 final assessment, the department shall inform the taxpayer by
19 a written statement of his or her right to appeal to the
20 ~~administrative law division~~ Tax Appeals Commission or to
21 circuit court and shall include the written description
22 required by subsection (2)a., as revised if necessary to
23 reflect any changes since the issuance of the preliminary
24 assessment.

25 ~~"(5)~~ (4) Except in cases involving suspected criminal
26 violations of the tax law or other criminal activity, the
27 department shall conduct an examination of a taxpayer during

1 regular business hours after providing reasonable notice to
2 the taxpayer. A taxpayer who refuses a proposed time for an
3 examination on the grounds that the proposed examination would
4 cause inconvenience or hardship must offer reasonable
5 alternative times and dates for the examination.

6 ~~"(6)(5)~~ At all stages of an examination or the
7 administrative review of the examination, and in any appeal to
8 the Tax Appeals Commission, a taxpayer is entitled to be
9 assisted or represented, at his or her own expense, by an
10 authorized representative. ~~The department shall prescribe a~~
11 ~~form by which the~~ A taxpayer may designate execute a power of
12 attorney designating any individual or individuals as his or
13 her authorized representative. a person to represent him or
14 her in the conduct of any proceedings, including collection
15 proceedings, resulting from actions of the department. In the
16 absence of this ~~form~~ power of attorney, the department or the
17 Tax Appeals Commission may accept such other evidence that a
18 person is the authorized representative of a taxpayer as it
19 considers appropriate. This provision shall not, however, be
20 construed as authorizing the practice of law before the
21 department, the Tax Appeals Commission, or any court in this
22 state by a person who is not a licensed attorney.

23 ~~"(7)(6)~~ A taxpayer shall be allowed to make an audio
24 recording of any in-person interview with any officer or
25 employee of the department relating to any examination or
26 investigation by the department, provided, however, the
27 taxpayer must give reasonable advance notice to the department

1 of his or her intent to record and the recording shall be at
2 the taxpayer's own expense and with the taxpayer's own
3 equipment. The department shall also be allowed to record any
4 interview if the taxpayer is recording the interview, or if
5 the department gives the taxpayer reasonable advance notice of
6 its intent to record the interview. The department shall
7 provide the taxpayer with a copy of the recording, but only if
8 the taxpayer provides reimbursement for the cost of the
9 transcript and reproduction of the copy. The cost shall be
10 reasonable as prescribed by regulations issued by the
11 department.

12 ~~"(8)(7)~~ This section shall not apply to criminal
13 investigations or investigations relating to the integrity of
14 any officer or employee of the department.

15 "(b) Department responsibilities generally.

16 "(1) The commissioner shall appoint a Taxpayer
17 Advocate from among the employees of the department. This
18 officer shall receive and review inquiries or complaints
19 concerning matters that have been pending before the
20 department for an unreasonable length of time, or matters
21 where the taxpayer has been unable to obtain a reasonable
22 response after several attempts to communicate with the
23 department employee assigned to the taxpayer's case, or his or
24 her immediate superiors. In addition, this officer shall
25 review and have the authority to waive a penalty for
26 reasonable cause as provided in subsection (h) of Section
27 40-2A-11, shall promptly review inquiries concerning release

1 of property levied upon, the erroneous filing of liens, the
2 failure to release a lien for good cause, other matters
3 complained of by a taxpayer or other affected party, or
4 matters referred to him or her by a judge of the Tax Appeals
5 Commission. The review process shall include consultation with
6 the taxpayer or his or her authorized representative regarding
7 the background for the inquiry, complaint, or request for
8 waiver of penalty or other relief sought. The Taxpayer
9 Advocate shall have no authority nor issue any ruling with
10 regard to any taxes collected by or on behalf of a
11 self-administered county or municipality.

12 "a. The Taxpayer Advocate shall, subject to the
13 approval of the commissioner or the assistant commissioner,
14 issue taxpayer assistance orders in the form and manner
15 prescribed herein and by department regulations.

16 "b. Notwithstanding any statute of limitation or
17 other provision in this title, a taxpayer assistance order may
18 declare that any tax, including a final assessment, was
19 erroneously assessed or reported and is not a liability due
20 the state, or that a petition for refund was erroneously
21 denied by the department.

22 "c. A taxpayer assistance order shall grant relief
23 as deemed appropriate, including the voiding of any
24 erroneously issued final assessment for a tax which was not a
25 debt due the state, granting of any refund due the taxpayer,
26 or abating an assessment of interest that has accrued because
27 of undue delay by department personnel.

1 "d. At the request of the Tax Appeals Commission,
2 the taxpayer advocate shall review a final order issued by the
3 Tax Appeals Commission that was not appealed pursuant to
4 Section 40-2B-13, if there is newly discovered evidence which
5 by due diligence could not have been discovered in time to
6 file an application for rehearing pursuant to Section
7 40-2B-9(i), and may grant such relief as the taxpayer advocate
8 deems appropriate.

9 "d.e. All taxpayer assistance orders shall be dated
10 and signed by the Taxpayer Advocate and approved either by the
11 commissioner or the assistant commissioner, and shall state
12 the underlying facts, the reasons for granting relief, and the
13 relief granted. Any taxpayer assistance order may, for good
14 cause, be modified or rescinded in writing by the Taxpayer
15 Advocate and either the commissioner or ~~the~~ assistant
16 commissioner.

17 "e.f. The Taxpayer Advocate shall have full access
18 to department personnel, books, and records subject, however,
19 to the confidentiality restrictions imposed by this chapter.

20 "f.g. Taxpayer assistance orders shall not be
21 subject to the confidentiality provisions of this title, and
22 shall be maintained by the secretary of the department and
23 shall be open to review upon written request. The Taxpayer
24 Advocate shall have no authority nor issue any ruling with
25 regard to any taxes collected by or on behalf of a
26 self-administered county or municipality.

1 "g.h. The commissioner shall make an annual report
2 to the Legislature of all taxpayer assistance orders approved
3 in accordance with the provisions of this section and Sections
4 40-2A-2 and 40-2A-3. Such report shall contain the total
5 amount of relief granted and the types of taxes for which
6 relief was granted.

7 "(2) The department shall maintain a continuing
8 education program to train employees of the department and to
9 provide them with a current knowledge of state and applicable
10 federal tax laws.

11 "(3) In addition to any other information provided
12 by law, the commissioner shall include in the department's
13 annual report information about the number or kind of audits
14 or assessments conducted in the year covered by the report.

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

17 "a. The basis of a production quota system for
18 employees; or

19 "b. The basis for evaluating an employee's
20 performance.

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

24 "(6) INSTALLMENT PAYMENTS.

25 "a. The commissioner is authorized to enter into
26 written agreements to allow any taxpayer to pay any tax in
27 installment payments if the commissioner determines that such

1 an agreement will facilitate collection of ~~such~~ the tax.
2 Notwithstanding the preceding sentence, such agreements shall
3 be entered into only regarding a tax ~~that has been finally~~
4 ~~assessed by the department and not appealed~~ liability
5 resulting from a final assessment from which an appeal can no
6 longer be taken, and such agreements shall not extend for a
7 period exceeding ~~twelve~~ 12 months, provided, that any such
8 agreement may be renewed at the discretion of the commissioner
9 for succeeding periods not to exceed ~~twelve~~ 12 months. The
10 commissioner shall only be authorized to enter such an
11 agreement with regard to a tax administered or collected by
12 the department.

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

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

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

20 "3. The taxpayer fails to pay any other tax
21 liability due the department at the time such liability is
22 due, unless the taxpayer has appealed such other liability
23 pursuant to the terms of this chapter;

24 "4. The financial condition of the taxpayer has
25 significantly changed;

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

1 "6. The commissioner believes that collection of any
2 tax to which an agreement under this provision relates is in
3 jeopardy.

4 "c. The commissioner shall have sole authority or
5 discretion to enter into or amend, modify, or terminate any
6 installment payment agreement provided for herein. The
7 commissioner shall promulgate regulations necessary for the
8 implementation of this provision.

9 "(c) Department failure to comply with this section.
10 The failure of the department to comply with any provision of
11 this section shall not prohibit the department from assessing
12 any tax as provided in this chapter, nor excuse the taxpayer
13 from timely complying with any time limitations under this
14 chapter. However, if the department fails to substantially
15 comply with the provisions of this section, the commissioner
16 shall, upon application by the taxpayer or other good cause
17 shown, abate any penalties otherwise arising from the
18 examination or assessment.

19 "(d) Abatement of penalty. The department shall
20 abate any penalty attributable to erroneous written advice
21 furnished to a taxpayer by an employee of the department.
22 However, this section shall apply only if the department
23 employee provided the written advice in good faith while
24 acting in his or her official capacity, the written advice was
25 reasonably relied on by the taxpayer and was in response to a
26 specific written request of the taxpayer, and the penalty did

1 not result from the taxpayer's failure to provide adequate or
2 accurate information.

3 "§40-2A-5.

4 "(a) The commissioner may, in addition to all other
5 powers and authority now granted by law, issue "revenue
6 rulings" describing the substantive application of any law or
7 regulation administered by the department. ~~Revenue rulings may~~
8 ~~also govern procedures applicable to the department, and in~~
9 ~~that event, shall be called "revenue procedures."~~ Revenue
10 rulings shall be binding on the department and the state, its
11 political subdivisions, and taxing authorities only with
12 respect to the taxpayer making the request and only with
13 respect to the facts contained in the request. The department
14 attorney assigned to review the request for a revenue ruling
15 shall consult with the taxpayer or their authorized
16 representative, if requested by the taxpayer or their
17 authorized representative, prior to issuing the revenue
18 ruling. A revenue ruling shall constitute the department's
19 interpretation of the law or regulations as applied to the
20 facts contained in the request, but only pertaining to the
21 particular facts described in the request, and only to the
22 taxpayer making the request.

23 "(b) Revenue rulings may be issued only if no taxes
24 have accrued with respect to the transactions, events, or
25 facts contained in the request at the time of the issuance of
26 the ruling.

1 "(c) Revenue rulings may be revoked or modified by
2 the commissioner at any time; but any revocation or
3 modification shall not be effective retroactively unless one
4 of the following has occurred:

5 "(1) The person making the request misstated or
6 omitted facts material to the ruling.

7 "(2) The ruling was issued with respect to a matter
8 involving the computation or payment of a tax that was due and
9 payable at the time the ruling was requested.

10 "(3) The law applied by the commissioner in the
11 revenue ruling is changed in a manner to alter the
12 commissioner's conclusions in the ruling and the change in the
13 law is made effective as of the date of the ruling.

14 "The taxpayer may petition for a hearing with the
15 ~~Administrative Law Division~~ Tax Appeals Commission to
16 determine the propriety, under ~~subsections~~ subsection (a),
17 (b), or (c), of any retroactive revocation of a ruling.

18 "(d) All revenue rulings issued by the department
19 shall be published, maintained as a public record, and made
20 available by the department for public inspection and copying,
21 within a reasonable time following their issuance, at a
22 reasonable cost to be determined by the department. Prior to
23 publication, the department shall delete from the text of the
24 ruling all names, addresses, titles, figures, dates, and other
25 information which may identify the particular taxpayer who
26 requested the ruling. If a revenue ruling contains trade
27 secrets or other confidential information, the department

1 shall, upon written request of the taxpayer, delete that
2 information prior to publication.

3 "(e) Requests for revenue rulings shall be submitted
4 in writing to the secretary in the form and manner as
5 prescribed by department regulations, accompanied by a fee of
6 two hundred dollars (\$200). The commissioner shall either
7 issue or refuse to issue a ruling within 120 days after
8 receipt of the request unless the taxpayer consents to an
9 extension of time. If the commissioner refuses to issue a
10 ruling within the time prescribed, the two hundred dollar
11 (\$200) fee shall be refunded to the taxpayer. A request may be
12 withdrawn at any time prior to the issuance of the requested
13 ruling, in which case there shall be no refund of the two
14 hundred dollar (\$200) fee. A taxpayer may request an expedited
15 revenue ruling in the form and manner prescribed by department
16 regulations, accompanied by a fee of three thousand dollars
17 (\$3,000), which the commissioner shall issue within 30 days
18 after receipt of the request or shall promptly refund the
19 filing fee to the taxpayer.

20 "(f) Revenue rulings shall be issued in the name of
21 the commissioner.

22 "(g) Subject to the provisions of this section, the
23 commissioner may also issue a revenue ruling in response to a
24 written request by a governing body of a self-administered
25 county or municipality, or by a taxpayer, regarding the
26 substantive application of a sales, use, rental, or lodgings
27 tax levied by or on behalf of the self-administered

1 municipality or county; provided, however, that the
2 commissioner may not (i) issue a revenue ruling interpreting
3 any tax levied by or on behalf of a self-administered
4 municipality or county which levies a gross receipts tax in
5 the nature of a sales tax, as defined in Section 40-2A-3(8),
6 or (ii) issue a revenue ruling that would establish a rule of
7 nexus determining the locality to which sales and use taxes,
8 or gross receipts taxes in the nature of a sales tax as
9 defined by Section 40-2A-3(8), are due if the locality is a
10 self-administered county or municipality, as defined by
11 Section 40-2A-3(20). Revenue rulings shall be binding on a
12 self-administered county or municipality only with respect to
13 the specific taxpayer making the request and only with respect
14 to the specific facts contained in the request. Any ruling
15 shall, if the other requirements of this section are met, be
16 issued within 45 days of receipt of the request, and if the
17 requesting party is a self-administered municipal or county
18 governing body, the fee for issuance of the ruling shall be
19 waived. If the requesting party is a taxpayer, the department
20 shall, promptly upon receipt, forward a copy of the ruling
21 request to the appropriate municipal or county governing body
22 and shall consult with and accept written comments from
23 representatives of the municipality or county prior to
24 issuance of the ruling.

25 "(h) Revenue rulings may also govern practices and
26 procedures applicable to the department or address an issue of
27 statewide importance affecting a particular industry in

1 Alabama, and in that event shall be called "revenue
2 procedures." Such revenue procedures may be requested by an
3 organization representing that industry, such as a trade
4 association, and no issuance fee shall be imposed. If the
5 revenue procedure applies to a tax levied by or on behalf of a
6 self-administered county or municipality, the department shall
7 consult with and accept written comments from representatives
8 of the affected county or municipality prior to issuance of
9 the revenue procedure.

10 "§40-2A-7.

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

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

25 "(2) The department may examine and audit the
26 records, books, or other relevant information maintained by
27 any taxpayer or other person for the purpose of computing and

1 determining the correct amount of value or correct amount of
2 any tax, license, or fee administered by the department, or
3 for any other purpose necessary for the proper administration
4 of any matter under the jurisdiction of the department.

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

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

1 department or by either U.S. mail with delivery confirmation
2 or certified mail, return receipt requested. A fee shall be
3 paid to banking institutions, other similar entities, or any
4 other person except the taxpayer, for copying, searching for,
5 reproducing, and transporting any records, books, papers, or
6 other documents requested or subpoenaed by the department and
7 to persons who are required to appear as a witness equal to
8 the fee authorized to be paid by the Internal Revenue Service
9 for similar services or appearances pursuant to ~~Section 7610~~
10 ~~of the Internal Revenue Code of 1986~~ 26 U.S.C. § 7610, as
11 amended from time to time. If any witness has been subpoenaed
12 to appear and testify or appear and produce records, books, or
13 other information, and fails or refuses to appear or testify
14 or to produce the books, records, or other information, that
15 witness shall be subject to contempt proceedings in the
16 circuit court of the judicial circuit in which the witness
17 resides, and upon proof of the fact to a circuit court may be
18 punished for contempt as is provided in cases of contempt in
19 circuit court. The circuit court shall also have jurisdiction
20 to hear, and if appropriate, to grant a motion to quash the
21 subpoena. This subdivision shall not apply to any appeal
22 pending before the Tax Appeals Commission.

23 "(5) The department may issue forms and make
24 reasonable regulations concerning any matter administered by
25 the department. Regulations promulgated by the department
26 shall be issued in accordance with the procedures set forth in

1 the Alabama Administrative Procedure Act, Chapter 22 of Title
2 41.

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

5 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL
6 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND
7 FINAL ASSESSMENTS.

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

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

25 "c. All preliminary and final assessments issued by
26 the department shall be executed as provided by regulations
27 promulgated by the department.

1 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
2 ASSESSMENT. For purposes of the three-year statute of
3 limitations provided by this subdivision, the term "return"
4 refers to the original return required to be filed with the
5 department pursuant to Title 40 or any other statutes
6 administered by the department. An amended return that
7 modifies or supplements an original return shall not extend or
8 renew the three-year limitations period, except as otherwise
9 provided by this subdivision. Any preliminary assessment shall
10 be entered within three years from the due date of the return,
11 or three years from the date the return is filed with the
12 department, whichever is later, or if no return is required to
13 be filed, within three years of the due date of the tax,
14 except as follows:

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

18 "b. A preliminary assessment may be entered within
19 six years from the due date of the return or six years from
20 the date the return is filed with the department, whichever is
21 later, if the taxpayer omits from the taxable base an amount
22 properly includable therein which is in excess of 25 percent
23 of the amount of the taxable base stated in the return.

24 "For purposes of this paragraph:

25 "1. The term taxable base means the gross income,
26 gross proceeds from sales, gross receipts, net worth capital

1 employed, or other amounts on which the tax ~~paid with~~ reported
2 on the return is ~~computed~~ measured; and

3 "2. In determining the amount omitted from the
4 taxable base, there shall not be taken into account any amount
5 which is omitted from the taxable base stated in the return if
6 the amount is disclosed in the return, or in a statement
7 attached to the return, in a manner adequate to apprise the
8 department of the nature and amount of the item.

9 "c. A preliminary assessment entered pursuant to
10 Sections 40-29-72 and 40-29-73, may be entered within five
11 years from the due date of the return on which the underlying
12 tax is required to be reported or within five years of the
13 date the return is filed, whichever is later.

14 "d.1. In the case of income received during the
15 lifetime of a decedent, or by his or her estate during the
16 period of administration, the preliminary assessment of any
17 income tax shall be entered within 18 months after written
18 request therefor, filed after the return is made, by the
19 executor, administrator, or other fiduciary representing the
20 estate of the decedent, but not after the expiration of three
21 years from the due date of the return or three years from the
22 date the return is filed with the department, whichever is
23 later.

24 "2. In the case of income received by a corporation
25 contemplating dissolution, a preliminary assessment of any
26 income tax shall be entered within 18 months after written
27 request, by the corporation, filed after the return is made,

1 but not after the expiration of three years from the due date
2 of the return or three years from the date the return is filed
3 with the department, whichever is later. This subparagraph
4 shall not apply to any corporation unless dissolution is
5 completed within 18 months of the date of the written notice.

6 "e. If a taxpayer has made the election provided in
7 subsection (d) ~~or (e)~~ of Section 40-18-8, a preliminary
8 assessment based on the gain realized as a result of the
9 involuntary conversion ~~[in the case of subsection (d) of~~
10 ~~Section 40-18-8]~~ or a rollover of gain on the sale of a
11 personal residence ~~[as provided in subsection (e) of Section~~
12 ~~40-18-8]~~ may be entered within three years from the date the
13 taxpayer notified the department of the replacement of the
14 property in accordance with subsection (d) ~~or (e)~~ of Section
15 40-18-8, ~~as the case may be,~~ or of his or her intention not to
16 replace the property.

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

25 "g.1.f. Reporting federal audit changes; time
26 limitations for assessments. When the Internal Revenue Service
27 changes the amount of federal income tax or federal estate tax

1 ~~in any manner~~ owed by the taxpayer, and the change results in
2 ~~an increase in~~ additional income tax or estate tax owed under
3 this title, ~~the department may, at any time~~ the taxpayer shall
4 be required to file an amended return with the department
5 ~~within one year~~ 180 days after the department is notified or
6 ~~otherwise learns~~ date that the change ~~has become~~ becomes
7 ~~final,~~ enter a preliminary assessment for and pay the
8 additional tax and interest due with the amended return. For
9 purposes of this subdivision, an amended return includes an
10 amended income or estate tax return on a form prescribed by
11 the department, along with reasonably detailed documentation
12 to verify the taxpayer's computation of the tax due and
13 identification of the federal changes. The department shall
14 prescribe a form or schedule that a taxpayer, or an affiliated
15 group of taxpayers, may file electronically that complies with
16 the amended return requirement of this subdivision. The
17 department shall be allowed to ~~assess the tax within the time~~
18 ~~period otherwise allowed by this section.~~ enter a preliminary
19 assessment for any additional tax due as a result of this
20 subdivision by the later of the following periods:

21 "1. Within the time period otherwise allowed by this
22 section.

23 "2. If the taxpayer files an amended return as
24 prescribed by and within the time specified in this
25 subdivision, within one year following the date the amended
26 return, as prescribed in this subdivision, was filed.

1 "3. If the taxpayer fails to file an amended return
2 as prescribed by and within the time specified in this
3 subdivision, within one year following the date the taxpayer
4 actually files such amended return with the department.

5 "4. If the taxpayer failed to file an amended return
6 as prescribed by and within the time specified in this
7 subdivision, within one year following the date when the
8 department is notified or otherwise learns that the federal
9 change has become final, provided that the taxpayer has not
10 filed an amended return to report the federal changes prior to
11 the department's receipt of such notification.

12 "Any tax assessed within the appropriate additional
13 one year time period allowed by this subdivision shall be
14 limited to those items changed on the federal income tax
15 return or federal estate tax return that affect the income tax
16 liability or the estate tax liability imposed by this title.

17 ~~"2. When a federal income tax return or federal~~
18 ~~estate tax return is changed in any manner after it has been~~
19 ~~filed with the Internal Revenue Service, other than by an~~
20 ~~amended return, and the change results in an overpayment of~~
21 ~~taxes imposed by this title, a petition for refund of the~~
22 ~~overpayment may be filed within the later of one year after~~
23 ~~the federal changes become final, or within the time allowed~~
24 ~~for the filing of a petition for refund as provided in this~~
25 ~~chapter. The refund shall be limited to those items changed on~~
26 ~~the federal income tax return or federal estate tax return~~

1 ~~that affect the income tax liability or estate tax liability~~
2 ~~imposed by this title.~~

3 "3.5. For purposes of this subdivision and
4 subsection (c) (2)c., the date that a federal change becomes
5 final is the date on which the taxpayer and the Internal
6 Revenue Service formally agree to the changes, or the date ~~of~~
7 on which any administrative or judicial order, judgment, or
8 decree ~~from which no further appeal was or may be taken~~ can no
9 longer be appealed due to the lapse of time.

10 "h.g. The running of the period of limitations
11 provided herein for entering a preliminary assessment shall be
12 suspended for the period that:

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

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

19 "i.h. The department and the taxpayer may, prior to
20 the expiration of the period for entering a preliminary
21 assessment or the filing of a petition for refund, agree in
22 writing to extend the time provided for entering the
23 assessment or filing the petition in this chapter. The tax may
24 be assessed, or the petition for refund may be filed, at any
25 time prior to the expiration of the period agreed upon. The
26 period agreed upon may be extended by subsequent agreements in

1 writing made before the expiration of the period previously
2 agreed upon.

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

18 "j. In addition to the time limits otherwise
19 provided in this section, if the department or a
20 self-administered county or municipality has erroneously
21 issued a refund, the department or the self-administered
22 county or municipality shall have two years from the date the
23 erroneous refund was mailed or otherwise transmitted to the
24 recipient to enter a preliminary assessment for the recovery
25 of the erroneously refunded amount, plus interest.

26 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON
27 TAXPAYER. The preliminary assessment entered by the

1 department, or a copy thereof, shall be promptly mailed by the
2 department to the taxpayer's last known address by either
3 first class U.S. mail or certified mail with return receipt
4 requested, but at the option of the department, the
5 preliminary assessment may be delivered to the taxpayer by
6 personal delivery or by U.S. mail with delivery confirmation.

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

9 "a. If a taxpayer disagrees with a preliminary
10 assessment as entered by the department, the taxpayer may file
11 a written petition for review with the department within ~~30~~ 60
12 days from the date of entry of the preliminary assessment
13 setting out the specific objections to the preliminary
14 assessment. Notwithstanding the time limitations imposed by
15 subsection (c) (2), the petition for review may also request a
16 refund limited to any overpayment of tax with respect to the
17 items changed in the preliminary assessment. If a petition for
18 review is timely filed, or if the department otherwise deems
19 it necessary, the department shall schedule a conference with
20 the taxpayer for the purpose of allowing the taxpayer and the
21 department to present their respective positions, discuss any
22 omissions or errors, and to attempt to agree upon any changes
23 or modifications to their respective positions.

24 "b. If a written petition for review:

25 "1. Is not timely filed, or

26 "2. Is properly filed, and upon further review the
27 department determines the preliminary assessment is due to be

1 upheld in whole or in part, the department may make the
2 assessment final in the amount of tax due as computed by the
3 department, with applicable interest and penalty computed to
4 the date of entry of the final assessment. If upon further
5 review, the department determines that the taxpayer is due a
6 refund for the period or periods involved in the preliminary
7 assessment, the refund shall be granted and paid in accordance
8 with subsection (c) (4).

9 "c. If a preliminary assessment is not made final by
10 the department within three years from the date of entry, the
11 taxpayer may appeal the preliminary assessment to the Tax
12 Appeals Commission or to the appropriate circuit court as
13 provided by subsection (b) (5) for an appeal of a final
14 assessment. Any preliminary assessment that is outstanding as
15 of October 1, 2011, and that was entered five or more years
16 prior to that date, is void unless the preliminary assessment
17 is made final or the department and the taxpayer agree in
18 writing to extend the time period for entering a final
19 assessment prior to October 1, 2011.

20 "c.d. The final assessment entered by the
21 department, or a copy thereof, shall promptly upon entry be
22 mailed by the department to the taxpayer's last known address
23 (i) by either first class U.S. mail or certified U.S. mail
24 with return receipt requested in the case of assessments of
25 tax of ~~five hundred dollars (\$500)~~ one thousand dollars
26 (\$1,000) or less or (ii) by certified mail with return receipt
27 requested in the case of assessments of tax of more than ~~five~~

1 ~~hundred dollars (\$500)~~ one thousand dollars (\$1,000). In
2 either case and at the option of the department, the final
3 assessment, or a copy thereof, may instead be delivered to the
4 taxpayer by personal delivery or by U.S. mail with delivery
5 confirmation.

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

7 "a. A taxpayer may appeal to the Tax Appeals
8 Commission from any final assessment entered by the department
9 by filing a notice of appeal with the ~~Administrative Law~~
10 ~~Division~~ Tax Appeals Commission and the secretary of the
11 department within ~~30~~ 60 days from the date of entry of the
12 final assessment, and the appeal, if timely filed, shall
13 proceed as ~~herein~~ provided in Chapter 2B for appeals to the
14 ~~Administrative Law Division~~ Tax Appeals Commission.

15 "b.1. In lieu of the appeal under paragraph a., at
16 the option of the taxpayer, the taxpayer may appeal from any
17 final assessment entered by the department to the Circuit
18 Court of Montgomery County, Alabama, or to the circuit court
19 of the county in which the taxpayer resides or has a principal
20 place of business in Alabama, as appropriate, by filing a
21 notice of appeal within ~~30~~ 60 days from the date of entry of
22 the final assessment with both the secretary of the department
23 and the clerk of the circuit court in which the appeal is
24 filed.

25 "2. If the appeal is to circuit court, the taxpayer,
26 also within the ~~30-day~~ 60-day period allowed for appeal, shall
27 do one of the following:

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

3 "(ii) File a supersedeas bond with the court ~~for~~ in
4 an amount equal to 125 percent of the amount of the tax,
5 interest, and any penalty shown on the final assessment. The
6 supersedeas bond shall be executed by a surety company
7 licensed and authorized to do business in Alabama and shall be
8 conditioned to pay the amount of tax, interest, and any
9 penalties shown on the final assessment, plus applicable
10 interest and any court costs relating to the appeal, payable
11 to the department, or the self-administered county or
12 municipality, if applicable.

13 "(iii) File an irrevocable letter of credit with the
14 circuit court in an amount equal to 125 percent of the amount
15 of the tax, interest, and any penalty shown on the final
16 assessment. The irrevocable letter of credit shall be issued
17 by a financial institution designated as a qualified public
18 depository by the Board of Directors of the Security for
19 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter
20 14A, Title 41. ~~The State of Alabama~~ department, or the
21 self-administered county or municipality, if applicable, shall
22 be named the beneficiary of the irrevocable letter of credit.
23 The irrevocable letter of credit shall be conditioned to pay
24 the assessment plus applicable interest and any court costs
25 relating to the appeal. The taxpayer may not issue an
26 irrevocable letter of credit as to a final assessment entered
27 against the same taxpayer.

1 "(iv) File a pledge or collateral assignment of
2 securities with the circuit court that constitute eligible
3 collateral under Chapter 14A, Title 41, in an amount equal to
4 200 percent of the amount of the tax, interest, and penalty
5 shown on the final assessment. The pledge or collateral
6 assignment shall be in favor of the department, or the
7 self-administered county or municipality, if applicable, and
8 conditioned to pay the assessment plus applicable interest and
9 any court costs relating to the appeal.

10 "(v) Show to the satisfaction of the clerk of the
11 circuit court to which the appeal is taken that the taxpayer
12 has a net worth, on the basis of fair market value, of one
13 hundred thousand dollars (\$100,000) or less, including his or
14 her homestead.

15 "3. A taxpayer may appeal a final assessment to
16 either the ~~Administrative Law Division~~ Tax Appeals Commission
17 or to circuit court as provided herein, even though the
18 taxpayer has paid the tax in issue prior to taking the appeal.

19 "c.1. The filing of the notice of appeal with the
20 ~~Administrative Law Division~~ Tax Appeals Commission and the
21 secretary of the department or, in the case of appeals to the
22 circuit court, the filing of the notice of appeal with both
23 the secretary of the department and the clerk of the circuit
24 court in which the appeal is filed and also the payment of the
25 assessment in full ~~and applicable interest~~ or the filing of a
26 supersedeas bond, an irrevocable letter of credit, or a pledge
27 or collateral assignment of securities as provided herein, are

1 jurisdictional. Except as set forth in subparagraph 2., if
2 such prerequisites are not satisfied within the time provided
3 for appeal, the appeal shall be dismissed for lack of
4 jurisdiction.

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

15 "3. On appeal to the circuit court or to the
16 ~~Administrative Law Division~~ Tax Appeals Commission, the final
17 assessment shall be prima facie correct, and the burden of
18 proof shall be on the taxpayer to prove the assessment is
19 incorrect.

20 "d.1. The ~~Administrative Law Division~~ Tax Appeals
21 Commission, circuit court, or the appellate court on appeal
22 may increase or decrease the assessment to reflect the correct
23 amount due.

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

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

4 "(c) Procedure governing petitions for refund;
5 appeals therefrom.

6 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any
7 taxpayer may file a petition for refund with the department
8 for any overpayment of tax or other amount erroneously paid to
9 the department or concerning any refund which the department
10 is required to administer. If a final assessment for the tax
11 has been entered by the department, a petition for refund of
12 all or a portion of the tax may be filed only if the final
13 assessment plus applicable interest has been paid in full
14 prior to or with the filing of the petition for refund. The
15 department may also issue automatic refunds pursuant to
16 Section 40-29-71. In the case of a petition for refund of
17 sales or use taxes pursuant to Chapter 23, public utilities
18 taxes pursuant to Chapter 21, and any transient occupancy tax
19 pursuant to Chapter 26, the petition shall be filed jointly by
20 the taxpayer who collected and paid over the tax to the
21 department and the consumer/purchaser who paid the tax to the
22 taxpayer. A direct petition may be filed by the taxpayer if
23 the taxpayer never collected the tax from the
24 consumer/purchaser, or if the tax has been credited or repaid
25 to the consumer/purchaser by the taxpayer.

26 "(2) TIME LIMITATION FOR FILING PETITION FOR REFUND;
27 AUTOMATIC REFUND.

1 "a. Generally. A petition for refund shall be filed
2 with the department or an automatic refund issued pursuant to
3 Section 40-29-71, or a credit allowed, within (i) three years
4 from the date that the return was filed, or (ii) two years
5 from the date of payment of the tax, ~~whichever is later,~~
6 period expires last or, if no return was timely filed, two
7 years from the date of payment of the tax if an individual
8 income tax return required by Section 40-18-27 is not timely
9 filed for a particular year, a petition for refund of
10 individual income tax paid by withholding or estimated payment
11 with respect to that year shall be filed, or a credit allowed,
12 within three years from the original due date of the return.
13 ~~For purposes of this paragraph, taxes paid through withholding~~
14 ~~or by estimated payment shall be deemed paid on the original~~
15 ~~due date of the return.~~

16 "b. Net operating loss carryback. In lieu of the
17 periods provided in paragraph a., in the case of a net
18 operating loss carryback, the period for filing a petition for
19 refund, the department making an automatic refund or allowing
20 a credit shall be the period prescribed in 26 U.S.C. ~~Section~~
21 §6511(d)(2) for the claiming of a credit or refund.

22 "c. Federal audit changes. When a federal income tax
23 return or federal estate tax return is changed after it has
24 been filed with the Internal Revenue Service, other than by an
25 amended return, and the change results in an overpayment of
26 income tax or estate tax imposed by this title, a petition for
27 refund of the overpayment must be filed within the later of

1 one year after the federal changes become final or the time
2 otherwise allowed for the filing of a petition for refund as
3 provided in this chapter. The refund shall be limited to the
4 tax overpaid as a result of those items changed on the federal
5 income tax return or federal estate tax return that affect the
6 income tax liability or estate tax liability imposed by this
7 title. For purposes of this subdivision, the date that a
8 federal change becomes final shall be determined as provided
9 in Section 40-2A-7(b) (2) f.5.

10 " (3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
11 REVIEW OF REFUND CLAIM; TIME LIMITATIONS. The department shall
12 either grant or deny a petition for refund within six months
13 from the date the petition is filed, unless the period is
14 extended by written agreement of the taxpayer and the
15 department. Upon review, the department may consider all facts
16 and issues relevant to the items changed or adjustments at
17 issue in the taxpayer's petition for refund and may thereafter
18 increase or decrease the requested refund. Alternatively, if
19 the department determines that additional tax is due as a
20 result of the petition for refund, it may enter a preliminary
21 assessment limited to the tax due on those items changed in
22 the petition for refund, so long as such preliminary
23 assessment is entered within six months from the date the
24 petition for refund is filed, or within the time limits
25 otherwise provided in subdivision (b) (2) whichever period
26 expires last. The taxpayer and his or her authorized
27 representative, if applicable, shall be notified of the

1 department's decision concerning the petition for refund by
2 either first class United States U.S. mail, or by certified
3 U.S. mail, return receipt requested, or by U.S. mail with
4 delivery confirmation, sent to the taxpayer's or the
5 authorized representative's last known address. If the
6 department fails to grant a refund within the time provided
7 herein, the petition for refund shall be deemed to be denied.

8 "(4) PROCEDURES IF REFUNDS GRANTED; CREDIT OF
9 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a
10 petition is granted in whole or in part, or the department ~~or,~~
11 the ~~Administrative Law Division~~ Tax Appeals Commission, or a
12 court otherwise determines that a refund is due, the
13 overpayment shall be refunded to the taxpayer by the state,
14 county, municipality, or other entity to which the overpayment
15 was distributed. If the department determines that a refund is
16 due, the amount of the overpayment plus accrued interest may
17 first be credited by the department against any outstanding
18 ~~final tax liabilities due and owing by the taxpayer to the~~
19 ~~department~~ tax due as reported by a taxpayer on a return, any
20 outstanding tax liability resulting from a final assessment
21 from which an appeal can no longer be taken, or any
22 outstanding tax liability that has been affirmed on appeal by
23 the Tax Appeals Commission or by a circuit or appellate court
24 in Alabama and from which no further appeal can be taken, and
25 the balance of any overpayment shall, subject to the setoff
26 provisions of Article 3 of Chapter 18, be refunded to the
27 taxpayer. If any refund or part thereof is credited to any

1 other tax by the department, the department shall provide a
2 written detailed statement to the taxpayer showing the amount
3 of overpayment, the amount credited for payment to other
4 taxes, and the amount refunded.

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

6 "a. A taxpayer may appeal from the denial in whole
7 or in part of a petition for refund by filing a notice of
8 appeal with the ~~Administrative Law Division~~ Tax Appeals
9 Commission within two years from the date the petition is
10 denied, ~~and the appeal, if.~~ If timely filed, the appeal shall
11 proceed as hereinafter provided in Chapter 2B for appeals to
12 the ~~Administrative Law Division~~ Tax Appeals Commission. On
13 appeal, the Tax Appeals Commission may consider all arguments
14 or issues relevant to a taxpayer's petition for refund
15 concerning the type of tax and the tax period or periods
16 involved and may thereafter increase or decrease the refund
17 due to the taxpayer for the tax period or periods involved.

18 "b. In lieu of appealing to the ~~Administrative Law~~
19 ~~Division~~ Tax Appeals Commission, the taxpayer may appeal from
20 the denial in whole or in part of a petition for refund by
21 filing a notice of appeal with the Circuit Court in Montgomery
22 County, Alabama, or the circuit court of the county in which
23 the taxpayer resides or has a principal place of business in
24 Alabama, as appropriate, by filing the notice of appeal within
25 two years from the date the petition is denied. The circuit
26 court shall hear the appeal according to its own rules and
27 procedures ~~and shall determine the correct amount of refund~~

1 ~~due, if any.~~ On appeal, the circuit court may consider all
2 arguments or issues relevant to a taxpayer's petition for
3 refund concerning the type of tax and the tax period or
4 periods involved and may thereafter increase or decrease the
5 refund due to the taxpayer for the tax period or periods
6 involved.

7 "c. If an appeal is not filed with the
8 ~~Administrative Law Division~~ Tax Appeals Commission or the
9 appropriate circuit court within two years of the date the
10 petition is denied, ~~then~~ the appeal shall be dismissed for
11 lack of jurisdiction.

12 "(d) The Department of Revenue shall revise existing
13 regulations or administrative guidance, or issue new
14 regulations or administrative guidance, as appropriate, in
15 conformance with this section.

16 "(e) ~~This~~ The amendments made to this section by Act
17 2007-504 shall apply to all appeals filed after June 15, 2007.
18 Notwithstanding the prior sentence, in any appeal to a circuit
19 court which ~~is~~ was pending on June 15, 2007, and in which a
20 supersedeas bond was filed pursuant to, and in compliance
21 with, the requirements of this section, for double the amount
22 of the tax, interest, and any penalty shown on the final
23 assessment, or for double the amount of the final order of the
24 administrative law judge, such bond may be reduced to 125
25 percent of such amount shown on the final assessment or in the
26 final order of the administrative law judge.

27 "§40-2A-8.

1 "(a) The department shall notify a taxpayer in
2 writing of any act or proposed act or refusal to act
3 concerning the denial or revocation of a license, permit, or
4 certificate of title concerning which the taxpayer has any
5 interest. The notice must be mailed by either first-class U.S.
6 mail or certified U.S. mail or U.S. mail with delivery
7 confirmation to the taxpayer's last known address, or to the
8 last known address of the taxpayer's authorized
9 representative, if applicable. Any taxpayer aggrieved by any
10 act or proposed act or refusal to act by the department shall
11 be entitled to file a notice of appeal from such act or
12 proposed act or refusal to act with the ~~administrative law~~
13 ~~division~~ Tax Appeals Commission. Such notice of appeal must be
14 filed within ~~30~~ 60 days of the date notice of such act or
15 refusal to act is mailed to the taxpayer, and such appeal, if
16 timely filed, shall proceed as herein provided for appeals to
17 the ~~administrative law division.~~ Tax Appeals Commission. Any
18 taxpayer aggrieved by any act, proposed act, or refusal to act
19 by the department, who is not issued written notice by the
20 department of his or her right to appeal, shall have 60 days
21 from actual notice of such act, proposed act, or refusal to
22 act in which to appeal to the Tax Appeals Commission. The
23 burden shall be on the taxpayer in such cases to prove that
24 the appeal was filed within 60 days of actual notice. If any
25 matter is timely appealed to the Tax Appeals Commission
26 pursuant to this section, the commission, in its discretion,
27 may remand or refer the matter to the department or the

1 department's Taxpayer Advocate for review before proceeding
2 with the appeal.

3 "(b) A taxpayer may elect to file a notice of appeal
4 with the Tax Appeals Commission regarding a notice of proposed
5 adjustment issued by the department affecting the taxpayer's
6 net operating loss deductions or carryovers for purposes of
7 the taxes imposed by Chapters 16 and 18 of this title. Such
8 notice of appeal shall be filed within the time period
9 prescribed in subsection (a), and the Tax Appeals Commission
10 shall have jurisdiction to determine the amount of the
11 taxpayer's net operating loss deductions or carryovers for the
12 tax periods in question.

13 "~~(b)~~(c) The department may proceed with the intended
14 action if no appeal is filed by the taxpayer with the
15 ~~administrative law division~~ Tax Appeals Commission within 30
16 days of the mailing of the notice by the department to the
17 ~~taxpayer.~~ the time allowed under subsection (a). If a
18 designated agent has failed to provide the department with a
19 bond and any qualifying license as provided in Section
20 32-8-34, the revocation of designated agent status by the
21 department shall be effective immediately upon electronic
22 notice through the system the designated agent uses to process
23 applications for certificates of title or receipt of written
24 notice of revocation, whether by U.S. mail or hand delivery.
25 Otherwise, the revocation of a designated agent status shall
26 be effective after the time for appeal under this section has
27 expired. The revocation of any motor vehicle certificate of

1 title or license by the department shall not be final until
2 either the titled owner and lien holder, if any, consent to
3 the revocation or the time for filing an appeal to the Tax
4 Appeals Commission has expired. The department may obtain an
5 injunction in the appropriate circuit court at any time
6 enjoining a licensee or designated agent from continuing to
7 operate under a disputed license or designated agent
8 authority, if the continued operation may cause substantial
9 loss of revenue, would cause substantial harm to the state or
10 public, or for such other good reason as determined by the
11 circuit court. The department may suspend the designated
12 agent's access to process new applications for certificate of
13 title until such time as any outstanding title applications
14 not properly filed by the designated agent are properly filed
15 with the department.

16 ~~"(c)~~(d) This section shall not apply to the
17 procedures governing assessments and refunds which are
18 otherwise provided for by this chapter, or to
19 intradepartmental personnel actions or any matter which is the
20 subject of any action then pending in state or federal court,
21 or to the collection of any liability due the department.

22 ~~"(d)~~(e) A taxpayer may appeal any matter governed by
23 this section to the circuit court only after exhausting ~~his~~
24 the appeal rights provided under this section. Any appeal to
25 the circuit court must be from a final or other appealable
26 order issued by the ~~administrative law judge~~ Tax Appeals
27 Commission.

1 "§40-2A-10.

2 "(a) Except as otherwise provided in this section,
3 it shall be unlawful for any person to print, publish, use, or
4 divulge, without the written permission or approval of the
5 taxpayer, the return of any taxpayer or any part of the
6 return, or any information secured in arriving at the amount
7 of tax or value reported, for any purpose other than the
8 proper administration of any matter administered by the
9 department, a county, or a municipality, or upon order of any
10 court or the Tax Appeals Commission, or as otherwise allowed
11 in this section. Statistical information pertaining to taxes
12 may be disclosed at the discretion of the commissioner or his
13 or her delegate to the legislative or executive branch of the
14 state. Upon request, the commissioner or his or her delegate
15 may make written disclosure as to the status of compliance of
16 entities subject to the requirements contained in Chapter 14,
17 prior to its repeal, and Chapter 14A, as applicable. A
18 conditional good standing certificate shall be issued to a
19 requesting person with respect to a business entity if the
20 entity has filed all state tax returns required under Chapter
21 14, prior to its repeal, and Chapter 14A, as applicable, and
22 paid the taxes shown ~~as payable in accordance with~~ due on
23 those returns. Any person found guilty of violating this
24 section shall, for each act of disclosure, have committed a
25 Class A misdemeanor. Additionally, to the extent provided in
26 26 U.S.C. § 7213A, it shall be unlawful for any state employee
27 willfully to inspect, except as authorized in 26 U.S.C. §

1 6103, any federal tax return or federal tax return information
2 acquired by the employee or another person under a provision
3 of 26 U.S.C. § 6103 referred to in 26 U.S.C. § 7213(a)(2).

4 "(b) This section shall not apply to returns filed
5 and information secured under laws of the state (1) governing
6 the registration and titling of motor vehicles, (2) levying or
7 imposing excise taxes or inspection fees upon the sale of,
8 use, and other disposition of gasoline and other petroleum
9 products, (3) governing the licensing of motor vehicle
10 dealers, reconditioners, rebuilders, wholesalers, and
11 automotive dismantlers and parts recyclers, (4) governing the
12 privilege licenses as provided in Chapter 12, other than
13 Article 4, of this title or (5) governing the issuance or
14 affixing of tobacco stamps required under Chapter 25.

15 "(c) This section shall not apply to the disclosure
16 of the amount of local privilege license or franchise fees
17 paid to counties and municipalities by any taxpayer possessing
18 a franchise (whether or not exclusive) granted by the
19 respective county or municipality. However, any information
20 other than the amount of license or franchise fees paid,
21 including returns or parts thereof or documents filed with or
22 secured by any municipality or county or their authorized
23 agent and relating to local privilege licenses and franchises
24 shall remain confidential information subject to subsection
25 (a).

26 "(d) Except as otherwise provided in ~~subsection (m)~~
27 ~~of Section 40-2A-9, the orders of the administrative law judge~~

1 ~~and all evidence, pleadings, and any other information offered~~
2 ~~or submitted in any appeal before the Administrative Law~~
3 ~~Division are not Sections 40-2B-9 and 40-2B-11, all evidence~~
4 ~~or other information filed with or introduced as evidence in a~~
5 ~~Tax Appeals Commission appeal shall not be subject to this~~
6 section.

7 "(e) The commissioner shall promulgate reasonable
8 regulations permitting and governing the exchange of tax
9 returns, information, records, and other documents secured by
10 the department, with tax officers of other agencies of the
11 state, municipal, and county government agencies in the state,
12 federal government agencies, any association of state
13 government tax agencies, any state government tax agencies of
14 other states, and any foreign government tax agencies.
15 However, (1) any tax returns, information, records, or other
16 documents remain subject to the confidentiality provisions set
17 forth in subsection (a); (2) the department may charge a
18 reasonable fee for providing information or documents for the
19 benefit of self-administered counties and municipalities; (3)
20 self-administered counties and municipalities may charge a
21 reasonable fee for providing information or documents for the
22 benefit of the department; and (4) any exchange shall be for
23 one or more of the following purposes:

24 "a. Collecting taxes due.

25 "b. Ascertaining the amount of taxes due from any
26 person.

1 "c. Determining whether a person is liable for, or
2 whether there is probable cause for believing a person might
3 be liable for, the payment of any tax to a federal, state,
4 county, municipal, or foreign government agency.

5 "(f) (1) Nothing herein shall prohibit the use of tax
6 returns or tax information by the department or county tax
7 collecting officials in the proper administration of any
8 matter administered by the department or county tax collecting
9 officials. The department, a municipality, or county tax
10 official may also divulge to a purchaser, prospective
11 purchaser, as defined pursuant to the regulations of the
12 department, or successor of a business or stock of goods the
13 outstanding sales, use, or rental tax liability of the seller
14 for which the purchaser, prospective purchaser, as defined
15 pursuant to the regulations of the department, or successor
16 may be liable pursuant to ~~Section~~ Sections 40-23-25, 40-23-82,
17 ~~or and~~ 40-12-224. This section shall not preclude the
18 inspection of returns by federal or foreign state agents
19 pursuant to Section 40-18-53.

20 "(2) Upon a request by the State Treasurer, the
21 commissioner may provide the State Treasurer with the names
22 and addresses of those persons entitled to property acquired
23 by the state under Article 2A of Chapter 12 of Title 35, the
24 Uniform Disposition of Unclaimed Property Act of 2004, as
25 amended from time to time. The information shall be used by
26 the State Treasurer solely for the purpose of administering

1 the Uniform Disposition of Unclaimed Property Act of 2004, as
2 amended from time to time.

3 "(g) Nothing herein shall prohibit the exchange of
4 information between and among county or municipal governments,
5 provided that any exchange shall be subject to the same
6 restrictions and criminal penalties imposed on the department
7 and its personnel as described in this section.

8 "(h) In no event shall any damages, attorney fees,
9 or court costs be assessed against the state, a county, or a
10 municipal government under this section, nor shall any
11 damages, attorney fees, or court costs be assessed against
12 elected officials, officers, or employees of a state, county,
13 or municipal government.

14 "§40-2A-11.

15 "(a) Failure to timely file ~~return~~ certain returns.
16 ~~If~~ Except as provided below, if a taxpayer fails to file any
17 return required to be filed with the department on or before
18 the date prescribed therefor, determined with regard to any
19 extension of time for filing, there shall be assessed as a
20 penalty the greater of an amount equal to 10 percent of ~~any~~
21 ~~additional~~ the correct amount of tax required to be paid with
22 the return or fifty dollars (\$50). If the taxpayer is not
23 required to pay any additional tax due with the return, the
24 penalty imposed by this subsection shall not be assessed
25 unless the department has first provided 30 days' written
26 notice to the taxpayer, at the last known address of the
27 taxpayer, that the return has not been filed and the taxpayer

1 fails or refuses to file the delinquent return within that
2 time period. This subsection shall not apply to any individual
3 income tax return or amended return filed with the department
4 if the taxpayer claims thereon and is due a refund of income
5 tax.

6 "(b) Failure to timely pay tax.

7 "(1) If a taxpayer fails to pay to the department
8 the amount of tax shown as due on a return required to be
9 filed on or before the date prescribed for payment of the tax,
10 determined with regard to any extension of time for payment,
11 there shall be added as a penalty one percent of the net
12 amount of the tax due if the failure to pay is for not more
13 than one month, with an additional one percent for each
14 additional month or fraction thereof during which failure to
15 pay continues, not exceeding 25 percent in the aggregate. In
16 lieu of the penalty provided in the immediately preceding
17 sentence, for any tax for which a monthly or quarterly return
18 is required, or for which no return is required, the
19 department shall add a failure to timely pay penalty of 10
20 percent of the unpaid amount shown as tax due on the return or
21 the amount stated in the notice and demand.

22 "(2) If a taxpayer fails to pay to the department
23 any amount in respect of any tax required to be shown on any
24 return, which is not so shown, within 30 calendar days from
25 the date of the first written notice and demand therefore,
26 there shall be added as a penalty one percent of the net
27 amount of the tax due if the failure to pay is for not more

1 than one month, with an additional one percent for each
2 additional month or fraction thereof during which failure to
3 pay continues, not exceeding 25 percent in the aggregate. In
4 lieu of the penalty provided in the immediately preceding
5 sentence, for any tax for which a monthly or quarterly return
6 is required, or for which no return is required, the
7 department shall add a failure to timely pay penalty of 10
8 percent of the unpaid amount stated in the notice and demand
9 unless payment is received within 30 calendar days from the
10 date of the first written notice and demand.

11 "(3) This subsection shall not apply to any failure
12 to pay any estimated tax required to be paid by Sections
13 40-18-80 and 40-18-80.1.

14 "(c) Underpayment due to negligence or substantial
15 understatement. ~~If any part of~~ If this subsection applies to
16 any portion of an underpayment of tax required to be shown on
17 a return, there shall be added to the tax an amount equal to
18 20 percent of the portion of the underpayment to which this
19 subsection applies. This subsection shall apply to the portion
20 of any underpayment of tax ~~is due to negligence or disregard~~
21 of rules or regulations, there shall be added to the tax an
22 amount equal to five percent of that part of the tax
23 attributable to negligence or disregard of rules or
24 regulations. which is attributable to one or more of the
25 following:

26 "(1) Negligence or disregard of rules or
27 regulations. For purposes of this ~~subsection~~ subdivision, the

1 term "negligence" includes any failure to make a reasonable
2 attempt to comply with ~~Title 40~~ this title or other statutes
3 administered by the department, and the term "disregard"
4 includes any careless, reckless, or intentional disregard of
5 valid rules and regulations.

6 "(2) Any substantial understatement of tax. For
7 purposes of this subdivision, the term "understatement" means
8 the excess of the amount of tax required to be shown on the
9 return for the tax period, over the amount of tax which is
10 actually shown as due on the return, provided that the amount
11 of understatement of tax shall be reduced by the portion of
12 the understatement which is attributable to any item if the
13 relevant facts affecting the item's tax treatment are
14 adequately disclosed in the return or in a statement attached
15 to the return and there is a reasonable basis for the tax
16 treatment of such item. The term "substantial understatement"
17 means the amount of understatement of tax that exceeds the
18 greater of five thousand dollars (\$5,000) or 20 percent of the
19 tax required to be shown on the return for the tax period.

20 "(d) Underpayment due to fraud. If any part of any
21 underpayment of tax required to be shown on a return is due to
22 fraud, there shall be added to the tax an amount equal to 50
23 75 percent of that portion of the underpayment which is
24 attributable to fraud.

25 "For purposes of this section, the term "fraud"
26 shall have the same meaning as ascribed to the term under 26
27 U.S.C. Section §6663, as in effect from time to time, except

1 that the reference therein to the secretary shall instead mean
2 the commissioner.

3 "(e) Frivolous return penalty. If a taxpayer files a
4 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~
5 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~
6 ~~hundred fifty dollars (\$250)~~ one thousand dollars (\$1,000).

7 "(f) Frivolous appeal penalty. If any appeal to the
8 ~~administrative law division~~ Tax Appeals Commission or circuit
9 court is determined to be frivolous or primarily for the
10 purpose of delay or to impede collection of any tax, a penalty
11 of ~~two hundred fifty dollars (\$250)~~ one thousand dollars
12 (\$1,000) or, at the discretion of the Tax Appeals Commission
13 or circuit judge, up to 25 percent of the tax in question,
14 whichever is greater, shall be assessed in addition to any tax
15 due.

16 "(g) Failure to file partnership or Alabama S
17 corporation returns. If a pass-through entity, as defined in
18 Section 40-18-24.2, or an Alabama S corporation, as defined in
19 Section 40-18-160(b)(1), fails to file the applicable
20 information return required by Section 40-18-28 or 40-18-39
21 for any taxable year within the time prescribed therefor, the
22 pass-through entity or corporation shall be liable for a
23 penalty equal to the product of fifty dollars (\$50) multiplied
24 by the number of members of the pass-through entity or
25 shareholders of the Alabama S corporation, whichever is
26 applicable, for each month, or fraction thereof, during which
27 such failure continues, but not to exceed 12 months.

1 "(h) Failure to pay by electronic funds transfer. If
2 a taxpayer fails to timely pay a tax by means of electronic
3 funds transfer as required by Section 41-1-20 there may be
4 assessed a penalty equal to the greater of one hundred dollars
5 (\$100) or five percent of the required payment.

6 "~~(g)~~ (i) Penalties not exclusive. The penalties
7 provided in this section for failure to timely file a return,
8 failure to timely pay tax, filing a frivolous return, filing a
9 frivolous appeal, or underpayment of tax due to either
10 negligence or a substantial understatement may be asserted
11 against the same taxpayer for the same tax period. If the
12 fraud penalty is asserted, however, no other penalties shall
13 be asserted.

14 "~~(h)~~ (j) Waiver of penalties. Notwithstanding the
15 foregoing, no penalty under this title or Section 10-2B-15.02
16 shall be assessed, if reasonable cause exists; or if a penalty
17 has been assessed, it shall be waived upon a determination of
18 reasonable cause. Reasonable cause shall include, but not be
19 limited to, those instances in which the taxpayer has acted in
20 good faith. The burden of proving reasonable cause shall be on
21 the taxpayer.

22 "~~(i)~~ (k) Discount sustained for ~~just causes~~
23 reasonable cause. All other provisions of tax laws
24 notwithstanding, either the ~~Commissioner of the Department of~~
25 ~~Revenue~~ commissioner or the taxpayer advocate of the
26 department, upon review of the circumstances involved, may
27 authorize the continuance or reinstatement of a

1 ~~statute-allowable~~ an otherwise allowable discount for timely
2 payment or filing when timely payment ~~is made, but~~ or filing
3 ~~is~~ was delayed for ~~just causes~~ reasonable cause.

4 ~~"(j)(1)~~ Penalty and interest assessed as tax. All
5 penalties and interest administered by the department shall be
6 assessed and collected in the same manner as taxes.

7 ~~"(k)(m)~~ Penalty not to apply to registration and
8 titling of motor vehicles. The penalties provided herein shall
9 not apply to the registration or titling of motor vehicles.

10 "§40-18-27.

11 "(a) Effective for tax years beginning after
12 December 31, 1997, every taxpayer having an adjusted gross
13 income for the taxable year of more than one thousand eight
14 hundred seventy-five dollars (\$1,875) if single or if married
15 and not living with spouse, and of more than three thousand
16 seven hundred fifty dollars (\$3,750) if married and living
17 with spouse, shall each year file with the Department of
18 Revenue a return stating specifically the items of gross
19 income, the deductions and credits allowed by this chapter,
20 the place of residence, and post office address. If a husband
21 and wife living together have an adjusted gross income of more
22 than three thousand seven hundred fifty dollars (\$3,750), each
23 shall file a return unless the income of each is included in a
24 single joint return. If the taxpayer is unable to file a
25 return, the return shall be filed by a duly authorized agent,
26 a guardian, or other person charged with the care of the
27 person or property of the taxpayer.

1 "(b) A taxpayer other than a resident shall not be
2 entitled to the deductions authorized by Sections 40-18-15 and
3 40-18-15.2 unless the taxpayer files a complete return showing
4 the gross income of the taxpayer both from within and outside
5 the state. Included on every income tax return shall be the
6 name, and address, and social security number of the person
7 who prepared the return. The taxpayer shall be held liable for
8 any statement made by an agent of the taxpayer with reference
9 to any information required by law to be furnished in
10 connection with that tax return.

11 "(c) Returns filed on the basis of the calendar year
12 shall be filed on or before April 15 following the close of
13 the calendar year. Returns filed on the basis of a fiscal year
14 shall be filed on or before the fifteenth day of the fourth
15 month following the close of the fiscal year. The department
16 may grant a reasonable extension of time for filing returns,
17 under rules and regulations as it shall prescribe. Except in
18 the case of taxpayers who are abroad, no extension shall be
19 for more than six months. If the taxpayer has requested an
20 extension of time for the filing of a return, the period
21 during which the return will be considered timely filed shall
22 not expire until 10 days after the Department of Revenue mails
23 to the taxpayer a rejection of the request for an extension of
24 time for filing the return. The return must be signed or
25 otherwise validated by both the taxpayer(s) and, if
26 applicable, the tax return preparer under rules or regulations
27 of the Department of Revenue and must contain a printed

1 declaration that the return is filed under the penalties of
2 perjury.

3 "(d) Every individual who willfully files and signs
4 or otherwise validates under rules or regulations of the
5 Department of Revenue a return which the individual does not
6 believe to be true and correct as to every material particular
7 shall be guilty of perjury and, upon conviction thereof, shall
8 be imprisoned in the penitentiary for not less than one, nor
9 more than five years.

10 "(e) In the event a husband and wife file a joint
11 return, the husband and wife shall be jointly and severally
12 liable for the income tax shown on the return or as may be
13 determined by the Department of Revenue to be due by them to
14 the State of Alabama. Notwithstanding the foregoing, ~~an~~
15 ~~innocent spouse~~ a husband or wife shall be relieved of certain
16 liabilities to the same extent and in the same manner as
17 ~~granted~~ allowed by the Internal Revenue Code for federal
18 income tax purposes, including 26 U.S.C. §§ 6015(b), 6015(c),
19 and 6015(f), as amended from time to time."

20 Section 5. All laws or parts of laws which conflict
21 with this act are repealed; and Section 40-2A-9, Code of
22 Alabama 1975, is specifically repealed.

23 Section 6. The provisions of this act are severable.
24 If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

1 Section 7. It is the intent of the Legislature that
2 the existence, authority, and powers of the Administrative Law
3 Division of the Department of Revenue shall remain in full
4 force and effect until the Tax Appeals Commission created
5 herein becomes fully operational on October 1, 2011, and that
6 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8
7 shall continue to be filed with and handled by the
8 Administrative Law Division until that date. To that end, the
9 repeal of Section 40-2A-9, and those portions of other
10 sections of Titles 11 and 40 relating to the powers,
11 authority, and duties of the Administrative Law Division and
12 the administrative law judge, and the right of a taxpayer to
13 appeal to the Administrative Law Division, shall not become
14 effective until October 1, 2011. Notwithstanding the
15 foregoing, the Tax Appeals Commission shall not have
16 jurisdiction over any appeals regarding taxes levied by or on
17 behalf of a self-administered county or municipality until
18 October 1, 2012. The amendments to Section 40-2A-7(b)(2)f.,
19 Code of Alabama 1975, relating to amended returns due to
20 federal audit changes, and Section 40-2A-11, Code of Alabama
21 1975, relating to civil penalties, by this act shall only
22 apply to tax periods beginning on or after January 1, 2012.

23 Section 8. This act shall become effective upon its
24 passage and approval by the Governor, or its otherwise
25 becoming law.