

1 SB232  
2 126763-5  
3 By Senator Brooks  
4 RFD: Judiciary  
5 First Read: 22-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.

19 (2) If the appeal involves a tax levied by or on  
20 behalf of a self-administered county or municipality, the Tax  
21 Appeals Commission shall promptly mail a copy of the notice of  
22 appeal by either U.S. mail with delivery confirmation or  
23 certified U.S. mail to the governing body of the affected  
24 county or municipality and shall provide the taxpayer or its  
25 authorized representative with written notification of the  
26 date the copy was mailed to the governing body. The affected  
27 county or municipality shall file a written answer with the

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

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



1 otherwise delivered as provided by regulation. If the appeal  
2 involves a tax levied by or on behalf of a self-administered  
3 county or municipality, the Tax Appeals Commission shall  
4 instead promptly mail a copy of the notice of the hearing to  
5 the governing body of the affected county or municipality by  
6 either U.S. mail with delivery confirmation or certified U.S.  
7 mail. The judge shall conduct the hearing substantially as  
8 follows:

9 (1) Open the record and receive appearances.

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

14 (3) Interrogate witnesses if deemed necessary.

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

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

20 (f) A judge may enter a preliminary order directing  
21 one or more parties to take such action as deemed appropriate  
22 or referring any issue or issues in dispute to the Department  
23 of Revenue's Taxpayer Advocate for consideration if the issue  
24 or issues relate to a tax administered by the Department of  
25 Revenue. A judge, after a hearing or after a case is otherwise  
26 submitted for decision, may issue an opinion and preliminary  
27 order, which shall include findings of fact and conclusions of

1 law. The opinion and preliminary order may direct the  
2 department to recompute a taxpayer's liability or the amount  
3 of a refund due or for any party to take such action as  
4 specified in the preliminary order.

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

12 (h) If a preliminary order, an opinion and  
13 preliminary order, or a final order involves a tax levied by  
14 or on behalf of a self-administered county or municipality and  
15 is within the jurisdiction of the Tax Appeals Commission, the  
16 Tax Appeals Commission shall mail a copy of the order to the  
17 governing body of the affected county or municipality and, if  
18 applicable, its authorized representative, by either U.S. mail  
19 with delivery confirmation or certified U.S. mail return  
20 receipt requested, within three days of the date of entry. The  
21 failure of the Tax Appeals Commission, however, to timely mail  
22 a copy of an order to the affected municipality or county, or  
23 the failure of the municipality or county to receive the  
24 order, shall not affect the validity of the order.

25 (i) Any party may apply for rehearing from any final  
26 order or opinion and preliminary order, provided, however, the  
27 application must be filed within 15 days from the date of

1 entry of such order. The application for rehearing shall  
2 specify the reasons and supporting arguments why such order is  
3 incorrect and should be reconsidered. The timely filing of an  
4 application for rehearing from a final order shall suspend the  
5 time period for filing an appeal to circuit court. If an  
6 application for rehearing is timely filed, the judge shall  
7 thereafter issue a final or other order on rehearing, either  
8 with or without a hearing on the application, at the  
9 discretion of the judge. The time for filing a notice of  
10 appeal to circuit court shall begin anew on the date of entry  
11 of the final order on rehearing.

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

23 (k) The rules of evidence applicable in civil  
24 nonjury cases in the circuit courts of Alabama shall be  
25 followed by the Tax Appeals Commission. Evidence not  
26 admissible thereunder may be admitted, however, in the  
27 discretion of the judge, if relevant, not unfairly prejudicial

1 to any party, and necessary for the fair adjudication of the  
2 case. The judge may announce before or during a hearing that  
3 it shall not be necessary for either party to object to any  
4 testimony or evidence offered by a party, and any objections  
5 shall be preserved and may be made on appeal. The final order  
6 issued by the judge shall be based only on such evidence as is  
7 relevant and material. Documentary evidence may be received in  
8 copy form if there is no objection thereto or in the  
9 discretion of the judge. Official notice may be taken of any  
10 technical facts within the specialized knowledge of the judge.

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

19 (m) Any person upon application, and at the  
20 discretion of the judge, may be permitted to intervene in any  
21 dispute before the Tax Appeals Commission if that person's  
22 rights are or may be affected by the outcome of the proceeding  
23 and the person's interest is not otherwise adequately  
24 represented in the case. Intervenors may also appeal to  
25 circuit court from a final or other appealable order, as  
26 provided herein for appeals. Parties interested in the outcome

1 of any case before the Tax Appeals Commission, with the  
2 permission of the judge, may submit amicus briefs.

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

8 (1) Information received from the Internal Revenue  
9 Service that is restricted by law or agreement from  
10 disclosure.

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

14 (3) As otherwise ordered by the judge.

15 §40-2B-10. Burden of proof in Tax Appeals Commission  
16 proceedings.

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

24 §40-2B-11. Hearings to be open to public; report of  
25 proceedings; exception; confidential information.

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

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

20           (c) An order closing a hearing or granting a  
21 protective order or an order denying same shall be considered  
22 a final order for purposes of appeal to circuit court. A party  
23 may appeal such an order to circuit court in the same manner  
24 and subject to the same requirements as appeals from final  
25 orders of the Tax Appeals Commission, except that if the case  
26 involves a disputed final assessment, the final assessment  
27 need not be paid, nor a supersedeas bond or other security

1 filed, in connection with the appeal. The Tax Appeals  
2 Commission may stay the case on the merits until the issue is  
3 finally resolved on appeal.

4 §40-2B-12. Authority to issue regulations. The Tax  
5 Appeals Commission, through the chief judge, is authorized to  
6 issue regulations governing procedures and practice before the  
7 Tax Appeals Commission, and matters of internal organization  
8 and operation. Such regulations shall be issued in accordance  
9 with Chapter 22 of Title 41.

10 §40-2B-13. Appeals to circuit court; reviewing  
11 authority and action on appeal.

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

17 (b) The taxpayer, an intervenor pursuant to Section  
18 40-2B-9(m), a self-administered county or municipality whose  
19 tax is within the jurisdiction of the Tax Appeals Commission,  
20 or the Department of Revenue may appeal to circuit court from  
21 a final or other appealable order issued by the Tax Appeals  
22 Commission by filing a notice of appeal with the appropriate  
23 circuit court within 60 days from the date the final or other  
24 appealable order was entered. A copy of the notice of appeal  
25 shall be submitted to the Tax Appeals Commission within the  
26 60-day appeal period. The Tax Appeals Commission shall

1 thereafter prepare a record on appeal. The appeal shall be  
2 filed in the following circuit courts:

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

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

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

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

24 (1) Remit the amount of the final assessment  
25 determined to be due by the final order to the Department of  
26 Revenue, or to the self-administered county or municipality,  
27 if applicable.



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

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

24          (4) File a pledge or collateral assignment of  
25          securities with the circuit court that constitute eligible  
26          collateral under Chapter 14A of Title 41, in an amount equal  
27          to 200 percent of the amount determined to be due by the final

1 order. The pledge or collateral assignment shall be in favor  
2 of the Department of Revenue, or the self-administered county  
3 or municipality, if applicable, and conditioned to pay the  
4 amount determined to be due by the final order, plus  
5 applicable interest and any court costs relating to the  
6 appeal.

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

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

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

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

22 (2) If the circuit court determines that the  
23 taxpayer has not satisfied the requirements of subsection (c),  
24 the circuit court shall order that the taxpayer satisfy such  
25 requirements. The taxpayer may satisfy such requirements at  
26 any time within 30 days after service of the court order. No  
27 order of dismissal for lack of jurisdiction shall be entered

1 within 30 days after service of the court order and no order  
2 of dismissal shall thereafter be entered if such requirement  
3 is satisfied within such 30-day period.

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

20 §40-2B-14. Publication of Tax Appeals Commission  
21 decisions.

22 Subject to Section 40-2B-9, the decisions determined  
23 to be of general public interest may be published and  
24 distributed by the Tax Appeals Commission, as prescribed by  
25 the chief judge. Provided that a decision may not be published  
26 until either the time period for appealing the decision has  
27 expired or the Tax Appeals Commission has received a copy of

1 the notice of appeal pursuant to Section 40-2B-13(b), in which  
2 case the fact that the decision has been appealed shall be  
3 noted on the first page of the published decision. A  
4 reasonable fee may be charged for the publication, as  
5 established from time to time by the chief judge.

6 §40-2B-15. Appointment and term of judges; maximum  
7 number; vacancy.

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

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

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

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

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

16 (2) The Commissioner of the Department of Revenue,  
17 or his or her designee.

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

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

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

26 (d) The appointing authorities shall submit to the  
27 Governor's Office the name or names of the initial member or

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

1 nominating committee shall compile a list of three nominees by  
2 majority vote and shall otherwise act by a majority vote at  
3 any meeting at which a quorum is present either in person, by  
4 written proxy, or by the written consent of all its members.  
5 For the purposes of this section, a quorum shall consist of a  
6 majority of the members of the nominating committee then  
7 serving.

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

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

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



1 eliminate an associate judge position if the current and  
2 anticipated case load does not warrant the position.

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

6 §40-2B-16. Qualifications of Tax Appeals Commission  
7 judge; oath; Tax Appeals Commission employees.

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

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

21 (c) Tax Appeals Commission judges shall be subject  
22 to disciplinary proceedings before the Judicial Inquiry  
23 Commission to the same extent as circuit judges. The Judicial  
24 Inquiry Commission shall have the authority to remove any Tax  
25 Appeals Commission judge from office, after notice and an  
26 opportunity to be heard, for neglect of duty, inability to  
27 perform duties, malfeasance in office, or other good cause.

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

24 (e) The chief judge may employ one Executive  
25 Assistant III as an unclassified service state employee, as  
26 provided in Section 36-26-10(c). All other Tax Appeals  
27 Commission personnel shall be appointed or hired by the chief

1 judge, as necessary for the proper operation of the Tax  
2 Appeals Commission, shall be state employees under the state  
3 Merit System, and shall be entitled to all benefits and  
4 protections available to state employees. The Executive  
5 Assistant III employed in the Administrative Law Division as  
6 of September 30, 2011, shall be transferred to the Tax Appeals  
7 Commission, along with any other Merit System employees  
8 employed by the Administrative Law Division on that date.

9 §40-2B-17. Judge's salary, expenses.

10 (a) The chief judge of the Tax Appeals Commission  
11 shall receive such salary as is provided from time to time for  
12 the highest level or step of Pay Grade 89 of the compensation  
13 plan of the state Merit System. Associate judges shall receive  
14 such salary as is provided from time to time at the highest  
15 level or step of Pay Grade 88 of the compensation plan of the  
16 state Merit System. The judges shall receive no other monetary  
17 compensation for services except as authorized by subsection  
18 (b).

19 (b) When a judge or other Tax Appeals Commission  
20 employee travels on Tax Appeals Commission business away from  
21 the state capital, he or she shall be reimbursed as provided  
22 for other state employees in Sections 36-7-20, 36-7-21,  
23 36-7-22, and 36-7-24. The chief judge, at his or her  
24 discretion, may direct and require any judge or other employee  
25 of the Tax Appeals Commission to attend continuing legal  
26 education or other training as necessary.

27 §40-2B-18. Chief judge; associate judges; functions.

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

8           (b) The chief judge shall assign cases and otherwise  
9 have authority over the operations of the Tax Appeals  
10 Commission, including any associate judge. The chief judge  
11 shall also have the discretion to order the Tax Appeals  
12 Commission to hear cases en banc if there is more than one  
13 judge sitting at that time.

14           (c) All judges of the Tax Appeals Commission, other  
15 than the chief judge, shall be designated as associate judges,  
16 and shall have the same authority and powers of the chief  
17 judge, except as specified in this chapter.

18           (d) If a judge of the Tax Appeals Commission dies,  
19 retires, or resigns, or is unable to serve as judge, or is  
20 removed from office for cause, the Chief Justice of the  
21 Supreme Court of Alabama, at the request of the nominating  
22 committee, may appoint a Tax Appeals Commission judge pro  
23 tempore, who must meet the qualifications for a Tax Appeals  
24 Commission judge set forth in Section 40-2B-16(a). Such  
25 appointment shall become effective the first day of the month  
26 following the submission of the appointment letter by the  
27 chief justice to the Governor's Office. Such judge pro tempore

1 shall serve until such time as a successor judge is confirmed  
2 by the Senate, as provided herein. If the judge pro tempore is  
3 appointed to fill the position of chief judge, he or she shall  
4 be compensated at the rate provided herein for the chief  
5 judge, and shall have and exercise all powers granted the  
6 chief judge. Otherwise, a judge pro tempore shall be  
7 compensated at the rate of an associate judge, and shall have  
8 and exercise all the powers granted an associate judge. Such  
9 compensation shall be paid out of the appropriation for the  
10 Tax Appeals Commission. The chief judge may also appoint a  
11 judge pro tempore to hear a special case or cases, as assigned  
12 by the chief judge including in cases where a judge  
13 disqualifies himself or herself on his or her own motion. Such  
14 judge pro tempore must meet the qualifications set forth in  
15 Section 40-2B-16(a), and shall be compensated at a rate  
16 specified by the chief judge, but not at a rate that exceeds  
17 any rate paid to an associate judge.

18 §40-2B-19. Offices of Tax Appeals Commission;  
19 location of hearings.

20 The principal office of the Tax Appeals Commission  
21 shall be in Montgomery, but the commission may hold hearings  
22 in any county seat, in the discretion of the chief judge. If  
23 the appeal involves a tax levied by or on behalf of a  
24 self-administered county or municipality, the Tax Appeals  
25 Commission may hold the hearing in the county seat of the  
26 affected county or the county seat of the county in which the  
27 affected municipality is located. The circuit court sitting in

1 any county, without charge and upon reasonable notice from a  
2 judge of the Tax Appeals Commission, shall provide the Tax  
3 Appeals Commission with suitable rooms and facilities within  
4 the courthouse space assigned to the circuit court. The county  
5 commission shall have no obligation or responsibility to  
6 provide space or facilities. The Tax Appeals Commission may  
7 also hold hearings in the Department of Revenue's service  
8 centers located throughout the state.

9 §40-2B-20. Authority to contract and expend funds;  
10 budget of Tax Appeals Commission; limitation on activities of  
11 personnel.

12 (a) The Tax Appeals Commission, through the chief  
13 judge, may contract or enter into agreements with any private  
14 or governmental agency, including the Administrative Office of  
15 Courts or the Retirement Systems of Alabama, for the rental of  
16 office space, and the rental or purchase of equipment,  
17 administrative or other support services, supplies, and all  
18 other property or services necessary for the operation of the  
19 Tax Appeals Commission. The funds for the operation of the Tax  
20 Appeals Commission shall be administered by the Tax Appeals  
21 Commission, through the chief judge. With respect to the  
22 fiscal year ending September 30, 2012, there shall be  
23 transferred from the Revenue Department Administrative Fund to  
24 the Tax Appeals Commission the amount of four hundred thousand  
25 dollars (\$400,000). In addition, there is appropriated the  
26 amount of twenty-five thousand dollars (\$25,000) from the  
27 General Fund for the fiscal year ending September 30, 2012, to

1 be used exclusively for the creation and operation of the Tax  
2 Appeals Commission. The total appropriation from the State  
3 General Fund for the fiscal year ending September 30, 2012,  
4 shall be allotted at the beginning of the first quarter of the  
5 fiscal year. The amount transferred from the Revenue  
6 Department Administrative Fund shall be disbursed to the Tax  
7 Appeals Commission in four equal increments, at the beginning  
8 of each quarter of the fiscal year. Thereafter, the Tax  
9 Appeals Commission, through the chief judge, shall prepare an  
10 annual budget, and sufficient funds shall be appropriated  
11 annually by the Legislature from the General Fund to be used  
12 exclusively for the operation of the Tax Appeals Commission.

13 (b) No employee of the Tax Appeals Commission or  
14 person serving as judge pro tempore shall act as an authorized  
15 representative or representative of the department before the  
16 Tax Appeals Commission while an employee or while serving as a  
17 judge pro tempore. Nor shall any former employee of the Tax  
18 Appeals Commission or former judge pro tempore act as an  
19 authorized representative, representative of the department,  
20 or otherwise participate in any case that was pending before  
21 the Tax Appeals Commission on the date of termination of that  
22 person's employment with or service on behalf of the Tax  
23 Appeals Commission. A former Tax Appeals Commission judge may  
24 represent a client before the Tax Appeals Commission in a  
25 legal, non-lobbying capacity, in a case that was not pending  
26 before the Tax Appeals Commission when the judge left office,

1 to the same extent former members of the Alabama judiciary are  
2 allowed by Section 36-25-13.

3 §40-2B-21. Records.

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

8 §40-2B-22. Filing fees prohibited.

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

11 §40-2B-23. Fees and expenses of witnesses. Any  
12 witness subpoenaed by the Tax Appeals Commission on its own  
13 motion to testify or produce records at a hearing before the  
14 Tax Appeals Commission shall be entitled to receive from the  
15 Tax Appeals Commission the fees and mileage provided in  
16 Section 40-2A-7(a)(4). Any witness subpoenaed by the Tax  
17 Appeals Commission at the request of a party to testify or  
18 produce records at such a hearing shall be entitled to receive  
19 from the requesting party the fees and mileage provided in  
20 Section 40-2A-7(a)(4).

21 §40-2B-24. Department of Revenue allowed to  
22 acquiesce or nonacquiesce in Tax Appeals Commission and  
23 circuit court decisions.

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



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

6 §40-2B-25. Election by Self-Administered County or  
7 Municipality to Divest Jurisdiction of Tax Appeals Commission.

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

25 (b) Subject to the limitation imposed by subsection  
26 (e), the election-out under this section shall be made by  
27 serving a copy of the ordinance or resolution evidencing the

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

18 (c) Subject to the limitation imposed by subsection  
19 (e), an election-out may be revoked, prospectively, by the  
20 governing body of the self-administered county or municipality  
21 at any time by resolution or ordinance, a certified copy of  
22 which shall be served on the Tax Appeals Commission in the  
23 manner prescribed above. The revocation of an election-out  
24 vests jurisdiction in the Tax Appeals Commission over all  
25 appeals of final assessments or denied refunds, in whole or in  
26 part, of the county's or municipality's sales, use, rental and  
27 lodgings taxes that are entered or denied on or after the date

1 that notice of revocation is published by the Tax Appeals  
2 Commission.

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

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

1                   Section 3. The Code Commissioner shall review Titles  
2 11 and 40 and shall substitute "Alabama Tax Appeals  
3 Commission" for any reference to the Administrative Law  
4 Division of the Department of Revenue, and shall make any  
5 other similar amendments consistent herewith.

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

9                   "§40-2A-3.

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

13                   "~~(1) ADMINISTRATIVE LAW JUDGE. The chief~~  
14 ~~administrative law judge of the department, or any other~~  
15 ~~individual acting in that capacity as appointed by the~~  
16 ~~commissioner.~~

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

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

22                   "~~(3)~~ (2) AUTHORIZED REPRESENTATIVE. Any individual  
23 with written authority or power of attorney to represent a  
24 taxpayer before the department or the Tax Appeals Commission;  
25 provided however, that nothing herein shall be construed as  
26 entitling any such individual who is not a licensed attorney  
27 to engage in the practice of law.

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

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

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

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

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

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

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

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

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

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

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

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

25           "(15) PETITION FOR REVIEW. A written document filed  
26 with the department in response to a preliminary assessment in

1 which the taxpayer sets forth reasonably specific objections  
2 to ~~the~~ a preliminary assessment.

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

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

13 "a. The Department of Revenue.

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

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

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

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

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

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

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

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



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

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

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

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

1 the department, a county, municipality, or its designee, or to  
2 keep any records required by this chapter.

3 ~~"(24)~~ (25) TAXPAYER ADVOCATE. The person so  
4 designated from time to time by the commissioner to assist the  
5 taxpayers of the State of Alabama with regard to tax issues  
6 resulting from any taxes administered or collected by the  
7 department.

8 ~~"(25)~~ (26) TAXPAYER ASSISTANCE ORDER. A written order  
9 issued by the Taxpayer Advocate and approved by either the  
10 commissioner or assistant commissioner which, among other  
11 items, states the facts and grants relief to a taxpayer  
12 concerning an issue in dispute with the department with regard  
13 to tax issues resulting from any taxes administered or  
14 collected by the department or grants a waiver of penalties  
15 otherwise owed to the department by a defined class or group  
16 of taxpayers who are the subject of a declaration of natural  
17 disaster by the Governor.

18 "§40-2A-4.

19 "(a) Rights of the taxpayer.

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

25 ~~"(2)~~ (1) At or before the commencement of an  
26 examination of the books and records of a taxpayer, the  
27 department shall provide to the taxpayer the current version

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

7 ~~"(3)~~ (2) At or before the issuance of a preliminary  
8 assessment, the department shall provide to the taxpayer in  
9 simple and non-technical terms:

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

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

16 ~~"(4)~~ (3) ~~At or before~~ Together with the issuance of a  
17 final assessment, the department shall inform the taxpayer by  
18 a written statement of his or her right to appeal to the  
19 ~~administrative law division~~ Tax Appeals Commission or to  
20 circuit court and shall include the written description  
21 required by subsection (2)a., as revised if necessary to  
22 reflect any changes since the issuance of the preliminary  
23 assessment.

24 ~~"(5)~~ (4) Except in cases involving suspected criminal  
25 violations of the tax law or other criminal activity, the  
26 department shall conduct an examination of a taxpayer during  
27 regular business hours after providing reasonable notice to

1 the taxpayer. A taxpayer who refuses a proposed time for an  
2 examination on the grounds that the proposed examination would  
3 cause inconvenience or hardship must offer reasonable  
4 alternative times and dates for the examination.

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

22 ~~"(7)(6)~~ A taxpayer shall be allowed to make an audio  
23 recording of any in-person interview with any officer or  
24 employee of the department relating to any examination or  
25 investigation by the department, provided, however, the  
26 taxpayer must give reasonable advance notice to the department  
27 of his or her intent to record and the recording shall be at

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

11 ~~"(8)(7)~~ This section shall not apply to criminal  
12 investigations or investigations relating to the integrity of  
13 any officer or employee of the department.

14 "(b) Department responsibilities generally.

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

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

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

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

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

5 "§40-2A-7.

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

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

20 "(2) The department may examine and audit the  
21 records, books, or other relevant information maintained by  
22 any taxpayer or other person for the purpose of computing and  
23 determining the correct amount of value or correct amount of  
24 any tax, license, or fee administered by the department, or  
25 for any other purpose necessary for the proper administration  
26 of any matter under the jurisdiction of the department.

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

13           "(4) The department may summon any witness to appear  
14 and give testimony, and summon by subpoena duces tecum any  
15 records, books, or other information of any kind relating to  
16 any matter which the department has authority to administer.  
17 The witness may be summoned by subpoena issued by the  
18 secretary of the department, any circuit judge, any  
19 magistrate, or any district judge, in the name of the  
20 department, directed to any sheriff of Alabama and returnable  
21 to the department. The subpoena may be served in like manner  
22 as subpoenas issued out of any circuit court in Alabama, or  
23 the subpoena may be served by an authorized employee of the  
24 department or by either U.S. mail with delivery confirmation  
25 or certified mail, return receipt requested. A fee shall be  
26 paid to banking institutions, other similar entities, or any  
27 other person except the taxpayer, for copying, searching for,



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

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

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

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

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

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

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

24                   "(2) TIME LIMITATION FOR ENTERING PRELIMINARY  
25 ASSESSMENT. For purposes of the three-year statute of  
26 limitations provided by this subdivision, the term "return"  
27 refers to the original return required to be filed with the

1 department pursuant to Title 40 or any other statutes  
2 administered by the department. An amended return that  
3 modifies or supplements an original return shall not extend or  
4 renew the three-year limitations period, except as otherwise  
5 provided by this subdivision. Any preliminary assessment shall  
6 be entered within three years from the due date of the return,  
7 or three years from the date the return is filed with the  
8 department, whichever is later, or if no return is required to  
9 be filed, within three years of the due date of the tax,  
10 except as follows:

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

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

20 "For purposes of this paragraph:

21 "1. The term taxable base means the gross income,  
22 gross proceeds from sales, gross receipts, net worth capital  
23 employed, or other amounts on which the tax ~~paid with~~ reported  
24 on the return is computed measured; and

25 "2. In determining the amount omitted from the  
26 taxable base, there shall not be taken into account any amount  
27 which is omitted from the taxable base stated in the return if

1 the amount is disclosed in the return, or in a statement  
2 attached to the return, in a manner adequate to apprise the  
3 department of the nature and amount of the item.

4 "c. A preliminary assessment entered pursuant to  
5 Sections 40-29-72 and 40-29-73, may be entered within five  
6 years from the due date of the return on which the underlying  
7 tax is required to be reported or within five years of the  
8 date the return is filed, whichever is later.

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

19 "2. In the case of income received by a corporation  
20 contemplating dissolution, a preliminary assessment of any  
21 income tax shall be entered within 18 months after written  
22 request, by the corporation, filed after the return is made,  
23 but not after the expiration of three years from the due date  
24 of the return or three years from the date the return is filed  
25 with the department, whichever is later. This subparagraph  
26 shall not apply to any corporation unless dissolution is  
27 completed within 18 months of the date of the written notice.

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

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

20            "g.1.f. Reporting federal audit changes; time  
21 limitations for assessments. When the Internal Revenue Service  
22 changes the amount of federal income tax or federal estate tax  
23 in any manner owed by the taxpayer, and the change results in  
24 an increase in additional income tax or estate tax owed under  
25 this title, the department may, at any time the taxpayer shall  
26 be required to file an amended return with the department  
27 within one year 180 days after the department is notified or

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

16 "1. Within the time period otherwise allowed by this  
17 section.

18 "2. If the taxpayer files an amended return as  
19 prescribed by and within the time specified in this  
20 subdivision, within one year following the date the amended  
21 return, as prescribed in this subdivision, was filed.

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

26 "4. If the taxpayer failed to file an amended return  
27 as prescribed by and within the time specified in this

1 subdivision, within one year following the date when the  
2 department is notified or otherwise learns that the federal  
3 change has become final, provided that the taxpayer has not  
4 filed an amended return to report the federal changes prior to  
5 the department's receipt of such notification.

6 "Any tax assessed within the appropriate additional  
7 one year time period allowed by this subdivision shall be  
8 limited to those items changed on the federal income tax  
9 return or federal estate tax return that affect the income tax  
10 liability or the estate tax liability imposed by this title.

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

23 "3.5. For purposes of this subdivision and  
24 subsection (c)(2)c., the date that a federal change becomes  
25 final is the date on which the taxpayer and the Internal  
26 Revenue Service formally agree to the changes, or the date ~~of~~  
27 on which any administrative or judicial order, judgment, or

1 decree ~~from which no further appeal was or may be taken~~ can no  
2 longer be appealed due to the lapse of time.

3 "h.g. The running of the period of limitations  
4 provided herein for entering a preliminary assessment shall be  
5 suspended for the period that:

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

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

12 "i.h. The department and the taxpayer may, prior to  
13 the expiration of the period for entering a preliminary  
14 assessment or the filing of a petition for refund, agree in  
15 writing to extend the time provided for entering the  
16 assessment or filing the petition in this chapter. The tax may  
17 be assessed, or the petition for refund may be filed, at any  
18 time prior to the expiration of the period agreed upon. The  
19 period agreed upon may be extended by subsequent agreements in  
20 writing made before the expiration of the period previously  
21 agreed upon.

22 "j.i. Additional tax may be assessed by the  
23 department within any applicable period allowed above, even  
24 though a preliminary or final assessment has been previously  
25 entered by the department against the same taxpayer for the  
26 same or a portion of the same tax period. No taxpayer,  
27 however, shall be subject to unnecessary examination or



1 investigation, and only one inspection of a taxpayer's books  
2 and records relating to each type of tax administered by the  
3 department shall be made for each taxable year, unless the  
4 taxpayer requests otherwise or unless the commissioner after  
5 investigation, notifies the taxpayer in writing that an  
6 additional inspection is necessary. The commissioner shall  
7 promulgate regulations consistent with those followed by the  
8 Internal Revenue Service with respect to second inspection of  
9 a taxpayer's books and records.

10 "j. In addition to the time limits otherwise  
11 provided in this section, if the department or a  
12 self-administered county or municipality has erroneously  
13 issued a refund, the department or the self-administered  
14 county or municipality shall have two years from the date the  
15 erroneous refund was mailed or otherwise transmitted to the  
16 recipient to enter a preliminary assessment for the recovery  
17 of the erroneously refunded amount, plus interest.

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

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

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

16            "b. If a written petition for review:

17            "1. Is not timely filed, or

18            "2. Is properly filed, and upon further review the  
19 department determines the preliminary assessment is due to be  
20 upheld in whole or in part, the department may make the  
21 assessment final in the amount of tax due as computed by the  
22 department, with applicable interest and penalty computed to  
23 the date of entry of the final assessment. If upon further  
24 review, the department determines that the taxpayer is due a  
25 refund for the period or periods involved in the preliminary  
26 assessment, the refund shall be granted and paid in accordance  
27 with subsection (c) (4).

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

12           "c.d. The final assessment entered by the  
13 department, or a copy thereof, shall promptly upon entry be  
14 mailed by the department to the taxpayer's last known address  
15 (i) by either first class U.S. mail or certified U.S. mail  
16 with return receipt requested in the case of assessments of  
17 tax of ~~five hundred dollars (\$500)~~ one thousand dollars  
18 (\$1,000) or less or (ii) by certified mail with return receipt  
19 requested in the case of assessments of tax of more than ~~five~~  
20 ~~hundred dollars (\$500)~~ one thousand dollars (\$1,000). In  
21 either case and at the option of the department, the final  
22 assessment, or a copy thereof, may instead be delivered to the  
23 taxpayer by personal delivery or by U.S. mail with delivery  
24 confirmation.

25           (5) PROCEDURE FOR APPEAL FROM FINAL ASSESSMENT.

26           "a. A taxpayer may appeal to the Tax Appeals  
27 Commission from any final assessment entered by the department

1 by filing a notice of appeal with the ~~Administrative Law~~  
2 ~~Division~~ Tax Appeals Commission and the secretary of the  
3 department within ~~30~~ 60 days from the date of entry of the  
4 final assessment, and the appeal, if timely filed, shall  
5 proceed as ~~herein~~ provided in Chapter 2B for appeals to the  
6 ~~Administrative Law Division~~ Tax Appeals Commission.

7 "b.1. In lieu of the appeal under paragraph a., at  
8 the option of the taxpayer, the taxpayer may appeal from any  
9 final assessment entered by the department to the Circuit  
10 Court of Montgomery County, Alabama, or to the circuit court  
11 of the county in which the taxpayer resides or has a principal  
12 place of business in Alabama, as appropriate, by filing a  
13 notice of appeal within ~~30~~ 60 days from the date of entry of  
14 the final assessment with both the secretary of the department  
15 and the clerk of the circuit court in which the appeal is  
16 filed.

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

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

22 "(ii) File a supersedeas bond with the court ~~for~~ in  
23 an amount equal to 125 percent of the amount of the tax,  
24 interest, and any penalty shown on the final assessment. The  
25 supersedeas bond shall be executed by a surety company  
26 licensed and authorized to do business in Alabama and shall be  
27 conditioned to pay the amount of tax, interest, and any

1 penalties shown on the final assessment, plus applicable  
2 interest and any court costs relating to the appeal, payable  
3 to the department, or the self-administered county or  
4 municipality, if applicable.

5 "(iii) File an irrevocable letter of credit with the  
6 circuit court in an amount equal to 125 percent of the amount  
7 of the tax, interest, and any penalty shown on the final  
8 assessment. The irrevocable letter of credit shall be issued  
9 by a financial institution designated as a qualified public  
10 depository by the Board of Directors of the Security for  
11 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter  
12 14A, Title 41. ~~The State of Alabama~~ department, or the  
13 self-administered county or municipality, if applicable, shall  
14 be named the beneficiary of the irrevocable letter of credit.  
15 The irrevocable letter of credit shall be conditioned to pay  
16 the assessment plus applicable interest and any court costs  
17 relating to the appeal. The taxpayer may not issue an  
18 irrevocable letter of credit as to a final assessment entered  
19 against the same taxpayer.

20 "(iv) File a pledge or collateral assignment of  
21 securities with the circuit court that constitute eligible  
22 collateral under Chapter 14A, Title 41, in an amount equal to  
23 200 percent of the amount of the tax, interest, and penalty  
24 shown on the final assessment. The pledge or collateral  
25 assignment shall be in favor of the department, or the  
26 self-administered county or municipality, if applicable, and

1 conditioned to pay the assessment plus applicable interest and  
2 any court costs relating to the appeal.

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

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

12 "c.1. The filing of the notice of appeal with the  
13 ~~Administrative Law Division~~ Tax Appeals Commission and the  
14 secretary of the department or, in the case of appeals to the  
15 circuit court, the filing of the notice of appeal with both  
16 the secretary of the department and the clerk of the circuit  
17 court in which the appeal is filed and also the payment of the  
18 assessment in full ~~and applicable interest~~ or the filing of a  
19 supersedeas bond, an irrevocable letter of credit, or a pledge  
20 or collateral assignment of securities as provided herein, are  
21 jurisdictional. Except as set forth in subparagraph 2., if  
22 such prerequisites are not satisfied within the time provided  
23 for appeal, the appeal shall be dismissed for lack of  
24 jurisdiction.

25 "2. Notwithstanding subparagraph 1., should the  
26 circuit court determine that the taxpayer has not satisfied  
27 the requirements of subparagraph b.2., the circuit court shall

1 order that the taxpayer satisfy such requirements. The  
2 taxpayer may satisfy such requirements at any time within 30  
3 days after service of the court order. No order of dismissal  
4 for lack of jurisdiction shall be entered within 30 days after  
5 service of the court order, and no order of dismissal shall  
6 thereafter be entered if such requirement is satisfied within  
7 such 30-day period.

8 "3. On appeal to the circuit court or to the  
9 ~~Administrative Law Division~~ Tax Appeals Commission, the final  
10 assessment shall be prima facie correct, and the burden of  
11 proof shall be on the taxpayer to prove the assessment is  
12 incorrect.

13 "d.1. The ~~Administrative Law Division~~ Tax Appeals  
14 Commission, circuit court, or the appellate court on appeal  
15 may increase or decrease the assessment to reflect the correct  
16 amount due.

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

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

24 "(c) Procedure governing petitions for refund;  
25 appeals therefrom.

26 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any  
27 taxpayer may file a petition for refund with the department

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

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

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



1 income tax return required by Section 40-18-27 is not timely  
2 filed for a particular year, a petition for refund of  
3 individual income tax paid by withholding or estimated payment  
4 with respect to that year shall be filed, or a credit allowed,  
5 within three years from the original due date of the return.  
6 ~~For purposes of this paragraph, taxes paid through withholding~~  
7 ~~or by estimated payment shall be deemed paid on the original~~  
8 ~~due date of the return.~~

9 "b. Net operating loss carryback. In lieu of the  
10 periods provided in paragraph a., in the case of a net  
11 operating loss carryback, the period for filing a petition for  
12 refund, the department making an automatic refund or allowing  
13 a credit shall be the period prescribed in 26 U.S.C. ~~Section~~  
14 §6511(d)(2) for the claiming of a credit or refund.

15 "c. Federal audit changes. When a federal income tax  
16 return or federal estate tax return is changed after it has  
17 been filed with the Internal Revenue Service, other than by an  
18 amended return, and the change results in an overpayment of  
19 income tax or estate tax imposed by this title, a petition for  
20 refund of the overpayment must be filed within the later of  
21 one year after the federal changes become final or the time  
22 otherwise allowed for the filing of a petition for refund as  
23 provided in this chapter. The refund shall be limited to the  
24 tax overpaid as a result of those items changed on the federal  
25 income tax return or federal estate tax return that affect the  
26 income tax liability or estate tax liability imposed by this  
27 title. For purposes of this subdivision, the date that a

1 federal change becomes final shall be determined as provided  
2 in Section 40-2A-7(b) (2) f.5.

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

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

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

26                   "a. A taxpayer may appeal from the denial in whole  
27 or in part of a petition for refund by filing a notice of

1 appeal with the ~~Administrative Law Division~~ Tax Appeals  
2 Commission within two years from the date the petition is  
3 denied, ~~and the appeal, if.~~ If timely filed, the appeal shall  
4 proceed as ~~hereinafter~~ provided in Chapter 2B for appeals to  
5 the ~~Administrative Law Division~~ Tax Appeals Commission. On  
6 appeal, the Tax Appeals Commission may consider all arguments  
7 relevant to a taxpayer's petition for refund concerning the  
8 type of tax and the tax period or periods involved and may  
9 thereafter increase or decrease the refund due to the taxpayer  
10 for the tax period or periods involved.

11 "b. In lieu of appealing to the ~~Administrative Law~~  
12 ~~Division~~ Tax Appeals Commission, the taxpayer may appeal from  
13 the denial in whole or in part of a petition for refund by  
14 filing a notice of appeal with the Circuit Court in Montgomery  
15 County, Alabama, or the circuit court of the county in which  
16 the taxpayer resides or has a principal place of business in  
17 Alabama, as appropriate, by filing the notice of appeal within  
18 two years from the date the petition is denied. The circuit  
19 court shall hear the appeal according to its own rules and  
20 procedures ~~and shall determine the correct amount of refund~~  
21 ~~due, if any.~~ On appeal, the circuit court may consider all  
22 arguments relevant to a taxpayer's petition for refund  
23 concerning the type of tax and the tax period or periods  
24 involved and may thereafter increase or decrease the refund  
25 due to the taxpayer for the tax period or periods involved.

26 "c. If an appeal is not filed with the  
27 ~~Administrative Law Division~~ Tax Appeals Commission or the

1 appropriate circuit court within two years of the date the  
2 petition is denied, ~~then~~ the appeal shall be dismissed for  
3 lack of jurisdiction.

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

8 "(e) ~~This~~ The amendments made to this section by Act  
9 2007-504 shall apply to all appeals filed after June 15, 2007.  
10 Notwithstanding the prior sentence, in any appeal to a circuit  
11 court which ~~is~~ was pending on June 15, 2007, and in which a  
12 supersedeas bond was filed pursuant to, and in compliance  
13 with, the requirements of this section, for double the amount  
14 of the tax, interest, and any penalty shown on the final  
15 assessment, or for double the amount of the final order of the  
16 administrative law judge, such bond may be reduced to 125  
17 percent of such amount shown on the final assessment or in the  
18 final order of the administrative law judge.

19 "§40-2A-8.

20 "(a) The department shall notify a taxpayer in  
21 writing of any act or proposed act or refusal to act  
22 concerning the denial or revocation of a license, permit, or  
23 certificate of title concerning which the taxpayer has any  
24 interest. The notice must be mailed by either first-class U.S.  
25 mail or certified U.S. mail or U.S. mail with delivery  
26 confirmation to the taxpayer's last known address, or to the  
27 last known address of the taxpayer's authorized

1 representative, if applicable. Any taxpayer aggrieved by any  
2 act or proposed act or refusal to act by the department shall  
3 be entitled to file a notice of appeal from such act or  
4 proposed act or refusal to act with the ~~administrative law~~  
5 ~~division~~ Tax Appeals Commission. Such notice of appeal must be  
6 filed within ~~30~~ 60 days of the date notice of such act or  
7 refusal to act is mailed to the taxpayer, and such appeal, if  
8 timely filed, shall proceed as herein provided for appeals to  
9 the ~~administrative law division.~~ Tax Appeals Commission. Any  
10 taxpayer aggrieved by any act, proposed act, or refusal to act  
11 by the department, who is not issued written notice by the  
12 department of his or her right to appeal, shall have 60 days  
13 from actual notice of such act, proposed act, or refusal to  
14 act in which to appeal to the Tax Appeals Commission. The  
15 burden shall be on the taxpayer in such cases to prove that  
16 the appeal was filed within 60 days of actual notice. If any  
17 matter is timely appealed to the Tax Appeals Commission  
18 pursuant to this section, the commission, in its discretion,  
19 may remand or refer the matter to the department or the  
20 department's Taxpayer Advocate for review before proceeding  
21 with the appeal.

22 "(b) A taxpayer may elect to file a notice of appeal  
23 with the Tax Appeals Commission regarding a notice of proposed  
24 adjustment issued by the department affecting the taxpayer's  
25 net operating loss deductions or carryovers for purposes of  
26 the taxes imposed by Chapters 16 and 18 of this title. Such  
27 notice of appeal shall be filed within the time period

1 prescribed in subsection (a), and the Tax Appeals Commission  
2 shall have jurisdiction to determine the amount of the  
3 taxpayer's net operating loss deductions or carryovers for the  
4 tax periods in question.

5 ~~"(b)(c)~~ The department may proceed with the intended  
6 action if no appeal is filed by the taxpayer with the  
7 ~~administrative law division~~ Tax Appeals Commission within 30  
8 ~~days of the mailing of the notice by the department to the~~  
9 ~~taxpayer.~~ the time allowed under subsection (a). If a  
10 designated agent has failed to provide the department with a  
11 bond and any qualifying license as provided in Section  
12 32-8-34, the revocation of designated agent status by the  
13 department shall be effective immediately upon electronic  
14 notice through the system the designated agent uses to process  
15 applications for certificates of title or receipt of written  
16 notice of revocation, whether by U.S. mail or hand delivery.  
17 Otherwise, the revocation of a designated agent status shall  
18 be effective after the time for appeal under this section has  
19 expired. The revocation of any motor vehicle certificate of  
20 title or license by the department shall not be final until  
21 either the titled owner and lien holder, if any, consent to  
22 the revocation or the time for filing an appeal to the Tax  
23 Appeals Commission has expired. The department may obtain an  
24 injunction in the appropriate circuit court at any time  
25 enjoining a licensee or designated agent from continuing to  
26 operate under a disputed license or designated agent  
27 authority, if the continued operation may cause substantial

1 loss of revenue, would cause substantial harm to the state or  
2 public, or for such other good reason as determined by the  
3 circuit court. The department may suspend the designated  
4 agent's access to process new applications for certificate of  
5 title until such time as any outstanding title applications  
6 not properly filed by the designated agent are properly filed  
7 with the department.

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

14           "~~(d)~~(e) A taxpayer may appeal any matter governed by  
15 this section to the circuit court only after exhausting ~~his~~  
16 the appeal rights provided under this section. Any appeal to  
17 the circuit court must be from a final or other appealable  
18 order issued by the ~~administrative law judge~~ Tax Appeals  
19 Commission.

20           "§40-2A-10.

21           "(a) Except as otherwise provided in this section,  
22 it shall be unlawful for any person to print, publish, use, or  
23 divulge, without the written permission or approval of the  
24 taxpayer, the return of any taxpayer or any part of the  
25 return, or any information secured in arriving at the amount  
26 of tax or value reported, for any purpose other than the  
27 proper administration of any matter administered by the



1 department, a county, or a municipality, or upon order of any  
2 court or the Tax Appeals Commission, or as otherwise allowed  
3 in this section. Statistical information pertaining to taxes  
4 may be disclosed at the discretion of the commissioner or his  
5 or her delegate to the legislative or executive branch of the  
6 state. Upon request, the commissioner or his or her delegate  
7 may make written disclosure as to the status of compliance of  
8 entities subject to the requirements contained in Chapter 14,  
9 prior to its repeal, and Chapter 14A, as applicable. A  
10 conditional good standing certificate shall be issued to a  
11 requesting person with respect to a business entity if the  
12 entity has filed all state tax returns required under Chapter  
13 14, prior to its repeal, and Chapter 14A, as applicable, and  
14 paid the taxes shown ~~as payable in accordance with~~ due on  
15 those returns. Any person found guilty of violating this  
16 section shall, for each act of disclosure, have committed a  
17 Class A misdemeanor. Additionally, to the extent provided in  
18 26 U.S.C. § 7213A, it shall be unlawful for any state employee  
19 willfully to inspect, except as authorized in 26 U.S.C. §  
20 6103, any federal tax return or federal tax return information  
21 acquired by the employee or another person under a provision  
22 of 26 U.S.C. § 6103 referred to in 26 U.S.C. § 7213(a) (2).

23 "(b) This section shall not apply to returns filed  
24 and information secured under laws of the state (1) governing  
25 the registration and titling of motor vehicles, (2) levying or  
26 imposing excise taxes or inspection fees upon the sale of,  
27 use, and other disposition of gasoline and other petroleum

1 products, (3) governing the licensing of motor vehicle  
2 dealers, reconditioners, rebuilders, wholesalers, and  
3 automotive dismantlers and parts recyclers, (4) governing the  
4 privilege licenses as provided in Chapter 12, other than  
5 Article 4, of this title or (5) governing the issuance or  
6 affixing of tobacco stamps required under Chapter 25.

7 "(c) This section shall not apply to the disclosure  
8 of the amount of local privilege license or franchise fees  
9 paid to counties and municipalities by any taxpayer possessing  
10 a franchise (whether or not exclusive) granted by the  
11 respective county or municipality. However, any information  
12 other than the amount of license or franchise fees paid,  
13 including returns or parts thereof or documents filed with or  
14 secured by any municipality or county or their authorized  
15 agent and relating to local privilege licenses and franchises  
16 shall remain confidential information subject to subsection  
17 (a).

18 "(d) Except as otherwise provided in ~~subsection (m)~~  
19 ~~of Section 40-2A-9, the orders of the administrative law judge~~  
20 ~~and all evidence, pleadings, and any other information offered~~  
21 ~~or submitted in any appeal before the Administrative Law~~  
22 ~~Division are not~~ Sections 40-2B-9 and 40-2B-11, all evidence  
23 or other information filed with or introduced as evidence in a  
24 Tax Appeals Commission appeal shall not be subject to this  
25 section.

26 "(e) The commissioner shall promulgate reasonable  
27 regulations permitting and governing the exchange of tax

1 returns, information, records, and other documents secured by  
2 the department, with tax officers of other agencies of the  
3 state, municipal, and county government agencies in the state,  
4 federal government agencies, any association of state  
5 government tax agencies, any state government tax agencies of  
6 other states, and any foreign government tax agencies.

7 However, (1) any tax returns, information, records, or other  
8 documents remain subject to the confidentiality provisions set  
9 forth in subsection (a); (2) the department may charge a  
10 reasonable fee for providing information or documents for the  
11 benefit of self-administered counties and municipalities; (3)  
12 self-administered counties and municipalities may charge a  
13 reasonable fee for providing information or documents for the  
14 benefit of the department; and (4) any exchange shall be for  
15 one or more of the following purposes:

16 "a. Collecting taxes due.

17 "b. Ascertaining the amount of taxes due from any  
18 person.

19 "c. Determining whether a person is liable for, or  
20 whether there is probable cause for believing a person might  
21 be liable for, the payment of any tax to a federal, state,  
22 county, municipal, or foreign government agency.

23 "(f) (1) Nothing herein shall prohibit the use of tax  
24 returns or tax information by the department or county tax  
25 collecting officials in the proper administration of any  
26 matter administered by the department or county tax collecting  
27 officials. The department, a municipality, or county tax

1 official may also divulge to a purchaser, prospective  
2 purchaser, as defined pursuant to the regulations of the  
3 department, or successor of a business or stock of goods the  
4 outstanding sales, use, or rental tax liability of the seller  
5 for which the purchaser, prospective purchaser, as defined  
6 pursuant to the regulations of the department, or successor  
7 may be liable pursuant to ~~Section~~ Sections 40-23-25, 40-23-82,  
8 ~~or and~~ 40-12-224. This section shall not preclude the  
9 inspection of returns by federal or foreign state agents  
10 pursuant to Section 40-18-53.

11 "(2) Upon a request by the State Treasurer, the  
12 commissioner may provide the State Treasurer with the names  
13 and addresses of those persons entitled to property acquired  
14 by the state under Article 2A of Chapter 12 of Title 35, the  
15 Uniform Disposition of Unclaimed Property Act of 2004, as  
16 amended from time to time. The information shall be used by  
17 the State Treasurer solely for the purpose of administering  
18 the Uniform Disposition of Unclaimed Property Act of 2004, as  
19 amended from time to time.

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

25 "(h) In no event shall any damages, attorney fees,  
26 or court costs be assessed against the state, a county, or a  
27 municipal government under this section, nor shall any

1 damages, attorney fees, or court costs be assessed against  
2 elected officials, officers, or employees of a state, county,  
3 or municipal government.

4 "§40-2A-11.

5 "(a) Failure to timely file ~~return~~ certain returns.  
6 ~~If~~ Except as provided below, if a taxpayer fails to file any  
7 return required to be filed with the department on or before  
8 the date prescribed therefor, determined with regard to any  
9 extension of time for filing, there shall be assessed as a  
10 penalty the greater of an amount equal to 10 percent of any  
11 ~~additional~~ the correct amount of tax required to be paid with  
12 the return or fifty dollars (\$50). If the taxpayer is not  
13 required to pay any additional tax due with the return, the  
14 penalty imposed by this subsection shall not be assessed  
15 unless the department has first provided 30 days' written  
16 notice to the taxpayer, at the last known address of the  
17 taxpayer, that the return has not been filed and the taxpayer  
18 fails or refuses to file the delinquent return within that  
19 time period. This subsection shall not apply to any individual  
20 income tax return or amended return filed with the department  
21 if the taxpayer claims thereon and is due a refund of income  
22 tax.

23 "(b) Failure to timely pay tax.

24 "(1) If a taxpayer fails to pay to the department  
25 the amount of tax shown as due on a return required to be  
26 filed on or before the date prescribed for payment of the tax,  
27 determined with regard to any extension of time for payment,

1 there shall be added as a penalty one percent of the net  
2 amount of the tax due if the failure to pay is for not more  
3 than one month, with an additional one percent for each  
4 additional month or fraction thereof during which failure to  
5 pay continues, not exceeding 25 percent in the aggregate. In  
6 lieu of the penalty provided in the immediately preceding  
7 sentence, for any tax for which a monthly or quarterly return  
8 is required, or for which no return is required, the  
9 department shall add a failure to timely pay penalty of 10  
10 percent of the unpaid amount shown as tax due on the return or  
11 the amount stated in the notice and demand.

12 "(2) If a taxpayer fails to pay to the department  
13 any amount in respect of any tax required to be shown on any  
14 return, which is not so shown, within 30 calendar days from  
15 the date of ~~the first notice and demand therefore~~ entry of the  
16 preliminary assessment relating to the tax, there shall be  
17 added as a penalty one percent of the net amount of the tax  
18 due if the failure to pay is for not more than one month, with  
19 an additional one percent for each additional month or  
20 fraction thereof during which failure to pay continues, not  
21 exceeding 25 percent in the aggregate. In lieu of the penalty  
22 provided in the immediately preceding sentence, for any tax  
23 for which a monthly or quarterly return is required, or for  
24 which no return is required, the department shall add a  
25 failure to timely pay penalty of 10 percent of the unpaid  
26 amount stated in the ~~notice and demand~~ preliminary assessment

1 unless payment is received within 30 calendar days from the  
2 date of ~~the first notice and demand~~ its entry.

3 "(3) This subsection shall not apply to any failure  
4 to pay any estimated tax required to be paid by Sections  
5 40-18-80 and 40-18-80.1.

6 "(c) Underpayment due to negligence or substantial  
7 understatement. ~~If any part of~~ If this subsection applies to  
8 any portion of an underpayment of tax required to be shown on  
9 a return, there shall be added to the tax an amount equal to  
10 20 percent of the portion of the underpayment to which this  
11 subsection applies. This subsection shall apply to the portion  
12 of any underpayment of tax ~~is due to negligence or disregard~~  
13 ~~of rules or regulations, there shall be added to the tax an~~  
14 ~~amount equal to five percent of that part of the tax~~  
15 ~~attributable to negligence or disregard of rules or~~  
16 ~~regulations.~~ which is attributable to one or more of the  
17 following:

18 "(1) Negligence or disregard of rules or  
19 regulations. For purposes of this ~~subsection~~ subdivision, the  
20 term "negligence" includes any failure to make a reasonable  
21 attempt to comply with ~~Title 40~~ this title or other statutes  
22 administered by the department, and the term "disregard"  
23 includes any careless, reckless, or intentional disregard of  
24 valid rules and regulations.

25 "(2) Any substantial understatement of tax. For  
26 purposes of this subdivision, the term "understatement" means  
27 the excess of the amount of tax required to be shown on the

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

12 "(d) Underpayment due to fraud. If any part of any  
13 underpayment of tax required to be shown on a return is due to  
14 fraud, there shall be added to the tax an amount equal to ~~50~~  
15 75 percent of that portion of the underpayment which is  
16 attributable to fraud.

17 "For purposes of this section, the term "fraud"  
18 shall have the same meaning as ascribed to the term under 26  
19 U.S.C. ~~Section §6663~~, as in effect from time to time, except  
20 that the reference therein to the secretary shall instead mean  
21 the commissioner.

22 "(e) Frivolous return penalty. If a taxpayer files a  
23 "frivolous return," as that term is used in 26 U.S.C. ~~Section~~  
24 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~  
25 hundred fifty dollars (\$250) one thousand dollars (\$1,000).

26 "(f) Frivolous appeal penalty. If any appeal to the  
27 ~~administrative law division~~ Tax Appeals Commission or circuit



1 court is determined to be frivolous or primarily for the  
2 purpose of delay or to impede collection of any tax, a penalty  
3 of ~~two hundred fifty dollars (\$250)~~ one thousand dollars  
4 (\$1,000) or, at the discretion of the Tax Appeals Commission  
5 or circuit judge, up to 25 percent of the tax in question,  
6 whichever is greater, shall be assessed in addition to any tax  
7 due.

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

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

25 "(g)(i) Penalties not exclusive. The penalties  
26 provided in this section for failure to timely file a return,  
27 failure to timely pay tax, filing a frivolous return, filing a

1 frivolous appeal, or underpayment of tax due to either  
2 negligence or a substantial understatement may be asserted  
3 against the same taxpayer for the same tax period. If the  
4 fraud penalty is asserted, however, no other penalties shall  
5 be asserted.

6 "~~(h)~~ (j) Waiver of penalties. Notwithstanding the  
7 foregoing, no penalty under this title or Section 10-2B-15.02  
8 shall be assessed, if reasonable cause exists; or if a penalty  
9 has been assessed, it shall be waived upon a determination of  
10 reasonable cause. Reasonable cause shall include, but not be  
11 limited to, those instances in which the taxpayer has acted in  
12 good faith. The burden of proving reasonable cause shall be on  
13 the taxpayer.

14 "~~(i)~~ (k) Discount sustained for ~~just causes~~  
15 reasonable cause. All other provisions of tax laws  
16 notwithstanding, either the ~~Commissioner of the Department of~~  
17 ~~Revenue~~ commissioner or the taxpayer advocate of the  
18 department, upon review of the circumstances involved, may  
19 authorize the continuance or reinstatement of ~~a~~  
20 ~~statute-allowable~~ an otherwise allowable discount for timely  
21 payment or filing when timely payment ~~is made, but~~ or filing  
22 ~~is~~ was delayed for ~~just causes~~ reasonable cause.

23 "~~(j)~~ (l) Penalty and interest assessed as tax. All  
24 penalties and interest administered by the department shall be  
25 assessed and collected in the same manner as taxes.

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

4           "§40-18-27.

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

22           "(b) A taxpayer other than a resident shall not be  
23 entitled to the deductions authorized by Sections 40-18-15 and  
24 40-18-15.2 unless the taxpayer files a complete return showing  
25 the gross income of the taxpayer both from within and outside  
26 the state. Included on every income tax return shall be the  
27 name, and address, and social security number of the person

1 who prepared the return. The taxpayer shall be held liable for  
2 any statement made by an agent of the taxpayer with reference  
3 to any information required by law to be furnished in  
4 connection with that tax return.

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

24 "(d) Every individual who willfully files and signs  
25 or otherwise validates under rules or regulations of the  
26 Department of Revenue a return which the individual does not  
27 believe to be true and correct as to every material particular

1 shall be guilty of perjury and, upon conviction thereof, shall  
2 be imprisoned in the penitentiary for not less than one, nor  
3 more than five years.

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

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

17 Section 6. The provisions of this act are severable.  
18 If any part of this act is declared invalid or  
19 unconstitutional, that declaration shall not affect the part  
20 which remains.

21 Section 7. It is the intent of the Legislature that  
22 the existence, authority, and powers of the Administrative Law  
23 Division of the Department of Revenue shall remain in full  
24 force and effect until the Tax Appeals Commission created  
25 herein becomes fully operational on October 1, 2011, and that  
26 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8  
27 shall continue to be filed with and handled by the

1 Administrative Law Division until that date. To that end, the  
2 repeal of Section 40-2A-9, and those portions of other  
3 sections of Titles 11 and 40 relating to the powers,  
4 authority, and duties of the Administrative Law Division and  
5 the administrative law judge, and the right of a taxpayer to  
6 appeal to the Administrative Law Division, shall not become  
7 effective until October 1, 2011. Notwithstanding the  
8 foregoing, the Tax Appeals Commission shall not have  
9 jurisdiction over any appeals regarding taxes levied by or on  
10 behalf of a self-administered county or municipality until  
11 October 1, 2012. The amendments to Section 40-2A-7(b)(2)f.,  
12 Code of Alabama 1975, relating to amended returns due to  
13 federal audit changes, and Section 40-2A-11, Code of Alabama  
14 1975, relating to civil penalties, by this act shall only  
15 apply to tax periods beginning on or after January 1, 2012.

16 Section 8. This act shall become effective upon its  
17 passage and approval by the Governor, or its otherwise  
18 becoming law.