

1 SB347  
2 126763-7  
3 By Senator Brooks  
4 RFD: Judiciary  
5 First Read: 05-APR-11

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

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

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

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

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

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

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

9  
10 A BILL

11 TO BE ENTITLED

12 AN ACT

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

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

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

3           CHAPTER 2B

4           CREATION AND OPERATION OF THE ALABAMA TAX APPEALS  
5 COMMISSION

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

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

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

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

23           §40-2B-2. Definitions.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

13 (1) Open the record and receive appearances.

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

18 (3) Interrogate witnesses if deemed necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) As otherwise ordered by the judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 §40-2B-21. Records.

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

11 §40-2B-22. Filing fees prohibited.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

13 "§40-2A-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           "a. The Department of Revenue.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

19 "§40-2A-4.

20 "(a) Rights of the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 "(b) Department responsibilities generally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           "(6) INSTALLMENT PAYMENTS.

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



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

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

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

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

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

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

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

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

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

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

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

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

3 "§40-2A-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 "§40-2A-7.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

24                   "For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

24 "b. If a written petition for review:

25 "1. Is not timely filed, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 "§40-2A-8.

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

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

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

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

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

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

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



1           "§40-2A-10.

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

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

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

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

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

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

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

24 "a. Collecting taxes due.

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

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

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

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

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

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

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

14 "§40-2A-11.

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

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

6 "(b) Failure to timely pay tax.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

10 "§40-18-27.

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

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

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

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

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

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

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

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

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

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