

# Engrossed



BILL STATUS

1 SB549

2 142519-2

3 By Senator Brooks

4 RFD: Judiciary

5 First Read: 19-APR-12



1 SB549

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3  
4 ENGROSSED

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6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To add Chapter 2B to Title 40 of the Code of Alabama  
12 1975, to provide for the creation and operation of the Alabama  
13 Tax Appeals Commission, to state that the intent of this act  
14 is to adopt in large part the American Bar Association Model  
15 State Administrative Tax Tribunal Act; to hear appeals of tax  
16 and other matters administered by the Department of Revenue,  
17 and certain taxes levied by or on behalf of self-administered  
18 counties or municipalities that do not opt-out; to provide the  
19 necessary funding for the first year of operations of the Tax  
20 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,  
21 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of  
22 Alabama 1975, for purposes of conformity to the federal  
23 Taxpayer's Bill of Rights, including broader "innocent spouse"  
24 type relief and increased penalties for negligence, fraud, and  
25 frivolous appeals or returns; to make technical corrections;  
26 to require amended state income tax returns as a result of IRS

1       audit changes; to increase the amount of time a taxpayer has  
2       to file an appeal of a preliminary or final assessment; and to  
3       abolish the Administrative Law Division of the Department of  
4       Revenue, including repealing Section 40-2A-9, Code of Alabama  
5       1975.

6       BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1           It is the intent of the Legislature to adopt in  
2 large part 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.

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

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

23           CHAPTER 2B

24           CREATION AND OPERATION OF THE ALABAMA TAX APPEALS

25           COMMISSION

26           §40-2B-1. Alabama Tax Appeals Commission.

1 (a) As part of the executive branch of state  
2 government, there is hereby created an independent commission  
3 to be known as the Alabama Tax Appeals Commission, also  
4 referred to herein as the "Tax Appeals Commission."

5 (b) The Tax Appeals Commission shall become fully  
6 operational on October 1, 2012. The Tax Appeals Commission, in  
7 cases within its jurisdiction:

8 (1) Is a commission of limited and special  
9 jurisdiction.

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

18 (c) The Tax Appeals Commission shall have a seal  
19 engraved with the words Alabama Tax Appeals Commission. The  
20 Tax Appeals Commission shall authenticate all of its orders,  
21 records, correspondence, and proceedings with the seal, and  
22 the courts of this state shall take judicial notice of the  
23 seal.

24 §40-2B-2. Definitions.

25 (a) The definitions provided for in Section 40-2A-3  
26 shall also apply to this chapter, except as provided in this

1 section. For purposes of this chapter, the following terms  
2 shall have the following meanings:

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

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

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

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

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

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

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

5           §40-2B-3. Jurisdiction and initial organization of  
6 the Tax Appeals Commission.

7           (a) The Tax Appeals Commission shall have  
8 jurisdiction to hear and determine all appeals pending before  
9 the Department of Revenue's Administrative Law Division on  
10 September 30, 2012, and all subsequent appeals filed with the  
11 Tax Appeals Commission pursuant to Chapters 2A and 29 of this  
12 title, Chapters 6, 7A, 13, and 20 of Title 32, relating to  
13 motor vehicles, or Section 40-2B-25, relating to  
14 self-administered counties and municipalities, except as  
15 follows:

16           (1) Appeals filed directly with the circuit court  
17 either from a final assessment entered by the department, or  
18 from the department's denial in whole or in part of a claim  
19 for refund.

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



1           (3) Any appeals regarding a sales, use, rental, or  
2 lodgings tax levied or collected by or on behalf of a  
3 self-administered county or municipality if the governing body  
4 of the county or municipality has made an election under  
5 Section 40-2B-25 to divest the Tax Appeals Commission of  
6 jurisdiction over the dispute, challenge, or appeal. Such  
7 appeals shall be heard by the employee or other agent of the  
8 self-administered county or municipality serving in the  
9 capacity of a hearings or appeals officer, subject to Section  
10 40-2A-6.

11           (b) To provide for a proper transition from the  
12 Administrative Law Division to the Tax Appeals Commission, the  
13 Department of Revenue, on or before October 1, 2012, shall  
14 transfer to the Tax Appeals Commission office furniture,  
15 equipment, computers, and other tangible personal property  
16 used by the Administrative Law Division, as well as all case  
17 files, docket books, and all other documents and information,  
18 in both tangible and intangible form, compiled, used, or  
19 maintained by the Administrative Law Division. Further, any  
20 appeals that are timely filed with the Administrative Law  
21 Division after September 30, 2012, shall be deemed timely  
22 filed with and transferred to the Tax Appeals Commission. The  
23 Chief Administrative Law Judge of the Administrative Law  
24 Division shall have and is hereby granted the power and  
25 authority necessary to effect an orderly transition,  
26 including, but not limited to, the power and authority to

1 execute binding contracts and commitments on behalf of the Tax  
2 Appeals Commission with respect to employees, office space,  
3 equipment, and other property, consistent with Sections  
4 40-2B-16 and 40-2B-20.

5 §40-2B-4. Service of papers and process.

6 Except concerning notices to the Department of  
7 Revenue from the Tax Appeals Commission, or as otherwise  
8 provided in this chapter, the Tax Appeals Commission shall  
9 mail any final order in which a judgment is entered or  
10 affirmed or any notice of hearing by either U.S. mail with  
11 delivery confirmation or certified U.S. mail, return receipt  
12 requested, to the taxpayer's last known address, or if the  
13 taxpayer has an authorized representative, to the authorized  
14 representative's last known address. All other orders or  
15 documents may, at the Tax Appeals Commission's discretion, be  
16 mailed by first class U.S. mail.

17 §40-2B-5. Timely mailed document considered to be  
18 timely filed.

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

22 (1) Timely mailed or delivered in accordance with  
23 Section 40-1-45 and Department of Revenue regulations  
24 pertinent thereto;

25 (2) Received by the Tax Appeals Commission on or  
26 before the date due; or

1                   (3) Received by the Tax Appeals Commission in  
2 legible form by facsimile or electronic transmission on or  
3 before the due date, if the original, signed document is  
4 mailed or delivered to the Tax Appeals Commission within seven  
5 days after receipt of the facsimile or electronic  
6 transmission.

7                   §40-2B-6. Issuance of subpoenas; administration of  
8 oaths.

9                   (a) A judge of the Tax Appeals Commission shall have  
10 the authority and the discretion to issue subpoenas, on his or  
11 her own motion or at the request of a party, requiring any  
12 person whose testimony may be relevant to an appeal to appear  
13 and give testimony, either at a deposition or a hearing before  
14 the judge. If a person is subpoenaed to testify at a  
15 deposition or a hearing at the request of a party, that party  
16 shall bear the cost of transcription of the deposition and the  
17 fees and mileage provided in Section 40-2A-7(a)(4). The judge  
18 shall also have discretion to issue subpoenas duces tecum  
19 requiring the production of any document or other evidence  
20 relevant to the appeal. Such subpoenas or subpoenas duces  
21 tecum shall be issued in the name of the Tax Appeals  
22 Commission, signed by a judge of the Tax Appeals Commission,  
23 and may be served either in the same manner as subpoenas  
24 issued by a circuit court, or by either U.S. mail with  
25 delivery confirmation or certified U.S. mail, return receipt  
26 requested. If any person has been subpoenaed to appear and

1 testify or appear and produce documents or other information,  
2 and fails or refuses to appear or testify or to produce such  
3 documents or other information, such person shall be subject  
4 to contempt proceedings, if instituted by a petition for  
5 contempt issued by a judge of the Tax Appeals Commission, in  
6 the circuit court of the judicial circuit in which such person  
7 resides, and upon proof of such fact to the circuit court, may  
8 be punished for contempt as is provided in cases of contempt  
9 in circuit court. Such proof of contempt may be evidenced by  
10 an affidavit of a judge of the Tax Appeals Commission.

11 Likewise, such circuit court shall have jurisdiction to hear,  
12 and if appropriate, to grant a motion to quash such subpoena.

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

16 §40-2B-7. Hearings to be without a jury and de novo.

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

19 §40-2B-8. Notice to taxpayer of right to appeal to  
20 Tax Appeals Commission.

21 The department shall notify a taxpayer of the right  
22 to appeal to the Tax Appeals Commission, and the  
23 jurisdictional requirements for perfecting the appeal. Such  
24 notice shall be given with a final assessment, or with any  
25 notice by the department informing the taxpayer that his or  
26 her claim for refund has been denied in whole or in part, or

1 any notice by the department informing the taxpayer of any  
2 act, proposed act, or refusal to act by the department from  
3 which the taxpayer has a right to appeal to the Tax Appeals  
4 Commission.

5 §40-2B-9. Procedures concerning appeals.

6 (a) The purpose of this section is to establish  
7 uniform procedures concerning appeals to the Tax Appeals  
8 Commission and to establish the authority and responsibilities  
9 of the judges of the Tax Appeals Commission concerning those  
10 appeals. This section shall be liberally construed to provide  
11 for the fair, efficient, and complete resolution of all  
12 matters in dispute.

13 (b) Judges of the Tax Appeals Commission shall hear  
14 and decide all appeals to the Tax Appeals Commission, as  
15 assigned by the chief judge. A judge, without a hearing, may  
16 dismiss any appeal, or grant appropriate relief to any party,  
17 if a party fails or refuses to comply with any Tax Appeals  
18 Commission regulation or statute concerning appeals before the  
19 Tax Appeals Commission, or if any party fails or refuses to  
20 comply with any preliminary order issued by a judge. The  
21 judge, for good cause, may reinstate an appeal dismissed under  
22 this subsection or withdraw an order granting relief, but only  
23 if an application to reinstate the appeal or withdraw the  
24 order is filed within 15 days from the date on which the order  
25 dismissing the appeal or granting the relief was entered, or  
26 on the judge's own motion within 90 days. A final order

1 dismissing an appeal or granting relief to a party may be  
2 appealed to circuit court in the same manner and subject to  
3 the same requirements as appeals from final or other  
4 appealable orders of the Tax Appeals Commission.

5 (c) The notice of appeal filed with the Tax Appeals  
6 Commission shall identify the final assessment, denied refund,  
7 or other act or refusal to act by the department which is the  
8 subject of the appeal, the position of the appealing party,  
9 the basis on which relief should be granted, and the relief  
10 sought. A notice of appeal that does not include all of the  
11 above information shall be sufficient to invoke the  
12 jurisdiction of the Tax Appeals Commission. The judge may  
13 require a taxpayer to file an amended notice of appeal if more  
14 information is deemed necessary.

15 (d) (1) Except as provided in subdivision (2), the  
16 Tax Appeals Commission shall notify the legal division of the  
17 Department of Revenue in writing that an appeal has been filed  
18 and shall mail a copy of such notification to the taxpayer or  
19 its authorized representative. The legal division shall file a  
20 written answer with the Tax Appeals Commission within 60 days  
21 from the date of issuance of the notice to the legal division.  
22 The judge may allow the legal division additional time, not to  
23 exceed 30 days, within which to file an answer, but only if  
24 the legal division requests the extension within the 60-day  
25 period provided by the preceding sentence. The answer shall  
26 state the facts and the issues involved and the Department of

1 Revenue's position relating thereto. The judge may require the  
2 Department of Revenue to file an amended answer if more  
3 information is deemed necessary. A county or municipality may  
4 consult with the legal division of the Department of Revenue  
5 concerning any appeal that involves the county's or  
6 municipality's tax that is administered by the Department of  
7 Revenue.

8 (2) If the appeal involves a tax levied by or on  
9 behalf of a self-administered county or municipality, the Tax  
10 Appeals Commission shall promptly mail a copy of the notice of  
11 appeal by either U.S. mail with delivery confirmation or  
12 certified U.S. mail to the governing body of the affected  
13 county or municipality and shall provide the taxpayer or its  
14 authorized representative with written notification of the  
15 date the copy was mailed to the governing body. The affected  
16 county or municipality shall file a written answer with the  
17 Tax Appeals Commission within 60 days of the date of mailing  
18 the notice of appeal to the affected county or municipality.  
19 The judge may allow the county or municipality additional  
20 time, not to exceed 30 days, within which to file an answer,  
21 but only if the county or municipality requests the extension  
22 within the 60-day period provided by the preceding sentence.  
23 The answer shall state the facts and the issues involved and  
24 the county's or municipality's position relating thereto. The  
25 judge may require the county or municipality to file an  
26 amended answer if more information is deemed necessary. The

1 county or municipality and its authorized representatives may  
2 consult with the legal division of the Department of Revenue  
3 concerning the appeal.

4 (e) An appeal may be held in abeyance at the  
5 discretion of the judge or may be submitted for decision on a  
6 joint stipulation of facts without a hearing or as otherwise  
7 agreed by the parties. Otherwise, except as provided in  
8 Section 40-2B-9 (b), a hearing shall be conducted by the  
9 judge. Notice of the hearing shall be mailed to the taxpayer  
10 at the taxpayer's last known address, by either U.S. mail with  
11 delivery confirmation or certified U.S. mail, return receipt  
12 requested, or to the taxpayer's representative, if any, at the  
13 representative's last known address, by either U.S. mail with  
14 delivery confirmation or certified U.S. mail, return receipt  
15 requested. Except as provided in the next sentence, notice of  
16 the hearing shall be mailed to the Department of Revenue by  
17 first class U.S. mail, by intragovernmental hand-mail, or  
18 otherwise delivered as provided by regulation. If the appeal  
19 involves a tax levied by or on behalf of a self-administered  
20 county or municipality, the Tax Appeals Commission shall  
21 instead promptly mail a copy of the notice of the hearing to  
22 the governing body of the affected county or municipality by  
23 either U.S. mail with delivery confirmation or certified U.S.  
24 mail. The judge shall conduct the hearing substantially as  
25 follows:

- 26 (1) Open the record and receive appearances.



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

5           (3) Interrogate witnesses if deemed necessary.

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

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

11           (f) A judge may enter a preliminary order directing  
12 one or more parties to take such action as deemed appropriate  
13 or referring any issue or issues in dispute to the Department  
14 of Revenue's Taxpayer Advocate for consideration if the issue  
15 or issues relate to a tax administered by the Department of  
16 Revenue. A judge, after a hearing or after a case is otherwise  
17 submitted for decision, may issue an opinion and preliminary  
18 order, which shall include findings of fact and conclusions of  
19 law. The opinion and preliminary order may direct the  
20 department to recompute a taxpayer's liability or the amount  
21 of a refund due or for any party to take such action as  
22 specified in the preliminary order.

23           (g) A final order shall be entered by the judge and  
24 shall contain findings of fact and conclusions of law. The  
25 final order shall provide appropriate relief under the  
26 circumstances, and, unless altered or amended on appeal or

1 rehearing, shall have the same force and effect as a final  
2 order issued by a circuit court in Alabama.

3 (h) If a preliminary order, an opinion and  
4 preliminary order, or a final order involves a tax levied by  
5 or on behalf of a self-administered county or municipality and  
6 is within the jurisdiction of the Tax Appeals Commission, the  
7 Tax Appeals Commission shall mail a copy of the order to the  
8 governing body of the affected county or municipality and, if  
9 applicable, its authorized representative, by either U.S. mail  
10 with delivery confirmation or certified U.S. mail return  
11 receipt requested, within three days of the date of entry. The  
12 failure of the Tax Appeals Commission, however, to timely mail  
13 a copy of an order to the affected municipality or county, or  
14 the failure of the municipality or county to receive the  
15 order, shall not affect the validity of the order.

16 (i) Any party may apply for rehearing from any final  
17 order or opinion and preliminary order, provided, however, the  
18 application must be filed within 15 days from the date of  
19 entry of such order. The application for rehearing shall  
20 specify the reasons and supporting arguments why such order is  
21 incorrect and should be reconsidered. The timely filing of an  
22 application for rehearing from a final order shall suspend the  
23 time period for filing an appeal to circuit court. If an  
24 application for rehearing is timely filed, the judge shall  
25 thereafter issue a final or other order on rehearing, either  
26 with or without a hearing on the application, at the

1 discretion of the judge. The time for filing a notice of  
2 appeal to circuit court shall begin anew on the date of entry  
3 of the final order on rehearing.

4 (j) All hearings before the Tax Appeals Commission  
5 shall be recorded by a qualified court reporter. The  
6 proceedings shall be transcribed at the request of either the  
7 department, the taxpayer, the affected self-administered  
8 county or municipality, or the Tax Appeals Commission, with  
9 the expense of transcription to be paid by the requesting  
10 party. The record of the proceedings shall be maintained by  
11 the Tax Appeals Commission for at least five years. Upon  
12 appeal to circuit court, the Tax Appeals Commission shall  
13 submit the record on appeal, including any transcript, to the  
14 circuit court for use in the appeal.

15 (k) The rules of evidence applicable in civil  
16 nonjury cases in the circuit courts of Alabama shall be  
17 followed by the Tax Appeals Commission. Evidence not  
18 admissible thereunder may be admitted, however, in the  
19 discretion of the judge, if relevant, not unfairly prejudicial  
20 to any party, and necessary for the fair adjudication of the  
21 case. The judge may announce before or during a hearing that  
22 it shall not be necessary for either party to object to any  
23 testimony or evidence offered by a party, and any objections  
24 shall be preserved and may be made on appeal. The final order  
25 issued by the judge shall be based only on such evidence as is  
26 relevant and material. Documentary evidence may be received in

1 copy form if there is no objection thereto or in the  
2 discretion of the judge. Official notice may be taken of any  
3 technical facts within the specialized knowledge of the judge.

4 (l) A taxpayer or a self-administered county or  
5 municipality may be represented before the Tax Appeals  
6 Commission by an authorized representative. If a taxpayer or a  
7 self-administered county or municipality or their authorized  
8 representative fails to appear at a hearing after proper  
9 service of notice, the judge may dismiss the appeal with  
10 prejudice, reset the matter for a subsequent hearing, or  
11 proceed with the hearing.

12 (m) Any taxpayer upon application may be permitted  
13 to intervene in any dispute before the Tax Appeals Commission  
14 to the extent allowed in Circuit Court under the Alabama Rules  
15 of Civil Procedure. Intervenors may also appeal to circuit  
16 court from a final or other appealable order, as provided  
17 herein for appeals. Parties interested in the outcome of any  
18 case before the Tax Appeals Commission, with the permission of  
19 the judge, may submit amicus briefs.

20 (n) All testimony, exhibits, documents, and other  
21 materials submitted by a party or introduced into evidence at  
22 a hearing before the Tax Appeals Commission, and all final and  
23 other orders issued by the judge, shall be deemed public  
24 information except:

1           (1) Information received from the Internal Revenue  
2 Service that is restricted by law or agreement from  
3 disclosure.

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

7           (3) As otherwise ordered by the judge.

8           §40-2B-10. Burden of proof in Tax Appeals Commission  
9 proceedings.

10           On appeal to the Tax Appeals Commission, a final  
11 assessment shall not be prima facie correct, and the burden of  
12 proof shall be on the department to prove that the assessment  
13 is correct. In cases involving denied refunds, the burden  
14 shall be on the taxpayer to prove that a refund is due. The  
15 judge shall have discretion to determine the party to proceed  
16 first with the evidence in the case.

17           §40-2B-11. Hearings to be open to public; report of  
18 proceedings; exception; confidential information.

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

22           (b) A judge may close a hearing to the public if, in  
23 the discretion of the judge, trade secrets, federal or other  
24 tax information, confidential business records, or other  
25 confidential information may be disclosed during the hearing.  
26 A judge may also issue protective orders concerning any

1 evidence involving trade secrets, federal or other tax  
2 information, confidential business records, or other  
3 confidential information. In determining whether a hearing  
4 should be closed or a protective order issued, the judge shall  
5 weigh the harm that may be suffered by the disclosing party  
6 against any benefit received by the public as a result of the  
7 disclosure. If the judge closes a hearing or issues a  
8 protective order as requested by a party or refuses to close a  
9 hearing or issue a requested protective order, the judge shall  
10 issue an order to that effect. The order shall explain the  
11 reasons why the request was granted or denied, as applicable.

12 (c) An order closing a hearing or granting a  
13 protective order or an order denying same shall be considered  
14 a final order for purposes of appeal to circuit court. A party  
15 may appeal such an order to circuit court in the same manner  
16 and subject to the same requirements as appeals from final  
17 orders of the Tax Appeals Commission, except that if the case  
18 involves a disputed final assessment, the final assessment  
19 need not be paid, nor a supersedeas bond or other security  
20 filed, in connection with the appeal. The Tax Appeals  
21 Commission may stay the case on the merits until the issue is  
22 finally resolved on appeal.

23 §40-2B-12. Authority to issue regulations. The Tax  
24 Appeals Commission, through the chief judge, is authorized to  
25 issue regulations governing procedures and practice before the  
26 Tax Appeals Commission, and matters of internal organization

1 and operation. Such regulations shall be issued in accordance  
2 with Chapter 22 of Title 41.

3 §40-2B-13. Appeals to circuit court; reviewing  
4 authority and action on appeal.

5 (a) Other than an application for rehearing to the  
6 Tax Appeals Commission, the exclusive remedy for review of any  
7 final or other appealable order issued by the Tax Appeals  
8 Commission shall be by appeal to the appropriate circuit  
9 court.

10 (b) The taxpayer, an intervenor pursuant to Section  
11 40-2B-9(m), a self-administered county or municipality whose  
12 tax is within the jurisdiction of the Tax Appeals Commission,  
13 or the Department of Revenue may appeal to circuit court from  
14 a final or other appealable order issued by the Tax Appeals  
15 Commission by filing a notice of appeal with the appropriate  
16 circuit court within 45 days from the date the final or other  
17 appealable order was entered. A copy of the notice of appeal  
18 shall be submitted to the Tax Appeals Commission within the  
19 45-day appeal period. The Tax Appeals Commission shall  
20 thereafter prepare a record on appeal. The appeal shall be  
21 filed in the following circuit courts:

22 (1) Any appeal by the Department of Revenue, a  
23 self-administered county or municipality whose tax is within  
24 the jurisdiction of the Tax Appeals Commission, or an  
25 intervenor shall be filed with the circuit court of the county

1 in which the taxpayer resides or has a principal place of  
2 business in Alabama.

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

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

14 (c) If the appeal to circuit court pursuant to  
15 subsection (b) is by a taxpayer from a final order involving a  
16 final assessment, the taxpayer, within the 45-day appeal  
17 period, shall do one of the following:

18 (1) Remit the amount of the final assessment  
19 determined to be due by the final order to the Department of  
20 Revenue, or to the self-administered county or municipality,  
21 if applicable.

22 (2) Execute a supersedeas bond, which shall be  
23 executed by a surety company licensed to do business in  
24 Alabama, in an amount equal to 125 percent of the amount  
25 determined to be due by the final order, plus applicable  
26 interest and any court costs relating to the appeal, payable



1 to the Department of Revenue, or to the self-administered  
2 county or municipality, if applicable, and conditioned to pay  
3 the amount determined to be due by the final order.

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

19 (4) File a pledge or collateral assignment of  
20 securities with the circuit court that constitute eligible  
21 collateral under Chapter 14A of Title 41, in an amount equal  
22 to 200 percent of the amount determined to be due by the final  
23 order. The pledge or collateral assignment shall be in favor  
24 of the Department of Revenue, or the self-administered county  
25 or municipality, if applicable, and conditioned to pay the  
26 amount determined to be due by the final order, plus

1 applicable interest and any court costs relating to the  
2 appeal.

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

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

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

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

18 (2) If the circuit court determines that the  
19 taxpayer has not satisfied the requirements of subsection (b)  
20 or (c), the circuit court shall order that the taxpayer  
21 satisfy such requirements. The taxpayer may satisfy such  
22 requirements at any time within 30 days after service of the  
23 court order. No order of dismissal for lack of jurisdiction  
24 shall be entered within 30 days after service of the court  
25 order and no order of dismissal shall thereafter be entered if  
26 such requirement is satisfied within such 30-day period.

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

16           §40-2B-14. Publication of Tax Appeals Commission  
17 decisions.

18           Subject to Section 40-2B-9, the decisions determined  
19 to be of general public interest may be published and  
20 distributed by the Tax Appeals Commission, as prescribed by  
21 the chief judge. Provided that a decision may not be published  
22 until either the time period for appealing the decision has  
23 expired or the Tax Appeals Commission has received a copy of  
24 the notice of appeal pursuant to Section 40-2B-13(b), in which  
25 case the fact that the decision has been appealed shall be  
26 noted on the first page of the published decision. A

1 reasonable fee may be charged for the publication, as  
2 established from time to time by the chief judge.

3 §40-2B-15. Appointment and term of judges; maximum  
4 number; vacancy.

5 (a) The term of a judge of the Tax Appeals  
6 Commission shall be six years, except as herein provided. The  
7 term of the first chief judge shall begin on October 1, 2012.

8 (b) Additional or successor judges of the Tax  
9 Appeals Commission shall be nominated by the Governor, except  
10 as provided below. The Governor shall submit the nominee's  
11 name to the Senate Confirmation Committee for approval. The  
12 nominee's name, if approved by the Senate Confirmation  
13 Committee, shall then be submitted for approval by the full  
14 Senate. If the Senate fails to approve the nominee by the  
15 adjournment of the legislative session during which the  
16 Governor submits the nominee's name, the Governor shall  
17 appoint a Judge Pro Tempore until such time as the Senate  
18 reconvenes and approves a nominee. The term of any new or  
19 successor judge shall begin on the first day of the month  
20 following the date of approval by the full Senate.

21 (c) There shall be no less than one nor more than  
22 three judges serving at any one time. The initial judge of the  
23 Tax Appeals Commission shall serve as chief judge. If the  
24 chief judge determines that a second or third judge is  
25 necessary, based on current and anticipated case load, the  
26 chief judge shall so notify the Governor, and the Governor

1 shall thereafter determine whether a second or third judge is  
2 necessary. If the Governor agrees with the chief judge's  
3 determination, the Governor shall commence proceedings under  
4 this section to fill the additional position. The chief judge  
5 may, with the advice and consent of the Governor, eliminate an  
6 associate judge position if the current and anticipated case  
7 load does not warrant the position.

8 (d) If a Tax Appeals Commission judge's position  
9 becomes vacant, the vacancy shall be filled according to the  
10 method set forth in subsection (b).

11 §40-2B-16. Qualifications of Tax Appeals Commission  
12 judge; oath; Tax Appeals Commission employees.

13 (a) Each Tax Appeals Commission judge shall be a  
14 United States citizen, domiciled in Alabama, a member in good  
15 standing of the Alabama State Bar Association and have been a  
16 licensed attorney in the State of Alabama for a minimum of  
17 five years. The judge shall possess an acceptable judicial  
18 temperament and a high level of knowledge and degree of  
19 experience in the area of state and local taxation, as  
20 determined by the Governor.

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

24 (c) Tax Appeals Commission judges shall be subject  
25 to disciplinary proceedings before the Judicial Inquiry  
26 Commission to the same extent as circuit judges. The Judicial

1 Inquiry Commission shall have the authority to remove any Tax  
2 Appeals Commission judge from office, after notice and an  
3 opportunity to be heard, for neglect of duty, inability to  
4 perform duties, malfeasance in office, or other good cause.

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

1 Commission judges shall also participate in the State  
2 Employees' Retirement System.

3 (e) The chief judge may employ one Executive  
4 Assistant III as an unclassified service state employee, as  
5 provided in Section 36-26-10(c). All other Tax Appeals  
6 Commission personnel shall be appointed or hired by the chief  
7 judge, as necessary for the proper operation of the Tax  
8 Appeals Commission, shall be state employees under the state  
9 Merit System, and shall be entitled to all benefits and  
10 protections available to state employees. The Executive  
11 Assistant III employed in the Administrative Law Division as  
12 of September 30, 2012, shall be transferred to the Tax Appeals  
13 Commission, along with any other Merit System employees  
14 employed by the Administrative Law Division on that date.

15 §40-2B-17. Judge's salary, expenses.

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

1 Department of Revenue, who shall become the initial chief  
2 judge of the Tax Appeals Commission pursuant to Section  
3 40-2B-18(a).

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

12 §40-2B-18. Chief judge; associate judges; functions.

13 (a) The initial chief judge of the Tax Appeals  
14 Commission shall be the chief administrative law judge of the  
15 Department of Revenue serving on September 30, 2012.  
16 Thereafter, the individual who is nominated as chief judge by  
17 the Governor, and approved by the Senate or appointed Pro  
18 Tempore by the Governor, as provided in Section 40-2B-15(b),  
19 shall serve as chief judge.

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



1 (c) All judges of the Tax Appeals Commission, other  
2 than the chief judge, shall be designated as associate judges,  
3 and shall have the same authority and powers of the chief  
4 judge, except as specified in this chapter.

5 (d) If a judge of the Tax Appeals Commission dies,  
6 retires, or resigns, or is unable to serve as judge, or is  
7 removed from office for cause, the Governor may appoint a Tax  
8 Appeals Commission judge pro tempore, who must meet the  
9 qualifications for a Tax Appeals Commission judge set forth in  
10 Section 40-2B-16(a). Such appointment shall become effective  
11 the first day of the month following the submission of the  
12 appointment letter by the chief justice to the Governor's  
13 Office. Such judge pro tempore shall serve until such time as  
14 a successor judge is confirmed by the Senate, as provided  
15 herein. If the judge pro tempore is appointed to fill the  
16 position of chief judge, he or she shall be compensated at the  
17 rate provided herein for the chief judge, and shall have and  
18 exercise all powers granted the chief judge. Otherwise, a  
19 judge pro tempore shall be compensated at the rate of an  
20 associate judge, and shall have and exercise all the powers  
21 granted an associate judge. Such compensation shall be paid  
22 out of the appropriation for the Tax Appeals Commission. The  
23 chief judge may also appoint a judge pro tempore to hear a  
24 special case or cases, as assigned by the chief judge,  
25 including in cases where a judge disqualifies himself or  
26 herself on his or her own motion. Such judge pro tempore must

1 meet the qualifications set forth in Section 40-2B-16(a), and  
2 shall be compensated at a rate specified by the chief judge,  
3 but not at a rate that exceeds any rate paid to an associate  
4 judge.

5 §40-2B-19. Offices of Tax Appeals Commission;  
6 location of hearings.

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

1           §40-2B-20. Authority to contract and expend funds;  
2 budget of Tax Appeals Commission; limitation on activities of  
3 personnel.

4           (a) The Tax Appeals Commission, through the chief  
5 judge, may contract or enter into agreements with any private  
6 or governmental agency, upon approval of the Finance Director,  
7 for the rental of office space, and the rental or purchase of  
8 equipment, administrative or other support services, supplies,  
9 and all other property or services necessary for the operation  
10 of the Tax Appeals Commission. The funds for the operation of  
11 the Tax Appeals Commission shall be administered by the Tax  
12 Appeals Commission, through the chief judge. With respect to  
13 the fiscal year ending September 30, 2013, there shall be  
14 transferred from the Revenue Department Administrative Fund to  
15 the Tax Appeals Commission the amount of four hundred  
16 twenty-five thousand dollars (\$425,000). The amount  
17 transferred from the Revenue Department Administrative Fund  
18 shall be disbursed to the Tax Appeals Commission in four equal  
19 increments, at the beginning of each quarter of the fiscal  
20 year. Thereafter, the Tax Appeals Commission, through the  
21 chief judge, shall prepare an annual budget, and funds shall  
22 be appropriated annually by the Legislature from the Revenue  
23 Department Administrative Fund to be used exclusively for the  
24 operation of the Tax Appeals Commission.

25           (b) No employee of the Tax Appeals Commission or  
26 person serving as judge pro tempore shall act as an authorized

1 representative or representative of the department before the  
2 Tax Appeals Commission while an employee or while serving as a  
3 judge pro tempore. Nor shall any former employee of the Tax  
4 Appeals Commission or former judge pro tempore act as an  
5 authorized representative, representative of the department,  
6 or otherwise participate in any case that was pending before  
7 the Tax Appeals Commission on the date of termination of that  
8 person's employment with or service on behalf of the Tax  
9 Appeals Commission. A former Tax Appeals Commission judge may  
10 represent a client before the Tax Appeals Commission in a  
11 legal, non-lobbying capacity, in a case that was not pending  
12 before the Tax Appeals Commission when the judge left office,  
13 to the same extent former members of the Alabama judiciary are  
14 allowed by Section 36-25-13.

15 §40-2B-21. Records.

16 The Tax Appeals Commission shall maintain an  
17 official docket, fee book, and other records as deemed  
18 necessary by the chief judge. Such records may be maintained  
19 in electronic format.

20 §40-2B-22. Filing fees prohibited.

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

23 §40-2B-23. Fees and expenses of witnesses. Any

24 witness subpoenaed by the Tax Appeals Commission on its own  
25 motion to testify or produce records at a hearing before the  
26 Tax Appeals Commission shall be entitled to receive from the

1 Tax Appeals Commission the fees and mileage provided in  
2 Section 40-2A-7(a) (4). Any witness subpoenaed by the Tax  
3 Appeals Commission at the request of a party to testify or  
4 produce records at such a hearing shall be entitled to receive  
5 from the requesting party the fees and mileage provided in  
6 Section 40-2A-7(a) (4).

7 §40-2B-24. Department of Revenue allowed to  
8 acquiesce or nonacquiesce in Tax Appeals Commission and  
9 circuit court decisions.

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

14 (b) Acquiescence in a decision means acceptance by  
15 the Department of Revenue of the conclusion reached, but does  
16 not necessarily mean acceptance and approval of the reasons or  
17 rationale of the Tax Appeals Commission or circuit court for  
18 its conclusion.

19 §40-2B-25. Election by Self-Administered County or  
20 Municipality to Divest Jurisdiction of Tax Appeals Commission.

21 (a) Unless a self-administered county or  
22 municipality elects, in the manner prescribed below, to divest  
23 the Tax Appeals Commission of jurisdiction over appeals of  
24 final assessments or denied refunds in whole or in part, of  
25 any sales, use, rental or lodgings taxes levied or collected  
26 from time to time by or on behalf of the self-administered

1 county or municipality, a taxpayer may appeal a final  
2 assessment or denied refund involving any such tax to the Tax  
3 Appeals Commission in accordance with the procedures and  
4 requirements provided in Section 40-2A-7 and this chapter. For  
5 purposes of any appeal filed by a taxpayer pursuant to this  
6 section, the term "department" as used in Section 40-2A-7  
7 means the governing body of the applicable self-administered  
8 county or municipality and not the Department of Revenue, and  
9 the term "secretary" as used in Section 40-2A-7 means the  
10 clerk of the governing body of the applicable  
11 self-administered county or municipality.

12 (b) Subject to the limitation imposed by subsection  
13 (e), the election-out under this section shall be made by  
14 serving a copy of the ordinance or resolution evidencing the  
15 election-out, adopted by the governing body of the  
16 self-administered county or municipality pursuant to this  
17 section, with the Tax Appeals Commission. Service may be  
18 accomplished by mailing a copy of the ordinance or resolution,  
19 certified by an appropriate official, by either U.S. mail with  
20 delivery confirmation or certified U.S. mail, return receipt  
21 requested, by hand delivery, or by an expedited courier  
22 service to the Tax Appeals Commission's office. The Tax  
23 Appeals Commission shall promptly publish notice of the  
24 election-out pursuant to subsection (d), and the election  
25 shall be effective on the date that notice is published.  
26 Notwithstanding the foregoing, appeals of final assessments or

1 denied refunds involving the electing county or municipality  
2 that were pending before the Tax Appeals Commission on the  
3 date that notice of the election-out is published shall  
4 continue to be heard and decided by the Tax Appeals Commission  
5 as if the election-out had not been made.

6 (c) Subject to the limitation imposed by subsection  
7 (e), an election-out may be revoked, prospectively, by the  
8 governing body of the self-administered county or municipality  
9 at any time by resolution or ordinance, a certified copy of  
10 which shall be served on the Tax Appeals Commission in the  
11 manner prescribed above. The revocation of an election-out  
12 vests jurisdiction in the Tax Appeals Commission over all  
13 appeals of final assessments or denied refunds, in whole or in  
14 part, of the county's or municipality's sales, use, rental and  
15 lodgings taxes that are entered or denied on or after the date  
16 that notice of revocation is published by the Tax Appeals  
17 Commission.

18 (d) At least once a month, the Tax Appeals  
19 Commission shall provide the Department of Revenue with a list  
20 of all self-administered counties and municipalities that have  
21 elected-out pursuant to subsection (b), or that have filed a  
22 notice of revocation of their election-out pursuant to  
23 subsection (c). The Department of Revenue shall publish the  
24 list on its website and otherwise make available to the public  
25 in the same manner that the rates and administrators of  
26 certain county and municipal taxes are published by the

1 Department of Revenue. The Tax Appeals Commission may also  
2 publish the list on its own website.

3 (e) A self-administered county or municipality may  
4 make only one election-out under subsection (b) or one  
5 revocation under subsection (c) during each calendar year. If  
6 an appeal is timely filed with the Tax Appeals Commission  
7 after the notice of an election-out by the self-administered  
8 county or municipality is published by the Tax Appeals  
9 Commission, the appeal shall be deemed timely filed with and  
10 transferred to the self-administered county or municipality.  
11 If an appeal is timely filed with a self-administered county  
12 or municipality after the notice of revocation by the  
13 self-administered county or municipality is published by the  
14 Tax Appeals Commission, the appeal shall be deemed timely  
15 filed with and transferred to the Tax Appeals Commission.

16 Section 3. The Code Commissioner shall review Titles  
17 11 and 40 and shall substitute "Alabama Tax Appeals  
18 Commission" for any reference to the Administrative Law  
19 Division of the Department of Revenue, and shall make any  
20 other similar amendments consistent herewith.

21 Section 4. Sections 40-2A-3, 40-2A-4, 40-2A-5,  
22 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of Alabama  
23 1975, are amended to read as follows:

24 "§40-2A-3.



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

4           ~~"(1) ADMINISTRATIVE LAW JUDGE. The chief~~  
5 ~~administrative law judge of the department, or any other~~  
6 ~~individual acting in that capacity as appointed by the~~  
7 ~~commissioner.~~

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

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

13           ~~"(3)~~ (2) AUTHORIZED REPRESENTATIVE. Any individual  
14 with written authority or power of attorney to represent a  
15 taxpayer before the department or the Tax Appeals Commission;  
16 provided however, that nothing herein shall be construed as  
17 entitling any such individual who is not a licensed attorney  
18 to engage in the practice of law.

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

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

24           "(5) COMPTROLLER. The Comptroller of the State of  
25 Alabama.

1           "(6) DELEGATE. When used with reference to the  
2 commissioner means any officer or employee of the department  
3 duly authorized by the commissioner, directly or indirectly,  
4 by one or more redelegations of authority, to perform the  
5 function described in the context.

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

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

19           "(9) FINAL ASSESSMENT. The final notice of value,  
20 underpayment, or nonpayment of any tax administered by the  
21 department.

22           "(10) INTEREST. That amount computed under Section  
23 40-1-44, on any overpayment or underpayment of tax or under  
24 Section 40-2A-18 on a final assessment.

25           "(11) INTERNAL REVENUE SERVICE. The agency of the  
26 United States principally responsible for the determination,

1 assessment, and collection of taxes established by Title 26 of  
2 the United States Code.

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

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

10 "(14) PETITION FOR REFUND. Any written request for a  
11 refund of any tax previously paid, including ~~a request~~ in the  
12 form of ~~an~~ any return or amended return. Unless otherwise  
13 provided by law, the request shall include sufficient  
14 information to identify the type and amount of tax overpaid,  
15 the taxpayer, the period included, and the reasons for the  
16 refund.

17 "(15) PETITION FOR REVIEW. A written document filed  
18 with the department in response to a preliminary assessment in  
19 which the taxpayer sets forth reasonably specific objections  
20 to ~~the~~ a preliminary assessment.

21 "(16) PRELIMINARY ASSESSMENT. The preliminary notice  
22 of value, ~~or~~ underpayment, or nonpayment of any tax  
23 administered by the department.

24 "(17) PRIVATE EXAMINING ~~AUDITING~~ OR COLLECTING FIRM.  
25 Any person in the business of collecting, through contract or  
26 otherwise, local sales, use, rental, lodgings or other taxes

1 or license fees for any county or municipality, or auditing  
2 any taxpayer, through the examination of books and records,  
3 for any county or municipality. The term shall not include any  
4 of the following:

5 "a. The Department of Revenue.

6 "b. A county or municipality that has entered into a  
7 contract or other arrangement to collect local sales, use,  
8 rental, lodgings or other taxes or license fees on behalf of  
9 another county or municipality, or to audit a taxpayer,  
10 through the examination of books and records, on behalf of  
11 another county or municipality.

12 "c. A person or firm whose sole function and purpose  
13 on behalf of a municipality or group of municipalities is to  
14 collect delinquent insurance premium license fees levied by  
15 that municipality or group of municipalities, and who has no  
16 authority to determine the amount of license fee, interest,  
17 court cost, or penalty owed to the municipality or group of  
18 municipalities.

19 "(18) PUBLICATION 1A. A written pamphlet to be  
20 distributed by the department to all taxpayers whose books and  
21 records are being examined by the department, at or before the  
22 commencement of an examination, explaining in simple and  
23 nontechnical terms, the role of the department and the rights  
24 of the taxpayer, ~~whose books and records are being examined by~~  
25 ~~the department during the examination and which shall be~~

1 promptly revised from time to time to reflect any changes in  
2 the applicable law or rules.

3 "(19) RETURN. Any report, document, or other  
4 statement required to be filed with the department for the  
5 purpose of paying, reporting, or determining the proper amount  
6 of value or tax due.

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

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

15 "a. A county or municipality that allows the  
16 department to administer a sales, use, rental, or lodgings tax  
17 which is levied by or on behalf of that county or  
18 municipality.

19 "b. A municipality or county that levies a gross  
20 receipts tax in the nature of a sales tax, as defined in  
21 subdivision (8). A county or municipality that both  
22 self-administers a sales, use, rental, or lodgings tax and  
23 allows the department to administer a sales, use, rental, or  
24 lodgings tax that is levied by or on behalf of the county or  
25 municipality is only a self-administered county or  
26 municipality with respect to those sales, use, rental, or

1 lodgings taxes that the county or municipality administers  
2 itself or for those taxes that it contracts for the  
3 collection.

4 "(22) TAX. Any amount, including applicable penalty  
5 and interest, levied or assessed against a taxpayer and which  
6 the department or any county, municipality, or their designees  
7 are required or authorized to administer under the provisions  
8 of Alabama law.

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

12 "~~(23)~~ (24) TAXPAYER. Any person subject to or liable  
13 for any state or local tax; any person required to file a  
14 return with respect to, or to pay, or withhold and remit any  
15 state or local tax or to report any information or value to  
16 the department, a county, municipality, or its designee; or  
17 any person required to obtain or holding any interest in any  
18 license, permit, or certificate of title issued by the  
19 department, a county, municipality, or its designee, or any  
20 person that may be affected by any act or refusal to act by  
21 the department, a county, municipality, or its designee, or to  
22 keep any records required by this chapter.

23 "~~(24)~~ (25) TAXPAYER ADVOCATE. The person so  
24 designated from time to time by the commissioner to assist the  
25 taxpayers of the State of Alabama with regard to tax issues

1 resulting from any taxes administered or collected by the  
2 department.

3 "~~(25)~~(26) TAXPAYER ASSISTANCE ORDER. A written order  
4 issued by the Taxpayer Advocate and approved by either the  
5 commissioner or assistant commissioner which, among other  
6 items, states the facts and grants relief to a taxpayer  
7 concerning an issue in dispute with the department with regard  
8 to tax issues resulting from any taxes administered or  
9 collected by the department or grants a waiver of penalties  
10 otherwise owed to the department by a defined class or group  
11 of taxpayers who are the subject of a declaration of natural  
12 disaster by the Governor.

13 "§40-2A-4.

14 "(a) Rights of the taxpayer.

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

20 "(1) For purposes of sections (a), (c), and (d), the  
21 term "department" shall include the Department of Revenue, a  
22 self-administered county or municipality, or a private  
23 examining or collecting firm, depending on whether the  
24 Department of Revenue, a self-administered county, or  
25 municipality, or private examining or collecting firm is  
26 conducting the examination of the taxpayer.

1           " (2) ~~At or~~ One week before the commencement of an  
2 examination of the books and records of a taxpayer, the  
3 department shall provide to the taxpayer the current version  
4 of Publication 1A. Publication 1A shall provide, in simple and  
5 non-technical terms, a statement of the taxpayer's rights.  
6 Those rights include the right to be represented during an  
7 examination, an explanation of their appeal rights, and the  
8 right to know the criteria and procedures used to select  
9 taxpayers for an examination.

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

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

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

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



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

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

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

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

20           "(b) Department responsibilities generally.

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

1 response after several attempts to communicate with the  
2 department employee assigned to the taxpayer's case, or his or  
3 her immediate superiors. In addition, this officer shall  
4 review and have the authority to waive a penalty for  
5 reasonable cause as provided in subsection (h) of Section  
6 40-2A-11, shall promptly review inquiries concerning release  
7 of property levied upon, the erroneous filing of liens, the  
8 failure to release a lien for good cause, other matters  
9 complained of by a taxpayer or other affected party, or  
10 matters referred to him or her by a judge of the Tax Appeals  
11 Commission. The review process shall include consultation with  
12 the taxpayer or his or her authorized representative, and the  
13 self-administered county or municipality, if applicable,  
14 regarding the background for the inquiry, complaint, or  
15 request for waiver of penalty or other relief sought. The  
16 Taxpayer Advocate shall have no authority nor issue any ruling  
17 with regard to any taxes collected by or on behalf of a  
18 self-administered county or municipality.

19 "a. The Taxpayer Advocate shall, subject to the  
20 approval of the commissioner or the assistant commissioner,  
21 issue taxpayer assistance orders in the form and manner  
22 prescribed herein and by department regulations.

23 "b. Notwithstanding any statute of limitation or  
24 other provision in this title, a taxpayer assistance order may  
25 declare that any tax, including a final assessment, was  
26 erroneously assessed or reported and is not a liability due

1 the state, or that a petition for refund was erroneously  
2 denied by the department.

3 "c. A taxpayer assistance order shall grant relief  
4 as deemed appropriate, including the voiding of any  
5 erroneously issued final assessment for a tax which was not a  
6 debt due the state, granting of any refund due the taxpayer,  
7 or abating an assessment of interest that has accrued because  
8 of undue delay by department personnel.

9 "d. At the request of the Tax Appeals Commission,  
10 the taxpayer advocate shall review a final order issued by the  
11 Tax Appeals Commission that was not appealed pursuant to  
12 Section 40-2B-13, if there is newly discovered evidence which  
13 by due diligence could not have been discovered in time to  
14 file an application for rehearing pursuant to Section  
15 40-2B-9(i), and may grant such relief as the taxpayer advocate  
16 deems appropriate.

17 "d.e. All taxpayer assistance orders shall be dated  
18 and signed by the Taxpayer Advocate and approved either by the  
19 commissioner or the assistant commissioner, and shall state  
20 the underlying facts, the reasons for granting relief, and the  
21 relief granted. Any taxpayer assistance order may, for good  
22 cause, be modified or rescinded in writing by the Taxpayer  
23 Advocate and either the commissioner or ~~the~~ assistant  
24 commissioner.

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

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

11           "g.h. The commissioner shall make an annual report  
12 to the Legislature of all taxpayer assistance orders approved  
13 in accordance with the provisions of this section and Sections  
14 40-2A-2 and 40-2A-3. Such report shall contain the total  
15 amount of relief granted and the types of taxes for which  
16 relief was granted.

17           "(2) The department shall maintain a continuing  
18 education program to train employees of the department and to  
19 provide them with a current knowledge of state and applicable  
20 federal tax laws.

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

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

1            "a. The basis of a production quota system for  
2 employees; or

3            "b. The basis for evaluating an employee's  
4 performance.

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

8            "(6) INSTALLMENT PAYMENTS.

9            "a. The commissioner is authorized to enter into  
10 written agreements to allow any taxpayer to pay any tax in  
11 installment payments if the commissioner determines that such  
12 an agreement will facilitate collection of such the tax.  
13 Notwithstanding the preceding sentence, such agreements shall  
14 be entered into only regarding a tax ~~that has been finally~~  
15 ~~assessed by the department and not appealed~~ liability  
16 resulting from a final assessment from which an appeal can no  
17 longer be taken, unless the right to appeal is waived by the  
18 taxpayer in writing, and such agreements shall not extend for  
19 a period exceeding ~~twelve~~ 12 months, provided, that any such  
20 agreement may be renewed at the discretion of the commissioner  
21 for succeeding periods not to exceed ~~twelve~~ 12 months. The  
22 commissioner shall only be authorized to enter such an  
23 agreement with regard to a tax administered or collected by  
24 the department.

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

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

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

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

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

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

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

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

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

1 administered or collected by the self-administered county, or  
2 municipality or the private examining or collecting firm.

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

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

23 "§40-2A-5.

24 "(a) The commissioner may, in addition to all other  
25 powers and authority now granted by law, issue "revenue  
26 rulings" describing the substantive application of any law or



1 regulation administered by the department. Revenue rulings may  
2 also govern procedures applicable to the department, and in  
3 that event, shall be called "revenue procedures." Revenue  
4 rulings shall be binding on the department and the state, its  
5 political subdivisions, and taxing authorities only with  
6 respect to the taxpayer making the request and only with  
7 respect to the facts contained in the request. The department  
8 attorney assigned to review the request for a revenue ruling  
9 shall consult with the taxpayer or their authorized  
10 representative, if requested by the taxpayer or their  
11 authorized representative, prior to issuing the revenue  
12 ruling. A revenue ruling shall constitute the department's  
13 interpretation of the law or regulations as applied to the  
14 facts contained in the request, but only pertaining to the  
15 particular facts described in the request, and only to the  
16 taxpayer making the request.

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

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

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

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

4           "(3) The law applied by the commissioner in the  
5 revenue ruling is changed in a manner to alter the  
6 commissioner's conclusions in the ruling and the change in the  
7 law is made effective as of the date of the ruling.

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

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

24           "(e) Requests for revenue rulings shall be submitted  
25 in writing to the secretary in the form and manner as  
26 prescribed by department regulations, accompanied by a fee of

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

15 "(f) Revenue rulings shall be issued in the name of  
16 the commissioner.

17 "(g) Subject to the provisions of this section, the  
18 commissioner may also issue a revenue ruling in response to a  
19 written request by a governing body of a self-administered  
20 county or municipality, or by a taxpayer, regarding the  
21 substantive application of a sales, use, rental, or lodgings  
22 tax levied by or on behalf of the self-administered  
23 municipality or county; provided, however, that the  
24 commissioner may not (i) issue a revenue ruling interpreting  
25 any tax levied by or on behalf of a self-administered  
26 municipality or county which levies a gross receipts tax in

1 the nature of a sales tax, as defined in Section 40-2A-3(8),  
2 or (ii) issue a revenue ruling that would establish a rule of  
3 nexus determining the locality to which sales and use taxes,  
4 or gross receipts taxes in the nature of a sales tax as  
5 defined by Section 40-2A-3(8), are due if the locality is a  
6 self-administered county or municipality, as defined by  
7 Section 40-2A-3(20). Revenue rulings shall be binding on a  
8 self-administered county or municipality only with respect to  
9 the specific taxpayer making the request and only with respect  
10 to the specific facts contained in the request. Any ruling  
11 shall, if the other requirements of this section are met, be  
12 issued within 45 days of receipt of the request, and if the  
13 requesting party is a self-administered municipal or county  
14 governing body, the fee for issuance of the ruling shall be  
15 waived. If the requesting party is a taxpayer, the department  
16 shall, promptly upon receipt, forward a copy of the ruling  
17 request to the appropriate municipal or county governing body  
18 and shall consult with and accept written comments from  
19 representatives of the municipality or county prior to  
20 issuance of the ruling.

21 "§40-2A-7.

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

24 "(1) In addition to all other recordkeeping  
25 requirements otherwise set out in this title, taxpayers shall  
26 keep and maintain an accurate and complete set of records,

1 books, and other information sufficient to allow the  
2 department to determine the correct amount of value or correct  
3 amount of any tax, license, permit, or fee administered by the  
4 department, or other records or information as may be  
5 necessary for the proper administration of any matters under  
6 the jurisdiction of the department. The books, records, and  
7 other information shall be open and available for inspection  
8 by the department upon request at a reasonable time and  
9 location.

10 "(2) The department may examine and audit the  
11 records, books, or other relevant information maintained by  
12 any taxpayer or other person for the purpose of computing and  
13 determining the correct amount of value or correct amount of  
14 any tax, license, or fee administered by the department, or  
15 for any other purpose necessary for the proper administration  
16 of any matter under the jurisdiction of the department.

17 "(3) A taxpayer, or any officer of a corporation or  
18 association, or partner of a partnership, manager of a  
19 manager-managed limited liability company, member of a  
20 member-managed limited liability company, or fiduciary of a  
21 trust, or other responsible individual of any entity under a  
22 duty to maintain books and records pursuant to this subsection  
23 who fails or refuses to maintain such records and books, or  
24 permit inspection, shall be subject to contempt proceedings in  
25 the circuit court of the judicial circuit in which the person  
26 resides or has a principal place of business, and upon proof

1 of the fact to the court, may be punished for contempt as  
2 provided in cases of contempt in circuit court.

3 "(4) The department may summon any witness to appear  
4 and give testimony, and summon by subpoena duces tecum any  
5 records, books, or other information of any kind relating to  
6 any matter which the department has authority to administer.  
7 The witness may be summoned by subpoena issued by the  
8 secretary of the department, any circuit judge, any  
9 magistrate, or any district judge, in the name of the  
10 department, directed to any sheriff of Alabama and returnable  
11 to the department. The subpoena may be served in like manner  
12 as subpoenas issued out of any circuit court in Alabama, or  
13 the subpoena may be served by an authorized employee of the  
14 department or by either U.S. mail with delivery confirmation  
15 or certified mail, return receipt requested. A fee shall be  
16 paid to banking institutions, other similar entities, or any  
17 other person except the taxpayer, for copying, searching for,  
18 reproducing, and transporting any records, books, papers, or  
19 other documents requested or subpoenaed by the department and  
20 to persons who are required to appear as a witness equal to  
21 the fee authorized to be paid by the Internal Revenue Service  
22 for similar services or appearances pursuant to ~~Section 7610~~  
23 ~~of the Internal Revenue Code of 1986~~ 26 U.S.C. § 7610, as  
24 amended from time to time. If any witness has been subpoenaed  
25 to appear and testify or appear and produce records, books, or  
26 other information, and fails or refuses to appear or testify

1 or to produce the books, records, or other information, that  
2 witness shall be subject to contempt proceedings in the  
3 circuit court of the judicial circuit in which the witness  
4 resides, and upon proof of the fact to a circuit court may be  
5 punished for contempt as is provided in cases of contempt in  
6 circuit court. The circuit court shall also have jurisdiction  
7 to hear, and if appropriate, to grant a motion to quash the  
8 subpoena. This subdivision shall not apply to any appeal  
9 pending before the Tax Appeals Commission.

10 "(5) The department may issue forms and make  
11 reasonable regulations concerning any matter administered by  
12 the department. Regulations promulgated by the department  
13 shall be issued in accordance with the procedures set forth in  
14 the Alabama Administrative Procedure Act, Chapter 22 of Title  
15 41.

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

18 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL  
19 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND  
20 FINAL ASSESSMENTS.

21 "a. If the department determines that the amount of  
22 any tax as reported on a return is incorrect, or if no return  
23 is filed, or if the department is required to determine value,  
24 the department may calculate the correct tax or value based on  
25 the most accurate and complete information reasonably  
26 obtainable by the department. The department may thereafter

1 enter a preliminary assessment for the correct tax or value,  
2 including any applicable penalty and interest.

3 "b. Where the amount of tax or value reported on a  
4 return is undisputed by the department, or the taxpayer  
5 consents in writing to the amount of any deficiency,  
6 determination of value, or preliminary assessment in writing  
7 as provided by regulation, the department may immediately  
8 enter a final assessment for the amount of the tax or value,  
9 plus applicable penalty and interest; provided, the department  
10 may at any time enter a final jeopardy assessment pursuant to  
11 Sections 40-17A-12, 40-29-90, and 40-29-91.

12 "c. All preliminary and final assessments issued by  
13 the department shall be executed as provided by regulations  
14 promulgated by the department.

15 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY  
16 ASSESSMENT. Any preliminary assessment shall be entered within  
17 three years from the due date of the return, or three years  
18 from the date the return is filed with the department,  
19 whichever is later, or if no return is required to be filed,  
20 within three years of the due date of the tax, except as  
21 follows:

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

25 "b. A preliminary assessment may be entered within  
26 six years from the due date of the return or six years from



1 the date the return is filed with the department, whichever is  
2 later, if the taxpayer omits from the taxable base an amount  
3 properly includable therein which is in excess of 25 percent  
4 of the amount of the taxable base stated in the return.

5 "For purposes of this paragraph:

6 "1. The term taxable base means the gross income,  
7 gross proceeds from sales, gross receipts, net worth capital  
8 employed, or other amounts on which the tax paid with reported  
9 on the return is computed measured; provided, that for a  
10 corporation subject to the income tax imposed by Chapter 18 of  
11 this title, the term "taxable base" means the corporation's  
12 federal gross income multiplied by its Alabama apportionment  
13 factor for the same tax year, calculated pursuant to Chapter  
14 27 of this title; and

15 "2. In determining the amount omitted from the  
16 taxable base, there shall not be taken into account any amount  
17 which is omitted from the taxable base stated in the return if  
18 the amount is disclosed in the return, or in a statement  
19 attached to the return, in a manner adequate to apprise the  
20 department of the nature and amount of the item. With respect  
21 to a corporation subject to the income tax imposed by Chapter  
22 18 of this title, an amount omitted from the taxable base  
23 shall not include any amounts for which the taxpayer has  
24 substantial authority supporting its position. For purposes of  
25 this subparagraph, the term "substantial authority" shall be  
26 defined by reference to 26 U.S.C. §6662, as in effect from

1 time to time, as may be modified by department rule to conform  
2 to Alabama tax law.

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

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

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

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

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

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

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

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

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

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

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

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

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

25           "3.5. For purposes of this subdivision and  
26 subsection (c)(2)c., the date that a federal change becomes

1 final is the date on which the taxpayer and the Internal  
2 Revenue Service formally agree to the changes, or the date of  
3 on which any administrative or judicial order, judgment, or  
4 ~~decree from which no further appeal was or may be taken~~ can no  
5 longer be appealed due to the lapse of time.

6 "h.g. The running of the period of limitations  
7 provided herein for entering a preliminary assessment shall be  
8 suspended for the period that:

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

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

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

25 "j.i. Additional tax may be assessed by the  
26 department within any applicable period allowed above, even

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

14 "j. The three-year statute of limitations provided  
15 by this subdivision for entering a preliminary assessment  
16 shall be extended by 60 days for the benefit of a  
17 self-administered county or municipality, in cases where the  
18 department has audited a taxpayer and additional sales, use,  
19 rental, or lodgings tax was found to be due, and the taxpayer  
20 likewise owes tax to the self-administered county or  
21 municipality for the same tax period or periods.

22 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON  
23 TAXPAYER. The preliminary assessment entered by the  
24 department, or a copy thereof, shall be promptly mailed by the  
25 department to the taxpayer's last known address by either  
26 first class U.S. mail or certified mail with return receipt

1 requested, but at the option of the department, the  
2 preliminary assessment may be delivered to the taxpayer by  
3 personal delivery or by U.S. mail with delivery confirmation.

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

6 "a. If a taxpayer disagrees with a preliminary  
7 assessment as entered by the department, the taxpayer may file  
8 a written petition for review with the department within ~~30~~ 45  
9 days from the date of entry of the preliminary assessment  
10 setting out the specific objections to the preliminary  
11 assessment. If a petition for review is timely filed, or if  
12 the department otherwise deems it necessary, the department  
13 shall schedule a conference with the taxpayer for the purpose  
14 of allowing the taxpayer and the department to present their  
15 respective positions, discuss any omissions or errors, and to  
16 attempt to agree upon any changes or modifications to their  
17 respective positions.

18 "b. If a written petition for review:

19 "1. Is not timely filed, or

20 "2. Is properly filed, and upon further review the  
21 department determines the preliminary assessment is due to be  
22 upheld in whole or in part, the department may make the  
23 assessment final in the amount of tax due as computed by the  
24 department, with applicable interest and penalty computed to  
25 the date of entry of the final assessment.



1           "c. If a preliminary assessment is not made final by  
2 the department within three years from the date of entry, the  
3 taxpayer may appeal the preliminary assessment to the Tax  
4 Appeals Commission or to the appropriate circuit court as  
5 provided by subsection (b) (5) for an appeal of a final  
6 assessment. Any preliminary assessment that is outstanding as  
7 of October 1, 2012, and that was entered five or more years  
8 prior to that date, is void unless the preliminary assessment  
9 is made final or the department and the taxpayer agree in  
10 writing to extend the time period for entering a final  
11 assessment prior to October 1, 2012.

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

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

1            "a. A taxpayer may appeal to the Tax Appeals  
2 Commission from any final assessment entered by the department  
3 by filing a notice of appeal with the ~~Administrative Law~~  
4 ~~Division~~ Tax Appeals Commission within ~~30~~ 45 days from the  
5 date of entry of the final assessment, and the appeal, if  
6 timely filed, shall proceed as ~~herein~~ provided in Chapter 2B  
7 for appeals to the ~~Administrative Law Division~~ Tax Appeals  
8 Commission.

9            "b.1. In lieu of the appeal under paragraph a., at  
10 the option of the taxpayer, the taxpayer may appeal from any  
11 final assessment entered by the department to the Circuit  
12 Court of Montgomery County, Alabama, or to the circuit court  
13 of the county in which the taxpayer resides or has a principal  
14 place of business in Alabama, as appropriate, by filing a  
15 notice of appeal within ~~30~~ 45 days from the date of entry of  
16 the final assessment with both the secretary of the department  
17 and the clerk of the circuit court in which the appeal is  
18 filed.

19            "2. If the appeal is to circuit court, the taxpayer,  
20 also within the ~~30-day~~ 45-day period allowed for appeal, shall  
21 do one of the following:

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

24            "(ii) File a supersedeas bond with the court for in  
25 an amount equal to 125 percent of the amount of the tax,  
26 interest, and any penalty shown on the final assessment. The

1 supersedeas bond shall be executed by a surety company  
2 licensed and authorized to do business in Alabama and shall be  
3 conditioned to pay the amount of tax, interest, and any  
4 penalties shown on the final assessment, plus applicable  
5 interest and any court costs relating to the appeal, payable  
6 to the department, or the self-administered county or  
7 municipality, if applicable.

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

23 "(iv) File a pledge or collateral assignment of  
24 securities with the circuit court that constitute eligible  
25 collateral under Chapter 14A, Title 41, in an amount equal to  
26 200 percent of the amount of the tax, interest, and penalty

1 shown on the final assessment. The pledge or collateral  
2 assignment shall be in favor of the department, or the  
3 self-administered county or municipality, if applicable, and  
4 conditioned to pay the assessment plus applicable interest and  
5 any court costs relating to the appeal.

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

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

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

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

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

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

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

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

1                   "(6) 30-DAY APPEAL PERIODS FOR INDIVIDUALS WHO FAIL  
2 TO FILE AN ALABAMA INCOME TAX RETURN. Notwithstanding the  
3 45-day appeal periods for preliminary assessments and final  
4 assessments provided by subdivisions (4) and (5), in the case  
5 of an individual who is subject to Alabama income tax and who  
6 fails to file timely the return required by Chapter 18 of this  
7 title for a particular tax year, if the department enters a  
8 preliminary assessment against the taxpayer based on  
9 information received from the Internal Revenue Service with  
10 respect to that same tax year, the taxpayer shall have only 30  
11 days to file a petition for review pursuant to subdivision  
12 (4), and if the preliminary assessment is made final, the  
13 taxpayer shall have only 30 days to file a notice of appeal  
14 pursuant to subdivision (5).

15                   "(c) Procedure governing petitions for refund;  
16 appeals therefrom.

17                   "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any  
18 taxpayer may file a petition for refund with the department  
19 for any overpayment of tax or other amount erroneously paid to  
20 the department or concerning any refund which the department  
21 is required to administer. If a final assessment for the tax  
22 has been entered by the department, a petition for refund of  
23 all or a portion of the tax may be filed only if the final  
24 assessment plus applicable interest has been paid in full  
25 prior to or with the filing of the petition for refund. The  
26 department may also issue automatic refunds pursuant to

1 Section 40-29-71. In the case of a petition for refund of  
2 sales or use taxes pursuant to Chapter 23, public utilities  
3 taxes pursuant to Chapter 21, and any transient occupancy tax  
4 pursuant to Chapter 26, the petition shall be filed jointly by  
5 the taxpayer who collected and paid over the tax to the  
6 department and the consumer/purchaser who paid the tax to the  
7 taxpayer. A direct petition may be filed by the taxpayer if  
8 the taxpayer never collected the tax from the  
9 consumer/purchaser, or if the tax has been credited or repaid  
10 to the consumer/purchaser by the taxpayer.

11 "(2) TIME LIMITATION FOR FILING PETITION FOR REFUND;  
12 AUTOMATIC REFUND.

13 "a. Generally. A petition for refund shall be filed  
14 with the department or an automatic refund issued pursuant to  
15 Section 40-29-71, or a credit allowed, within (i) three years  
16 from the date that the return was filed, or (ii) two years  
17 from the date of payment of the tax, ~~whichever is later,~~  
18 period expires last or, if no return was timely filed, two  
19 years from the date of payment of the tax if an individual  
20 income tax return required by Section 40-18-27 is not timely  
21 filed for a particular year, a petition for refund of  
22 individual income tax paid by withholding or estimated payment  
23 with respect to that year shall be filed, or a credit allowed,  
24 within three years from the original due date of the return.  
25 ~~For purposes of this paragraph, taxes paid through withholding~~

1 ~~or by estimated payment shall be deemed paid on the original~~  
2 ~~due date of the return.~~

3 "b. Net operating loss carryback. In lieu of the  
4 periods provided in paragraph a., in the case of a net  
5 operating loss carryback, the period for filing a petition for  
6 refund, the department making an automatic refund or allowing  
7 a credit shall be the period prescribed in 26 U.S.C. Section  
8 §6511(d)(2) for the claiming of a credit or refund.

9 "c. Federal audit changes. When a federal income tax  
10 return or federal estate tax return is changed after it has  
11 been filed with the Internal Revenue Service, other than by an  
12 amended return, and the change results in an overpayment of  
13 income tax or estate tax imposed by this title, a petition for  
14 refund of the overpayment must be filed within the later of  
15 one year after the federal changes become final or the time  
16 otherwise allowed for the filing of a petition for refund as  
17 provided in this chapter. The refund shall be limited to the  
18 tax overpaid as a result of those items changed on the federal  
19 income tax return or federal estate tax return that affect the  
20 income tax liability or estate tax liability imposed by this  
21 title. For purposes of this subdivision, the date that a  
22 federal change becomes final shall be determined as provided  
23 in Section 40-2A-7(b)(2)f.5.

24 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;  
25 TIME LIMITATIONS. The department shall either grant or deny a  
26 petition for refund within six months from the date the



1 petition is filed, unless the period is extended by written  
2 agreement of the taxpayer and the department. The taxpayer and  
3 his or her authorized representative, if applicable, shall be  
4 notified of the department's decision concerning the petition  
5 for refund by either first class ~~United States~~ U.S. mail, or  
6 by certified U.S. mail, return receipt requested, or by U.S.  
7 mail with delivery confirmation, sent to the taxpayer's or the  
8 authorized representative's last known address. If the  
9 department fails to grant a refund within the time provided  
10 herein, the petition for refund shall be deemed to be denied.

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

1 in Alabama and from which no further appeal can be taken, and  
2 the balance of any overpayment shall, subject to the setoff  
3 provisions of Article 3 of Chapter 18, be refunded to the  
4 taxpayer. If any refund or part thereof is credited to any  
5 other tax by the department, the department shall provide a  
6 written detailed statement to the taxpayer showing the amount  
7 of overpayment, the amount credited for payment to other  
8 taxes, and the amount refunded.

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

10 "a. A taxpayer may appeal from the denial in whole  
11 or in part of a petition for refund by filing a notice of  
12 appeal with the ~~Administrative Law Division~~ Tax Appeals  
13 Commission within two years from the date the petition is  
14 denied, ~~and the appeal, if.~~ If timely filed, the appeal shall  
15 proceed as hereinafter provided in Chapter 2B for appeals to  
16 the ~~Administrative Law Division~~ Tax Appeals Commission.

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

1 procedures and shall determine the correct amount of refund  
2 due, if any.

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

8 "(d) The Department of Revenue shall revise existing  
9 regulations or administrative guidance, or issue new  
10 regulations or administrative guidance, as appropriate, in  
11 conformance with this section.

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

23 "§40-2A-8.

24 "(a) The department shall notify a taxpayer in  
25 writing of any act or proposed act or refusal to act  
26 concerning the denial or revocation of a license, permit, or

1 certificate of title concerning which the taxpayer has any  
2 interest. The notice must be mailed by either first-class U.S.  
3 mail or certified U.S. mail or U.S. mail with delivery  
4 confirmation to the taxpayer's last known address, or to the  
5 last known address of the taxpayer's authorized  
6 representative, if applicable. Any taxpayer aggrieved by any  
7 act or proposed act or refusal to act by the department shall  
8 be entitled to file a notice of appeal from such act or  
9 proposed act or refusal to act with the ~~administrative law~~  
10 ~~division~~ Tax Appeals Commission. Such notice of appeal must be  
11 filed within ~~30~~ 45 days of the date notice of such act or  
12 refusal to act is mailed to the taxpayer, and such appeal, if  
13 timely filed, shall proceed as herein provided for appeals to  
14 the ~~administrative law division~~. Tax Appeals Commission. Any  
15 taxpayer aggrieved by any act, proposed act, or refusal to act  
16 by the department, who is not issued written notice by the  
17 department of his or her right to appeal, shall have 45 days  
18 from actual notice of such act, proposed act, or refusal to  
19 act in which to appeal to the Tax Appeals Commission. The  
20 burden shall be on the taxpayer in such cases to prove that  
21 the appeal was filed within 45 days of actual notice. If any  
22 matter is timely appealed to the Tax Appeals Commission  
23 pursuant to this section, the commission, in its discretion,  
24 may remand or refer the matter to the department or the  
25 department's Taxpayer Advocate for review before proceeding  
26 with the appeal.

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

11           "~~(b)~~ (c) The department may proceed with the intended  
12 action if no appeal is filed by the taxpayer with the  
13 ~~administrative law division~~ Tax Appeals Commission within 30  
14 ~~days of the mailing of the notice by the department to the~~  
15 ~~taxpayer.~~ the time allowed under subsection (a). If a  
16 designated agent has failed to provide the department with a  
17 bond and any qualifying license as provided in Section  
18 32-8-34, the revocation of designated agent status by the  
19 department shall be effective immediately upon electronic  
20 notice through the system the designated agent uses to process  
21 applications for certificates of title or receipt of written  
22 notice of revocation, whether by U.S. mail or hand delivery.  
23 Otherwise, the revocation of a designated agent status shall  
24 be effective after the time for appeal under this section has  
25 expired. The revocation of any motor vehicle certificate of  
26 title or license by the department shall not be final until

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

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

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

1           "§40-2A-11.

2           "(a) Failure to timely file return certain returns.

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

20           "(b) Failure to timely pay tax.

21           "(1) If a taxpayer fails to pay to the department  
22 the amount of tax shown as due on a return required to be  
23 filed on or before the date prescribed for payment of the tax,  
24 determined with regard to any extension of time for payment,  
25 there shall be added as a penalty one percent of the net  
26 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 shown as tax due on the return or  
9 the amount stated in the notice and demand.

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



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

4           "(c) Underpayment due to negligence. If any part of  
5 any underpayment of tax is due to negligence or disregard of  
6 rules or regulations, there shall be added to the tax an  
7 amount equal to ~~five~~ 20 percent of that part of the tax  
8 attributable to negligence or disregard of rules or  
9 regulations.

10           "For purposes of this subsection, the term  
11 "negligence" includes any failure to make a reasonable attempt  
12 to comply with ~~Title 40~~ this title or other statutes  
13 administered by the department, and the term "disregard"  
14 includes any careless, reckless, or intentional disregard of  
15 valid rules and regulations.

16           "(d) Underpayment due to fraud. If any part of any  
17 underpayment of tax required to be shown on a return is due to  
18 fraud, there shall be added to the tax an amount equal to ~~50~~  
19 75 percent of that portion of the underpayment which is  
20 attributable to fraud.

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

1           "(e) Frivolous return penalty. If a taxpayer files a  
2 "frivolous return," as that term is used in 26 U.S.C. Section  
3 § 6702, that taxpayer may be liable for a penalty of up to ~~two~~  
4 ~~hundred fifty dollars (\$250)~~ five hundred dollars (\$500).

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

14           "(g) Failure to file partnership or Alabama S  
15 corporation returns. If a pass-through entity, as defined in  
16 Section 40-18-24.2, or an Alabama S corporation, as defined in  
17 Section 40-18-160(b)(1), fails to file the applicable  
18 information return required by Section 40-18-28 or 40-18-39  
19 for any taxable year within the time prescribed therefor, the  
20 pass-through entity or corporation shall be liable for a  
21 penalty equal to the product of fifty dollars (\$50) multiplied  
22 by the number of members of the pass-through entity or  
23 shareholders of the Alabama S corporation, whichever is  
24 applicable, for each month, or fraction thereof, during which  
25 such failure continues, but not to exceed 12 months. In no

1 case, however, shall the penalty exceed one thousand dollars  
2 (\$1,000) per return.

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

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

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

23 "(i)(k) Discount sustained for ~~just causes~~  
24 reasonable cause. All other provisions of tax laws  
25 notwithstanding, either the ~~Commissioner of the Department of~~  
26 ~~Revenue~~ commissioner or the taxpayer advocate of the

1 department, upon review of the circumstances involved, may  
2 authorize the continuance or reinstatement of a  
3 ~~statute allowable~~ an otherwise allowable discount for timely  
4 payment or filing when timely payment ~~is made, but~~ or filing  
5 ~~is~~ was delayed for ~~just causes~~ reasonable cause.

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

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

12 "\$40-18-27.

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

1 return, the return shall be filed by a duly authorized agent,  
2 a guardian, or other person charged with the care of the  
3 person or property of the taxpayer.

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

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

1 to the taxpayer a rejection of the request for an extension of  
2 time for filing the return. The return must be signed or  
3 otherwise validated by both the taxpayer(s) and, if  
4 applicable, the tax return preparer under rules or regulations  
5 of the Department of Revenue and must contain a printed  
6 declaration that the return is filed under the penalties of  
7 perjury.

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

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

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

4           Section 6. The provisions of this act are severable.  
5 If any part of this act is declared invalid or  
6 unconstitutional, that declaration shall not affect the part  
7 which remains.

8           Section 7. It is the intent of the Legislature that  
9 the existence, authority, and powers of the Administrative Law  
10 Division of the Department of Revenue shall remain in full  
11 force and effect until the Tax Appeals Commission created  
12 herein becomes fully operational on October 1, 2012, and that  
13 all appeals filed pursuant to Sections 40-2A-7 and 40-2A-8  
14 shall continue to be filed with and handled by the  
15 Administrative Law Division until that date. To that end, the  
16 repeal of Section 40-2A-9, and those portions of other  
17 sections of Titles 11 and 40 relating to the powers,  
18 authority, and duties of the Administrative Law Division and  
19 the administrative law judge, and the right of a taxpayer to  
20 appeal to the Administrative Law Division, shall not become  
21 effective until October 1, 2012. Notwithstanding the  
22 foregoing, the Tax Appeals Commission shall not have  
23 jurisdiction over any appeals regarding taxes levied by or on  
24 behalf of a self-administered county or municipality until  
25 October 1, 2013. The amendments to Section 40-2A-7(b)(2)f.,  
26 Code of Alabama 1975, relating to amended returns due to

1 federal audit changes, Section 40-2A-7(b)(2)b., Code of  
2 Alabama 1975, relating to the six-year statute of limitations  
3 for corporate income tax purposes, and Section 40-2A-11, Code  
4 of Alabama 1975, relating to civil penalties, by this act  
5 shall only apply to tax periods beginning on or after January  
6 1, 2013.

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



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Senate

Read for the first time and referred to the Senate committee on Judiciary.....	19-APR-12
Read for the second time and placed on the calen- dar.....	26-APR-12
Read for the third time and passed as amended ....	03-MAY-12

Yeas 29  
Nays 0

Patrick Harris  
Secretary