

1 SB549
2 143446-2
3 By Senator Brooks
4 RFD: Judiciary
5 First Read: 19-APR-12

1 SB549

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3
4 ENROLLED, An Act,

5 To add Chapter 2B to Title 40 of the Code of Alabama
6 1975, to provide for the creation and operation of the Alabama
7 Tax Appeals Commission, to state that the intent of this act
8 is to adopt in large part the American Bar Association Model
9 State Administrative Tax Tribunal Act; to hear appeals of tax
10 and other matters administered by the Department of Revenue,
11 and certain taxes levied by or on behalf of self-administered
12 counties or municipalities that do not opt-out; to provide the
13 necessary funding for the first year of operations of the Tax
14 Appeals Commission; to amend Sections 40-2A-3, 40-2A-4,
15 40-2A-5, 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of
16 Alabama 1975, for purposes of conformity to the federal
17 Taxpayer's Bill of Rights, including broader "innocent spouse"
18 type relief and increased penalties for negligence, fraud, and
19 frivolous appeals or returns; to make technical corrections;
20 to require amended state income tax returns as a result of IRS
21 audit changes; to increase the amount of time a taxpayer has
22 to file an appeal of a preliminary or final assessment; and to
23 abolish the Administrative Law Division of the Department of
24 Revenue, including repealing Section 40-2A-9, Code of Alabama
25 1975.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 It is the intent of the Legislature to adopt in
21 large part the American Bar Association Model State
22 Administrative Tax Tribunal Act.

23 It is the intent of the Legislature that this act
24 foster the settlement or other resolution of tax disputes to
25 the greatest extent possible and, in cases in which litigation

1 is necessary, to provide taxpayers with a fair, independent,
2 pre-payment procedure to resolve a dispute with the Department
3 of Revenue or, in certain cases, a self-administered county or
4 municipality.

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

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

17 CHAPTER 2B

18 CREATION AND OPERATION OF THE ALABAMA TAX APPEALS
19 COMMISSION

20 §40-2B-1. Alabama Tax Appeals Commission.

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

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

4 (1) Is a commission of limited and special
5 jurisdiction.

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

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

20 §40-2B-2. Definitions.

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

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

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

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

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

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

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

24 (4) The term "tax" shall mean and refer to a sales,
25 use, rental, or lodgings tax levied by or on behalf of a

1 self-administered county or municipality that has not elected
2 out.

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

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

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

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

1 including, but not limited to, the power and authority to
2 execute binding contracts and commitments on behalf of the Tax
3 Appeals Commission with respect to employees, office space,
4 equipment, and other property, consistent with Sections
5 40-2B-16 and 40-2B-20.

6 §40-2B-4. Service of papers and process.

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

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

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

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

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

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

9 §40-2B-6. Issuance of subpoenas; administration of
10 oaths.

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

1 issued by a circuit court, or by either U.S. mail with
2 delivery confirmation or certified U.S. mail, return receipt
3 requested. If any person has been subpoenaed to appear and
4 testify or appear and produce documents or other information,
5 and fails or refuses to appear or testify or to produce such
6 documents or other information, such person shall be subject
7 to contempt proceedings, if instituted by a petition for
8 contempt issued by a judge of the Tax Appeals Commission, in
9 the circuit court of the judicial circuit in which such person
10 resides, and upon proof of such fact to the circuit court, may
11 be punished for contempt as is provided in cases of contempt
12 in circuit court. Such proof of contempt may be evidenced by
13 an affidavit of a judge of the Tax Appeals Commission.

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

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

19 §40-2B-7. Hearings to be without a jury and de novo.

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

22 §40-2B-8. Notice to taxpayer of right to appeal to
23 Tax Appeals Commission.

24 The department shall notify a taxpayer of the right
25 to appeal to the Tax Appeals Commission, and the

1 jurisdictional requirements for perfecting the appeal. Such
2 notice shall be given with a final assessment, or with any
3 notice by the department informing the taxpayer that his or
4 her claim for refund has been denied in whole or in part, or
5 any notice by the department informing the taxpayer of any
6 act, proposed act, or refusal to act by the department from
7 which the taxpayer has a right to appeal to the Tax Appeals
8 Commission.

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

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

17 (b) Judges of the Tax Appeals Commission shall hear
18 and decide all appeals to the Tax Appeals Commission, as
19 assigned by the chief judge. A judge, without a hearing, may
20 dismiss any appeal, or grant appropriate relief to any party,
21 if a party fails or refuses to comply with any Tax Appeals
22 Commission regulation or statute concerning appeals before the
23 Tax Appeals Commission, or if any party fails or refuses to
24 comply with any preliminary order issued by a judge. The
25 judge, for good cause, may reinstate an appeal dismissed under

1 this subsection or withdraw an order granting relief, but only
2 if an application to reinstate the appeal or withdraw the
3 order is filed within 15 days from the date on which the order
4 dismissing the appeal or granting the relief was entered, or
5 on the judge's own motion within 90 days. A final order
6 dismissing an appeal or granting relief to a party may be
7 appealed to circuit court in the same manner and subject to
8 the same requirements as appeals from final or other
9 appealable orders of the Tax Appeals Commission.

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

20 (d) (1) Except as provided in subdivision (2), the
21 Tax Appeals Commission shall notify the legal division of the
22 Department of Revenue in writing that an appeal has been filed
23 and shall mail a copy of such notification to the taxpayer or
24 its authorized representative. The legal division shall file a
25 written answer with the Tax Appeals Commission within 60 days

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

14 (2) If the appeal involves a tax levied by or on
15 behalf of a self-administered county or municipality, the Tax
16 Appeals Commission shall promptly mail a copy of the notice of
17 appeal by either U.S. mail with delivery confirmation or
18 certified U.S. mail to the governing body of the affected
19 county or municipality and shall provide the taxpayer or its
20 authorized representative with written notification of the
21 date the copy was mailed to the governing body. The affected
22 county or municipality shall file a written answer with the
23 Tax Appeals Commission within 60 days of the date of mailing
24 the notice of appeal to the affected county or municipality.
25 The judge may allow the county or municipality additional

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

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

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

8 (1) Open the record and receive appearances.

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

13 (3) Interrogate witnesses if deemed necessary.

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

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

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

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

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

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

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

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

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

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

24 (m) Any taxpayer upon application, and at the
25 discretion of the judge, may be permitted to intervene in any

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

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

15 (1) Information received from the Internal Revenue
16 Service that is restricted by law or agreement from
17 disclosure.

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

21 (3) As otherwise ordered by the judge.

22 §40-2B-10. Burden of proof in Tax Appeals Commission
23 proceedings.

24 On appeal to the Tax Appeals Commission, a final
25 assessment shall be prima facie correct, and the burden of

1 proof shall be on the taxpayer to prove that the assessment is
2 incorrect. In cases involving denied refunds, the burden shall
3 be on the taxpayer to prove that a refund is due. The judge
4 shall have discretion to determine the party to proceed first
5 with the evidence in the case.

6 §40-2B-11. Hearings to be open to public; report of
7 proceedings; exception; confidential information.

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

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

1 issue an order to that effect. The order shall explain the
2 reasons why the request was granted or denied, as applicable.

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

14 §40-2B-12. Authority to issue regulations. The Tax
15 Appeals Commission, through the chief judge, is authorized to
16 issue regulations governing procedures and practice before the
17 Tax Appeals Commission, and matters of internal organization
18 and operation. Such regulations shall be issued in accordance
19 with Chapter 22 of Title 41.

20 §40-2B-13. Appeals to circuit court; reviewing
21 authority and action on appeal.

22 (a) Other than an application for rehearing to the
23 Tax Appeals Commission, the exclusive remedy for review of any
24 final or other appealable order issued by the Tax Appeals

1 Commission shall be by appeal to the appropriate circuit
2 court.

3 (b) The taxpayer, an intervenor pursuant to Section
4 40-2B-9(m), a self-administered county or municipality whose
5 tax is within the jurisdiction of the Tax Appeals Commission,
6 or the Department of Revenue may appeal to circuit court from
7 a final or other appealable order issued by the Tax Appeals
8 Commission by filing a notice of appeal with the appropriate
9 circuit court within 60 days from the date the final or other
10 appealable order was entered. A copy of the notice of appeal
11 shall be submitted to the Tax Appeals Commission within the
12 60-day appeal period. The Tax Appeals Commission shall
13 thereafter prepare a record on appeal. The appeal shall be
14 filed in the following circuit courts:

15 (1) Any appeal by the Department of Revenue, a
16 self-administered county or municipality whose tax is within
17 the jurisdiction of the Tax Appeals Commission, or an
18 intervenor shall be filed with the circuit court of the county
19 in which the taxpayer resides or has a principal place of
20 business in Alabama.

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

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

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

12 (1) Remit the amount of the final assessment
13 determined to be due by the final order to the Department of
14 Revenue, or to the self-administered county or municipality,
15 if applicable.

16 (2) Execute a supersedeas bond, which shall be
17 executed by a surety company licensed to do business in
18 Alabama, in an amount equal to 125 percent of the amount
19 determined to be due by the final order, plus applicable
20 interest and any court costs relating to the appeal, payable
21 to the Department of Revenue, or to the self-administered
22 county or municipality, if applicable, and conditioned to pay
23 the amount determined to be due by the final order.

24 (3) File an irrevocable letter of credit with the
25 circuit court in an amount equal to 125 percent of the amount

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

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

24 (5) Show to the satisfaction of the clerk of the
25 circuit court to which the appeal is taken that the taxpayer

1 has a net worth, based on fair market value, of one hundred
2 thousand dollars (\$100,000), or less, including his or her
3 homestead.

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

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

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

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

23 (e) The appeal to circuit court from a final or
24 other appealable order issued by the Tax Appeals Commission
25 shall be a trial de novo, except that the order shall be

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

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

16 Subject to Section 40-2B-9, the decisions determined
17 to be of general public interest may be published and
18 distributed by the Tax Appeals Commission, as prescribed by
19 the chief judge. Provided that a decision may not be published
20 until either the time period for appealing the decision has
21 expired or the Tax Appeals Commission has received a copy of
22 the notice of appeal pursuant to Section 40-2B-13(b), in which
23 case the fact that the decision has been appealed shall be
24 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 eight years, except as herein provided.
7 The term of the first chief judge shall begin on October 1,
8 2012.

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

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

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

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

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

18 (3) Except as otherwise provided in this
19 subdivision, one member appointed by the Lieutenant Governor,
20 who shall be a representative of county government. If more
21 than 50 percent of the self-administered counties in this
22 state have elected to divest the Tax Appeals Commission of
23 jurisdiction pursuant to Section 40-2B-25 as of October 1 of
24 each year, the representative of county government shall be

1 removed and the Director of Finance or his or her designee
2 shall serve as a member of the nominating committee.

3 (4) Except as otherwise provided in this
4 subdivision, one member appointed by the Speaker of the House
5 of Representatives, who shall be a representative of municipal
6 government. If more than 50 percent of the self-administered
7 municipalities in this state have elected to divest the Tax
8 Appeals Commission of jurisdiction pursuant to Section
9 40-2B-25 as of October 1 of each year, the representative of
10 municipal government shall be removed and the Director of
11 Finance or his or her designee shall serve as a member of the
12 nominating committee. If more than 50 percent of the
13 self-administered counties and more than 50 percent of the
14 self-administered municipalities have elected to divest the
15 Tax Appeals Commission of jurisdiction pursuant to Section
16 40-2B-25 as of October 1 of each year, there shall only be
17 five members of the nominating committee, the fifth of whom is
18 the Director of Finance or his or her designee.

19 (5) Two members appointed by the President of the
20 Alabama Circuit Judges Association, who shall be
21 representatives of the taxpayers (including small businesses)
22 of the state but who shall not be practicing attorneys or
23 employees or former employees of the Department of Revenue or
24 municipal or county government.

1 The appointing authorities should take into
2 consideration the racial, gender, geographic, urban/rural, and
3 economic diversity of the state when selecting representatives
4 for the nominating committee.

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

1 business of the nominating committee. The secretary shall
2 maintain the permanent records of the nominating committee. A
3 copy of all appointment letters submitted by an appointing
4 authority to the Governor's Office shall be mailed or
5 otherwise delivered to the secretary of the nominating
6 committee, once a secretary is appointed. The committee may
7 conduct private meetings, as deemed appropriate by the
8 committee, but only in compliance with applicable laws. The
9 nominating committee shall compile a list of three nominees by
10 majority vote and shall otherwise act by a majority vote at
11 any meeting at which a quorum is present either in person, by
12 written proxy, or by the written consent of all its members.
13 For the purposes of this section, a quorum shall consist of a
14 majority of the members of the nominating committee then
15 serving.

16 (e) Any sitting judge, at the end of his or her
17 term, shall be automatically appointed to a subsequent
18 eight-year term unless the judge is recalled in accordance
19 with this subsection. A recall may be initiated by the
20 Governor, the Attorney General, or the Judicial Inquiry
21 Commission by submitting a petition for recall to the Chief
22 Judge of the Court of the Judiciary no more than 12 and no
23 less than three months before the end of a judge's current
24 term. The petition shall state the reasons why the judge
25 should not serve another eight-year term. A copy of the

1 petition for recall shall be simultaneously submitted to the
2 chair of the nominating committee. In such case, the
3 nominating committee shall provide an objective, written
4 appraisal of the performance of the sitting judge to the Chief
5 Judge of the Court of the Judiciary for use in determining the
6 competency and fitness of the judge, including a
7 recommendation by the committee. If the Court of the Judiciary
8 votes to recall the judge, the judge is not reappointed to
9 another eight-year term, and a successor judge shall be
10 appointed as provided in subsection (b). The term of the judge
11 subject to the petition for recall shall be extended during
12 the pendency of the recall proceedings, and if recalled, the
13 judge shall continue to serve until a successor judge is
14 appointed as provided in subsection (b). If a petition for
15 recall is timely submitted, but the Court of the Judiciary
16 does not vote to recall the judge, the judge shall thereafter
17 be automatically appointed to another eight-year term.

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

1 determination, the Governor shall instruct the nominating
2 committee to commence proceedings under this section to fill
3 the additional position. The chief judge may, with the advice
4 and consent of the Governor, eliminate an associate judge
5 position if the current and anticipated case load does not
6 warrant the position.

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

10 §40-2B-16. Qualifications of Tax Appeals Commission
11 judge; oath; Tax Appeals Commission employees.

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

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

4 (c) Tax Appeals Commission judges shall be subject
5 to disciplinary proceedings before the Judicial Inquiry
6 Commission to the same extent as circuit judges. The Judicial
7 Inquiry Commission shall have the authority to remove any Tax
8 Appeals Commission judge from office, after notice and an
9 opportunity to be heard, for neglect of duty, inability to
10 perform duties, malfeasance in office, or other good cause.

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

1 involuntarily terminated for purposes of receiving any
2 retirement benefits and member contributions pursuant to the
3 retirement plan. If at the time of appointment, a judge is a
4 Merit System employee of the state, the judge shall be
5 entitled to carry over, continue, and retain any of the
6 benefits resulting from prior state employment. Tax Appeals
7 Commission judges shall also participate in the State
8 Employees' Retirement System.

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

21 §40-2B-17. Judge's salary, expenses.

22 (a) The chief judge of the Tax Appeals Commission
23 shall receive such salary as is provided from time to time
24 within Pay Grade 88 of the compensation plan of the state
25 Merit System, as determined by the Governor with the advice of

1 the nominating committee. Associate judges shall receive such
2 salary as is provided from time to time within Pay Grade 84 of
3 the compensation plan of the state Merit System, as determined
4 by the chief judge with the advice of the Governor. The judges
5 shall receive no other monetary compensation for services
6 except as authorized by subsection (b). This subsection shall
7 neither increase nor decrease the salary received by the chief
8 administrative law judge of the Department of Revenue, who
9 shall become the initial chief judge of the Tax Appeals
10 Commission pursuant to Section 40-2B-18(a).

11 (b) When a judge or other Tax Appeals Commission
12 employee travels on Tax Appeals Commission business away from
13 the state capital, he or she shall be reimbursed as provided
14 for other state employees in Sections 36-7-20, 36-7-21,
15 36-7-22, and 36-7-24. The chief judge, at his or her
16 discretion, may direct and require any judge or other employee
17 of the Tax Appeals Commission to attend continuing legal
18 education or other training as necessary.

19 §40-2B-18. Chief judge; associate judges; functions.

20 (a) The initial chief judge of the Tax Appeals
21 Commission shall be the chief administrative law judge of the
22 Department of Revenue serving on September 30, 2012.
23 Thereafter, the individual who is appointed as chief judge by
24 the Governor, and approved by the Senate or appointed Pro

1 Tempore by the Governor, as provided in Section 40-2B-15(b),
2 shall serve as chief judge.

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

9 (c) All judges of the Tax Appeals Commission, other
10 than the chief judge, shall be designated as associate judges,
11 and shall have the same authority and powers of the chief
12 judge, except as specified in this chapter.

13 (d) If a judge of the Tax Appeals Commission dies,
14 retires, or resigns, or is unable to serve as judge, or is
15 removed from office for cause, the Governor may appoint a Tax
16 Appeals Commission judge pro tempore, who must meet the
17 qualifications for a Tax Appeals Commission judge set forth in
18 Section 40-2B-16(a). Such appointment shall become effective
19 the first day of the month following the submission of the
20 appointment letter by the chief justice to the Governor's
21 Office. Such judge pro tempore shall serve until such time as
22 a successor judge is confirmed by the Senate, as provided
23 herein. If the judge pro tempore is appointed to fill the
24 position of chief judge, he or she shall be compensated at the
25 rate provided herein for the chief judge, and shall have and

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

14 §40-2B-19. Offices of Tax Appeals Commission;
15 location of hearings.

16 The principal office of the Tax Appeals Commission
17 shall be in Montgomery and in a building that is separate and
18 apart from any building in which the Department of Revenue has
19 an office, as approved by the Finance Director. The Tax
20 Appeals Commission may hold hearings in any county seat, in
21 the discretion of the chief judge. If the appeal involves a
22 tax levied by or on behalf of a self-administered county or
23 municipality, the Tax Appeals Commission may hold the hearing
24 in the county seat of the affected county or the county seat
25 of the county in which the affected municipality is located.

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

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

13 (a) The Tax Appeals Commission, through the chief
14 judge, may contract or enter into agreements with any private
15 or governmental agency, upon approval of the Finance Director,
16 for the rental of office space, and the rental or purchase of
17 equipment, administrative or other support services, supplies,
18 and all other property or services necessary for the operation
19 of the Tax Appeals Commission. The funds for the operation of
20 the Tax Appeals Commission shall be administered by the Tax
21 Appeals Commission, through the chief judge. With respect to
22 the fiscal year ending September 30, 2013, there shall be
23 transferred from the Revenue Department Administrative Fund to
24 the Tax Appeals Commission the amount of four hundred
25 twenty-five thousand dollars (\$425,000). The amount

1 transferred from the Revenue Department Administrative Fund
2 shall be disbursed to the Tax Appeals Commission in four equal
3 increments, at the beginning of each quarter of the fiscal
4 year. Thereafter, the Tax Appeals Commission, through the
5 chief judge, shall prepare an annual budget, and funds shall
6 be appropriated annually by the Legislature from the Revenue
7 Department Administrative Fund to be used exclusively for the
8 operation of the Tax Appeals Commission.

9 (b) No employee of the Tax Appeals Commission or
10 person serving as judge pro tempore shall act as an authorized
11 representative or representative of the department before the
12 Tax Appeals Commission while an employee or while serving as a
13 judge pro tempore. Nor shall any former employee of the Tax
14 Appeals Commission or former judge pro tempore act as an
15 authorized representative, representative of the department,
16 or otherwise participate in any case that was pending before
17 the Tax Appeals Commission on the date of termination of that
18 person's employment with or service on behalf of the Tax
19 Appeals Commission. A former Tax Appeals Commission judge may
20 represent a client before the Tax Appeals Commission in a
21 legal, non-lobbying capacity, in a case that was not pending
22 before the Tax Appeals Commission when the judge left office,
23 to the same extent former members of the Alabama judiciary are
24 allowed by Section 36-25-13.

25 §40-2B-21. Records.

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

5 §40-2B-22. Filing fees prohibited.

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

8 §40-2B-23. Fees and expenses of witnesses. Any
9 witness subpoenaed by the Tax Appeals Commission on its own
10 motion to testify or produce records at a hearing before the
11 Tax Appeals Commission shall be entitled to receive from the
12 Tax Appeals Commission the fees and mileage provided in
13 Section 40-2A-7(a)(4). Any witness subpoenaed by the Tax
14 Appeals Commission at the request of a party to testify or
15 produce records at such a hearing shall be entitled to receive
16 from the requesting party the fees and mileage provided in
17 Section 40-2A-7(a)(4).

18 §40-2B-24. Department of Revenue allowed to
19 acquiesce or nonacquiesce in Tax Appeals Commission and
20 circuit court decisions.

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

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

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

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

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

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

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

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

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

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

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

12 Section 4. Sections 40-2A-3, 40-2A-4, 40-2A-5,
13 40-2A-7, 40-2A-8, 40-2A-11, and 40-18-27, Code of Alabama
14 1975, are amended to read as follows:

15 "§40-2A-3.

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

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

22 "(2) AUTHORIZED REPRESENTATIVE. Any individual with
23 written authority or power of attorney to represent a taxpayer
24 before the department or the Tax Appeals Commission; provided
25 however, that nothing herein shall be construed as entitling

1 any such individual who is not a licensed attorney to engage
2 in the practice of law.

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

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

8 "(5) COMPTROLLER. The Comptroller of the State of
9 Alabama.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 "a. The Department of Revenue.

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

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

1 authority to determine the amount of license fee, interest,
2 court cost, or penalty owed to the municipality or group of
3 municipalities.

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

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

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

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

23 "a. A county or municipality that allows the
24 department to administer a sales, use, rental, or lodgings tax

1 which is levied by or on behalf of that county or
2 municipality.

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

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

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

22 "(24) TAXPAYER. Any person subject to or liable for
23 any state or local tax; any person required to file a return
24 with respect to, or to pay, or withhold and remit any state or
25 local tax or to report any information or value to the

1 department, a county, municipality, or its designee; or any
2 person required to obtain or holding any interest in any
3 license, permit, or certificate of title issued by the
4 department, a county, municipality, or its designee, or any
5 person that may be affected by any act or refusal to act by
6 the department, a county, municipality, or its designee, or to
7 keep any records required by this chapter.

8 "(25) TAXPAYER ADVOCATE. The person so designated
9 from time to time by the commissioner to assist the taxpayers
10 of the State of Alabama with regard to tax issues resulting
11 from any taxes administered or collected by the department.

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

22 "§40-2A-4.

23 "(a) Rights of the taxpayer.

24 "(1) For purposes of sections (a), (c), and (d), the
25 term "department" shall include the Department of Revenue, a

1 self-administered county or municipality, or a private
2 examining or collecting firm, depending on whether the
3 Department of Revenue, a self-administered county, or
4 municipality, or private examining or collecting firm is
5 conducting the examination of the taxpayer.

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

15 "(3) At least one week before the issuance of a
16 preliminary assessment, the department shall provide to the
17 taxpayer in simple and non-technical terms:

18 "a. A written description of the basis for the
19 assessment and any penalty asserted with respect to the
20 assessment.

21 "b. A written description of the method by which the
22 taxpayer may request an administrative review of the
23 preliminary assessment.

24 "(4) Together with the issuance of a final
25 assessment, the department shall inform the taxpayer by a

1 written statement of his or her right to appeal to the Tax
2 Appeals Commission or to circuit court and shall include the
3 written description required by subsection (2)a., as revised
4 if necessary to reflect any changes since the issuance of the
5 preliminary assessment.

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

14 "(6) At all stages of an examination or the
15 administrative review of the examination, and in any appeal to
16 the Tax Appeals Commission, a taxpayer is entitled to be
17 assisted or represented, at his or her own expense, by an
18 authorized representative. A taxpayer may execute a power of
19 attorney, including by executing such form prescribed by the
20 department, designating any individual or individuals as his
21 or her authorized representative. In the absence of this power
22 of attorney, the department or the Tax Appeals Commission may
23 accept such other evidence that a person is the authorized
24 representative of a taxpayer as it considers appropriate. This
25 provision shall not, however, be construed as authorizing the

1 practice of law before the department, the Tax Appeals
2 Commission, or any court in this state by a person who is not
3 a licensed attorney.

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

20 "(8) This section shall not apply to criminal
21 investigations or investigations relating to the integrity of
22 any officer or employee of the department.

23 "(b) Department responsibilities generally.

24 "(1) The commissioner shall appoint a Taxpayer
25 Advocate from among the employees of the department. This

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

23 "a. The Taxpayer Advocate shall, subject to the
24 approval of the commissioner or the assistant commissioner,

1 issue taxpayer assistance orders in the form and manner
2 prescribed herein and by department regulations.

3 "b. Notwithstanding any statute of limitation or
4 other provision in this title, a taxpayer assistance order may
5 declare that any tax, including a final assessment, was
6 erroneously assessed or reported and is not a liability due
7 the state, or that a petition for refund was erroneously
8 denied by the department.

9 "c. A taxpayer assistance order shall grant relief
10 as deemed appropriate, including the voiding of any
11 erroneously issued final assessment for a tax which was not a
12 debt due the state, granting of any refund due the taxpayer,
13 or abating an assessment of interest that has accrued because
14 of undue delay by department personnel.

15 "d. At the request of the Tax Appeals Commission,
16 the taxpayer advocate shall review a final order issued by the
17 Tax Appeals Commission that was not appealed pursuant to
18 Section 40-2B-13, if there is newly discovered evidence which
19 by due diligence could not have been discovered in time to
20 file an application for rehearing pursuant to Section
21 40-2B-9(i), and may grant such relief as the taxpayer advocate
22 deems appropriate.

23 "e. All taxpayer assistance orders shall be dated
24 and signed by the Taxpayer Advocate and approved either by the
25 commissioner or the assistant commissioner, and shall state

1 the underlying facts, the reasons for granting relief, and the
2 relief granted. Any taxpayer assistance order may, for good
3 cause, be modified or rescinded in writing by the Taxpayer
4 Advocate and either the commissioner or assistant
5 commissioner.

6 "f. The Taxpayer Advocate shall have full access to
7 department personnel, books, and records subject, however, to
8 the confidentiality restrictions imposed by this chapter.

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

16 "h. The commissioner shall make an annual report to
17 the Legislature of all taxpayer assistance orders approved in
18 accordance with the provisions of this section and Sections
19 40-2A-2 and 40-2A-3. Such report shall contain the total
20 amount of relief granted and the types of taxes for which
21 relief was granted.

22 "(2) The department shall maintain a continuing
23 education program to train employees of the department and to
24 provide them with a current knowledge of state and applicable
25 federal tax laws.

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

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

7 "a. The basis of a production quota system for
8 employees; or

9 "b. The basis for evaluating an employee's
10 performance.

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

14 "(6) INSTALLMENT PAYMENTS.

15 "a. The commissioner is authorized to enter into
16 written agreements to allow any taxpayer to pay any tax in
17 installment payments if the commissioner determines that such
18 an agreement will facilitate collection of the tax.
19 Notwithstanding the preceding sentence, such agreements shall
20 be entered into only regarding a tax liability resulting from
21 a final assessment from which an appeal can no longer be
22 taken, unless the right to appeal is waived by the taxpayer in
23 writing, and such agreements shall not extend for a period
24 exceeding 12 months, provided, that any such agreement may be
25 renewed at the discretion of the commissioner for succeeding

1 periods not to exceed 12 months. The commissioner shall only
2 be authorized to enter such an agreement with regard to a tax
3 administered or collected by the department.

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

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

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

11 "3. The taxpayer fails to pay any other tax
12 liability due the department at the time such liability is
13 due, unless the taxpayer has appealed such other liability
14 pursuant to the terms of this chapter;

15 "4. The financial condition of the taxpayer has
16 significantly changed;

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

19 "6. The commissioner believes that collection of any
20 tax to which an agreement under this provision relates is in
21 jeopardy.

22 "c. The commissioner shall have sole authority or
23 discretion to enter into or amend, modify, or terminate any
24 installment payment agreement provided for herein. The

1 commissioner shall promulgate regulations necessary for the
2 implementation of this provision.

3 "d. Any self-administered county or municipality or
4 any private examining or collecting firm shall have the same
5 authority as provided to the commissioner by this subdivision
6 relating to installment payments with respect to taxes
7 administered or collected by the self-administered county, or
8 municipality or the private examining or collecting firm.

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

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

1 specific written request of the taxpayer, and the penalty did
2 not result from the taxpayer's failure to provide adequate or
3 accurate information.

4 "§40-2A-5.

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

24 "(b) Revenue rulings may be issued only if no taxes
25 have accrued with respect to the transactions, events, or

1 facts contained in the request at the time of the issuance of
2 the ruling.

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

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

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

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

16 "The taxpayer may petition for a hearing with the
17 Tax Appeals Commission to determine the propriety, under
18 subsection (a), (b), or (c), of any retroactive revocation of
19 a ruling.

20 "(d) All revenue rulings issued by the department
21 shall be published, maintained as a public record, and made
22 available by the department for public inspection and copying,
23 within a reasonable time following their issuance, at a
24 reasonable cost to be determined by the department. Prior to
25 publication, the department shall delete from the text of the

1 ruling all names, addresses, titles, figures, dates, and other
2 information which may identify the particular taxpayer who
3 requested the ruling. If a revenue ruling contains trade
4 secrets or other confidential information, the department
5 shall, upon written request of the taxpayer, delete that
6 information prior to publication.

7 "(e) Requests for revenue rulings shall be submitted
8 in writing to the secretary in the form and manner as
9 prescribed by department regulations, accompanied by a fee of
10 two hundred dollars (\$200). The commissioner shall either
11 issue or refuse to issue a ruling within 120 days after
12 receipt of the request unless the taxpayer consents to an
13 extension of time. If the commissioner refuses to issue a
14 ruling within the time prescribed, the two hundred dollar
15 (\$200) fee shall be refunded to the taxpayer. A request may be
16 withdrawn at any time prior to the issuance of the requested
17 ruling, in which case there shall be no refund of the two
18 hundred dollar (\$200) fee. A taxpayer may request an expedited
19 revenue ruling in the form and manner prescribed by department
20 regulations, accompanied by a fee of three thousand dollars
21 (\$3,000), which the commissioner shall issue within 30 days
22 after receipt of the request or shall promptly refund the
23 filing fee to the taxpayer.

24 "(f) Revenue rulings shall be issued in the name of
25 the commissioner.

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

1 shall, promptly upon receipt, forward a copy of the ruling
2 request to the appropriate municipal or county governing body
3 and shall consult with and accept written comments from
4 representatives of the municipality or county prior to
5 issuance of the ruling.

6 "§40-2A-7.

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

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

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

1 for any other purpose necessary for the proper administration
2 of any matter under the jurisdiction of the department.

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

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

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

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

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

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

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

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

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

1 "c. All preliminary and final assessments issued by
2 the department shall be executed as provided by regulations
3 promulgated by the department.

4 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
5 ASSESSMENT. Any preliminary assessment shall be entered within
6 three years from the due date of the return, or three years
7 from the date the return is filed with the department,
8 whichever is later, or if no return is required to be filed,
9 within three years of the due date of the tax, except as
10 follows:

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

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

20 "For purposes of this paragraph:

21 "1. The term taxable base means the gross income,
22 gross proceeds from sales, gross receipts, net worth, or other
23 amounts on which the tax reported on the return is measured;
24 provided, that for a corporation subject to the income tax
25 imposed by Chapter 18 of this title, the term "taxable base"

1 means the corporation's federal gross income multiplied by its
2 Alabama apportionment factor for the same tax year, calculated
3 pursuant to Chapter 27 of this title; and

4 "2. In determining the amount omitted from the
5 taxable base, there shall not be taken into account any amount
6 which is omitted from the taxable base stated in the return if
7 the amount is disclosed in the return, or in a statement
8 attached to the return, in a manner adequate to apprise the
9 department of the nature and amount of the item. With respect
10 to a corporation subject to the income tax imposed by Chapter
11 18 of this title, an amount omitted from the taxable base
12 shall not include any amounts for which the taxpayer has
13 substantial authority supporting its position. For purposes of
14 this subparagraph, the term "substantial authority" shall be
15 defined by reference to 26 U.S.C. §6662, as in effect from
16 time to time, as may be modified by department rule to conform
17 to Alabama tax law.

18 "c. A preliminary assessment entered pursuant to
19 Sections 40-29-72 and 40-29-73, may be entered within five
20 years from the due date of the return on which the underlying
21 tax is required to be reported or within five years of the
22 date the return is filed, whichever is later.

23 "d.1. In the case of income received during the
24 lifetime of a decedent, or by his or her estate during the
25 period of administration, the preliminary assessment of any

1 income tax shall be entered within 18 months after written
2 request therefor, filed after the return is made, by the
3 executor, administrator, or other fiduciary representing the
4 estate of the decedent, but not after the expiration of three
5 years from the due date of the return or three years from the
6 date the return is filed with the department, whichever is
7 later.

8 "2. In the case of income received by a corporation
9 contemplating dissolution, a preliminary assessment of any
10 income tax shall be entered within 18 months after written
11 request, by the corporation, filed after the return is made,
12 but not after the expiration of three years from the due date
13 of the return or three years from the date the return is filed
14 with the department, whichever is later. This subparagraph
15 shall not apply to any corporation unless dissolution is
16 completed within 18 months of the date of the written notice.

17 "e. If a taxpayer has made the election provided in
18 subsection (d) of Section 40-18-8, a preliminary assessment
19 based on the gain realized as a result of the involuntary
20 conversion may be entered within three years from the date the
21 taxpayer notified the department of the replacement of the
22 property in accordance with subsection (d) of Section 40-18-8
23 or of his or her intention not to replace the property.

24 "f. Reporting federal audit changes; time
25 limitations for assessments. When the Internal Revenue Service

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

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

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

24 "3. If the taxpayer fails to file an amended return
25 as prescribed by and within the time specified in this

1 subdivision, within one year following the date the taxpayer
2 actually files such amended return with the department.

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

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

15 "5. For purposes of this subdivision and subsection
16 (c)(2)c., the date that a federal change becomes final is the
17 date on which the taxpayer and the Internal Revenue Service
18 formally agree to the changes, or the date on which any
19 administrative or judicial order, judgment, or decree can no
20 longer be appealed due to the lapse of time.

21 "g. The running of the period of limitations
22 provided herein for entering a preliminary assessment shall be
23 suspended for the period that:

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

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

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

17 "i. Additional tax may be assessed by the department
18 within any applicable period allowed above, even though a
19 preliminary or final assessment has been previously entered by
20 the department against the same taxpayer for the same or a
21 portion of the same tax period. No taxpayer, however, shall be
22 subject to unnecessary examination or investigation, and only
23 one inspection of a taxpayer's books and records relating to
24 each type of tax administered by the department shall be made
25 for each taxable year, unless the taxpayer requests otherwise

1 or unless the commissioner after investigation, notifies the
2 taxpayer in writing that an additional inspection is
3 necessary. The commissioner shall promulgate regulations
4 consistent with those followed by the Internal Revenue Service
5 with respect to second inspection of a taxpayer's books and
6 records.

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

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

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

1 "a. If a taxpayer disagrees with a preliminary
2 assessment as entered by the department, the taxpayer may file
3 a written petition for review with the department within 60
4 days from the date of entry of the preliminary assessment
5 setting out the specific objections to the preliminary
6 assessment. If a petition for review is timely filed, or if
7 the department otherwise deems it necessary, the department
8 shall schedule a conference with the taxpayer for the purpose
9 of allowing the taxpayer and the department to present their
10 respective positions, discuss any omissions or errors, and to
11 attempt to agree upon any changes or modifications to their
12 respective positions.

13 "b. If a written petition for review:

14 "1. Is not timely filed, or

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

21 "c. If a preliminary assessment is not made final by
22 the department within three years from the date of entry, the
23 taxpayer may appeal the preliminary assessment to the Tax
24 Appeals Commission or to the appropriate circuit court as
25 provided by subsection (b) (5) for an appeal of a final

1 assessment. Any preliminary assessment that is outstanding as
2 of October 1, 2012, and that was entered five or more years
3 prior to that date, is void unless the preliminary assessment
4 is made final or the department and the taxpayer agree in
5 writing to extend the time period for entering a final
6 assessment prior to October 1, 2012.

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

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

19 "a. A taxpayer may appeal to the Tax Appeals
20 Commission from any final assessment entered by the department
21 by filing a notice of appeal with the Tax Appeals Commission
22 within 60 days from the date of entry of the final assessment,
23 and the appeal, if timely filed, shall proceed as provided in
24 Chapter 2B for appeals to the Tax Appeals Commission.

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

10 "2. If the appeal is to circuit court, the taxpayer,
11 also within the 60-day period allowed for appeal, shall do one
12 of the following:

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

15 "(ii) File a supersedeas bond with the court in an
16 amount equal to 125 percent of the amount of the tax,
17 interest, and any penalty shown on the final assessment. The
18 supersedeas bond shall be executed by a surety company
19 licensed and authorized to do business in Alabama and shall be
20 conditioned to pay the amount of tax, interest, and any
21 penalties shown on the final assessment, plus applicable
22 interest and any court costs relating to the appeal, payable
23 to the department, or the self-administered county or
24 municipality, if applicable.

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

16 "(iv) File a pledge or collateral assignment of
17 securities with the circuit court that constitute eligible
18 collateral under Chapter 14A, Title 41, in an amount equal to
19 200 percent of the amount of the tax, interest, and penalty
20 shown on the final assessment. The pledge or collateral
21 assignment shall be in favor of the department, or the
22 self-administered county or municipality, if applicable, and
23 conditioned to pay the assessment plus applicable interest and
24 any court costs relating to the appeal.

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

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

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

22 "2. Notwithstanding subparagraph 1., should the
23 circuit court determine that the taxpayer has not satisfied
24 the requirements of subparagraph b.2., the circuit court shall
25 order that the taxpayer satisfy such requirements. The

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

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

11 "d.1. The Tax Appeals Commission, circuit court, or
12 the appellate court on appeal may increase or decrease the
13 assessment to reflect the correct amount due.

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

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

21 "(6) 30-DAY APPEAL PERIODS FOR INDIVIDUALS WHO FAIL
22 TO FILE AN ALABAMA INCOME TAX RETURN. Notwithstanding the
23 60-day appeal periods for preliminary assessments and final
24 assessments provided by subdivisions (4) and (5), in the case
25 of an individual who is subject to Alabama income tax and who

1 fails to file timely the return required by Chapter 18 of this
2 title for a particular tax year, if the department enters a
3 preliminary assessment against the taxpayer based on
4 information received from the Internal Revenue Service with
5 respect to that same tax year, the taxpayer shall have only 30
6 days to file a petition for review pursuant to subdivision
7 (4), and if the preliminary assessment is made final, the
8 taxpayer shall have only 30 days to file a notice of appeal
9 pursuant to subdivision (5).

10 "(c) Procedure governing petitions for refund;
11 appeals therefrom.

12 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any
13 taxpayer may file a petition for refund with the department
14 for any overpayment of tax or other amount erroneously paid to
15 the department or concerning any refund which the department
16 is required to administer. If a final assessment for the tax
17 has been entered by the department, a petition for refund of
18 all or a portion of the tax may be filed only if the final
19 assessment plus applicable interest has been paid in full
20 prior to or with the filing of the petition for refund. The
21 department may also issue automatic refunds pursuant to
22 Section 40-29-71. In the case of a petition for refund of
23 sales or use taxes pursuant to Chapter 23, public utilities
24 taxes pursuant to Chapter 21, and any transient occupancy tax
25 pursuant to Chapter 26, the petition shall be filed jointly by

1 the taxpayer who collected and paid over the tax to the
2 department and the consumer/purchaser who paid the tax to the
3 taxpayer. A direct petition may be filed by the taxpayer if
4 the taxpayer never collected the tax from the
5 consumer/purchaser, or if the tax has been credited or repaid
6 to the consumer/purchaser by the taxpayer.

7 "(2) TIME LIMITATION FOR FILING PETITION FOR REFUND;
8 AUTOMATIC REFUND.

9 "a. Generally. A petition for refund shall be filed
10 with the department or an automatic refund issued pursuant to
11 Section 40-29-71, or a credit allowed, within (i) three years
12 from the date that the return was filed, or (ii) two years
13 from the date of payment of the tax, whichever period expires
14 last or, if an individual income tax return required by
15 Section 40-18-27 is not timely filed for a particular year, a
16 petition for refund of individual income tax paid by
17 withholding or estimated payment with respect to that year
18 shall be filed, or a credit allowed, within three years from
19 the original due date of the return.

20 "b. Net operating loss carryback. In lieu of the
21 periods provided in paragraph a., in the case of a net
22 operating loss carryback, the period for filing a petition for
23 refund, the department making an automatic refund or allowing
24 a credit shall be the period prescribed in 26 U.S.C.
25 §6511(d) (2) for the claiming of a credit or refund.

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

16 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
17 TIME LIMITATIONS. The department shall either grant or deny a
18 petition for refund within six months from the date the
19 petition is filed, unless the period is extended by written
20 agreement of the taxpayer and the department. The taxpayer and
21 his or her authorized representative, if applicable, shall be
22 notified of the department's decision concerning the petition
23 for refund by either first class U.S. mail, certified U.S.
24 mail, return receipt requested, or by U.S. mail with delivery
25 confirmation, sent to the taxpayer's or the authorized

1 representative's last known address. If the department fails
2 to grant a refund within the time provided herein, the
3 petition for refund shall be deemed to be denied.

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

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

2 "a. A taxpayer may appeal from the denial in whole
3 or in part of a petition for refund by filing a notice of
4 appeal with the Tax Appeals Commission within two years from
5 the date the petition is denied. If timely filed, the appeal
6 shall proceed as provided in Chapter 2B for appeals to the Tax
7 Appeals Commission.

8 "b. In lieu of appealing to the Tax Appeals
9 Commission, the taxpayer may appeal from the denial in whole
10 or in part of a petition for refund by filing a notice of
11 appeal with the Circuit Court in Montgomery County, Alabama,
12 or the circuit court of the county in which the taxpayer
13 resides or has a principal place of business in Alabama, as
14 appropriate, by filing the notice of appeal within two years
15 from the date the petition is denied. The circuit court shall
16 hear the appeal according to its own rules and procedures and
17 shall determine the correct amount of refund due, if any.

18 "c. If an appeal is not filed with the Tax Appeals
19 Commission or the appropriate circuit court within two years
20 of the date the petition is denied, the appeal shall be
21 dismissed for lack of jurisdiction.

22 "(d) The Department of Revenue shall revise existing
23 regulations or administrative guidance, or issue new
24 regulations or administrative guidance, as appropriate, in
25 conformance with this section.

1 "(e) The amendments made to this section by Act
2 2007-504 shall apply to all appeals filed after June 15, 2007.
3 Notwithstanding the prior sentence, in any appeal to a circuit
4 court which was pending on June 15, 2007, and in which a
5 supersedeas bond was filed pursuant to, and in compliance
6 with, the requirements of this section, for double the amount
7 of the tax, interest, and any penalty shown on the final
8 assessment, or for double the amount of the final order of the
9 administrative law judge, such bond may be reduced to 125
10 percent of such amount shown on the final assessment or in the
11 final order of the administrative law judge.

12 "§40-2A-8.

13 "(a) The department shall notify a taxpayer in
14 writing of any act or proposed act or refusal to act
15 concerning the denial or revocation of a license, permit, or
16 certificate of title concerning which the taxpayer has any
17 interest. The notice must be mailed by either first-class U.S.
18 mail or certified U.S. mail or U.S. mail with delivery
19 confirmation to the taxpayer's last known address, or to the
20 last known address of the taxpayer's authorized
21 representative, if applicable. Any taxpayer aggrieved by any
22 act or proposed act or refusal to act by the department shall
23 be entitled to file a notice of appeal from such act or
24 proposed act or refusal to act with the Tax Appeals
25 Commission. Such notice of appeal must be filed within 60 days

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

16 "(b) A taxpayer may elect to file a notice of appeal
17 with the Tax Appeals Commission regarding a notice of proposed
18 adjustment issued by the department affecting the taxpayer's
19 net operating loss deductions or carryovers for purposes of
20 the taxes imposed by Chapters 16 and 18 of this title. Such
21 notice of appeal shall be filed within the time period
22 prescribed in subsection (a), and the Tax Appeals Commission
23 shall have jurisdiction to determine the amount of the
24 taxpayer's net operating loss deductions or carryovers for the
25 tax periods in question.

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

1 title until such time as any outstanding title applications
2 not properly filed by the designated agent are properly filed
3 with the department.

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

10 "(e) A taxpayer may appeal any matter governed by
11 this section to the circuit court only after exhausting the
12 appeal rights provided under this section. Any appeal to the
13 circuit court must be from a final or other appealable order
14 issued by the Tax Appeals Commission.

15 "§40-2A-11.

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

1 first provided 30 days' written notice to the taxpayer, at the
2 last known address of the taxpayer, that the return has not
3 been filed and the taxpayer fails or refuses to file the
4 delinquent return within that time period; provided, however,
5 that the penalty may be assessed if the taxpayer has been
6 given written notice of a delinquent return for the same type
7 of tax within the 12 months preceding the due date of the
8 second delinquent return. This subsection shall not apply to
9 any individual income tax return or amended return filed with
10 the department if the taxpayer claims thereon and is due a
11 refund of income tax.

12 "(b) Failure to timely pay tax.

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

1 percent of the unpaid amount shown as tax due on the return or
2 the amount stated in the notice and demand.

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

19 "(3) This subsection shall not apply to any failure
20 to pay any estimated tax required to be paid by Sections
21 40-18-80 and 40-18-80.1.

22 "(c) Underpayment due to negligence. If any part of
23 any underpayment of tax is due to negligence or disregard of
24 rules or regulations, there shall be added to the tax an
25 amount equal to 20 percent of that part of the tax

1 attributable to negligence or disregard of rules or
2 regulations.

3 "For purposes of this subsection, the term
4 "negligence" includes any failure to make a reasonable attempt
5 to comply with this title or other statutes administered by
6 the department, and the term "disregard" includes any
7 careless, reckless, or intentional disregard of valid rules
8 and regulations.

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

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

19 "(e) Frivolous return penalty. If a taxpayer files a
20 "frivolous return," as that term is used in 26 U.S.C. § 6702,
21 that taxpayer may be liable for a penalty of up to five
22 hundred dollars (\$500).

23 "(f) Frivolous appeal penalty. If any appeal to the
24 Tax Appeals Commission or circuit court is determined to be
25 frivolous or primarily for the purpose of delay or to impede

1 collection of any tax, a penalty of five hundred dollars
2 (\$500) or, at the discretion of the Tax Appeals Commission or
3 circuit judge, up to 25 percent of the tax in question,
4 whichever is greater, shall be assessed in addition to any tax
5 due.

6 "(g) Failure to file partnership or Alabama S
7 corporation returns. If a pass-through entity, as defined in
8 Section 40-18-24.2, or an Alabama S corporation, as defined in
9 Section 40-18-160(b)(1), fails to file the applicable
10 information return required by Section 40-18-28 or 40-18-39
11 for any taxable year within the time prescribed therefor, the
12 pass-through entity or corporation shall be liable for a
13 penalty equal to the product of fifty dollars (\$50) multiplied
14 by the number of members of the pass-through entity or
15 shareholders of the Alabama S corporation, whichever is
16 applicable, for each month, or fraction thereof, during which
17 such failure continues, but not to exceed 12 months. In no
18 case, however, shall the penalty exceed one thousand dollars
19 (\$1,000) per return.

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

1 "(i) Penalties not exclusive. The penalties provided
2 in this section for failure to timely file a return, failure
3 to timely pay tax, filing a frivolous return, filing a
4 frivolous appeal, or underpayment of tax due to negligence may
5 be asserted against the same taxpayer for the same tax period.
6 If the fraud penalty is asserted, however, no other penalties
7 shall be asserted.

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

16 "(k) Discount sustained for reasonable cause. All
17 other provisions of tax laws notwithstanding, either the
18 commissioner or the taxpayer advocate of the department, upon
19 review of the circumstances involved, may authorize the
20 continuance or reinstatement of an otherwise allowable
21 discount for timely payment or filing when timely payment or
22 filing was delayed for reasonable cause.

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

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

4 "§40-18-27.

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

22 "(b) A taxpayer other than a resident shall not be
23 entitled to the deductions authorized by Sections 40-18-15 and
24 40-18-15.2 unless the taxpayer files a complete return showing
25 the gross income of the taxpayer both from within and outside

1 the state. Included on every income tax return shall be the
2 name, and address, and social security number or Preparer
3 Taxpayer Identification Number of the person who prepared the
4 return. The taxpayer shall be held liable for any statement
5 made by an agent of the taxpayer with reference to any
6 information required by law to be furnished in connection with
7 that tax return.

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

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

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

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

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

23 Section 6. The provisions of this act are severable.
24 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

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

1 shall only apply to tax periods beginning on or after January
2 1, 2013.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB549

Senate 03-MAY-12

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 16-MAY-12

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives

Passed: 16-MAY-12, as amended

House of Representatives

Passed: 16-MAY-2012, as amended by Conference Committee Report.

By: Senator Brooks