

1 SB423
2 162882-2
3 By Senators Melson and Orr
4 RFD: Governmental Affairs
5 First Read: 28-APR-15

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To enact the Alabama Tax Delinquency Amnesty Act of
12 2015; to provide for definitions; to require the Department of
13 Revenue to establish a tax amnesty program as provided for in
14 this Bill; to provide for terms and conditions of the program;
15 to provide for the disposition of the monies collected
16 pursuant to the tax amnesty program; to provide for an
17 effective date; and to provide for related matters.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. This Act shall be known as and may be
20 cited as the "Alabama Tax Delinquency Amnesty Act of 2015".

21 Section 2. Definitions. As used in this bill, the
22 following terms have the meaning ascribed to them in this
23 Section, except when the context clearly indicates otherwise:

24 (1) "Commissioner" means the Commissioner of the
25 Department of Revenue.

26 (2) "Courier" means a messenger other than the
27 United States Postal Service that delivers parcels, packages,

1 and the like, containing returns, reports, and other documents
2 or payments.

3 (3) "Department" means the Department of Revenue.

4 (4) "Postmark" means an official mark made by the
5 United States Postal Service on a piece of mail to cancel the
6 stamp and to indicate the place and date of sending.

7 (5) "Tax period" means any period for which a tax
8 return is required by law to be filed with the department.

9 (6) "Taxpayer" means any individual or entity
10 subject to any tax imposed by any law of the state of Alabama,
11 payable to the state of Alabama, and collected by the
12 department.

13 Section 3. (A) The department shall develop and
14 implement a tax amnesty program in accordance with the
15 provisions of this bill. The Commissioner shall provide by
16 regulation as necessary for the administration and
17 implementation of this amnesty program. The Commissioner shall
18 publicize the tax amnesty program in order to maximize the
19 public awareness of and participation in the program. The
20 Commissioner may, for purpose of publicizing the tax amnesty
21 program, contract with any advertising agency within or
22 outside this state and use public service announcements,
23 pamphlets, mail notices, and print, television, and radio
24 announcements. Such publications shall include increasing
25 public awareness that the tax amnesty program will provide
26 amnesty for sales and use tax due on internet, mail order, or
27 other purchases made from out-of-state vendors for which

1 Alabama sales or use tax was not charged at the time of
2 purchase. In furthering the collections of amnesty, the
3 Commissioner may procure amnesty program administration
4 services on a fee basis; however, the fee shall not exceed ten
5 percent of the total dollars collected.

6 (B) The amnesty program shall be effective for a
7 period of at least two months duration in 2015 occurring prior
8 to December 31, 2015; for a period of at least one month in
9 2016, occurring between July 1, 2016 and December 31, 2016;
10 and for a period of at least one month in 2017, occurring
11 between July 1, 2017, and December 31, 2017, all at the
12 discretion of the Commissioner. The tax amnesty program shall
13 apply to all taxes administered by the department except for
14 penalties for failure to submit information reports that are
15 not based on an underpayment of tax.

16 (C) Notwithstanding the terms of provisions of any
17 other Act or other provisions of law to the contrary, and
18 except as provided in Subsection (B), the following taxes are
19 eligible for amnesty:

20 (1) Taxes due prior to January 1, 2015, for which
21 the department has issued an individual or a business proposed
22 assessment, notice of assessment, bill, notice, or demand for
23 payment not later than May 31, 2015; or

24 (2) Taxes for taxable periods that began before
25 January 1, 2015.

26 (D) Participation in the amnesty program shall be
27 conditioned upon the agreement of the taxpayer that the right

1 to protest or initiate an administrative or judicial
2 proceeding is barred. The agreement shall only apply to the
3 specific tax and the tax period for which amnesty is granted.

4 (E) Amnesty for matters under examination and in
5 litigation.

6 (1) Taxpayers involved in field audits or litigation
7 that participate in an amnesty program shall agree to abide by
8 the department's interpretation of the law with respect to
9 issues involved in the audit or litigation resolved through
10 amnesty for all taxable periods beginning in 2016, 2017, and
11 2018 for the taxpayers participating in the 2015 amnesty
12 period; for all taxable periods beginning in 2017, 2018, and
13 2019 for taxpayers participating in the 2016 amnesty period;
14 and for all taxable periods beginning in 2018, 2019, and 2020
15 for taxpayers participating in the 2017 amnesty period.

16 Taxpayers shall agree to abide by the department's
17 interpretation of the law at the time the returns for these
18 periods are filed. Failure to abide by the department's
19 interpretation of the law for these periods shall subject the
20 taxpayer to the negligence penalty under Section 40-2A-11(c),
21 Code of Alabama 1975.

22 (2) Taxpayers involved in litigation that elect to
23 participate in amnesty shall agree to pay all costs of
24 litigation up until the effective date of the agreement.

25 (3) Taxpayers electing to participate in amnesty who
26 have paid under protest and filed suit in accordance with
27 Section 40-2A-9 and 40-2B-2, Code of Alabama 1975, shall agree

1 that upon approval of their amnesty application, the
2 department shall release their payment from escrow and apply
3 it in accordance with the term of the amnesty agreement. Any
4 refunds resulting from the application of the payment shall be
5 made in accordance with Subsection (J) of this Section. The
6 application for amnesty shall be subject to the provisions of
7 Paragraphs (1) and (2) of this Subsection.

8 (F) Taxpayers with existing liens on their property,
9 both movable and immovable, filed pursuant to Section 40-1-2,
10 Code of Alabama 1975, are eligible for amnesty; however,
11 taxpayers are required to pay any and all lien fees associated
12 with the tax periods for which amnesty is applied for.

13 (G) Amnesty will be granted only for eligible taxes
14 to eligible taxpayers who apply for amnesty during an amnesty
15 period on forms prescribed by the Commissioner and who pay all
16 of the tax, all fees and costs, if applicable, and any
17 interest due upon filing the amnesty application. The amnesty
18 application for taxpayers involved in field audits or
19 litigation shall include all issues and all eligible periods
20 involved in the audit or litigation. The Commissioner shall
21 reserve the right to require taxpayers to file tax returns
22 with the amnesty application. Notwithstanding the terms of
23 provisions of any other Act or other provisions of law to the
24 contrary, if the amnesty application is approved during the
25 2015 amnesty period the Commissioner shall waive one-half of
26 the interest and all of the penalties associated with the tax
27 periods for which amnesty is applied. If the amnesty

1 application is approved during the 2016 amnesty period, the
2 Commissioner shall waive fifteen percent of all the penalties
3 associated with the tax periods for which amnesty is applied,
4 but no interest shall be waived. If the amnesty application is
5 approved during the 2017 amnesty period, the Commissioner
6 shall waive ten percent of all of the penalties associated
7 with the tax periods for which amnesty is applied, but no
8 interest shall be waived. An amnesty payment or application
9 submitted in a properly addressed envelope with sufficient
10 postage delivered by the United States Postal Service is
11 deemed paid or received on the date it is postmarked. An
12 amnesty payment or application delivered by courier or
13 taxpayer is deemed paid or received on the date it is
14 delivered to the department's headquarters or a regional
15 office. No installment agreements will be entered into for tax
16 periods that are approved for amnesty.

17 (H) Ineligible taxpayers. Amnesty shall not be
18 granted to taxpayers who are parties to any criminal
19 investigation or criminal litigations in any court of the
20 United States or the state of Alabama pending on the effective
21 date of this Act for nonpayment, delinquency, or fraud in
22 relation to any state tax imposed by a law of the state of
23 Alabama and administered by the department. Further, a
24 taxpayer who delivers or discloses any false or fraudulent
25 application, document, return, or other statement to the
26 department in connection with an amnesty application shall be
27 ineligible for amnesty and shall be subject of the fraud

1 penalty under Section 40-2A-11(d), Code of Alabama 1975, or a
2 penalty of ten thousand dollars, whichever is greater.

3 (1) Amnesty applications shall include a written
4 waiver of all rights, restrictions, and delays for assessing,
5 collecting, or protesting taxes and interest due as set forth
6 in Title 40, Chapter 2A and Chapter 2B of the Code of Alabama,
7 1975. The filing of such applications shall make the tax,
8 interest, and penalty immediately due and payable; subject to
9 the notice and due process procedures provided for by law;
10 ineligible for refund, credit, or claim against the state; and
11 ineligible for redetermination; however, a taxpayer shall be
12 eligible for a refund or credit if the overpayment arises
13 after the amnesty application is submitted and is attributable
14 to a properly claimed Alabama net operating loss or
15 attributable to an adjustment made by the Internal Revenue
16 Service to the taxpayer's federal income tax, and the
17 taxpayers provides notice of the adjustment to the
18 Commissioner within sixty days of receipt of the adjustment
19 from the Internal Revenue Service. A taxpayer who files an
20 application for amnesty retains all administrative and
21 judicial rights of appeal with respect to any additional tax
22 assessed by the department.

23 (J) No interest shall be paid on refunds for those
24 amounts previously collected by the department from the
25 taxpayer for a tax period for which amnesty is granted.

26 (K) Post amnesty collection penalty. If, following
27 the termination of the tax amnesty period, the Commissioner

1 issues a deficiency assessment for a period for which amnesty
2 was taken, the Commissioner shall have the authority to impose
3 penalties and institute civil proceedings or criminal
4 proceedings as authorized by law only with respect to the
5 difference between the amount shown on the amnesty application
6 and the correct amount of tax due. The Commissioner may by
7 regulation impose after the expiration of the tax amnesty
8 period a cost of collection penalty not to exceed twenty
9 percent of any additional deficiency assessed for any taxable
10 period for which amnesty was taken. This penalty shall be in
11 addition to all other applicable penalties, fees, or costs.
12 The Commissioner shall have the right to waive any or all of
13 the collection penalty when it is demonstrated that any of the
14 deficiency of the taxpayer was not due to negligence,
15 intentional disregard or administrative rules and regulations,
16 or fraud. The imposition of penalties or civil proceedings or
17 criminal proceedings shall not invalidate the amnesty that was
18 previously granted. No penalty shall be imposed if the
19 deficiency results from an adjustment made by the Internal
20 Revenue Service to the taxpayer's federal income tax and the
21 taxpayer provides written notice of the adjustment to the
22 Commissioner within sixty days of receipt of the adjustment
23 from the Internal Revenue Service, or if the taxpayer's
24 application for amnesty was based on a proposed assessment or
25 notice of assessment.

26 (L) For taxable periods beginning on or after
27 January 1, 2016, and before December 31, 2023, taxpayers that

1 participate in the amnesty and later fail to comply with any
2 payment or filing provision administered by the Commissioner
3 shall be subject to the negligence penalty under Section
4 40-2A-11(c), Code of Alabama 1975, or a penalty of one hundred
5 dollars, whichever is greater.

6 Section 4. (A) The Commissioner shall retain from
7 the monies collected under this Act an amount equal to all
8 penalties waived under this Act, an amount equal to the costs
9 for contractual information technology and amnesty program
10 administration services, and an amount equal to any collection
11 fees, legal fees, or any other fees the department incurs that
12 are associated with granting amnesty. The Commissioner shall
13 also retain an amount not to exceed two hundred fifty
14 thousands dollars for advertising expenses from monies
15 collected from taxes paid pursuant to this Act.

16 (B) After satisfaction of the requirements of
17 Subsection A of this Section, all remaining monies collected
18 pursuant to this bill shall be paid into the state treasury
19 and placed in the appropriate state funds for the specific tax
20 collected pursuant to current law.

21 Section 5. This Act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.

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Senate

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Yeas 28
Nays 1

Patrick Harris
Secretary