

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

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8 SYNOPSIS: This bill would provide for an amnesty  
9 program for all taxes administered by the Alabama  
10 Department of Revenue, except the motor fuel tax,  
11 for tax years 2015, 2016, and 2017.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT  
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17 To enact the Alabama Tax Delinquency Amnesty Act of  
18 2015; to provide for definitions; to require the Department of  
19 Revenue to establish a tax amnesty program as provided for in  
20 this Bill; to provide for terms and conditions of the program;  
21 to provide for the disposition of the monies collected  
22 pursuant to the tax amnesty program; to provide for an  
23 effective date; and to provide for related matters.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

4           (1) "Commissioner" means the Commissioner of the  
5 Department of Revenue.

6           (2) "Courier" means a messenger other than the  
7 United States Postal Service that delivers parcels, packages,  
8 and the like, containing returns, reports, and other documents  
9 or payments.

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

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

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

16          (6) "Taxpayer" means any individual or entity  
17 subject to any tax imposed by any law of the state of Alabama,  
18 payable to the state of Alabama, and collected by the  
19 department.

20           Section 3. (A) The department shall develop and  
21 implement a tax amnesty program in accordance with the  
22 provisions of this bill. The Commissioner shall provide by  
23 regulation as necessary for the administration and  
24 implementation of this amnesty program. The Commissioner shall  
25 publicize the tax amnesty program in order to maximize the  
26 public awareness of and participation in the program. The  
27 Commissioner may, for purpose of publicizing the tax amnesty

1 program, contract with any advertising agency within or  
2 outside this state and use public service announcements,  
3 pamphlets, mail notices, and print, television, and radio  
4 announcements. Such publications shall include increasing  
5 public awareness that the tax amnesty program will provide  
6 amnesty for sales and use tax due on internet, mail order, or  
7 other purchases made from out-of-state vendors for which  
8 Alabama sales or use tax was not charged at the time of  
9 purchase. In furthering the collections of amnesty, the  
10 Commissioner may procure amnesty program administration  
11 services on a fee basis; however, the fee shall not exceed ten  
12 percent of the total dollars collected.

13 (B) The amnesty program shall be effective for a  
14 period of at least two months duration in 2015 occurring prior  
15 to December 31, 2015; for a period of at least one month in  
16 2016, occurring between July 1, 2016 and December 31, 2016;  
17 and for a period of at least one month in 2017, occurring  
18 between July 1, 2017, and December 31, 2017, all at the  
19 discretion of the Commissioner. The tax amnesty program shall  
20 apply to all taxes administered by the department except for  
21 motor fuel taxes and penalties for failure to submit  
22 information reports that are not based on an underpayment of  
23 tax.

24 (C) Notwithstanding the terms of provisions of any  
25 other Act or other provisions of law to the contrary, and  
26 except as provided in Subsection (B), the following taxes are  
27 eligible for amnesty:

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

5           (2) Taxes for taxable periods that began before  
6 January 1, 2015.

7           (D) Participation in the amnesty program shall be  
8 conditioned upon the agreement of the taxpayer that the right  
9 to protest or initiate an administrative or judicial  
10 proceeding is barred. The agreement shall only apply to the  
11 specific tax and the tax period for which amnesty is granted.

12           (E) Amnesty for matters under examination and in  
13 litigation.

14           (1) Taxpayers involved in field audits or litigation  
15 that participate in an amnesty program shall agree to abide by  
16 the department's interpretation of the law with respect to  
17 issues involved in the audit or litigation resolved through  
18 amnesty for all taxable periods beginning in 2016, 2017, and  
19 2018 for the taxpayers participating in the 2015 amnesty  
20 period; for all taxable periods beginning in 2017, 2018, and  
21 2019 for taxpayers participating in the 2016 amnesty period;  
22 and for all taxable periods beginning in 2018, 2019, and 2020  
23 for taxpayers participating in the 2017 amnesty period.

24 Taxpayers shall agree to abide by the department's  
25 interpretation of the law at the time the returns for these  
26 periods are filed. Failure to abide by the department's  
27 interpretation of the law for these periods shall subject the

1 taxpayer to the negligence penalty under Section 40-2A-11(c),  
2 Code of Alabama 1975.

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

6 (3) Taxpayers electing to participate in amnesty who  
7 have paid under protest and filed suit in accordance with  
8 Section 40-2A-9 and 40-2B-2, Code of Alabama 1975, shall agree  
9 that upon approval of their amnesty application, the  
10 department shall release their payment from escrow and apply  
11 it in accordance with the term of the amnesty agreement. Any  
12 refunds resulting from the application of the payment shall be  
13 made in accordance with Subsection (J) of this Section. The  
14 application for amnesty shall be subject to the provisions of  
15 Paragraphs (1) and (2) of this Subsection.

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

21 (G) Amnesty will be granted only for eligible taxes  
22 to eligible taxpayers who apply for amnesty during an amnesty  
23 period on forms prescribed by the Commissioner and who pay all  
24 of the tax, all fees and costs, if applicable, and any  
25 interest due upon filing the amnesty application. The amnesty  
26 application for taxpayers involved in field audits or  
27 litigation shall include all issues and all eligible periods

1 involved in the audit or litigation. The Commissioner shall  
2 reserve the right to require taxpayers to file tax returns  
3 with the amnesty application. Notwithstanding the terms of  
4 provisions of any other Act or other provisions of law to the  
5 contrary, if the amnesty application is approved during the  
6 2015 amnesty period the Commissioner shall waive one-half of  
7 the interest and all of the penalties associated with the tax  
8 periods for which amnesty is applied. If the amnesty  
9 application is approved during the 2016 amnesty period, the  
10 Commissioner shall waive fifteen percent of all the penalties  
11 associated with the tax periods for which amnesty is applied,  
12 but no interest shall be waived. If the amnesty application is  
13 approved during the 2017 amnesty period, the Commissioner  
14 shall waive ten percent of all of the penalties associated  
15 with the tax periods for which amnesty is applied, but no  
16 interest shall be waived. An amnesty payment or application  
17 submitted in a properly addressed envelope with sufficient  
18 postage delivered by the United States Postal Service is  
19 deemed paid or received on the date it is postmarked. An  
20 amnesty payment or application delivered by courier or  
21 taxpayer is deemed paid or received on the date it is  
22 delivered to the department's headquarters or a regional  
23 office. No installment agreements will be entered into for tax  
24 periods that are approved for amnesty.

25 (H) Ineligible taxpayers. Amnesty shall not be  
26 granted to taxpayers who are parties to any criminal  
27 investigation or criminal litigations in any court of the

1 United States or the state of Alabama pending on the effective  
2 date of this Act for nonpayment, delinquency, or fraud in  
3 relation to any state tax imposed by a law of the state of  
4 Alabama and administered by the department. Further, a  
5 taxpayer who delivers or discloses any false or fraudulent  
6 application, document, return, or other statement to the  
7 department in connection with an amnesty application shall be  
8 ineligible for amnesty and shall be subject of the fraud  
9 penalty under Section 40-2A-11(d), Code of Alabama 1975, or a  
10 penalty of ten thousand dollars, whichever is greater.

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



1 application for amnesty retains all administrative and  
2 judicial rights of appeal with respect to any additional tax  
3 assessed by the department.

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

7 (K) Post amnesty collection penalty. If, following  
8 the termination of the tax amnesty period, the Commissioner  
9 issues a deficiency assessment for a period for which amnesty  
10 was taken, the Commissioner shall have the authority to impose  
11 penalties and institute civil proceedings or criminal  
12 proceedings as authorized by law only with respect to the  
13 difference between the amount shown on the amnesty application  
14 and the correct amount of tax due. The Commissioner may by  
15 regulation impose after the expiration of the tax amnesty  
16 period a cost of collection penalty not to exceed twenty  
17 percent of any additional deficiency assessed for any taxable  
18 period for which amnesty was taken. This penalty shall be in  
19 addition to all other applicable penalties, fees, or costs.  
20 The Commissioner shall have the right to waive any or all of  
21 the collection penalty when it is demonstrated that any of the  
22 deficiency of the taxpayer was not due to negligence,  
23 intentional disregard or administrative rules and regulations,  
24 or fraud. The imposition of penalties or civil proceedings or  
25 criminal proceedings shall not invalidate the amnesty that was  
26 previously granted. No penalty shall be imposed if the  
27 deficiency results from an adjustment made by the Internal

1 Revenue Service to the taxpayer's federal income tax and the  
2 taxpayer provides written notice of the adjustment to the  
3 Commissioner within sixty days of receipt of the adjustment  
4 from the Internal Revenue Service, or if the taxpayer's  
5 application for amnesty was based on a proposed assessment or  
6 notice of assessment.

7 (L) For taxable periods beginning on or after  
8 January 1, 2016, and before December 31, 2023, taxpayers that  
9 participate in the amnesty and later fail to comply with any  
10 payment or filing provision administered by the Commissioner  
11 shall be subject to the negligence penalty under Section  
12 40-2A-11(c), Code of Alabama 1975, or a penalty of one hundred  
13 dollars, whichever is greater.

14 Section 4. (A) The Commissioner shall retain from  
15 the monies collected under this Act an amount equal to all  
16 penalties waived under this Act, an amount equal to the costs  
17 for contractual information technology and amnesty program  
18 administration services, and an amount equal to any collection  
19 fees, legal fees, or any other fees the department incurs that  
20 are associated with granting amnesty. The Commissioner shall  
21 also retain an amount not to exceed two hundred fifty  
22 thousands dollars for advertising expenses from monies  
23 collected from taxes paid pursuant to this Act.

24 (B) After satisfaction of the requirements of  
25 Subsection A of this Section, all remaining monies collected  
26 pursuant to this bill shall be paid into the state treasury

1 and placed in the appropriate state funds for the specific tax  
2 collected pursuant to current law.

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