

1 SB20
2 171723-1
3 By Senator Melson
4 RFD: Finance and Taxation General Fund
5 First Read: 08-SEP-15

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8 SYNOPSIS: This bill would provide for an amnesty
9 program for all taxes administered by the
10 Department of Revenue, except the motor fuel taxes.
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12 A BILL
13 TO BE ENTITLED
14 AN ACT
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16 To enact the Alabama Tax Delinquency Amnesty Act of
17 2016; to provide for definitions; to require the Department of
18 Revenue to establish a tax amnesty program as provided for in
19 this Bill; to provide for terms and conditions of the program;
20 to provide for the disposition of the monies collected
21 pursuant to the tax amnesty program; to provide for an
22 effective date; and to provide for related matters.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This Act shall be known as and may be
25 cited as the "Alabama Tax Delinquency Amnesty Act of 2016".

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) "Contact" or "Contacted" means previous contact
7 of any kind by the Department or an agent of the Department
8 within five years prior to the initial written request for
9 amnesty. This includes returns filed for the tax types
10 included in the application for tax periods beginning before
11 the look-back period. Contact includes, but is not limited to,
12 with regard to potential liability for the type of tax
13 identified in the amnesty application: receipt of a nexus
14 questionnaire, an audit or notice of audit, payment of tax,
15 registration for tax, registration with the Secretary of
16 State, request for extension of time to file, making a payment
17 of estimated tax, filing a return, and non-compliance issued
18 in response to an application for a certificate of good
19 standing or a certificate of compliance by the taxpayer, or on
20 behalf of the taxpayer.

21 (3) "Courier" means a messenger other than the
22 United States Postal Service that delivers parcels, packages,
23 and the like, containing returns, reports, and other documents
24 or payments.

25 (4) "Department" means the Department of Revenue.

26 (5) "Look-back Period" means the last three full tax
27 years (or 36 months) of tax returns which are delinquent.

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

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

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

10 Section 3. (A) The department shall develop and
11 implement a tax amnesty program in accordance with the
12 provisions of this bill. The Commissioner may provide by
13 regulation as necessary for the administration and
14 implementation of this amnesty program. The Commissioner shall
15 publicize the tax amnesty program in order to maximize the
16 public awareness of and participation in the program. The
17 Commissioner may, for purpose of publicizing the tax amnesty
18 program, contract with any advertising agency within or
19 outside this state and use public service announcements,
20 pamphlets, mail notices, and print, television, and radio
21 announcements. Such publications shall include increasing
22 public awareness that the tax amnesty program will provide
23 amnesty for sales and use tax due on internet, mail order, or
24 other purchases made from out-of-state vendors for which
25 Alabama sales or use tax was not charged at the time of
26 purchase. In furthering the collections of amnesty, the
27 Commissioner may procure amnesty program administration

1 services on a fee basis; however, the fee shall not exceed ten
2 percent of the total dollars collected.

3 (B) The amnesty program shall be effective for a
4 period of at least two months duration in 2016 occurring prior
5 to August 31, 2016. The tax amnesty program shall apply to all
6 taxes administered by the department except for motor fuel
7 taxes, penalties imposed by § 40-29-73, and penalties for
8 failure to submit information reports that are not based on an
9 underpayment of tax.

10 (C) Notwithstanding the provisions of any other Act
11 or other provisions of law to the contrary, and except as
12 provided in Subsection (B), the following taxes are eligible
13 for amnesty:

14 (1) Taxes due prior to January 1, 2015; or

15 (2) Taxes for taxable periods that began before
16 January 1, 2015.

17 (D) Participation in the amnesty program shall be
18 conditioned upon the agreement of the taxpayer that the right
19 to protest or initiate an administrative or judicial
20 proceeding is barred. The agreement shall only apply to the
21 specific tax and the tax period for which amnesty is granted.

22 (E) Amnesty will be granted only for eligible taxes
23 to eligible taxpayers who apply for amnesty during the amnesty
24 period on forms prescribed by the Commissioner and who pay all
25 of the tax, all fees and costs, if applicable, and any
26 interest due upon filing the amnesty application. A standard
27 look-back period, as defined in this Act, will apply for all

1 tax types eligible for amnesty. If the taxpayer has collected
2 any tax without remitting such tax to the Department, the
3 look-back period will be extended to include all periods, back
4 to the point of collection. The Commissioner shall reserve the
5 right to require taxpayers to file tax returns with the
6 amnesty application. Notwithstanding the provisions of any
7 other Act or other provisions of law to the contrary, if the
8 amnesty application is approved during the amnesty period the
9 Commissioner shall waive one-half of the interest and all of
10 the penalties associated with the tax periods for which
11 amnesty is applied. An amnesty payment or application
12 submitted in a properly addressed envelope with sufficient
13 postage delivered by the United States Postal Service is
14 deemed paid or received on the date it is postmarked. An
15 amnesty payment or application delivered by courier or
16 taxpayer is deemed paid or received on the date it is
17 delivered to the department's headquarters or a regional
18 office. No installment agreements will be entered into for tax
19 periods that are approved for amnesty.

20 (F) Ineligible taxpayers. Amnesty shall not be
21 granted to taxpayers who have been contacted by the
22 department, who are parties to any criminal investigation or
23 criminal litigations in any court of the United States or the
24 state of Alabama pending on the effective date of this Act for
25 nonpayment, delinquency, or fraud in relation to any state tax
26 imposed by a law of the state of Alabama and administered by
27 the department. Further, a taxpayer who delivers or discloses

1 any false or fraudulent application, document, return, or
2 other statement to the department in connection with an
3 amnesty application shall be ineligible for amnesty and shall
4 be subject of the fraud penalty under Section 40-2A-11(d),
5 Code of Alabama 1975, or a penalty of ten thousand dollars,
6 whichever is greater.

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

1 (G) No interest shall be paid on refunds for those
2 amounts previously collected by the department from the
3 taxpayer for a tax period for which amnesty is granted.

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

1 from the Internal Revenue Service or if the taxpayer's
2 application for amnesty was based on a proposed assessment or
3 notice of assessment.

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

11 Section 4. (A) The Commissioner shall also retain an
12 amount not to exceed two hundred fifty thousand dollars for
13 advertising expenses from monies collected from taxes paid
14 pursuant to this Act. Such amount is hereby appropriated to
15 the Department and shall be in addition to any and all other
16 funds heretofore or hereafter appropriated, for the fiscal
17 year beginning October 1, 2015.

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

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