

1 HB38  
2 172812-4  
3 By Representatives Tuggle, Mooney, Wingo, Hill (M), Weaver,  
4 Harper, Fridy, Chesteen, Lee, Ledbetter, Wilcox, Sanderford,  
5 Clouse, Boothe, McCutcheon, Baker, McMillan, Millican, Greer,  
6 Martin, Beckman, Fincher, Pettus, Garrett, Carns, Shedd,  
7 Poole, Hubbard, Faulkner, South and Johnson (K)  
8 RFD: State Government  
9 First Read: 02-FEB-16  
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1           "For the purposes of this chapter and Chapter 2B,  
2 the following terms shall have the following meanings:

3           "(1) ASSOCIATE ALABAMA TAX TRIBUNAL JUDGE. An  
4 associate judge as defined in Section 40-2B-2.

5           "(2) AUTHORIZED REPRESENTATIVE. Any individual,  
6 including, but not limited to, an attorney or certified public  
7 accountant with written authority or power of attorney to  
8 represent a taxpayer before the department or the Alabama Tax  
9 Tribunal; provided however, that nothing herein shall be  
10 construed as entitling any such individual who is not a  
11 licensed attorney to engage in the practice of law.

12           "(3) CHIEF ALABAMA TAX TRIBUNAL JUDGE or CHIEF  
13 JUDGE. The chief judge as defined in Section 40-2B-2.

14           "(4) COMMISSIONER. The commissioner of the  
15 department or his or her delegate.

16           "(5) COMPTROLLER. The Comptroller of the State of  
17 Alabama.

18           "(6) DELEGATE. When used with reference to the  
19 commissioner means any officer or employee of the department  
20 duly authorized by the commissioner, directly or indirectly,  
21 by one or more redelegations of authority, to perform the  
22 function described in the context.

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

25           "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES  
26 TAX. A privilege or license tax, imposed by a municipality or  
27 county, measured by gross receipts or gross proceeds of sale

1 and which: (i) was in effect on or before February 25, 1997,  
2 or is an amendment to a tax which was in effect on that date;  
3 (ii) is levied against those selling tangible personal  
4 property at retail, those operating places of amusement or  
5 entertainment, those making street deliveries, and those  
6 leasing or renting tangible personal property; and (iii) is  
7 due and payable to a county or municipality monthly or  
8 quarterly.

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

12 "(10) INTEREST. That amount computed under Section  
13 40-1-44, on any overpayment or underpayment of tax or under  
14 Section 40-2A-18 on a final assessment.

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

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

23 "(13) PERSON. Any individual, association, estate,  
24 trust, partnership, corporation, or other entity of any kind.

25 "(14) PETITION FOR REFUND. Any written request for a  
26 refund of any tax previously paid, including in the form of an  
27 amended return. Unless otherwise provided by law, the request

1 shall include sufficient information to identify the type and  
2 amount of tax overpaid, the taxpayer, the period included, and  
3 the reasons for the refund.

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

8 "(16) PRELIMINARY ASSESSMENT. The preliminary notice  
9 of value or underpayment of any tax administered by the  
10 department.

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

18 "a. The Department of Revenue.

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

25 "c. A person or firm whose sole function and purpose  
26 on behalf of a municipality or group of municipalities is to  
27 collect delinquent insurance premium license fees levied by

1 that municipality or group of municipalities, and who has no  
2 authority to determine the amount of license fee, interest,  
3 court cost, or penalty owed to the municipality or group of  
4 municipalities.

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

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

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

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

26 "a. A county or municipality that allows the  
27 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) ALABAMA TAX TRIBUNAL. The Alabama Tax Tribunal  
20 as described in Chapter 2B.

21 "(24) TAXPAYER. Any person subject to or liable for  
22 any state or local tax; any person required to file a return  
23 with respect to, or to pay, or withhold and remit any state or  
24 local tax or to report any information or value to the  
25 department, a county, municipality, or its designee; or any  
26 person required to obtain or holding any interest in any  
27 license, permit, or certificate of title issued by the

1 department, a county, municipality, or its designee, or any  
2 person that may be affected by any act or refusal to act by  
3 the department, a county, municipality, or its designee, or to  
4 keep any records required by this chapter.

5 "(25) TAXPAYER ADVOCATE. The person ~~so designated~~  
6 ~~from time to time by the commissioner~~ appointed by the  
7 Governor pursuant to Sections 40-2A-4 and 40-2A-4.1 to assist  
8 the taxpayers of the State of Alabama with regard to tax  
9 issues resulting from any taxes administered or collected by  
10 the department.

11 "(26) TAXPAYER ASSISTANCE ORDER. A written order  
12 issued by the Taxpayer Advocate and approved by ~~either the~~  
13 ~~commissioner or assistant commissioner~~ which, among other  
14 items, states the facts and grants relief to a taxpayer  
15 concerning an issue in dispute with the department with regard  
16 to tax issues resulting from any taxes administered or  
17 collected by the department."

18 Section 2. Section 40-2A-4, Code of Alabama 1975, is  
19 amended to read as follows:

20 "§40-2A-4.

21 "(a) Rights of the taxpayer.

22 "(1) For purposes of this subsection and subsections  
23 (c) and (d), the term "department" shall include the  
24 Department of Revenue, a self-administered county or  
25 municipality, or a private examining or collecting firm,  
26 depending on whether the Department of Revenue, a  
27 self-administered county or municipality, or private examining



1 or collecting firm is conducting the examination of the  
2 taxpayer.

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

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

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

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

21 "(4) At or before the issuance of a final  
22 assessment, the department shall inform the taxpayer by a  
23 written statement of his or her right to appeal to the Alabama  
24 Tax Tribunal or to circuit court.

25 "(5) Except in cases involving suspected criminal  
26 violations of the tax law or other criminal activity, the  
27 department shall conduct an examination of a taxpayer during

1 regular business hours after providing reasonable notice to  
2 the taxpayer. A taxpayer who refuses a proposed time for an  
3 examination on the grounds that the proposed examination would  
4 cause inconvenience or hardship must offer reasonable  
5 alternative times and dates for the examination.

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

21 "(7) A taxpayer shall be allowed to make an audio  
22 recording of any in-person interview with any officer or  
23 employee of the department relating to any examination or  
24 investigation by the department, provided, however, the  
25 taxpayer must give reasonable advance notice to the department  
26 of his or her intent to record and the recording shall be at  
27 the taxpayer's own expense and with the taxpayer's own

1 equipment. The department shall also be allowed to record any  
2 interview if the taxpayer is recording the interview, or if  
3 the department gives the taxpayer reasonable advance notice of  
4 its intent to record the interview. The department shall  
5 provide the taxpayer with a copy of the recording, but only if  
6 the taxpayer provides reimbursement for the cost of the  
7 transcript and reproduction of the copy. The cost shall be  
8 reasonable as prescribed by regulations issued by the  
9 department.

10 "(8) This section shall not apply to criminal  
11 investigations or investigations relating to the integrity of  
12 any officer or employee of the department.

13 "(b) Department responsibilities generally.

14 "(1) The ~~commissioner~~ Governor shall appoint a  
15 Taxpayer Advocate from ~~among the employees of the department a~~  
16 list of at least two and up to five qualified candidates  
17 submitted by the Taxpayer Advocate Selection Committee created  
18 in Section 40-2A-4.1. The Taxpayer Advocate shall serve at the  
19 pleasure of the Governor. The ~~taxpayer advocate~~ Taxpayer  
20 Advocate shall be an employee of the Department of Revenue in  
21 the unclassified service. The salary shall be fixed by the  
22 Governor in accordance with Section 36-6-6 and shall be paid  
23 from the Revenue Department Administrative Fund. For purposes  
24 of employment benefits, the Taxpayer Advocate shall be treated  
25 as other unclassified employees of the state. This officer  
26 shall receive and review inquiries or complaints concerning  
27 matters that have been pending before the department for an

1 unreasonable length of time, or matters where the taxpayer has  
2 been unable to obtain a reasonable response after several  
3 attempts to communicate with the department employee assigned  
4 to the taxpayer's case, or his or her immediate superiors. In  
5 addition, this officer shall review and have the authority to  
6 waive a penalty for reasonable cause as provided in subsection  
7 (h) of Section 40-2A-11, shall promptly review inquiries  
8 concerning release of property levied upon, the erroneous  
9 filing of liens, the failure to release a lien for good cause,  
10 or other matters complained of by a taxpayer or other affected  
11 party. The Taxpayer Advocate shall have no authority nor issue  
12 any ruling with regard to any taxes collected by or on behalf  
13 of a self-administered county or municipality.

14 "a. The Taxpayer Advocate shall, subject to the  
15 approval of the commissioner ~~or the assistant commissioner~~,  
16 issue taxpayer assistance orders in the form and manner  
17 prescribed herein and by department regulations.

18 "b. Notwithstanding any statute of limitation or  
19 other provision in this title, a taxpayer assistance order may  
20 declare that any tax, including a final assessment, was  
21 erroneously assessed or reported and is not a liability due  
22 the state, or that a petition for refund was erroneously  
23 denied by the department.

24 "c. A taxpayer assistance order shall grant relief  
25 as deemed appropriate, including the voiding of any  
26 erroneously issued final assessment for a tax which was not a  
27 debt due the state, granting of any refund due the taxpayer,

1 ~~or~~ abating an assessment of interest that has accrued because  
2 of undue delay by department personnel, or the granting of  
3 such other relief that is equitable under the circumstances.

4 "d. At the request of the Alabama Tax Tribunal, the  
5 ~~taxpayer advocate~~ Taxpayer Advocate shall review a final order  
6 issued by the Alabama Tax Tribunal that was not appealed  
7 pursuant to Section 40-2B-2, if there is newly discovered  
8 ~~evidence which by due diligence could not have been discovered~~  
9 ~~in time to file an application for rehearing pursuant to~~  
10 ~~Section 40-2B-2, and may propose relief as the taxpayer~~  
11 ~~advocate Taxpayer Advocate deems appropriate and approved by~~  
12 ~~the commissioner or the assistant commissioner. evidence which~~  
13 ~~by due diligence could not have been discovered in time to~~  
14 ~~file an application for rehearing pursuant to Section 40-2B-2,~~  
15 ~~and may propose relief as the taxpayer advocate deems~~  
16 ~~appropriate and approved by the commissioner or the assistant~~  
17 ~~commissioner relevant to the issue or issues addressed in the~~  
18 ~~final order. The Taxpayer Advocate, with the approval of the~~  
19 ~~commissioner, may thereafter grant such relief based on the~~  
20 ~~evidence that is equitable under the circumstances.~~

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

1 Advocate and ~~either the commissioner or the assistant~~  
2 ~~commissioner.~~

3 "f. The Taxpayer Advocate shall have full access to  
4 department personnel, books, and records subject, however, to  
5 the confidentiality restrictions imposed by this chapter. The  
6 department shall provide appropriate and adequate office  
7 space, equipment, trained and qualified personnel, and other  
8 property necessary to support the requirements of the Taxpayer  
9 Advocate.

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

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

23 "i.1. The Taxpayer Advocate shall promote the  
24 interests of taxpayers involved in disputes where an ambiguity  
25 in tax law exists and work to resolve those disputes in favor  
26 a manner that addresses the interests of the taxpayer.

1                   "2. On or before January 15 of each year, the  
2 Taxpayer Advocate shall submit a report identifying  
3 ambiguities in tax laws in this state and providing  
4 recommendations to resolve the identified ambiguities to the  
5 Governor, Lieutenant Governor, Speaker of the House, President  
6 Pro Tempore of the Senate, and Chairs of the Senate Finance  
7 and Taxation General Fund Committee, the Senate Finance and  
8 Taxation Education Committee, the House Ways and Means General  
9 Fund Committee, and the House Ways and Means Education  
10 Committee. The commissioner shall also be provided the report  
11 and may submit his or her comments and additional suggestions  
12 in response to the report.

13                   "j. The Taxpayer Advocate shall maintain a public  
14 website, paid for from the Revenue Department Administrative  
15 Fund, separate from the ~~department~~ department's public website  
16 detailing activity of the advocate and containing information  
17 and resources for taxpayers. The department shall include  
18 contact information of the Taxpayer Advocate on its public  
19 website.

20                   "k. In addition to all other duties prescribed in  
21 this subsection, the Taxpayer Advocate shall do all of the  
22 following:

23                   "1. Identify subject areas where taxpayers have  
24 difficulties interacting with the department.

25                   "2. Identify classes of taxpayers or specific  
26 business sectors which have common problems related to the  
27 department.

1                   "3. Propose solutions, including administrative  
2 changes, to practices and procedures of the department.

3                   "4. Recommend legislative action as may be  
4 appropriate to resolve problems encountered by taxpayers.

5                   "5. Educate taxpayers concerning their rights and  
6 responsibilities under the tax laws of this state.

7                   "6. Educate tax professionals concerning the  
8 department's rules and interpretations by issuing bulletins  
9 and written materials.

10                  "(2) The department shall maintain a continuing  
11 education program to train employees of the department and to  
12 provide them with a current knowledge of state and applicable  
13 federal tax laws.

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

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

20                    "a. The basis of a production quota system for  
21 employees; or

22                    "b. The basis for evaluating an employee's  
23 performance.

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

27                  "(6) INSTALLMENT PAYMENTS.



1            "a. The commissioner is authorized to enter into  
2 written agreements to allow any taxpayer to pay any tax in  
3 installment payments if the commissioner determines that such  
4 agreement will facilitate collection of such tax.  
5 Notwithstanding the preceding sentence, such agreements shall  
6 be entered into only regarding a tax that has been finally  
7 assessed by the department and not appealed, and such  
8 agreements shall not extend for a period exceeding 12 months,  
9 provided, that any such agreement may be renewed at the  
10 discretion of the commissioner for succeeding periods not to  
11 exceed 12 months. The commissioner shall only be authorized to  
12 enter such an agreement with regard to a tax administered or  
13 collected by the department.

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

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

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

21            "3. The taxpayer fails to pay any other tax  
22 liability due the department at the time such liability is  
23 due, unless the taxpayer has appealed such other liability  
24 pursuant to the terms of this chapter;

25            "4. The financial condition of the taxpayer has  
26 significantly changed;

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

3           "6. The commissioner believes that collection of any  
4 tax to which an agreement under this provision relates is in  
5 jeopardy.

6           "c. The commissioner shall have sole authority or  
7 discretion to enter into or amend, modify, or terminate any  
8 installment payment agreement provided for herein. The  
9 commissioner shall promulgate regulations necessary for the  
10 implementation of this provision.

11           "d. Any self-administered county or municipality  
12 shall have the same authority as provided to the commissioner  
13 by this subdivision relating to installment payments with  
14 respect to taxes administered or collected by the  
15 self-administered county or municipality.

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

26           "(d) Abatement of penalty. The department shall  
27 abate any penalty attributable to erroneous written advice

1 furnished to a taxpayer by an employee of the department.  
2 However, this section shall apply only if the department  
3 employee provided the written advice in good faith while  
4 acting in his or her official capacity, the written advice was  
5 reasonably relied on by the taxpayer and was in response to a  
6 specific written request of the taxpayer, and the penalty did  
7 not result from the taxpayer's failure to provide adequate or  
8 accurate information."

9 Section 3. Section 40-2A-4.1 is added to the Code of  
10 Alabama 1975, to read as follows:

11 §40-2A-4.1.

12 (a) The Taxpayer Advocate Selection Committee is  
13 hereby created for the purpose of submitting nominations to  
14 the Governor for the position of Taxpayer Advocate pursuant to  
15 Section 40-2A-4. The committee shall consist of the following  
16 members:

17 (1) The Chair of the House Commerce and Small  
18 Business Committee.

19 (2) The Chair of the Senate Fiscal Responsibility  
20 and Economic Development Committee.

21 (3) The Secretary of State.

22 (4) The Executive Director of the National  
23 Federation of Independent Business/Alabama (NFIB-AL).

24 (5) The Chair of the Alabama Business Associations'  
25 Tax Coalition (BATC).

26 (b) Candidates selected by the committee for  
27 nomination shall have experience and be highly knowledgeable

1 in the areas of accounting, business management, finance, tax  
2 law, or other applicable backgrounds related to the duties of  
3 the Taxpayer Advocate.

4 (c) Within 60 days of the effective date of this  
5 act, the committee shall meet and provide its list of  
6 recommendations to the Governor. In the event of a vacancy in  
7 the position of Taxpayer Advocate, the Governor shall  
8 immediately notify and call a meeting of the committee.

9 The employee serving as Taxpayer Advocate prior to  
10 the effective date of this act may be reassigned duties within  
11 the Department of Revenue as determined by the commissioner.

12 Section 4. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-ferred to the House of Representatives committee on State Government ..... 02-FEB-16

Read for the second time and placed on the calendar..... 03-FEB-16

Read for the third time and passed as amended..... 09-FEB-16

Yeas 70, Nays 33, Abstains 0

Jeff Woodard  
Clerk