

1 HB38
2 172812-3
3 By Representatives Tuggle, Mooney, Wingo, Hill (M), Weaver,
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5 Clouse, Boothe, McCutcheon, Baker, McMillan, Millican, Greer,
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8 RFD: State Government
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8 SYNOPSIS: Under existing law, the Taxpayer Advocate,
9 appointed by the Revenue Commissioner, receives
10 inquiries or complaints regarding tax matters
11 pending before the Department of Revenue, advocates
12 for the resolution of certain disputes between
13 taxpayers and the department, and issues taxpayer
14 assistance orders under certain conditions.

15 This bill would provide that the Taxpayer
16 Advocate would be appointed by the Governor from a
17 list of qualified candidates submitted by the
18 Taxpayer Advocate Selection Committee and would
19 serve at the pleasure of the Governor.

20 This bill would also require the Taxpayer
21 Advocate to maintain a public website with certain
22 information regarding activity of the advocate and
23 resources for taxpayers, would require the advocate
24 to promote the interests of taxpayers involved in
25 disputes where an ambiguity in tax law exists, and
26 would require the advocate to identify ambiguities
27 in Alabama tax law and submit an annual report to

1 certain legislative committees regarding
2 recommendations to resolve the ambiguities.

3 This bill would provide additional duties
4 for the Taxpayer Advocate, including the duty to
5 identify classes of taxpayers or specific business
6 sectors that have common problems related to the
7 department and to educate taxpayers concerning
8 their rights and responsibilities under Alabama tax
9 law.

10 This bill would also remove the assistant
11 commissioner's authority to approve taxpayer
12 assistance orders.

13
14 A BILL
15 TO BE ENTITLED
16 AN ACT

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18 To amend Section 40-2A-4, Code of Alabama 1975,
19 relating to the Taxpayer Advocate; to provide for the
20 appointment of the advocate by the Governor; to require the
21 advocate to maintain a public website; to require the advocate
22 to promote the interests of taxpayers involved in disputes
23 where an ambiguity in tax law exists; to remove the assistant
24 commissioner's authority to approve taxpayer assistance
25 orders; to require an annual report to certain legislative
26 committees regarding tax law ambiguities; to provide for
27 additional duties of the advocate; and to add Section

1 40-2A-4.1 to the Code of Alabama 1975, to create the Taxpayer
2 Advocate Selection Committee and to provide for membership and
3 duties of the committee.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Section 40-2A-4, Code of Alabama 1975, is
6 amended to read as follows:

7 "§40-2A-4.

8 "(a) Rights of the taxpayer.

9 "(1) For purposes of this subsection and subsections
10 (c) and (d), the term "department" shall include the
11 Department of Revenue, a self-administered county or
12 municipality, or a private examining or collecting firm,
13 depending on whether the Department of Revenue, a
14 self-administered county or municipality, or private examining
15 or collecting firm is conducting the examination of the
16 taxpayer.

17 "(2) At or before the commencement of an examination
18 of the books and records of a taxpayer, the department shall
19 provide to the taxpayer the current version of Publication 1A.
20 Publication 1A shall provide, in simple and non-technical
21 terms, a statement of the taxpayer's rights. Those rights
22 include the right to be represented during an examination, an
23 explanation of their appeal rights, and the right to know the
24 criteria and procedures used to select taxpayers for an
25 examination.

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

4 "a. A written description of the basis for the
5 assessment and any penalty asserted with respect to the
6 assessment.

7 "b. A written description of the method by which the
8 taxpayer may request an administrative review of the
9 preliminary assessment.

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

14 "(5) Except in cases involving suspected criminal
15 violations of the tax law or other criminal activity, the
16 department shall conduct an examination of a taxpayer during
17 regular business hours after providing reasonable notice to
18 the taxpayer. A taxpayer who refuses a proposed time for an
19 examination on the grounds that the proposed examination would
20 cause inconvenience or hardship must offer reasonable
21 alternative times and dates for the examination.

22 "(6) At all stages of an examination or the
23 administrative review of the examination, and in any appeal to
24 the Alabama Tax Tribunal, a taxpayer is entitled to be
25 assisted or represented, at his or her own expense, by an
26 authorized representative. The department shall prescribe a
27 form by which the taxpayer may designate a person to represent

1 him or her in the conduct of any proceedings, including
2 collection proceedings, resulting from actions of the
3 department. In the absence of this form, the department or the
4 Alabama Tax Tribunal may accept such other evidence that a
5 person is the authorized representative of a taxpayer as it
6 considers appropriate. This provision shall not be construed
7 as authorizing the practice of law before the department,
8 Alabama Tax Tribunal, or any court in this state by a person
9 who is not a licensed attorney.

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

1 "(8) This section shall not apply to criminal
2 investigations or investigations relating to the integrity of
3 any officer or employee of the department.

4 "(b) Department responsibilities generally.

5 "(1) The ~~commissioner~~ Governor shall appoint a
6 Taxpayer Advocate from ~~among the employees of the department~~ a
7 list of up to five qualified candidates submitted by the
8 Taxpayer Advocate Selection Committee created in Section
9 40-2A-4.1. The Taxpayer Advocate shall serve at the pleasure
10 of the Governor. The taxpayer advocate shall be in the
11 unclassified service. The salary shall be fixed by the
12 Governor in accordance with Section 36-6-6 and shall be paid
13 from the Revenue Department Administrative Fund. This officer
14 shall receive and review inquiries or complaints concerning
15 matters that have been pending before the department for an
16 unreasonable length of time, or matters where the taxpayer has
17 been unable to obtain a reasonable response after several
18 attempts to communicate with the department employee assigned
19 to the taxpayer's case, or his or her immediate superiors. In
20 addition, this officer shall review and have the authority to
21 waive a penalty for reasonable cause as provided in subsection
22 (h) of Section 40-2A-11, shall promptly review inquiries
23 concerning release of property levied upon, the erroneous
24 filing of liens, the failure to release a lien for good cause,
25 or other matters complained of by a taxpayer or other affected
26 party. The Taxpayer Advocate shall have no authority nor issue

1 any ruling with regard to any taxes collected by or on behalf
2 of a self-administered county or municipality.

3 "a. The Taxpayer Advocate shall, subject to the
4 approval of the commissioner ~~or the assistant commissioner~~,
5 issue taxpayer assistance orders in the form and manner
6 prescribed herein and by department regulations.

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

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

19 "d. At the request of the Alabama Tax Tribunal, the
20 ~~taxpayer advocate~~ Taxpayer Advocate shall review a final order
21 issued by the Alabama Tax Tribunal that was not appealed
22 pursuant to Section 40-2B-2, if there is newly discovered
23 evidence which by due diligence could not have been discovered
24 in time to file an application for rehearing pursuant to
25 Section 40-2B-2, and may propose relief as the ~~taxpayer~~
26 ~~advocate~~ Taxpayer Advocate deems appropriate and approved by
27 the commissioner ~~or the assistant commissioner~~.

1 "e. All taxpayer assistance orders shall be dated
2 and signed by the Taxpayer Advocate and approved ~~either~~ by the
3 commissioner ~~or the assistant commissioner~~, and shall state
4 the underlying facts, the reasons for granting relief, and the
5 relief granted. Any taxpayer assistance order may, for good
6 cause, be modified or rescinded in writing by the Taxpayer
7 Advocate and ~~either~~ the commissioner ~~or the assistant~~
8 ~~commissioner~~.

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

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

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

25 "i.1. The Taxpayer Advocate shall promote the
26 interests of taxpayers involved in disputes where an ambiguity

1 in tax law exists and work to resolve those disputes in favor
2 of the taxpayer.

3 "2. On or before January 15 of each year, the
4 Taxpayer Advocate shall submit a report identifying
5 ambiguities in tax laws in this state and providing
6 recommendations to resolve the identified ambiguities to the
7 Chairs of the Senate Finance and Taxation General Fund
8 Committee, the Senate Finance and Taxation Education
9 Committee, the House Ways and Means General Fund Committee,
10 and the House Ways and Means Education Committee.

11 "j. The Taxpayer Advocate shall maintain a public
12 website separate from the department detailing activity of the
13 advocate and containing information and resources for
14 taxpayers. The department shall include contact information of
15 the Taxpayer Advocate on its public website.

16 "k. In addition to all other duties prescribed in
17 this subsection, the Taxpayer Advocate shall do all of the
18 following:

19 "1. Identify subject areas where taxpayers have
20 difficulties interacting with the department.

21 "2. Identify classes of taxpayers or specific
22 business sectors which have common problems related to the
23 department.

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

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

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

3 "6. Educate tax professionals concerning the
4 department's rules and interpretations by issuing bulletins
5 and written materials.

6 "(2) The department shall maintain a continuing
7 education program to train employees of the department and to
8 provide them with a current knowledge of state and applicable
9 federal tax laws.

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

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

16 "a. The basis of a production quota system for
17 employees; or

18 "b. The basis for evaluating an employee's
19 performance.

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

23 "(6) INSTALLMENT PAYMENTS.

24 "a. The commissioner is authorized to enter into
25 written agreements to allow any taxpayer to pay any tax in
26 installment payments if the commissioner determines that such
27 agreement will facilitate collection of such tax.

1 Notwithstanding the preceding sentence, such agreements shall
2 be entered into only regarding a tax that has been finally
3 assessed by the department and not appealed, and such
4 agreements shall not extend for a period exceeding 12 months,
5 provided, that any such agreement may be renewed at the
6 discretion of the commissioner for succeeding periods not to
7 exceed 12 months. The commissioner shall only be authorized to
8 enter such an agreement with regard to a tax administered or
9 collected by the department.

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

12 "1. Information provided by the taxpayer to the
13 commissioner prior to the date of such agreement was
14 inaccurate or incomplete;

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

17 "3. The taxpayer fails to pay any other tax
18 liability due the department at the time such liability is
19 due, unless the taxpayer has appealed such other liability
20 pursuant to the terms of this chapter;

21 "4. The financial condition of the taxpayer has
22 significantly changed;

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

25 "6. The commissioner believes that collection of any
26 tax to which an agreement under this provision relates is in
27 jeopardy.

1 "c. The commissioner shall have sole authority or
2 discretion to enter into or amend, modify, or terminate any
3 installment payment agreement provided for herein. The
4 commissioner shall promulgate regulations necessary for the
5 implementation of this provision.

6 "d. Any self-administered county or municipality
7 shall have the same authority as provided to the commissioner
8 by this subdivision relating to installment payments with
9 respect to taxes administered or collected by the
10 self-administered county or municipality.

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

21 "(d) Abatement of penalty. The department shall
22 abate any penalty attributable to erroneous written advice
23 furnished to a taxpayer by an employee of the department.
24 However, this section shall apply only if the department
25 employee provided the written advice in good faith while
26 acting in his or her official capacity, the written advice was
27 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 Section 2. Section 40-2A-4.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §40-2A-4.1.

7 (a) The Taxpayer Advocate Selection Committee is
8 hereby created for the purpose of submitting nominations to
9 the Governor for the position of Taxpayer Advocate pursuant to
10 Section 40-2A-4. The committee shall consist of the following
11 members:

12 (1) The Chair of the House Commerce and Small
13 Business Committee.

14 (2) The Chair of the Senate Fiscal Responsibility
15 and Economic Development Committee.

16 (3) The Secretary of State.

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

19 (5) The Chair of the Alabama Business Associations'
20 Tax Coalition (BATC).

21 (b) Candidates selected by the committee for
22 nomination shall have experience and be highly knowledgeable
23 in the areas of accounting, business management, finance, tax
24 law, or other applicable backgrounds related to the duties of
25 the Taxpayer Advocate.

26 (c) Within 60 days of the effective date of this
27 act, the committee shall meet and provide its list of

1 recommendations to the Governor. In the event of a vacancy in
2 the position of Taxpayer Advocate, the Governor shall
3 immediately notify and call a meeting of the committee.

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