

1 SB128
2 180907-1
3 By Senator Melson
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 09-FEB-17

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8 SYNOPSIS: Under current law, all tax preparers are
9 required to obtain a federal preparer
10 identification number in order to prepare federal
11 income tax returns.

12 However, there are minimal provisions in
13 place to protect consumers against state income tax
14 return preparers that incorrectly file tax returns
15 on a recurring basis.

16 This legislation would require all income
17 tax preparers to provide their federal preparer
18 identification number on all Alabama income tax
19 returns prepared.

20 In addition, this bill will ensure that the
21 Alabama Business Privilege tax return due dates are
22 the same as federal income tax returns. For
23 financial institutions, the due date will
24 correspond with the excise tax return.

25 In addition, Section 12 of Act 99-665, as
26 amended by Act 2000-705, is codified by this bill
27 as part of Section 40-14A-22. These changes

1 include, but are not limited to, codifying the
2 maximum business privilege tax amount for a Real
3 Estate Investment Trust (REIT). Other technical
4 corrections from these acts are also codified by
5 this bill.

6 This bill changes the name of the Taxpayer
7 Advocate to the Taxpayer Assistance Officer. In
8 addition, this bill will allow for more than one
9 Taxpayer Assistance Officer.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To require tax preparers to include their federal
16 preparer tax identification number on Alabama income tax
17 returns prepared; to provide penalties for violations; ensure
18 that business privilege tax returns are due at the same time
19 as the corresponding federal income tax return, for financial
20 institutions, the due date will correspond with the Alabama
21 excise tax return due date; and Section 12 of Act 99-665, as
22 amended by Act 2000-705, is codified by this bill as part of
23 Section 40-14A-22, these changes include, but are not limited
24 to, codifying the maximum business privilege tax amount for a
25 Real Estate Investment Trust (REIT); the name of the Taxpayer
26 Advocate is being changed to the Taxpayer Assistance Officer,
27 and allows for multiple Taxpayer Assistance Officers.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. A new Article is hereby added to the Code
3 of Alabama 1975, and shall be known and may be cited as the
4 "Alabama Taxpayer Protection and Assistance Act."

5 Section 2. The Alabama Taxpayer Protection and
6 Assistance Act is enacted to protect consumers by establishing
7 a mechanism to ensure that qualified individuals provide tax
8 preparation services in Alabama.

9 Section 3. When used in this act, the following
10 terms shall have the following meanings:

11 (1) DEPARTMENT. The Alabama Department of Revenue.

12 (2) INCOME TAX RETURN PREPARER.

13 (a) A person who prepares for compensation, or who
14 employs one or more persons to prepare for compensation, any
15 income tax return or claim for refund, required to be filed
16 pursuant to Title 40, Chapter 18, Code of Alabama 1975. The
17 preparation of a substantial portion of a return or claim for
18 refund shall be treated as the preparation of that return or
19 claim for refund.

20 (b) A person is not an income tax preparer if all he
21 or she solely performs the following duties:

22 1. furnishes typing, reproducing, or other
23 mechanical assistance;

24 2. prepares returns or claims for refunds for the
25 employer by whom he or she is regularly and continuously
26 employed or has ownership in a subchapter K entity for which
27 he or she prepares a return;

1 3. prepares as a fiduciary, returns or claims for
2 refunds for any person; or

3 4. prepares claims for refunds for a taxpayer in
4 response to any notice of deficiency issued to that taxpayer
5 or in response to any waiver of restriction after the
6 commencement of an audit of that taxpayer or of another
7 taxpayer if a determination in the audit of the other taxpayer
8 directly or indirectly affects the tax liability of the
9 taxpayer whose claims he or she is preparing.

10 (3) PERSON. An individual, firm, proprietorship,
11 association, corporation, or another entity.

12 (4) PTIN. Preparer Tax Identification Number issued
13 by the Internal Revenue Service and defined in Internal
14 Revenue Service Notice 2011-6.

15 Section 4. No person may provide tax preparation
16 services for Alabama income tax returns, unless an IRS issued
17 Preparer Tax Identification Number is provided by such
18 preparer when submitting a return and signing as a paid
19 preparer.

20 Section 5. Duties of the Department.

21 (a) For taxable years beginning on or after January
22 1, 2018, the Department shall, by rule, require any income tax
23 return preparer, as defined in this act, to include his or her
24 PTIN on any tax return prepared by the income tax return
25 preparer and filed under Title 40, Chapter 18, Code of Alabama
26 1975, or any claim for refund of tax imposed Title 40, Chapter
27 18, Code of Alabama 1975.

1 (b) The Department shall develop and by rule
2 implement a program using the PTIN as an oversight mechanism
3 to assess returns, to identify high error rates, patterns of
4 suspected fraud, and unsubstantiated basis for tax positions
5 by income tax return preparers.

6 (c) The Department shall, by rule, establish formal
7 and regular communication protocols with the Commissioner of
8 the Internal Revenue Service to share and exchange PTIN
9 information on income tax return preparers who are suspected
10 of fraud, disciplined, or barred from filing tax returns with
11 the Department or the Internal Revenue Service. The Department
12 may, by rule, establish additional communication protocols
13 with other states to exchange similar enforcement or
14 discipline information.

15 Section 6. Enforcement.

16 a) The Department may investigate the actions of any
17 income tax return preparer filing Alabama income tax returns
18 and may bar or suspend an income tax return preparer from
19 filing returns with the Department for good cause, subject to
20 the appeal rights under Chapter 2A of Title 40.

21 (b) In addition to all other penalties provided by
22 law, any person violating this act by failing to provide his
23 or her PTIN shall pay a civil penalty to the Department in the
24 amount of \$50 per offense, but not to exceed \$25,000 per
25 calendar year; however, no such penalty shall be imposed if it
26 is shown that the failure is due to reasonable cause and not
27 due to willful neglect, as determined by the Department.

1 Section 7. Section 40-14A-22 is hereby amended as
2 follows:

3 "§40-14A-22.

4 "(a) Levy of tax. There is hereby levied an annual
5 privilege tax on every corporation, limited liability entity,
6 and disregarded entity doing business in Alabama, or
7 organized, incorporated, qualified, or registered under the
8 laws of Alabama. The tax shall accrue as of January 1 of every
9 taxable year, or in the case of a taxpayer organized,
10 incorporated, qualified, or registered during the year, or
11 doing business in Alabama for the first time, as of the date
12 the taxpayer is organized, incorporated, registered, or
13 qualifies to do business, or begins to do business in Alabama,
14 as the case may be. The taxpayer shall be liable for the tax
15 levied by this article for each year beginning before the
16 taxpayer has been dissolved or otherwise ceased to exist or
17 has withdrawn or forfeited its qualification to do business in
18 Alabama. The amount of the tax due shall be determined by
19 multiplying the taxpayer's net worth in Alabama by the rate
20 determined in subsection (b).

21 "(b) Rate of tax. For all taxable years of taxpayers
22 that begin after December 31, 1999, the rate of tax shall be
23 as set forth below.

24 If taxable
25 income of the
26 taxpayer is:

1	at least	but less	The tax rate
		than	shall be
2		\$1	\$0.25 per
			\$1,000
3	\$1	\$200,000	\$1.00 per
			\$1,000
4	\$200,000	\$500,000	\$1.25 per
			\$1,000
5	\$500,000	\$2,500,000	\$1.50 per
			\$1,000
6	\$2,500,000		\$1.75 per
			\$1,000

7 "(c) Minimum tax. Except as provided in subsection
8 (f), the privilege tax levied by this article on certain
9 corporations, business trusts, limited liability entities, and
10 disregarded entities shall not be less than \$100.

11 "(d) Maximum tax.

12 "(1) Except as provided in subdivision (2), the
13 privilege tax levied by this article shall not exceed \$15,250
14 for any taxpayer for the taxable year beginning January 1,
15 2000. For each taxable year thereafter, the maximum tax shall
16 not exceed \$15,000 for any taxpayer, except as provided in
17 subdivision (2).

1 "(2) With respect to any (i) financial institution
2 groups as defined in subsection (f) (1); (ii) insurance
3 company that is subject to the premium taxes levied by Chapter
4 4A of Title 27; and (iii) corporation, company, limited
5 liability entity, or association whose property is assessed
6 for taxation pursuant to the provisions of Chapter 21 and is
7 ~~also~~ obligated to serve the general public, but is not subject
8 to the Alabama Corporate Income tax, the privilege tax levied
9 by this article shall not exceed \$3,000,000, for any taxpayer
10 or, for a financial institution group, for the financial
11 institution group as a whole each year except as provided in
12 subsection (e). ~~With respect to any real estate investment~~
13 ~~trust as defined in Chapter 13 of Title 10, the privilege tax~~
14 ~~levied by this article shall not exceed \$500,000, for any~~
15 ~~taxpayer each year except as provided in subsection (e).~~ The
16 privilege tax levied by this article on any electing family
17 limited liability entity shall not exceed \$500.

18 "The privilege tax levied by this article on any
19 corporation organized as a not-for-profit corporation that
20 does not engage in any business other than holding title to
21 property and paying the expenses thereof, including, without
22 limitation, a property owners' association or a corporation
23 organized solely to hold title to property on a temporary
24 basis, shall not exceed \$100.

25 "(e) Short taxable years. If any taxpayer's taxable
26 year is less than 12 months because the taxpayer is
27 incorporated or organized within the taxable year, or if any

1 foreign corporation or foreign limited liability entity
2 qualifies, registers, or begins to do business in this state
3 within the taxable year or converts to a taxable year other
4 than the calendar year, the amount of the tax levied by this
5 article shall be determined in the manner specified in this
6 article but apportioned to the short taxable year in same
7 proportion as the number of days in the short taxable year
8 bears to 365, but in no event less than \$100 nor more than the
9 applicable amount specified in subsection (d).

10 "(f) Minimum taxes for financial institution groups.

11 "(1) For purposes of this subsection, the following
12 terms shall mean:

13 "a. Affiliated Group. (i) One or more chains of
14 corporations or limited liability entities connected through
15 the ownership of stock or ownership interests with a common
16 parent which is a corporation or limited liability entity, but
17 only if the common parent owns directly stock or ownership
18 interests meeting the requirements of item (ii) in at least
19 one of the other corporations or limited liability entities,
20 and only if stock or ownership interests meeting the
21 requirements of item (ii) in each of the corporations or
22 limited liability entities (except the common parent) is owned
23 directly by one or more of the other corporations or limited
24 liability entities. (ii) The ownership of stock or ownership
25 interests of any corporation or limited liability entity meets
26 the requirements of this paragraph if it possesses at least 80

1 percent of the total voting power or capital and profits
2 interest of the corporation or limited liability entity.

3 "b. Financial Institution. The meaning given in
4 Section 40-16-1.

5 "c. Financial Institution Group. All taxpayers in an
6 affiliated group where at least one member of the group is a
7 financial institution that is subject to the provisions of
8 Chapter 16. In the event a financial institution taxpayer is
9 not a member of an affiliated group, that financial
10 institution shall be treated as a financial institution group.

11 "(2) To the extent that the members of a financial
12 institution group have different taxable years, the group
13 shall be deemed, for purposes of the business privilege tax
14 ~~and corporate shares tax~~ levied by Articles ~~2 and 3~~, to have
15 a calendar taxable year.

16 "(3) Taxpayers who are members of a financial
17 institution group shall complete their ~~corporate shares tax~~
18 ~~and~~ business privilege tax returns without regard to this
19 subsection. Those taxpayers shall submit their returns
20 together, and the minimum tax amount provided in subdivision
21 (5) shall apply to the aggregate business privilege tax and
22 ~~corporate shares tax~~ liability of the group. To the extent
23 that the minimum amount provided in subdivision (5) applies to
24 determine the liability of the group, each taxpayer which is a
25 member of the group shall be liable for that portion of the
26 group liability which is equal to the amount multiplied by the
27 ratio of the taxpayer's liability without regard to this

1 subsection over the liability of the group without regard to
2 this subsection. Upon the annual election of the common
3 parent, a financial institution group may file a single
4 return, executed by the common parent of that financial
5 institution group. The return shall be completed as if the
6 financial institution group were a single taxpayer. Each
7 member of the financial institution group shall be jointly and
8 severally liable for the group's business privilege tax and
9 corporate shares tax liabilities.

10 ~~"(4) For the taxable year beginning January 1, 2000,~~
11 ~~the tax returns of all members of a financial institution~~
12 ~~group shall be due July 10, 2000. For taxable years beginning~~
13 ~~after December 31, 2000, the tax returns for all members of a~~
14 ~~financial institution group shall be due March 15 of the~~
15 ~~taxable year. The tax returns for all members of a financial~~
16 ~~institution group shall be due no later than the corresponding~~
17 ~~Alabama financial institution excise tax return due date.~~
18 ~~Extensions for filing these returns shall not be granted for~~
19 ~~more than six months. beyond September 15 of the taxable year.~~
20 ~~For the return due July 10, 2000, any corporate shares taxes~~
21 ~~and business privilege taxes accrued and paid by any member of~~
22 ~~the financial institution group before July 10, 2000, shall be~~
23 ~~applied against the minimum tax amount provided in subdivision~~
24 ~~(5).~~

25 "(5) For taxable years beginning on or after January
26 1, 2000, the minimum aggregate business privilege and

1 ~~corporate shares taxes~~ levied by Articles 2 and 3 on all
2 members of a financial institution group shall be:

3 "a. For financial institutions with total deposits
4 inside Alabama of less than one billion dollars
5 (\$1,000,000,000) within that financial institution group, as
6 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
7 immediately preceding taxable year, the tax rate shall be
8 \$.125 per one thousand dollars (\$1,000) of such deposits. For
9 deposit rate purposes for all future periods, the deposits
10 shall in no event be less than the deposits listed as of June
11 30, 1999.

12 "b. For financial institutions with total deposits
13 inside Alabama of one billion dollars (\$1,000,000,000) or
14 greater up to and including six billion dollars
15 (\$6,000,000,000) within that financial institution group, as
16 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
17 immediately preceding taxable year, the tax rate shall be \$.17
18 per one thousand dollars (\$1,000) of such deposits. For
19 deposit rate purposes for all future periods, the deposits
20 shall in no event be less than the deposits listed as of June
21 30, 1999.

22 "c. For financial institutions with total deposits
23 inside Alabama greater than six billion dollars
24 (\$6,000,000,000) within that financial institution group, as
25 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
26 immediately preceding taxable year, the tax rate shall be
27 \$.225 per one thousand dollars (\$1,000) of such deposits. For

1 deposit rate purposes for all future periods, the deposits
2 shall in no event be less than the deposits listed as of June
3 30, 1999.

4 "d. Provided, however, that in the case of a
5 financial institution group that, as of June 30, 1999, (i) had
6 total deposits of less than one billion dollars
7 (\$1,000,000,000) and (ii) derived at least a majority of its
8 deposits, as reported to FDIC, OTS, or NCUSIF, that were
9 booked to one or more branches or offices located within
10 Alabama from account holders whose addresses of record on the
11 books of the financial institution group were outside the
12 State of Alabama, the phrase "total deposits in Alabama," for
13 purposes of calculating the minimum aggregate business
14 privilege ~~and shares tax~~ levied by Articles 2 ~~and 3~~ for all
15 taxable years beginning on and after January 1, 2000, shall
16 only include deposits of account holders whose addresses of
17 record on the books of the financial institution group are
18 inside the State of Alabama.

19 "e. In the event a financial institution group sells
20 Alabama deposits to another financial institution group that
21 reports those deposits in Alabama for purposes of Act
22 2000-705, those deposits shall not be taxed more than once
23 pursuant to the provisions of Act 2000-705 in the same taxable
24 year. The liability for such taxes shall be the responsibility
25 of the purchaser, and the tax base for the selling group shall
26 be adjusted accordingly.

1 "f. In the event an existing financial institution
2 group reports deposits in any year less than 96.5 percent of
3 the deposits reported as of June 30, 1999, the alternative
4 minimum tax shall be based on the deposits reported as of June
5 30, 1999. In the event an existing financial institution group
6 reports deposits in any year more than 96.5 percent of the
7 deposits reported as of June 30, 1999, the alternative minimum
8 tax shall be based on the deposits reported for that taxable
9 year. For financial institutions coming into existence after
10 June 30, 1999, the deposits upon which the alternative minimum
11 tax is based shall not be less than the deposits reported the
12 first full year that financial institution reported deposits
13 to the FDIC, OTS, or NCUSIF."

14 Section 8. Section 40-14A-25 is hereby amended as
15 follows:

16 "§40-14A-25.

17 "(a) Every taxpayer shall file a privilege tax
18 return, which shall include the public record disclosures
19 required by Section 10-2B-16.22, with the department for every
20 taxable year for which it is subject to the tax levied by this
21 article. A disregarded entity that is owned by an individual,
22 general partnership, or other entity not subject to the tax
23 levied by this article shall file a return and pay the tax
24 levied on it by this article. Except as provided in Section
25 40-14A-22(f) (4), the return required by this section is due
26 not later than the corresponding federal income tax return as
27 required to be filed as provided under federal law. ~~March 15 of~~

1 ~~the taxable year for all taxpayers except limited liability~~
2 ~~entities for which the due date of the return shall be April~~
3 ~~15 of the taxable year, or, in In the case of a taxpayer's~~
4 ~~initial return, ~~30 days~~ two and one half months after the~~
5 ~~taxpayer comes into existence, qualifies or registers to do~~
6 ~~business, or commences doing business in Alabama as the case~~
7 ~~may be. For all taxable years beginning after December 31,~~
8 ~~2000, a corporation shall file the return required by this~~
9 ~~section not later than two and one half months after the~~
10 ~~beginning of the corporation's taxable year; a limited~~
11 ~~liability entity shall file the return required by this~~
12 ~~section not later than three and one half months after the~~
13 ~~beginning of the limited liability entity's taxable year; and~~
14 ~~a A disregarded entity that is required to file a return by~~
15 ~~this section shall file the return not later than the time its~~
16 ~~owner is required to file its return. If a taxpayer is~~
17 ~~required to change its taxable year pursuant to the previous~~
18 ~~sentence, then it shall file a return for the short taxable~~
19 ~~year beginning January 1, 2001, and ending on the day before~~
20 ~~the beginning of its new taxable year, and the return shall be~~
21 ~~filed not later than the corresponding federal income tax~~
22 ~~return as required to be filed as provided under federal law.~~
23 ~~two and one half months, if a corporation, and three and~~
24 ~~one half months, if a limited liability entity, after the~~
25 ~~beginning of its new taxable year. In cases where receivers,~~
26 ~~trustees in bankruptcy, or assignees are operating the~~
27 ~~property or business of taxpayers, those receivers, trustees,~~

1 or assignees shall file returns for the taxpayers in the same
2 manner and form as the taxpayers are required to file returns.
3 Any tax due on the basis of returns filed by receivers,
4 trustees, or assignees shall be collected in the same manner
5 as if collected from the taxpayers for whose business or
6 property they have custody and control. The department may
7 grant a reasonable extension of time for filing returns under
8 rules and regulations prescribed by the department. No
9 extension shall be for more than six months.

10 "(b) The tax provided in this article shall be
11 reported on forms and in the manner as prescribed by the
12 department. The failure to receive a form from the department
13 shall not relieve a taxpayer from liability for any tax,
14 penalty, or interest otherwise due. The tax due, as reported,
15 shall constitute an admitted liability for that amount. The
16 department may compute and assess additional tax, penalty, and
17 interest against a taxpayer as provided in Chapter 2A.
18 Interest on overpayments of business privilege tax will be
19 computed and paid in the manner provided in Section
20 40-1-44(b)(1)b.

21 "(c) A corporation that is a member of an Alabama
22 affiliated group that has elected to file a consolidated
23 return pursuant to Section 40-18-39 or Section 40-16-3(b), if
24 it is subject to the tax imposed by this article, shall file a
25 separate return reporting and paying tax on its net worth
26 without regard to other members of the affiliated group."

1 Section 9. Throughout Tile 40, Chapter 2A strike the
2 term "Taxpayer Advocate" and replace with the term "Taxpayer
3 Assistance Officer or Taxpayer Assistance Officers"

4 Section 10. The Department shall adopt rules to
5 assist with the implementation and enforcement of this act.

6 Section 11. If any part of this act is declared
7 invalid or unconstitutional, that declaration shall not affect
8 the part which remains.

9 Section 12. All laws or parts of laws which conflict
10 with this act are hereby repealed.

11 Section 13. Sections 7 and 8 shall become effective
12 immediately and the remaining sections of the act shall become
13 effective January 1, 2018, following its passage and approval
14 by the Governor, or upon its otherwise becoming law.