

1 SB63
2 189158-2
3 By Senator Livingston
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 09-JAN-18

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8 SYNOPSIS: Under current law, a petition for refund of
9 sales or use taxes must be filed jointly by the
10 taxpayer and the consumer/purchaser. A direct
11 petition may be filed by the taxpayer if the
12 taxpayer never collected the tax from the
13 consumer/purchaser.

14 This bill will eliminate the jointly filed
15 petition for refund and allow the
16 consumer/purchaser who paid the tax to a licensed
17 seller to file a direct petition for refund.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Section 40-2A-3, Code of Alabama 1975,
24 relating to definitions; to amend Section 40-2A-7, Code of
25 Alabama 1975, to eliminate jointly filed petitions for refund.
26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 40-2A-3 and 40-2A-7, Code of
2 Alabama 1975, is amended to read as follows:

3 "§40-2A-3.

4 "For the purposes of this chapter and Chapter 2B,
5 the following terms shall have the following meanings:

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

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

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

17 "(4) COMMISSIONER. The commissioner of the
18 department or his or her delegate.

19 "(5) COMPTROLLER. The Comptroller of the State of
20 Alabama.

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

26 "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The
27 Alabama Department of Revenue.

1 "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES
2 TAX. A privilege or license tax, imposed by a municipality or
3 county, measured by gross receipts or gross proceeds of sale
4 and which: (i) was in effect on or before February 25, 1997,
5 or is an amendment to a tax which was in effect on that date;
6 (ii) is levied against those selling tangible personal
7 property at retail, those operating places of amusement or
8 entertainment, those making street deliveries, and those
9 leasing or renting tangible personal property; and (iii) is
10 due and payable to a county or municipality monthly or
11 quarterly.

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

15 "(10) INTEREST. That amount computed under Section
16 40-1-44, on any overpayment or underpayment of tax or under
17 Section 40-2A-18 on a final assessment.

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

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

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

1 "(14) PETITION FOR REFUND. Any written request for a
2 refund of any tax previously paid, including in the form of an
3 amended return. Unless otherwise provided by law, the request
4 shall include sufficient information to identify the type and
5 amount of tax overpaid, the taxpayer, the consumer/purchaser,
6 the period included, and the reasons for the refund.

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

11 "(16) PRELIMINARY ASSESSMENT. The preliminary notice
12 of value or underpayment of any tax administered by the
13 department.

14 "(17) PRIVATE AUDITING OR COLLECTING FIRM. Any
15 person in the business of collecting, through contract or
16 otherwise, local sales, use, rental, lodgings or other taxes
17 or license fees for any county or municipality, or auditing
18 any taxpayer, through the examination of books and records,
19 for any county or municipality. The term shall also be
20 referred to as a third-party auditing firm, a third-party
21 collecting firm, or a third-party administrator. The term
22 shall not include any of the following:

23 "a. The Department of Revenue.

24 "b. A county or municipality that has entered into a
25 contract or other arrangement to collect local sales, use,
26 rental, lodgings, or other taxes or license fees on behalf of
27 another county or municipality, or to audit a taxpayer,

1 through the examination of books and records, on behalf of
2 another county or municipality.

3 "c. A person or firm whose sole function and purpose
4 on behalf of a municipality or group of municipalities is to
5 collect delinquent insurance premium license fees levied by
6 that municipality or group of municipalities, and who has no
7 authority to determine the amount of license fee, interest,
8 court cost, or penalty owed to the municipality or group of
9 municipalities.

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

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

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

24 "(21) SELF-ADMINISTERED COUNTY OR MUNICIPALITY. A
25 county or municipality that administers its own sales and use
26 taxes or other local municipal or county taxes levied or
27 authorized to be levied by a general or local act, or

1 contracts out all or part of that function to a private
2 auditing or collecting firm. The term does not include any of
3 the following:

4 "a. A county or municipality that allows the
5 department to administer a sales, use, rental, or lodgings tax
6 which is levied by or on behalf of that county or
7 municipality.

8 "b. A municipality or county that levies a gross
9 receipts tax in the nature of a sales tax, as defined in
10 subdivision (8). A county or municipality that both
11 self-administers a sales, use, rental, or lodgings tax and
12 allows the department to administer a sales, use, rental, or
13 lodgings tax that is levied by or on behalf of the county or
14 municipality is only a self-administered county or
15 municipality with respect to those sales, use, rental, or
16 lodgings taxes that the county or municipality administers
17 itself or for those taxes that it contracts for the
18 collection.

19 "(22) TAX. Any amount, including applicable penalty
20 and interest, levied or assessed against a taxpayer and which
21 the department or any county, municipality, or their designees
22 are required or authorized to administer under the provisions
23 of Alabama law.

24 "(23) ALABAMA TAX TRIBUNAL. The Alabama Tax Tribunal
25 as described in Chapter 2B.

26 "(24) TAXPAYER. Any person subject to or liable for
27 any state or local tax; any person required to file a return

1 with respect to, or to pay, or withhold and remit any state or
2 local tax or to report any information or value to the
3 department, a county, municipality, or its designee; or any
4 person required to obtain or holding any interest in any
5 license, permit, or certificate of title issued by the
6 department, a county, municipality, or its designee, or any
7 person that may be affected by any act or refusal to act by
8 the department, a county, municipality, or its designee, or to
9 keep any records required by this chapter.

10 "(25) TAXPAYER ADVOCATE. The person so designated
11 from time to time by the commissioner to assist the taxpayers
12 of the State of Alabama with regard to tax issues resulting
13 from any taxes administered or collected by the department.

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

21 "§40-2A-7.

22 "(a) Maintenance of records; audit and subpoena
23 authority; authority to issue regulations.

24 "(1) In addition to all other recordkeeping
25 requirements otherwise set out in this title, taxpayers shall
26 keep and maintain an accurate and complete set of records,
27 books, and other information sufficient to allow the

1 department to determine the correct amount of value or correct
2 amount of any tax, license, permit, or fee administered by the
3 department, or other records or information as may be
4 necessary for the proper administration of any matters under
5 the jurisdiction of the department. The books, records, and
6 other information shall be open and available for inspection
7 by the department upon request at a reasonable time and
8 location.

9 "(2) The department may examine and audit the
10 records, books, or other relevant information maintained by
11 any taxpayer or other person for the purpose of computing and
12 determining the correct amount of value or correct amount of
13 any tax, license, or fee administered by the department, or
14 for any other purpose necessary for the proper administration
15 of any matter under the jurisdiction of the department.

16 "(3) A taxpayer, or any officer of a corporation or
17 association, or partner of a partnership, or fiduciary of a
18 trust, or responsible individual of any entity under a duty to
19 maintain books and records pursuant to this subsection who
20 fails or refuses to maintain such records and books, or permit
21 inspection, shall be subject to contempt proceedings in the
22 circuit court of the judicial circuit in which the person
23 resides or has a principal place of business, and upon proof
24 of the fact to the court, may be punished for contempt as
25 provided in cases of contempt in circuit court.

26 "(4) The department may summon any witness to appear
27 and give testimony, and summon by subpoena duces tecum any

1 records, books, or other information of any kind relating to
2 any matter which the department has authority to administer.
3 The witness may be summoned by subpoena issued by the
4 secretary of the department, any circuit judge, any
5 magistrate, or any district judge, in the name of the
6 department, directed to any sheriff of Alabama and returnable
7 to the department. The subpoena may be served in like manner
8 as subpoenas issued out of any circuit court, or the subpoena
9 may be served by an authorized employee of the department or
10 by either U.S. mail with delivery confirmation or certified
11 mail, return receipt requested. A fee shall be paid to banking
12 institutions, other similar entities, or any other person
13 except the taxpayer, for copying, searching for, reproducing,
14 and transporting any records, books, papers, or other
15 documents requested or subpoenaed by the department and to
16 persons who are required to appear as a witness equal to the
17 fee authorized to be paid by the Internal Revenue Service for
18 similar services or appearances pursuant to Section 7610 of
19 the Internal Revenue Code of 1986, as amended. If any witness
20 has been subpoenaed to appear and testify or appear and
21 produce records, books, or other information, and fails or
22 refuses to appear or testify or to produce the books, records,
23 or other information, that witness shall be subject to
24 contempt proceedings in the circuit court of the judicial
25 circuit in which the witness resides, and upon proof of the
26 fact to a circuit court may be punished for contempt as is
27 provided in cases of contempt in circuit court.

1 "(5) The department may issue forms and make
2 reasonable regulations concerning any matter administered by
3 the department. Regulations promulgated by the department
4 shall be issued in accordance with the procedures set forth in
5 the Alabama Administrative Procedure Act, Chapter 22 of Title
6 41.

7 "(b) Procedures governing entry of preliminary and
8 final assessments; appeals therefrom.

9 "(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL
10 ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND
11 FINAL ASSESSMENTS.

12 "a. If the department determines that the amount of
13 any tax as reported on a return is incorrect, or if no return
14 is filed, or if the department is required to determine value,
15 the department may calculate the correct tax or value based on
16 the most accurate and complete information reasonably
17 obtainable by the department. The department may thereafter
18 enter a preliminary assessment for the correct tax or value,
19 including any applicable penalty and interest.

20 "b. Where the amount of tax or value reported on a
21 return is undisputed by the department, or the taxpayer
22 consents to the amount of any deficiency, determination of
23 value, or preliminary assessment in writing as provided by
24 regulation, the department may immediately enter a final
25 assessment for the amount of the tax or value, plus applicable
26 penalty and interest; provided, the department may at any time

1 enter a final jeopardy assessment pursuant to Sections
2 40-17A-12, 40-29-90, and 40-29-91.

3 "c. All preliminary and final assessments issued by
4 the department shall be executed as provided by regulations
5 promulgated by the department.

6 "(2) TIME LIMITATION FOR ENTERING PRELIMINARY
7 ASSESSMENT. Any preliminary assessment shall be entered within
8 three years from the due date of the return, or three years
9 from the date the return is filed with the department,
10 whichever is later, or if no return is required to be filed,
11 within three years of the due date of the tax, except as
12 follows:

13 "a. A preliminary assessment may be entered at any
14 time if no return is filed as required, or if a false or
15 fraudulent return is filed with the intent to evade tax.

16 "b. A preliminary assessment may be entered within
17 six years from the due date of the return or six years from
18 the date the return is filed with the department, whichever is
19 later, if the taxpayer omits from the taxable base an amount
20 properly includable therein which is in excess of 25 percent
21 of the amount of the taxable base stated in the return.

22 "For purposes of this paragraph:

23 "1. The term taxable base means the gross income,
24 gross proceeds from sales, gross receipts, net worth, or other
25 amounts on which the tax paid with the return is computed; and

26 "2. In determining the amount omitted from the
27 taxable base, there shall not be taken into account any amount

1 which is omitted from the taxable base stated in the return if
2 the amount is disclosed in the return, or in a statement
3 attached to the return, in a manner adequate to apprise the
4 department of the nature and amount of the item.

5 "c. A preliminary assessment entered pursuant to
6 Sections 40-29-72 and 40-29-73, may be entered within five
7 years from the due date of the return on which the underlying
8 tax is required to be reported or within five years of the
9 date the return is filed, whichever is later.

10 "d.1. In the case of income received during the
11 lifetime of a decedent, or by his or her estate during the
12 period of administration, the preliminary assessment of any
13 income tax shall be entered within 18 months after written
14 request therefor, filed after the return is made, by the
15 executor, administrator, or other fiduciary representing the
16 estate of the decedent, but not after the expiration of three
17 years from the due date of the return or three years from the
18 date the return is filed with the department, whichever is
19 later.

20 "2. In the case of income received by a corporation
21 contemplating dissolution, a preliminary assessment of any
22 income tax shall be entered within 18 months after written
23 request, by the corporation, filed after the return is made,
24 but not after the expiration of three years from the due date
25 of the return or three years from the date the return is filed
26 with the department, whichever is later. This subparagraph

1 shall not apply to any corporation unless dissolution is
2 completed within 18 months of the date of the written notice.

3 "e. If a taxpayer has made the election provided in
4 subsection (d) or (e) of Section 40-18-8, a preliminary
5 assessment based on the gain realized as a result of the
6 involuntary conversion [in the case of subsection (d) of
7 Section 40-18-8] or a rollover of gain on the sale of a
8 personal residence [as provided in subsection (e) of Section
9 40-18-8] may be entered within three years from the date the
10 taxpayer notified the department of the replacement of the
11 property in accordance with subsection (d) or (e) of Section
12 40-18-8, as the case may be, or of his or her intention not to
13 replace the property.

14 "f. If a taxpayer has validly elected to have the
15 provisions of subdivision (a) (7) of Section 40-18-6 and
16 subsection (l) of Section 40-18-8 apply to an acquisition of
17 stock before January 1, 1985, any liability of the taxpayer
18 under this title, solely from amendment of its returns to be
19 consistent with that election may be assessed at any time
20 within five years from the date on which the taxpayer filed
21 the amended returns with the department.

22 "g.1. When the Internal Revenue Service changes the
23 amount of federal income tax or federal estate tax in any
24 manner and the change results in an increase in additional
25 income tax or estate tax owed under this title, the department
26 may, at any time within one year after the department is
27 notified or otherwise learns that the change has become final,

1 enter a preliminary assessment for additional tax due. The
2 department shall be allowed to assess the tax within the time
3 period otherwise allowed by this section. Any tax assessed
4 within the additional one year period allowed shall be limited
5 to those items changed on the federal income tax return or
6 federal estate tax return that affect the income tax liability
7 or the estate tax liability imposed by this title.

8 "2. When a federal income tax return or federal
9 estate tax return is changed in any manner after it has been
10 filed with the Internal Revenue Service, other than by an
11 amended return, and the change results in an overpayment of
12 taxes imposed by this title, a petition for refund of the
13 overpayment may be filed within the later of one year after
14 the federal changes become final, or within the time allowed
15 for the filing of a petition for refund as provided in this
16 chapter. The refund shall be limited to those items changed on
17 the federal income tax return or federal estate tax return
18 that affect the income tax liability or estate tax liability
19 imposed by this title.

20 "3. For purposes of this subdivision, the date that
21 a federal change becomes final is the date on which the
22 taxpayer and the Internal Revenue Service formally agree to
23 the changes, or the date of any administrative or judicial
24 order, judgment, or decree from which no further appeal was or
25 may be taken.

1 "h. The running of the period of limitations
2 provided herein for entering a preliminary assessment shall be
3 suspended for the period that:

4 "1. The taxpayer or the assets of the taxpayer are
5 involved in a case under Title 11 of the United States Code,
6 Bankruptcy, and for a period of six months thereafter; or

7 "2. The assets of the taxpayer are in the control or
8 custody of a court in any proceeding, and for a period of six
9 months thereafter.

10 "i. The department and the taxpayer may, prior to
11 the expiration of the period for entering a preliminary
12 assessment or the filing of a petition for refund, agree in
13 writing to extend the time provided for entering the
14 assessment or filing the petition in this chapter. The tax may
15 be assessed, or the petition for refund may be filed, at any
16 time prior to the expiration of the period agreed upon. The
17 period agreed upon may be extended by subsequent agreements in
18 writing made before the expiration of the period previously
19 agreed upon.

20 "j. Additional tax may be assessed by the department
21 within any applicable period allowed above, even though a
22 preliminary or final assessment has been previously entered by
23 the department against the same taxpayer for the same or a
24 portion of the same tax period. No taxpayer, however, shall be
25 subject to unnecessary examination or investigation, and only
26 one inspection of a taxpayer's books and records relating to
27 each type of tax administered by the department shall be made

1 for each taxable year, unless the taxpayer requests otherwise
2 or unless the commissioner after investigation, notifies the
3 taxpayer in writing that an additional inspection is
4 necessary. The commissioner shall promulgate regulations
5 consistent with those followed by the Internal Revenue Service
6 with respect to second inspection of a taxpayer's books and
7 records.

8 "k. The three-year statute of limitations provided
9 by this subdivision for entering a preliminary assessment
10 shall be extended as provided in the following sentence, for
11 the benefit of a self-administered county or municipality, in
12 cases where: 1. the department has audited a taxpayer and has
13 entered a final assessment against the taxpayer for additional
14 sales, use, rental, or lodgings tax; 2. the taxpayer owes the
15 same type of tax to the self-administered county or
16 municipality for the same tax period or periods; and 3. the
17 taxpayer or its authorized representative has not contacted
18 the county or municipality or its private auditing firm,
19 pursuant to its voluntary disclosure program, prior to the
20 date of entry of the final assessment. In such cases, the
21 statute of limitations shall not expire until the earlier of
22 six months from the date of entry of the final assessment or
23 60 days following the date of mailing or transmittal by
24 electronic mail by the department to the self-administered
25 county or municipality or its private auditing firm of a copy
26 of the notice of final assessment and any attachments thereto.
27 Any tax assessed by the self-administered county or

1 municipality within the additional time period allowed by this
2 subdivision shall be limited to those items changed or
3 adjustments included in the final assessment entered by the
4 department. The Alabama Tax Tribunal, during the months of
5 January and July of each year, shall publish a list of pending
6 appeals and the tax or taxes at issue.

7 "(3) SERVICE OF PRELIMINARY ASSESSMENT UPON
8 TAXPAYER. The preliminary assessment entered by the
9 department, or a copy thereof, shall be promptly mailed by the
10 department to the taxpayer's last known address by either
11 first class U.S. mail or certified mail with return receipt
12 requested, but at the option of the department, the
13 preliminary assessment may be delivered to the taxpayer by
14 personal service.

15 "(4) PROCEDURE FOR REVIEW OF DISPUTED PRELIMINARY
16 ASSESSMENTS; ENTRY AND NOTICE OF FINAL ASSESSMENT.

17 "a. If a taxpayer disagrees with a preliminary
18 assessment as entered by the department, the taxpayer may file
19 a written petition for review with the department within 30
20 days from the date of mailing or personal service, whichever
21 occurs earlier, of the preliminary assessment setting out the
22 specific objections to the preliminary assessment. If a
23 petition for review is timely filed, or if the department
24 otherwise deems it necessary, the department shall schedule a
25 conference with the taxpayer for the purpose of allowing the
26 taxpayer and the department to present their respective
27 positions, discuss any omissions or errors, and to attempt to

1 agree upon any changes or modifications to their respective
2 positions.

3 "b. If a written petition for review:

4 "1. Is not timely filed, or

5 "2. Is properly filed, and upon further review the
6 department determines the preliminary assessment is due to be
7 upheld in whole or in part, the department may make the
8 assessment final in the amount of tax due as computed by the
9 department, with applicable interest and penalty computed to
10 the date of entry of the final assessment.

11 "c. If a preliminary assessment is not withdrawn or
12 made final by the department within five years from the date
13 of entry, the taxpayer may appeal the preliminary assessment
14 to the Alabama Tax Tribunal or to the appropriate circuit
15 court as provided by subsection (b) (5) for an appeal of a
16 final assessment.

17 "d. The final assessment entered by the department,
18 or a copy thereof, shall be mailed by the department to the
19 taxpayer's last known address (i) by either first class U.S.
20 mail or certified mail with return receipt requested in the
21 case of assessments of tax of five hundred dollars (\$500) or
22 less or (ii) by certified mail with return receipt requested
23 in the case of assessments of tax of more than five hundred
24 dollars (\$500). In either case and at the option of the
25 department, the final assessment, or a copy thereof, may be
26 delivered to the taxpayer by personal service.

27 "(5) PROCEDURE FOR APPEAL FROM FINAL ASSESSMENT.

1 "a. A taxpayer may appeal to the Alabama Tax
2 Tribunal from any final assessment entered by the department
3 by filing a notice of appeal with the Alabama Tax Tribunal
4 within 30 days from the date of mailing or personal service,
5 whichever occurred earlier, of the final assessment, and the
6 appeal, if timely filed, shall proceed as herein provided in
7 Chapter 2B for appeals to the Alabama Tax Tribunal.

8 "b.1. In lieu of the appeal under paragraph a., at
9 the option of the taxpayer, the taxpayer may appeal from any
10 final assessment to the Circuit Court of Montgomery County,
11 Alabama, or to the circuit court of the county in which the
12 taxpayer resides or has a principal place of business in
13 Alabama, as appropriate, by filing notice of appeal within 30
14 days from the date of mailing or personal service, whichever
15 occurs earlier, of the final assessment with both the
16 secretary of the department and the clerk of the circuit court
17 in which the appeal is filed.

18 "2. If the appeal is to circuit court, the taxpayer,
19 also within the 30-day period allowed for appeal, shall do one
20 of the following:

21 "(i) Pay the tax, interest, and any penalty shown on
22 the final assessment.

23 "(ii) File a supersedeas bond with the court for 125
24 percent of the amount of the tax, interest, and any penalty
25 shown on the final assessment. The supersedeas bond shall be
26 executed by a surety company licensed and authorized to do
27 business in Alabama and shall be conditioned to pay the amount

1 of tax, interest, and any penalties shown on the final
2 assessment, plus applicable interest and any court costs
3 relating to the appeal, payable to the department, or the
4 self-administered county or municipality, if applicable.

5 "(iii) File an irrevocable letter of credit with the
6 circuit court in an amount equal to 125 percent of the amount
7 of the tax, interest, and any penalty shown on the final
8 assessment. The irrevocable letter of credit shall be issued
9 by a financial institution designated as a qualified public
10 depository by the Board of Directors of the Security for
11 Alabama Funds Enhancement (SAFE) Program pursuant to Chapter
12 14A, Title 41. The department or the self-administered county
13 or municipality, if applicable, shall be named the beneficiary
14 of the irrevocable letter of credit. The irrevocable letter of
15 credit shall be conditioned to pay the assessment plus
16 applicable interest and any court costs relating to the
17 appeal. The taxpayer may not issue an irrevocable letter of
18 credit as to a final assessment entered against the same
19 taxpayer.

20 "(iv) File a pledge or collateral assignment of
21 securities with the circuit court that constitute eligible
22 collateral under Chapter 14A, Title 41, in an amount equal to
23 200 percent of the amount of the tax, interest, and penalty
24 shown on the final assessment. The pledge or collateral
25 assignment shall be in favor of the department or the
26 self-administered county or municipality, if applicable, and

1 conditioned to pay the assessment plus applicable interest and
2 any court costs relating to the appeal.

3 "(v) Show to the satisfaction of the clerk of the
4 circuit court to which the appeal is taken that the taxpayer
5 has a net worth, on the basis of fair market value, of two
6 hundred fifty thousand dollars (\$250,000) or less, including
7 his or her homestead.

8 "3. A taxpayer may appeal a final assessment to
9 either the Alabama Tax Tribunal or to circuit court as
10 provided herein, even though the taxpayer has paid the tax in
11 issue prior to taking the appeal.

12 "c.1. The filing of the notice of appeal with the
13 Alabama Tax Tribunal or, in the case of appeals to the circuit
14 court, the filing of the notice of appeal with both the
15 secretary of the department and the clerk of the circuit court
16 in which the appeal is filed and also the payment of the
17 assessment in full and applicable interest or the filing of a
18 supersedeas bond, an irrevocable letter of credit, or a pledge
19 or collateral assignment of securities as provided herein, are
20 jurisdictional. Except as set forth in subparagraph 2., if
21 such prerequisites are not satisfied within the time provided
22 for appeal, the appeal shall be dismissed for lack of
23 jurisdiction.

24 "2. Notwithstanding subparagraph 1., should the
25 circuit court determine that the taxpayer has not satisfied
26 the requirements of subparagraph b.2., the circuit court shall
27 order that the taxpayer satisfy such requirements. The

1 taxpayer may satisfy such requirements at any time within 30
2 days after service of the court order. No order of dismissal
3 for lack of jurisdiction shall be entered within 30 days after
4 service of the court order, and no order of dismissal shall
5 thereafter be entered if such requirement is satisfied within
6 such 30-day period.

7 "3. On appeal to the circuit court or to the Alabama
8 Tax Tribunal, the final assessment shall be prima facie
9 correct, and the burden of proof shall be on the taxpayer to
10 prove the assessment is incorrect.

11 "d.1. The Alabama Tax Tribunal, circuit court, or
12 the appellate court on appeal may increase or decrease the
13 assessment to reflect the correct amount due.

14 "2. If a final assessment is reduced on appeal, any
15 overpayment of tax paid by the taxpayer shall immediately be
16 refunded to the taxpayer by the state, county, municipality,
17 or other entity to which the overpayment was distributed.

18 "3. No court shall have the power to enjoin the
19 collection of any taxes due on an assessment so appealed or to
20 suspend the payment thereof.

21 "(c) Procedure governing petitions for refund;
22 appeals therefrom.

23 "(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any
24 taxpayer may file a petition for refund with the department
25 for any overpayment of tax or other amount erroneously paid to
26 the department or concerning any refund which the department
27 is required to administer. If a final assessment for the tax

1 has been entered by the department, a petition for refund of
2 all or a portion of the tax may be filed only if the final
3 assessment plus applicable interest has been paid in full
4 prior to or with the filing of the petition for refund. The
5 department may also issue automatic refunds pursuant to
6 Section 40-29-71. ~~In the case of a petition for refund of~~
7 ~~sales or use taxes pursuant to Chapter 23, public utilities~~
8 ~~taxes pursuant to Chapter 21, and any transient occupancy tax~~
9 ~~pursuant to Chapter 26, the petition shall be filed jointly by~~
10 ~~the taxpayer who collected and paid over the tax to the~~
11 ~~department and the consumer/purchaser who paid the tax to the~~
12 ~~taxpayer. A direct~~ In the case of a petition for refund of
13 public utilities taxes pursuant to Chapter 21, sales or use
14 taxes pursuant to Chapter 23, and any transient occupancy tax
15 pursuant to Chapter 26, a petition may be filed by the
16 consumer/purchaser who paid the tax directly to the taxpayer,
17 or by the taxpayer if the taxpayer never collected the tax
18 from the consumer/purchaser tax has been credited or repaid to
19 the consumer/purchaser by the tax payer, or by the taxpayer if
20 the tax has been credited or repaid to the consumer/purchaser
21 by the taxpayer taxpayer remitted in excess of the tax due,
22 however never collected the tax from the consumer/purchaser.
23 The Department may adopt rules and establish procedures
24 regarding petitions for refund, including establishing
25 procedures for claiming such refunds on an annual basis when
26 the amount of a refund is less than twenty-five dollars

1 (\$25.00) and offsetting any state use tax liability against
2 any refund otherwise due prior to paying a refund.

3 "(2) TIME LIMITATION FOR FILING PETITION FOR REFUND;
4 AUTOMATIC REFUND.

5 "a. Generally. A petition for refund shall be filed
6 with the department or an automatic refund issued pursuant to
7 Section 40-29-71, or a credit allowed, within (i) three years
8 from the date that the return was filed, or (ii) two years
9 from the date of payment of the tax, whichever is later, or,
10 if no return was timely filed, two years from the date of
11 payment of the tax. For purposes of this paragraph, taxes paid
12 through withholding or by estimated payment shall be deemed
13 paid on the original due date of the return.

14 "b. Net Operating Loss Carryback. In lieu of the
15 periods provided in paragraph a., in the case of a net
16 operating loss carryback, the period for filing a petition for
17 refund, the department making an automatic refund or allowing
18 a credit shall be the period prescribed in 26 U.S.C. Section
19 6511(d) (2) for the claiming of a credit or refund.

20 "(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS;
21 TIME LIMITATIONS. The department shall either grant or deny a
22 petition for refund within six months from the date the
23 petition is filed, unless the period is extended by written
24 agreement of the taxpayer and the department. The taxpayer
25 shall be notified of the department's decision concerning the
26 petition for refund by first class mail, or by either United
27 States mail with delivery confirmation or by certified mail,

1 return receipt requested, sent to the taxpayer's last known
2 address. If the department fails to grant a refund within the
3 time provided herein, the petition for refund shall be deemed
4 to be denied.

5 "(4) PROCEDURED IF REFUNDS GRANTED; CREDIT OF
6 REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. If a
7 petition is granted, or the department, the Alabama Tax
8 Tribunal, or a court otherwise determines that a refund is
9 due, the overpayment shall be refunded to the taxpayer by the
10 state, county, municipality, or other entity to which the
11 overpayment was distributed. If the department determines that
12 a refund is due, the amount of overpayment plus accrued
13 interest may first be credited by the department against any
14 outstanding final tax liabilities due and owing by the
15 taxpayer to the department, and the balance of any overpayment
16 shall, subject to the setoff provisions of Article 3 of
17 Chapter 18, be refunded to the taxpayer. If any refund or part
18 thereof is credited to any other tax by the department, the
19 department shall provide a written detailed statement to the
20 taxpayer showing the amount of overpayment, the amount
21 credited for payment to other taxes, and the amount refunded.

22 "(5) PROCEDURES IF REFUND DENIED; APPEAL.

23 "a. A taxpayer may appeal from the denial in whole
24 or in part of a petition for refund by filing a notice of
25 appeal with the Alabama Tax Tribunal within two years from the
26 date the petition is denied, and the appeal, if timely filed,

1 shall proceed as hereinafter provided for appeals to the
2 Alabama Tax Tribunal.

3 "b. In lieu of appealing to the Alabama Tax
4 Tribunal, the taxpayer may appeal from the denial of a
5 petition for refund by filing a notice of appeal with the
6 Circuit Court in Montgomery County, Alabama, or the circuit
7 court of the county in which the taxpayer resides or has a
8 principal place of business in Alabama, as appropriate, by
9 filing the notice of appeal within two years from the date the
10 petition is denied. The circuit court shall hear the appeal
11 according to its own rules and procedures and shall determine
12 the correct amount of refund due, if any.

13 "c. If an appeal is not filed with the Alabama Tax
14 Tribunal or the circuit court within two years of the date the
15 petition is denied, then the appeal shall be dismissed for
16 lack of jurisdiction.

17 "(d) The Department of Revenue shall revise existing
18 regulations or administrative guidance, or issue new
19 regulations or administrative guidance, as appropriate, in
20 conformance with this section.

21 "(e) This section shall apply to all appeals filed
22 after June 15, 2007. Notwithstanding the prior sentence, in
23 any appeal to a circuit court which is pending on June 15,
24 2007, and in which a supersedeas bond was filed pursuant to,
25 and in compliance with, the requirements of this section, for
26 double the amount of the tax, interest, and any penalty shown
27 on the final assessment, or for double the amount of the final

1 order of the administrative law judge, such bond may be
2 reduced to 125 percent of such amount shown on the final
3 assessment or in the final order of the administrative law
4 judge."

5 Section 2. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or upon its otherwise becoming law.