

State and Local Tax Bulletin

February 28, 2011
Alabama Edition



Three Prominent Alabama Business Groups Announce Their 2011 Tax Legislative Agendas

By Bruce P. Ely and J. Sims Rhyne, III

Upcoming Seminars Involving Members Of Our SALT Practice Group

March 7, 2011

The Council On State Taxation 2011 COST Sales Tax School will be held again at the Georgia Tech Hotel & Conference Center in Atlanta, Georgia. Bruce Ely and Will Thistle will be speaking, with Alan Poe of Holland & Hart, LLP, Denver, on the topic of "Dealing with 'Home Rule' Jurisdictions; Disturbing Trends." For more information, visit www.cost.org.

March 22-23, 2011

The American Bar Association-Institute for Professionals in Taxation (ABA-IPT) Advanced Income Tax Seminar will be held at the Ritz-Carlton Hotel in New Orleans, Louisiana again this year. Chris Grissom will be providing an update and recent developments involving intangibles add-back statutes around the country. For more information, visit www.ipt.org.

March 25, 2011

A tax seminar designed for our general contractor clients and friends will be held at our Birmingham office that morning. Stuart Frentz, Bruce Ely, Axel Bolvig, Steve Wilson (from our Jackson office), Jimmy Long and Will Thistle will be the co-presenters. For more information, visit www.babc.com/general-contractor-tax-seminar

March 30, 2011

The ABA will sponsor a national teleconference on the use and taxation of series limited liability companies, titled "Series LLCs. No, It's Not a New TV Series," with co-presenters: Bruce Ely; Allan Donn of Willcox & Savage, P.C., Norfolk, Virginia; and Bahar Schippel of Snell & Wilmer, LLP, Phoenix. For more information on the teleconference, visit www.aba.org.

In preparation for the 2011 regular session of the Alabama Legislature, which begins on Tuesday, March 1, several prominent business and trade associations in the State have released their 2011 legislative agendas. These agendas feature both new and renewed tax measures and incentives. The 5,000 member Business Council of Alabama ("BCA") (www.bcatoday.org) and the 4,000 member Alabama Retail Association ("ARA") (www.alabamaretail.org) state legislative agendas each focus on state and local tax proposals. In addition, the Birmingham Business Alliance ("BBA"), successor to the Birmingham Regional Chamber of Commerce (www.birminghambusinessalliance.com), also released its legislative agenda recently, advocating some of the same measures as the BCA and the ARA.

The BCA and ARA both reaffirm their support for legislation creating an independent tax appeals process for state and local tax assessments. The BBA, along with the BCA and ARA, support Alabama adopting the Streamlined Sales and Use Tax Compact. Additionally, all three organizations will lobby for the Alabama Taxpayers' Bill of Right II legislation, as described below. The BCA will also closely monitor legislative efforts to regulate the standards for Alabama income tax return preparers, and will also advocate a confidentiality privilege for accountant workpapers. In addition, the BCA and ARA both say that they will continue to oppose mandatory unitary combined reporting on corporate income taxpayers.

Given the budget crisis the state is currently facing, with large deficits in both the Education Trust Fund and the General Fund, this legislative session could be especially contentious. Also, Governor Bentley's promise not to raise taxes will likely spark debate among legislators who will propose raising taxes to close the budget gap or to close so-called "tax loopholes."

Business Council of Alabama State Tax Agenda

William Canary, BCA president and CEO, stated that: "We remain cautiously optimistic regarding tax issues on BCA's 2011 Legislative Agenda, primarily because the voters of Alabama have seated a more business- and taxpayer-friendly Legislature. Although a variety of challenges await the new Governor and Legislature, the state's leaders have made job creation foremost among what they hope to accomplish." Given the focus on job creation in Governor

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Bentley's new administration, the BCA believes there will be a significant opportunity for the enactment of one of their top tax issues--an increase in the small business health insurance premium deduction.

In 2011, the BCA will actively work to:

- Create the **Alabama Tax Appeals Commission** ("ATAC") as an independent state tax agency, headed by a judge selected in a non-partisan manner who has specific training in state and local taxation. The legislation would also abolish the Administrative Law Division of the Alabama Department of Revenue.
- Enact the **Alabama Taxpayers' Bill of Rights II** ("TBOR II"), an update and expansion of the original landmark legislation enacted in 1992, which extends the appeal deadlines for taxpayers and broadens "innocent spouse" relief, among other changes.
- Increase the **Small Business Healthcare Tax Deduction** from 150% to 200% of premiums paid on behalf of employees, a position also advocated by the BCA's Small Business and Health Care Committees.
- Establish a confidentiality privilege for accountant workpapers, including tax accrual workpapers.

In 2011, the BCA will support efforts to:

- Resolve the problems and litigation over the Alabama Department of Revenue's "**gross income regulation**" that affects partnerships, S corporations, LLCs and other pass-through entities earning income both in and outside of Alabama. The legislation would: (1) prospectively require the resident owners to include all of the entity's non-Alabama income in their Alabama income; but (2) provide a pass-through tax credit for income/franchise taxes paid to other states and foreign countries by the entity, on behalf of its resident owners.
- Streamline and simplify our sales/use tax system so that in-state and out-of-state retailers are on a level playing field.

In 2011, the BCA will again oppose any effort to establish **unitary combined reporting** in Alabama and will monitor efforts to regulate and set **minimum standards for tax preparers**.

Alabama Retail Association State Tax Agenda

With legislation expected to be introduced in the 2011 regular session to educate consumers about sales and use taxes, Rick Brown, President of the ARA, hopes that "the Alabama Legislature [will] take some steps this year toward leveling the playing field between remote (online/catalog) and neighborhood brick-and-mortar retailers. A sale is a sale is a sale, whether the customer

pays in a store, online, over the phone or through the mail." Other proposed legislation will authorize the formation of a commission to begin the process of streamlining Alabama's sales and use tax provisions, so that in the event Congress adopts or blesses the Streamlined Sales and Use Tax Agreement via the Main Street Fairness Act or its successor, Alabama will be ready for compliance.

In 2011, the ARA will support:

- Requiring remote sellers to notify Alabama consumers that a use tax may be due and must be paid by the purchaser to the state of Alabama and its localities. The notification should be required on any website, catalog, invoice and receipt generated by a remote retailer regardless of physical nexus with Alabama.
- The **Streamlined Sales and Use Tax** (SST) initiative, which would equalize sales taxes between brick and mortar retailers and those that are catalog and/or Internet-based and thus level the playing field for in-state and out-of-state retailers. It further will provide a simplified sales tax system, by making the collection and remittance of sales taxes more manageable for businesses. To facilitate this initiative, the ARA supports the establishment of a state-level administration commission, to prepare Alabama for participation in the proposed Main Street Fairness Act in the event the Congressional proposal becomes law.
- Increasing the **income tax deduction for small businesses** that provide healthcare coverage for their employees from 150% to 200% of the premiums paid.
- Creation of the **Alabama Tax Appeals Commission** as described above.
- The **Alabama Taxpayers' Bill of Rights II** as described above.

In 2011, the ARA will oppose:

- Expansion of State unemployment compensation benefits that result in increased taxes on Alabama businesses.
- Taxing or banning plastic bags.
- "**Band-Aid or quick-fix tax schemes**" or singling out one particular industry or segment of business for punitive tax increases. ARA vehemently opposes any patchwork tax efforts.
- **Mandatory unitary combined reporting** for corporate taxpayers.

Birmingham Business Alliance Tax Agenda

In 2011, the BBA will also support:

- **Main Street Fairness Act:** The Birmingham Business Alliance urges the Alabama Congressional delegation to advocate and vote in favor of the passage of the Main Street Fairness Act. The Main Street Fairness Act, H.R. 5660, is a parallel measure of the Streamlined Sales and Use Tax Compact which many expect the Alabama Legislature to debate having the state join as a full member.
- **Business Activity Tax Simplification Act ("BATSA"):** The BBA supports passage of BATSA – a bill that would modernize current nexus law and provides definite, specific standards to govern when states may impose a business activity tax on multistate businesses.

- **Research & Development Credit:** Being in the center of a biotech- and health care-oriented city, the BBA advocates the enactment of a state R&D income tax credit that parallels the federal credit.

Final Note

One bill not on any of these group's agenda, but likely supported by all, would confirm a vote of the Alabama Legislature's administrative agency oversight committee, known as the Legislative Council, last July. At the hearing, the Council unanimously voted to reject a regulation proposed by the ADOR that would have in essence repealed (if that were possible) the statutory deduction within the business privilege tax for investments in subsidiaries not doing business in Alabama. That bill will take the form of a house joint resolution.

SALT Practice Group:

Bruce P. Ely, Chair
(205) 521-8366
bely@babac.com

Joseph W. Gibbs
(615) 252-2317
jgibbs@babac.com

W. Stanley Gregory
(334) 956-7604
sgregory@babac.com

Christopher R. Grissom
(205) 521-8514
cgrissom@babac.com

K. Wood Herren
(205) 521-8505
wherren@babac.com

James E. Long, Jr.
(205) 521-8626
jelong@babac.com

Patricia Head Moskal
(615) 252-2369
pmoskal@babac.com

Brian S. Shelton
(615) 252-2313
bshelton@babac.com

William T. Thistle, II
(205) 521-8985
wthistle@babac.com

Robert D. Thorington
(334) 956-7609
rthorington@babac.com

Robert C. Walthall
(205) 521-8308
rwalthall@babac.com

Stephen M. Wilson
(601) 592-9957
swilson@babac.com

Bradley Arant Boulton Cummings LLP Office Locations:

ALABAMA

One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203
(205) 521-8000

200 Clinton Avenue West, Suite 900
Huntsville, AL 35801
(256) 517-5100

The Alabama Center for Commerce
401 Adams Avenue, Suite 780
Montgomery, AL 36104
(334) 956-7700

MISSISSIPPI

188 E. Capitol Street, Suite 400
Jackson, MS 39201
(601) 948-8000

NORTH CAROLINA

100 North Tryon Street, Suite 2690
Charlotte, NC 28202
(704) 332-8842

TENNESSEE

1600 Division Street, Suite 700
Nashville, TN 37203
(615) 244-2582

WASHINGTON, DC

1615 L Street, N.W., Suite 1350
Washington, DC 20036
(202) 393-7150

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