



State and Local Tax Alert

Alabama Edition



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Alabama Taxpayers' Bill of Rights II— House Version Introduced

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On January 27, **House Bill 105** was introduced by Representative Paul DeMarco (R-Homewood), and will be handled in the Senate by Ben Brooks (R-Mobile), both of whom are well-respected attorneys. This landmark legislation reflects the work of the Alabama State Bar Tax Section in cooperation with the Alabama Society of CPAs, along with input from the business community, the Alabama Department of Revenue (“ADOR”) and local government organizations, over the past several years. HB 105 is virtually identical to last year’s HB 427, which passed the House of Representatives unanimously and then the Senate Judiciary Committee during the 2011 regular session, and incorporates the Senate floor amendment negotiated by State Bar President Jim Pratt and the two co-sponsors.

Rep. DeMarco stated in a press release today that “[t]his bill will ensure that businesses and taxpayers choosing to appeal tax assessments are given a level playing field and referees who will remain neutral from the beginning of the process to the end. This bill can be summed up in two words that are at the core of its intent – simple fairness.”

Several trade and business associations have already endorsed HB 105, including the Alabama Society of CPAs, the Business Council of Alabama, the Alabama Retail Association, the Birmingham Business Alliance, the West Alabama Chamber of Commerce, the Alabama State Bar, Eagle Forum, and the American Bar Association (“ABA”). The Council On State Taxation (“COST”) has also enthusiastically endorsed the bill. The bill has been assigned to the House Judiciary Committee, and could come up for a vote within the next two weeks.

The major features of the bill are:

1. Creates the Alabama Tax Appeals Commission (“ATAC”) by abolishing the current Administrative Law Division of the ADOR and transferring both the personnel and equipment to a newly-formed state agency, under the executive branch. The annual appropriation for the Administrative Law Division is simply assigned to ATAC. Alabama is now in the distinct minority of states that lack an independent tax appeals tribunal and received a “D” on the latest State Tax Due Process Scorecard issued by COST, primarily for this reason. The ATAC provisions are based in large part on the ABA’s Model State Tax Tribunal Act, which the National Conference of State Legislatures, the American Legislative Exchange Council, the National Taxpayers Union, and COST have endorsed.
 - In addition to ADOR assessments, taxpayers could appeal final assessments of sales, use, rental, and lodgings taxes issued by *self-administered cities and counties (and their private auditing firms)* to the ATAC, unless the governing body of the city or county opts out;
 - An ATAC judge may be removed from office by the Governor, the Attorney General, or the Judicial Inquiry Commission for neglect of duty, inability to perform duties, malfeasance in office, or other good cause;

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- There is a six-member nominating committee, consisting of appointees by the State Bar, the Commissioner of Revenue, Alabama League of Municipalities (“ALM”), Association of County Commissions (“ACCA”), and the Circuit Judges Association (the latter selects two members who cannot be attorneys; or current or former city, county, or ADOR employees). Membership for ALM and ACCA is contingent on participation in ATAC by at least 50% of their self-administered cities or counties; and
- If the Senate fails to approve the Governor’s proposed appointment to ATAC, the judge shall be selected by the Chief Justice of the Alabama Supreme Court from the list of three candidates recommended by the nominating committee.

Note: *Allowing taxpayers to appeal final assessments from self-administered cities and counties or their contract auditing firms would be a major step toward addressing the frustration of the business community and tax practitioners with the differing interpretations and appeals procedures of the numerous self-administered localities or their private auditing firms.*

2. Extends the period in which the taxpayer can appeal both a preliminary and final assessment from 30 days to 60 days after issuance of the assessment. The ADOR’s Legal Division is also given 60 days in which to file their answer with the ATAC, plus a 30-day extension if so requested within the initial 60-day period. The additional 30-day appeal periods do not apply to individuals who fail to file their state income tax return and the ADOR must compute their tax liability based on information obtained from the IRS.
3. Amends the statute imposing a minimum \$50 penalty when the taxpayer does not file a return by the due date. The ADOR assesses the penalty now even if no tax is due on the return—and even if a refund is due. The revised penalty would not apply to any individual income taxpayer who is owed a refund on the delinquent tax return. Additionally, for all other returns in which the taxpayer does not owe any additional tax (i.e., a zero sales tax return), the \$50 penalty would only apply if the taxpayer fails to file the delinquent return within 30 days after written notification from the ADOR.
4. Conforms to two intervening changes to the “innocent spouse” rules under the Internal Revenue Code to expand the scope of this defense for Alabama spouses.
5. Clarifies that filing an amended tax return with a refund claim does not extend or create a new three-year statute of limitations period, consistent with federal case law, thus overruling the ALD’s 2000 decision in *Dupree v. ADOR* (which the authors consider to be incorrect).
6. At the request of the ADOR, however, allows the ADOR up to six months in which to review a refund claim and, if necessary, to enter a preliminary assessment that is limited to only the adjustments at issue in the refund claim. Conversely, the authors of the bill added an exception to the time limits on filing a refund claim to allow taxpayers to request a refund in their petition for review of a preliminary assessment, which is filed after the normal statute of limitations has expired, provided that the claim is limited to the issues listed in the preliminary assessment.
7. Creates an expedited revenue ruling procedure by which a taxpayer can receive a ruling within 30 days if they pay a \$3,000 filing fee, and in all events requires the ADOR’s Legal Division to contact the taxpayer or its authorized representative—if they so request—to discuss their ruling request, prior to the ADOR issuing the ruling.
8. At the request of the ADOR, increases the penalties for negligence, fraud, and frivolous tax returns and appeals to the ATAC to conform to current federal law. The current system of penalties apparently is not deterring tax protesters.
9. At the request of the ADOR, adds a substantial understatement penalty (only applies to income taxes) and adds penalties for failure to file partnership or S corporation information returns, or failure to pay tax by EFT when required by law, consistent with federal law.
10. At the request of the ADOR and the Alabama Education Association, the six-year statute of limitations for corporate income tax purposes that is triggered by a 25% understatement of the taxable base would be measured by federal gross income as apportioned to Alabama, in order to clarify the changes by the 1999 amendments to Alabama’s corporate income tax that dropped “Alabama gross income” as the starting point. However, any amounts omitted from the base for which the taxpayer has “substantial authority” are excluded for purposes of measuring the 25% understatement.
11. Extends from two years to three years the statute of limitations on filing a refund claim for income tax withheld from a taxpayer-employee’s wages that is later determined to have been overpaid, consistent with federal law.

12. Requires the ADOR to attach not only to the *preliminary* assessment but to the *final* assessment a written description of the basis for the assessment and any penalties.
13. Clarifies that the circuit courts have jurisdiction to hear, and if appropriate, to grant a motion to quash a subpoena issued by the ADOR to the extent the subpoena is overbroad or seeks privileged information.
14. At the request of the ADOR, and because Alabama income tax law generally piggybacks federal income tax law, amends the "RAR" statute requiring taxpayers to report IRS audit changes to the ADOR or allowing taxpayers to file a refund claim if the IRS granted a refund to them for the same tax period and same issues. The statute of limitations on assessment may not close until the taxpayer files an amended return and reports the IRS audit adjustment, which the taxpayer would be required to file within six months after a final determination of their federal tax liability (one year under current law). However, the taxpayer will continue to have one year after the grant of an IRS refund in which to file an equivalent refund claim with the ADOR.
15. Automatically nullifies any preliminary assessment that has been outstanding more than five years as of October 1, 2012 (i.e., issued prior to October 1, 2007), unless a final assessment is issued thereon or the parties agree to extend the time period. Under current law, the issuance of a preliminary assessment—which was intended to allow the parties to resolve their differences administratively—suspends the statute of limitations on assessments *indefinitely*. There have been reported instances where the ADOR or a self-administered locality or its contract auditing firm opted to sit on a preliminary assessment but take no further action. In the meantime, the taxpayer has no appeal rights.
16. For any other preliminary assessment not described above that is issued by either the ADOR or a self-administered city or county, but then lies dormant for three years, the taxpayer has the *option* to appeal the preliminary assessment to the ATAC or appropriate circuit court. See above explanation.
17. Requires the Taxpayer Advocate ("TA") to contact the taxpayer or his/her representative before issuing a denial of their request for an interest abatement or waiver of penalties. Under current law, the TA is not obligated to contact the taxpayers or their CPA/attorney to learn their side of the story or discuss his or her concerns about their request. If requested by the ATAC judge, the bill allows the TA to review and correct a final order if there is newly-discovered evidence that shows the taxpayer was incorrectly assessed.
18. Clarifies that taxpayers have the option to appeal to the ATAC any proposed adjustments by the ADOR to their net operating loss carryovers, even though the proposed adjustment does not result in an assessment of income tax or a denied refund claim.

With the new composition of the Alabama Legislature, many believe that 2012 is the opportune time to pass this much-needed legislation. The authors are two of the principal authors of "TBOR II." If you have any questions regarding the bill, feel free to contact either of them at the email addresses listed above.

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