

ACT No. 2000 - 233

1 SB22
2 21613-5
3 By Senator Butler
4 RFD: Governmental Affairs
5 First Read: 01-FEB-2000
6 PFD 01/27/2000



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Enrolled, An Act,

To amend Sections 40-2A-2, 40-2A-3, and 40-2A-4, Code of Alabama 1975, to create the position of Taxpayer Advocate, with authority to provide relief to a taxpayer when a tax has been erroneously assessed or collected, or when a refund has been erroneously denied.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-2A-2, 40-2A-3, and 40-2A-4, Code of Alabama 1975, are amended to read as follows:

"§40-2A-2.

"(1) a. Legislative intent. — The legislative intent of this chapter is to provide equitable and uniform procedures for the operation of the department and for all taxpayers when dealing with the department. This chapter is intended as a minimum procedural code and the department may grant or adopt additional procedures not inconsistent with this chapter. This chapter shall be liberally construed to allow substantial justice.

"b. The provisions of this chapter shall be complementary and in addition to all other provisions of law. In the event of any conflict between the provisions of this chapter and those of any other specific statutory provisions contained in other chapters of this title, or of any other title, it is hereby declared to be the legislative intent

1 that, to the extent such other specific provisions are
2 inconsistent with or different from the provisions of this
3 chapter, the provisions of this chapter shall prevail.

4 "(2) Scope. — The provisions contained herein shall
5 govern all matters administered by the department except as
6 otherwise provided by law or by agreement entered into
7 pursuant to lawful authority. However, nothing herein shall be
8 construed to apply to the assessment of ad valorem taxes on
9 real or personal property which is administered by the various
10 counties of the State of Alabama, except that the
11 determination and assessment of value of property of public
12 utilities under Chapter 21 of Title 40, and the determination
13 and assessment of value of corporate shares of stock under
14 Article 4 of Chapter 14 of Title 40, shall be governed by the
15 procedures set forth in this chapter.

16 "(3) Procedures exclusive. — The department shall
17 not be subject to the declaratory judgment, declaratory
18 ruling, or contested case provisions of the Alabama
19 Administrative Procedure Act, Chapter 22 of Title 41.

20 "§40-2A-3.

21 "For the purposes of this chapter, the following
22 terms shall have the following meanings:

23 "(1) ADMINISTRATIVE LAW JUDGE. The chief
24 administrative law judge of the department, or any other

1 individual acting in that capacity as appointed by the
2 commissioner.

3 "(2) ADMINISTRATIVE LAW DIVISION. The administrative
4 law division of the department.

5 "(3) AUTHORIZED REPRESENTATIVE. Any individual with
6 written authority or power of attorney to represent a taxpayer
7 before the department; provided however, that nothing herein
8 shall be construed as entitling any such individual who is not
9 a licensed attorney to engage in the practice of law.

10 "(4) COMMISSIONER. The commissioner of the
11 department or his or her delegate.

12 "(5) COMPTROLLER. The Comptroller of the State of
13 Alabama.

14 "(6) DELEGATE. When used with reference to the
15 commissioner means any officer or employee of the department
16 duly authorized by the commissioner, directly or indirectly,
17 by one or more redelegations of authority, to perform the
18 function described in the context.

19 "(7) DEPARTMENT or DEPARTMENT OF REVENUE. The
20 Alabama Department of Revenue.

21 "(8) GROSS RECEIPTS TAX IN THE NATURE OF A SALES
22 TAX. A privilege or license tax, imposed by a municipality or
23 county, measured by gross receipts or gross proceeds of sale
24 and which: (i) was in effect on or before February 25, 1997,
25 or is an amendment to a tax which was in effect on that date;
26 (ii) is levied against those selling tangible personal

1 property at retail, those operating places of amusement or
2 entertainment, those making street deliveries, and those
3 leasing or renting tangible personal property; and (iii) is
4 due and payable to a county or municipality monthly or
5 quarterly.

6 "(9) FINAL ASSESSMENT. The final notice of value,
7 underpayment, or nonpayment of any tax administered by the
8 department.

9 "(10) INTEREST. That amount computed under Section
10 40-1-44, on any overpayment or underpayment of tax.

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

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

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

21 "(14) PETITION FOR REFUND. Any written request for a
22 refund of any tax previously paid, including in the form of an
23 amended return. Unless otherwise provided by law, the request
24 shall include sufficient information to identify the type and

1 amount of tax overpaid, the taxpayer, the period included, and
2 the reasons for the refund.

3 "(15) PETITION FOR REVIEW. A written document filed
4 with the department in response to a preliminary assessment in
5 which the taxpayer sets forth reasonably specific objections
6 to the preliminary assessment.

7 "(16) PRELIMINARY ASSESSMENT. The preliminary notice
8 of value or underpayment of any tax administered by the
9 department.

10 "(17) PRIVATE AUDITING OR COLLECTING FIRM. Any
11 person in the business of collecting, through contract or
12 otherwise, local sales, use, rental, lodgings or other taxes
13 or license fees for any county or municipality, or auditing
14 any taxpayer, through the examination of books and records,
15 for any county or municipality. The term shall not include any
16 of the following:

17 "a. The Department of Revenue.

18 "b. A county or municipality that has entered into a
19 contract or other arrangement to collect local sales, use,
20 rental, lodgings or other taxes or license fees on behalf of
21 another county or municipality, or to audit a taxpayer,
22 through the examination of books and records, on behalf of
23 another county or municipality.

24 "c. A person or firm whose sole function and purpose
25 on behalf of a municipality or group of municipalities is to
26 collect delinquent insurance premium license fees levied by

1 that municipality or group of municipalities, and who has no
2 authority to determine the amount of license fee, interest,
3 court cost, or penalty owed to the municipality or group of
4 municipalities.

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

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

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

19 "(21) SELF-ADMINISTERED COUNTY OR MUNICIPALITY. A
20 county or municipality that administers its own sales and use
21 taxes or other local municipal or county taxes levied or
22 authorized to be levied by a general or local act, or
23 contracts out all or part of that function to a private
24 auditing or collecting firm. The term does not include any of
25 the following:

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

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

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

21 "(23) TAXPAYER. Any person subject to or liable for
22 any state or local tax; any person required to file a return
23 with respect to, or to pay, or withhold and remit any state or
24 local tax or to report any information or value to the
25 department, a county, municipality, or its designee; or any
26 person required to obtain or holding any interest in any

1 license, permit, or certificate of title issued by the
 2 department, a county, municipality, or its designee, or any
 3 person that may be affected by any act or refusal to act by
 4 the department, a county, municipality, or its designee, or to
 5 keep any records required by this chapter.

6 "(24) TAXPAYER ADVOCATE. The person so designated
 7 from time to time by the Commissioner of Revenue to assist the
 8 taxpayers of the State of Alabama with regard to tax issues
 9 resulting from any taxes administered or collected by the
 10 department.

11 "(25) TAXPAYER ASSISTANCE ORDER. A written order
 12 issued by the Taxpayer Advocate and approved by either the
 13 Commissioner or Assistant Commissioner of Revenue which, among
 14 other items, states the facts and grants relief to a taxpayer
 15 concerning an issue in dispute with the department with regard
 16 to tax issues resulting from any taxes administered or
 17 collected by the department.

18 "§40-2A-4.

19 "(a) Rights of the taxpayer.

20 "(1) For purposes of this section, the term
 21 "taxpayer" shall only mean a taxpayer whose books and records
 22 are subject to examination by the department, and shall not
 23 include any taxpayer regarding taxes collected or examined by
 24 a self-administered county or municipality.

1 "(2) At or before the commencement of an examination
2 of the books and records of a taxpayer, the department shall
3 provide to the taxpayer the current version of Publication 1A.
4 Publication 1A shall provide, in simple and non-technical
5 terms, a statement of the taxpayer's rights. Those rights
6 include the right to be represented during an examination, an
7 explanation of their appeal rights, and the right to know the
8 criteria and procedures used to select taxpayers for an
9 examination.

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

13 "a. A written description of the basis for the
14 assessment and any penalty asserted with respect to the
15 assessment.

16 "b. A written description of the method by which the
17 taxpayer may request an administrative review of the
18 preliminary assessment.

19 "(4) At or before the issuance of a final
20 assessment, the department shall inform the taxpayer by a
21 written statement of his or her right to appeal to the
22 administrative law division or to circuit court.

23 "(5) Except in cases involving suspected criminal
24 violations of the tax law or other criminal activity, the
25 department shall conduct an examination of a taxpayer during
26 regular business hours after providing reasonable notice to

1 the taxpayer. A taxpayer who refuses a proposed time for an
2 examination on the grounds that the proposed examination would
3 cause inconvenience or hardship must offer reasonable
4 alternative times and dates for the examination.

5 "(6) At all stages of an examination or the
6 administrative review of the examination, a taxpayer is
7 entitled to be assisted or represented, at his own expense, by
8 an authorized representative. The department shall prescribe a
9 form by which the taxpayer may designate a person to represent
10 him or her in the conduct of any proceedings, including
11 collection proceedings, resulting from actions of the
12 department. In the absence of this form, the department may
13 accept such other evidence that a person is the authorized
14 representative of a taxpayer as it considers appropriate. This
15 provision shall not be construed as authorizing the practice
16 of law before the department or any court in this state by a
17 person who is not a licensed attorney.

18 "(7) A taxpayer shall be allowed to make an audio
19 recording of any in-person interview with any officer or
20 employee of the department relating to any examination or
21 investigation by the department, provided, however, the
22 taxpayer must give reasonable advance notice to the department
23 of his or her intent to record and the recording shall be at
24 the taxpayer's own expense and with the taxpayer's own
25 equipment. The department shall also be allowed to record any

1 interview if the taxpayer is recording the interview, or if
2 the department gives the taxpayer reasonable advance notice of
3 its intent to record the interview. The department shall
4 provide the taxpayer with a copy of the recording, but only if
5 the taxpayer provides reimbursement for the cost of the
6 transcript and reproduction of the copy. The cost shall be
7 reasonable as prescribed by regulations issued by the
8 department.

9 "(8) This section shall not apply to criminal
10 investigations or investigations relating to the integrity of
11 any officer or employee of the department.

12 "(b) Department responsibilities generally.

13 "(1) The Commissioner of Revenue shall appoint a
14 Taxpayer Advocate from among the employees of the department.
15 This officer shall receive and review inquiries or complaints
16 concerning matters that have been pending before the
17 department for an unreasonable length of time, or matters
18 where the taxpayer has been unable to obtain a reasonable
19 response after several attempts to communicate with the
20 department employee assigned to the taxpayer's case, or his or
21 her immediate superiors. In addition, this officer shall
22 review and have the authority to waive a penalty for
23 reasonable cause as provided in Section 40-2A-11(h), shall
24 promptly review inquiries concerning release of property
25 levied upon, the erroneous filing of liens, the failure to
26 release a lien for good cause, or other matters complained of

1 by a taxpayer or other affected party . The Taxpayer Advocate
2 shall have no authority nor issue any ruling with regard to
3 any taxes collected by or on behalf of a self-administered
4 county or municipality.

5 "a. The Taxpayer Advocate shall, subject to the
6 approval of the Commissioner or the Assistant Commissioner of
7 Revenue, issue taxpayer assistance orders in the form and
8 manner prescribed herein and by department regulations.

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

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

21 "d. All taxpayer assistance orders shall be dated
22 and signed by the Taxpayer Advocate and approved either by the
23 Commissioner or Assistant Commissioner of Revenue, and shall
24 state the underlying facts, the reasons for granting relief,
25 and the relief granted. Any taxpayer assistance order may, for

1 good cause, be modified or rescinded in writing by the
2 Taxpayer Advocate and either the Commissioner or Assistant
3 Commissioner of Revenue.

4 "e. The Taxpayer Advocate shall have full access to
5 department personnel, books, and records, subject, however, to
6 the confidentiality restrictions imposed by this chapter.

7 "f. Taxpayer assistance orders shall not be subject
8 to the confidentiality provisions of Title 40, and shall be
9 maintained by the secretary of the department and shall be
10 open to review upon written request. The Taxpayer Advocate
11 shall have no authority nor issue any ruling with regard to
12 any taxes collected by or on behalf of a self-administered
13 county or municipality.

14 "g. The Commissioner shall make an annual report to
15 the Legislature of all taxpayer assistance orders approved in
16 accordance with the provisions of this act. Such report shall
17 contain the total amount of relief granted and the types of
18 taxes for which relief was granted.

19 "(2) The department shall maintain a continuing
20 education program to train employees of the department and to
21 provide them with a current knowledge of state and applicable
22 federal tax laws.

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

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

3 "a. The basis of a production quota system for
4 employees; or

5 "b. The basis for evaluating an employee's
6 performance.

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

10 "(6) INSTALLMENT PAYMENTS.

11 "a. The commissioner is authorized to enter into
12 written agreements to allow any taxpayer to pay any tax in
13 installment payments if the commissioner determines that such
14 agreement will facilitate collection of such tax.

15 Notwithstanding the preceding sentence, such agreements shall
16 be entered into only regarding a tax that has been finally
17 assessed by the department and not appealed, and such
18 agreements shall not extend for a period exceeding twelve
19 months, provided, that any such agreement may be renewed at
20 the discretion of the commissioner for succeeding periods not
21 to exceed twelve months. The commissioner shall only be
22 authorized to enter such an agreement with regard to a tax
23 administered or collected by the department.

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

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

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

6 "3. The taxpayer fails to pay any other tax
7 liability due the department at the time such liability is
8 due, unless the taxpayer has appealed such other liability
9 pursuant to the terms of this chapter;

10 "4. The financial condition of the taxpayer has
11 significantly changed;

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

14 "6. The commissioner believes that collection of any
15 tax to which an agreement under this provision relates is in
16 jeopardy.

17 "c. The commissioner shall have sole authority or
18 discretion to enter into or amend, modify, or terminate any
19 installment payment agreement provided for herein. The
20 commissioner shall promulgate regulations necessary for the
21 implementation of this provision.

22 "(c) Department failure to comply with this section.
23 - The failure of the department to comply with any provision
24 of this section shall not prohibit the department from
25 assessing any tax as provided in this chapter, nor excuse the
26 taxpayer from timely complying with any time limitations under

1 this chapter. However, if the department fails to
2 substantially comply with the provisions of this section, the
3 commissioner shall, upon application by the taxpayer or other
4 good cause shown, abate any penalties otherwise arising from
5 the examination or assessment.

6 "(d) Abatement of penalty. - The department shall
7 abate any penalty attributable to erroneous written advice
8 furnished to a taxpayer by an employee of the department.
9 However, this section shall apply only if the department
10 employee provided the written advice in good faith while
11 acting in his official capacity, the written advice was
12 reasonably relied on by the taxpayer and was in response to a
13 specific written request of the taxpayer, and the penalty did
14 not result from the taxpayer's failure to provide adequate or
15 accurate information."

16 Section 2. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

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Louis Barr

President and Presiding Officer of the Senate

Pro Temp
W. H. H. H.

Speaker of the House of Representatives

Senate 15-FEB-2000
I hereby certify that the within Act originated in and passed
the Senate.

McDowell Lee
Secretary

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House of Representatives
Amended and passed 06-APR-2000

Senate concurred in House amendment 11-APR-2000

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By: Senator Butler

APPROVED *4/18/00*
TIME *3:25 P.M.*
[Signature]
GOVERNOR

Alabama Secretary of State