

MEMORANDUM

TO **Members, Tax Section, Alabama State Bar**

FROM **Bruce P. Ely**

DATE **January 19, 2009**

SUBJECT **Summary of Working Draft – Proposed “Alabama Taxpayers’ Bill of Rights II” Legislation**

Since enactment of the Alabama Taxpayers’ Bill of Rights and Uniform Revenue Procedures Act in 1992, which we patterned in large part after the federal Taxpayer Bill of Rights provisions then in effect, many federal law changes have taken place along with the practical experience gained—and ALJ and ADOR rulings issued—while working with the current statute.

Following is a summary of a working draft that the Council On State Taxation (COST) urged me to prepare, and that hopefully the BCA, the Alabama Retail Association and other business groups, and the Alabama State Bar and Alabama Society of CPAs, will eventually endorse. The draft includes suggested changes from the ADOR Tax Policy Office that have been submitted to me over the past two years, although neither they nor any business or professional group has officially endorsed the current draft.

1. Extend the period in which the taxpayer (“TP”) can appeal both a preliminary and final assessment from 30 days to 60 days.
2. Conform with the pro-TP changes to the supersedeas appeal bond provisions enacted as Act 2007-504.
3. Conform with two sets of interim federal changes to the innocent spouse rules.
4. Automatically nullify a preliminary assessment if no action is taken (either to withdraw it or issue a final assessment) within three or four (?) years.
5. Allow the Commissioner of Revenue to waive interest at the same time he/she issues a decree waiving late filing penalties and extending due dates of returns as a result of a natural disaster, etc.
6. Require the Taxpayer Advocate Office to contact the TP or their representative before issuing a denial of an interest abatement request.
7. Require the ADOR to hold a status conference with the TP or its representative and allow the TP to withdraw a request for a revenue ruling if the ADOR intends to issue an adverse ruling.

8. Grant the ADOR the statutory authority—in conformity with federal law [IRC §§ 7405 and 6602]—to recover an erroneously-issued tax refund within two years of issuance.
9. Revise the provision allowing the taxpayer to file its appeal where it has “a” (vs. “its”) principal place of business in the state, which allows the TP to choose between two or more different circuit courts to file suit, and also causes a potential foot-fault by the ADOR lawyers if they mistakenly choose the wrong circuit court in which to file their appeal of an adverse ALD ruling.
10. Correct the statute imposing a minimum \$50 penalty for late filing—now, the greater of 10% of the understatement or \$50--even if the return shows no tax due.
11. Amend the statute to allow an automatic extension of time to file an individual tax return if a federal extension is granted (only corporations receive this grace now—and only by ADOR regulation).
12. Require a notice of final assessment to be accompanied by a revised worksheet showing how the assessment, interest and any penalties were calculated (vs. just being attached to the notice of preliminary assessment).
13. Allow the ADOR to issue “revenue procedures,” like the IRS does, which provide guidance to a broad set of TPs or to an entire industry.
14. Clarify that the TP may file a motion in the appropriate circuit court to quash an ADOR subpoena issued during an audit or administrative appeal.
15. Increase the penalties for negligence, fraud, frivolous returns and frivolous ALD appeals, in conformity with federal changes.
16. Clarify that the Taxpayer Advocate may also waive a late-filed sales tax return in order to reinstate the merchant’s discount (vs. just the Commissioner).
17. Others?

I would very much appreciate your input or questions. *Time is of the essence.* Thanks.