BATC

Business Associations' Tax Coalition

Alabama Taxpayers' Bill of Rights II

- Creates the Alabama Tax Appeals Commission, or ATAC, by transferring the budget and functions of the current Administrative Law Division of the Department of Revenue to the new independent agency at no additional cost to the state. Alabama is in the distinct minority of states that lack an independent tax appeals tribunal.

- In addition to appeals of Alabama Revenue Department-administered taxes, the bill allows taxpayers to appeal assessments of sales, use, rental or lodging tax from self-administered cities and counties and their contract auditing firms to the ATAC, unless the governing body of the city or county opts out. A city or county that opts out must offer an appeal process that parallels the ATAC function. Currently, if a taxpayer appeals an assessment levied by a self-administered locality:

    - the appeal usually is heard by an employee of the locality or of a certain contract auditing firm employed by the same self-administered cities and counties making the assessments; or
    - the taxpayer must appeal to each and every city and county represented by the contract auditing firm.

- Extends the appeal period for both a preliminary and final assessment by 30 days, increasing it to 60 days after either assessment is issued. The additional 30 days to appeal does not apply to individuals who file their state income tax returns late. Self-administered cities and counties have a narrow window of time to audit a taxpayer that has received a final assessment from the Alabama Revenue Department but only for the same type of tax and same tax period.

- Eliminates the minimum $50 penalty when a taxpayer does not file an income tax return by the due date if the individual taxpayer is owed a refund; and waives the penalty if the taxpayer owes no additional tax, such as a zero sales tax return, and files the delinquent return within 30 days of written notice from the Revenue Department.

- 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.

- Requires the Revenue Department to attach a written description of the basis for the assessment to the preliminary and final assessment. Currently, a "bare" final assessment can be issued, without any explanation as to the calculation of or legal basis for the assessment.

- Automatically nullifies a preliminary assessment that has been outstanding for more than five years as of Oct. 1, if the preliminary assessment is not withdrawn, a final assessment issued or the parties agree to extend the time period. Under current law, a preliminary assessment, which is intended to allow the parties to resolve their differences administratively, can put off the statute of limitations indefinitely. With the changes, any preliminary assessment that remains unresolved after three years may be appealed by the taxpayer.

- Allows the Taxpayer Advocate to reinstate the merchant's discount for retailers who file a sales tax return late because of "reasonable cause." Currently, only the Revenue Commissioner has that power.

- Broadens the "innocent spouse" relief for paying tax, interest and penalties if your spouse (or former spouse) improperly reported items or omitted items on your tax return, which is consistent with federal changes. A bill passed in 2012 only partially conformed to the pro-taxpayer federal changes.

- Increases the negligence penalty from 5 percent to 20 percent and the fraud penalty from 50 percent to75 percent, which would make Alabama law parallel to federal law. It adds a failure-to-file penalty for certain pass-through entity returns (LLCs), capped at $1,000.