

Summary of Substitute to HB 105

What follows is a summary of the Senate Substitute to House Bill 105, the Taxpayers' Bill of Rights II:

1. Creates an independent Alabama Tax Tribunal (ATT) by abolishing the current Administrative Law Division of the Alabama Department of Revenue (ADOR) and transferring both the personnel and equipment to a newly-formed state agency, under the executive branch. The annual appropriation earmarked for the Administrative Law Division is carved out and assigned to the ATT, so there is no additional cost. Alabama is now in the distinct minority of states that lack an independent tax appeals tribunal and we received a “D” on the latest State Tax Due Process Scorecard issued by the Council on State Taxation primarily for this reason.

Five important features of the ATT provisions are:

- ATT judges are appointed by the governor (at least one judge, and no more than three total); the governor may also appoint pro tem judges if necessary. No Senate confirmation is involved per the Governor's request.
- Taxpayers may appeal final assessments of sales, use, rental, and lodgings taxes issued by *self-administered cities and counties (and their private auditing firms)* to the ATT, unless the governing body of the city or county opts-out.
- No filing fees will be imposed on taxpayers.
- At the end of the six-year term, a judge may be reappointed to serve another term by the governor.

Allowing taxpayers to appeal final assessments issued by self-administered cities and counties or their contract auditing firms is a *major step* toward addressing the frustration of the business community and tax practitioners with the differing interpretations and appeals procedures of the many self-administered localities and their private auditing firms. This will work hand-in-hand with the new ONE SPOT e-filing program for sales/use/rental taxes that went live on Oct. 1.

2. Instead of date of entry, a preliminary or final assessment must be appealed within 30 days from the date of actual mailing to the taxpayer (or date of personal service, whichever occurred earlier), improving the requirements to provide fair notice to taxpayers.
3. In a cases where an assessment is appealed directly to circuit court (or from ATT to circuit court), a taxpayer that has a net worth of less than \$250,000 does not have to post a bond or pay the disputed tax before filing an appeal (previously, the threshold was \$100,000 of net worth).
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. A bill passed in 2012 only partially conformed to the pro-taxpayer federal changes.
5. No increases or amendments to existing penalties.

6. Clarifies that taxpayers have the *option* to appeal to the ATT any proposed adjustments by the ADOR to their net operating loss (NOL) deductions or carryovers, even though the proposed adjustment does not result in an assessment of tax or a denied refund claim.
7. 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 local government or its contract auditing firm decided to sit on a preliminary assessment when they concluded that it was probably erroneous but they were hoping for the law to become more favorable to them (e.g., a new case or a change in the nexus rules). In the meantime, the taxpayer has no appeal rights. This bill gives the taxpayer the *option* to appeal the preliminary assessment to the ATT or the appropriate circuit court after five years from the date of entry.
8. If requested by the ATT judge, allows the Taxpayer Advocate to correct a final order if there is newly-discovered evidence that shows the taxpayer was incorrectly assessed.
9. Allows self-administered counties and cities a narrow window of time to enter a preliminary assessment against a taxpayer that was audited by the ADOR and additional sales, use, rental or lodgings tax was found to be due, which assessment is limited to the same issue and same tax periods.
10. Requires the ADOR attorney assigned to a revenue ruling request to consult with the taxpayer and the authorized representative prior to issuing the ruling.
11. Clarifies that self-administered cities and counties have the ability to enter into installment agreements with taxpayers, similar to the powers of the Revenue Commissioner.