

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-14-1-16

Rule Title: Uniform Revenue Procedures -- Appeal from Final Assessment

New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

Yes

Is there another, less restrictive method of regulation available that could adequately protect the public?

No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Yes

Does the proposed rule have any economic impact?

No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *Michael D. Smith*

Date 7/21/14

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**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-14-1-.16

Rule Title: Uniform Revenue Procedures -- Appeal from Final Assessment

 New X Amend Repeal Adopt by Reference

- NO This rule has no economic impact.
 YES This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

**BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE
BENEFITS AND BURDEN COMPARISON:**

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

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**ALABAMA DEPARTMENT OF REVENUE
Tax Policy & Research Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-13-1-.01	Scope of Division 13
810-14-1-.02	Guidelines for Granting Administrative Reviews
810-14-1-.16	Uniform Revenue Procedures -- Appeal from Final Assessment
810-14-1-.21	Procedures if Refunds Granted; Credit of Refund; Payment of Other Taxes; Payment of Interest
810-14-1-.22	Denial or Revocation of Licenses, Account Numbers, Permits and Certificates (Including Motor Vehicle Certificates of Title)

INTENDED ACTION: Amend the above rules

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rules to comply with the provisions of Act 2014-146, which passed during the 2014 Regular Legislative Session.

RULE NO. & TITLE

810-14-1-.24	Appeals to the Administrative Law Division - Authority of Administrative Law Judge
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INTENDED ACTION: Repeal and Replace

SUBSTANCE OF PROPOSED ACTION: The department proposes to repeal the existing language in the above rule and replace it with new language to comply with the provisions of Act 2014-146, which passed during the 2014 Regular Legislative Session.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 1:30 p.m. on Wednesday, September 10, 2014, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at ww.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132 at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Wednesday, September 10, 2014

CONTACT PERSON AT AGENCY:

Patricia Toles
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-14-1-.16 Uniform Revenue Procedures -- Appeal from Final Assessment.

(1) SCOPE. The provisions contained herein shall govern appeals to the ~~Administrative Law Division of the Department~~ Alabama Tax Tribunal (hereinafter, the "Tax Tribunal") or to a Circuit Court. However, with the exception of the property of public utilities under Chapter 21 of Title 40, nothing herein shall be construed to apply to the appeal of ad valorem taxes on real or personal property which is administered by the various counties of the State of Alabama.

(2) DEFINITIONS.

(a) Final Assessment Assessment. Shall have the meaning ascribed to it pursuant to Section 40-2A-3 of the Code of Alabama.

(b) Ad Valorem Taxes. The taxes commonly known as "property taxes" as provided in Title 40 of the Code of Alabama.

(3) PURPOSE. The purpose of this ~~regulation~~ rule is to provide the taxpayer with the information necessary to make appeals.

(4) APPEAL OPTIONS. Within a 30 day period from the date entered mailed or delivered by personal service, whichever occurs earlier, (as shown on the Final Assessment document), a taxpayer may appeal (even if the taxpayer has paid the tax at issue prior to making the appeal) a final Final assessment Assessment to the:

(a) ~~Administrative Law Division of the Department of Revenue Tax Tribunal~~, or

(b) to a circuit court, as provided below.

(5) ~~APPEALS TO THE DEPARTMENT'S ADMINISTRATIVE LAW JUDGE.~~ ALABAMA TAX TRIBUNAL. If the taxpayer chooses to appeal to the ~~Department's Administrative Law Division Tax Tribunal~~, the taxpayer must notify the ~~Administrative Law Judge Tax Tribunal Judge~~ in writing of the intent to appeal. The written appeal notice must be filed with the ~~Administrative Law Division Tax Tribunal~~ within the following time limits: (1) within 30 days from the date on which a Final Assessment is mailed as provided in Section 40-2A-7(b)(4)d or delivered by personal service, whichever occurs earlier; (2) within two years from the date on which a petition for refund is denied or deemed denied; (3) within 30 days after the date on which the Department mails notice of any denial or revocation of a license, permit, or certificate of title from which the taxpayer is entitled to appeal pursuant to Section 40-2A-8; provided, however, the burden is on the taxpayer to show that the appeal was filed within 30 days of actual notice; (4) within 30 days after the date on which the Department mails notice of a proposed adjustment to a taxpayer's net operating loss deduction or carryover concerning the taxes

imposed by Chapters 16 or 18 of Title 40; or(5) within 30 days after 5 years from the date a preliminary assessment was entered by the Department that has not been withdrawn or made final by the Department, thirty (30) days of the final assessment date. The notice of appeal must contain the taxpayer's name, address, telephone number, type of tax and tax period(s) being appealed, and a brief statement explaining the objection(s) to the final Final assessment Assessment. A copy of the final Final-assessment Assessment should be attached to the notice of appeal. The appeal should be sent to the following address: address specified in the rules promulgated by the Tax Tribunal.

Alabama Department of Revenue
Administrative Law Division
P. O. Box 327130
Montgomery, AL 36132-7130

(6) APPEALS DIRECTLY TO CIRCUIT COURT. If the taxpayer chooses to appeal directly to the circuit court, as provided by applicable statutes, in lieu of an appeal to the Tax Tribunal, the taxpayer may appeal to either the Montgomery County Circuit Court or, if the taxpayer resides or has a principal place of business within Alabama, the circuit court of the Alabama county in which the taxpayer resides or has a principal place of business. The taxpayer must file a written notice of appeal within thirty (30) days of the date the final assessment date was mailed or delivered by personal service, whichever occurs earlier, with both the Secretary of the Department and the clerk of the circuit court in the county where the appeal is filed. The Department's copy should be sent to the following address:

Secretary of the Department
Alabama Department of Revenue
P. O. Box 327001
Montgomery, AL 36132-7001.

And, the taxpayer must do one of the following:

- (a) Pay the total tax, interest, and any penalty shown on the final assessment in full; or
- (b) Execute a supersedeas bond with the court for 125 percent of the amount of the total tax, interest, and any penalty shown on the final assessment.
- (c) File an irrevocable letter of credit with the circuit court in an amount equal to 125 percent of the amount of the tax, interest, and any penalty shown on the final assessment. The irrevocable letter of credit shall be issued by a financial institution designated as a qualified public depository by the Board of Directors of the SAFE program pursuant to the provisions of Chapter 14A, Title 41, Code of Alabama. The State of Alabama shall be named the beneficiary of the irrevocable letter of credit. The

irrevocable letter of credit shall be conditioned to pay the assessment plus applicable interest and any court costs relating to the appeal. The taxpayer may not issue an irrevocable letter of credit for a final assessment entered against the same taxpayer;

(d) File a pledge or collateral assignment of securities that constitute eligible collateral under Chapter 14A, Title 41, Code of Alabama, in an amount equal to 200 percent of the amount of the tax, interest, and penalty shown on the final assessment. The pledge or collateral assignment shall be conditioned to pay the assessment plus applicable interest and any court costs relating to the appeal;

(e) Show to the satisfaction of the clerk of the circuit court to which the appeal is taken that the taxpayer has a net worth, on the basis of fair market value, of one hundred thousand two hundred fifty-thousand dollars (~~\$100~~250,000) or less, including his or her homestead.

(7) **APPEALS TO CIRCUIT COURT FROM A FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE TAX TRIBUNAL JUDGE.** Either the taxpayer or the department may appeal to circuit court from a final order issued by the ~~administrative law judge~~ **Tax Tribunal Judge** by filing a notice of appeal with the ~~Administrative Law Division Tax Tribunal~~ and with the circuit court within 30 days from the date of entry of the final order. Any appeal by the department shall be filed with the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama. If the taxpayer neither resides in Alabama nor has a principal place of business in Alabama, the appeal may be made to the Circuit Court of Montgomery County, Alabama. Any appeal by the taxpayer may be taken to the Circuit Court of Montgomery County, Alabama, or to the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama and the taxpayer must do one of the following:

(a) Pay the amount stated in the final order of the ~~administrative law judge~~, **Tax Tribunal Judge** plus applicable interest.

(b) Execute a supersedeas bond, which shall be executed by a surety company licensed to do business in Alabama, for 125 percent of the amount stated as due in the final order of the ~~administrative law judge~~, **Tax Tribunal Judge**, including tax, interest, and any applicable penalty, payable to the state and conditioned to pay the amount stated in the final order plus applicable interest due the state and any court cost relating to the appeal.

(c) File an irrevocable letter of credit with the circuit court in an amount equal to 125 percent of the amount stated as due in the final order of the ~~administrative law judge~~, **Tax Tribunal Judge**. The irrevocable letter of credit shall be issued by a financial institution designated as a qualified public depository by the Board of Directors of the SAFE program pursuant to the provisions of Chapter 14A, Title 41. The State of Alabama shall be named the beneficiary of the irrevocable letter of credit. The irrevocable letter of credit shall be conditioned to pay the assessment plus applicable

interest and any court costs relating to the appeal. The taxpayer may not issue an irrevocable letter of credit as to an appeal by the same taxpayer.

(d) File a pledge or collateral assignment of securities that constitute eligible collateral under Chapter 14A, Title 41, in an amount equal to 200 percent of the amount stated as due in the final order of the ~~administrative law judge~~, Tax Tribunal Judge. The pledge or collateral assignment shall be conditioned to pay the assessment plus applicable interest and any court costs relating to the appeal.

(e) Show to the satisfaction of the clerk of the circuit court to which the appeal is taken that the taxpayer has a net worth (based on fair market value) of ~~one~~ two hundred fifty thousand dollars (~~\$100-250,000~~) or less, including his or her homestead.

Author: Patricia Toles Michael Mason
Authority: Sections 40-2A-7(a)(5), 40-2A-7(b)(5)b., and 40-2A-9, Code of Alabama 1975 and Act 2014-146.
History: Adopted through APA effective August 19, 1993.
Amended: Filed April 2, 1996, effective May 7, 1996.
Amended: Filed October 4, 2007, effective November 8, 2007.