

ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODECHAPTER 810-14-1
TAXPAYERS; BILL OF RIGHTS AND UNIFORM REVENUE PROCEDURES

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810-14-1-.01 Scope Of The Rules. This chapter sets forth the rules to be used by the Alabama Department of Revenue in the administration of Chapter 2A of Title 40, Code of Ala. 1975, passed during the 1992 regular legislative session. Chapter 2A of Title 40, Code of Ala. 1975, titled the "Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act," was enacted to provide equitable and uniform procedures for the operation of the Department and for all taxpayers when dealing with the

Department. These rules are promulgated to implement the act and clarify the rights of the Alabama taxpayer and the role and responsibilities of the Department in administering the state's tax laws.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.02 Guidelines For Granting Administrative Reviews.

(1) A taxpayer who does not agree with a notice of preliminary assessment may file a written request for review with the Department in response to the preliminary assessment. This written request shall be referred to as a "petition for review" and should describe specific objections to the preliminary assessment.

(a) The petition must be filed within thirty (30) days of the mailing personal service, whichever occurs earlier, of the preliminary assessment date. However, if the thirtieth (30th) day falls on a Saturday, Sunday, or state holiday, the taxpayer has until the next business day to file the petition.

(b) The petition must be submitted to the address shown on the assessment notice.

(2) The Department will review the petition and will schedule a conference if requested by the taxpayer or as otherwise deemed necessary by the Department. The conference will allow the Department and the taxpayer to present their respective positions.

(3) If a written petition is not timely filed or if a petition is filed and upon review the Department determines that the preliminary assessment is due to be upheld in whole or in part, the Department will enter a final assessment for the amount determined by the Department to be due.

(4) Final assessments may be appealed to the Alabama Tax Tribunal or to circuit court, regardless of whether a petition for review was filed.

Author: Patricia Toles

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-4.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed December 5, 2014; effective January 9, 2015.

810-14-1-.03 **Cost Of Transcripts And Recordings.**

(1) A taxpayer may request a transcript, copy of a transcript, or copy of an audio recording of any in-person interview between a taxpayer and any officer or employee of the department.

(2) Reasonable Advance Notice of Recording.

(a) Upon reasonable advance notice to the taxpayer, the department may record any in-person interview between the taxpayer and any officer or employee of the department. For purposes of this rule, reasonable notice means at least 24 hours notice, unless otherwise approved by the department.

(b) Failure of the department to provide reasonable advance notice of its intent to audio record an interview scheduled between a taxpayer and any officer or employee of the department will not be considered sufficient cause not to appear for any in-person interview.

(3) Cost of Transcripts and Records.

(a) If the interview is recorded by the department and the department does not intend to have the recording transcribed, upon the request of the taxpayer the department will send the audio recording to a court reporter for transcription and the taxpayer shall pay for all actual expenses incurred.

(b) If the interview has been transcribed by the department and the taxpayer requests a copy of the transcript, the department will copy the transcript and the taxpayer shall pay \$.20 per page for the cost of copying the transcript.

(c) If the interview is recorded by the department and the taxpayer requests a copy of the audio recording, the department will reproduce the audio recording and the taxpayer shall pay for the cost of the media recording medium (for example, a properly formatted CD), plus a \$25.00 fee for administrative costs involved in producing the recording.

Authors: George Mingledorff, Cameran Clark

Statutory Authority: Code of Ala. 1975, Title 40, Chapter 2A.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Published January 29, 2021; effective March 15, 2021.

810-14-1-.04 **Installment Payment Agreements.**

(1) The Commissioner, or a delegate thereof, is authorized to enter into an installment payment agreement with a taxpayer if it is determined that the agreement will facilitate collection of a tax administered or collected by the department. An installment payment agreement can only be entered into for a tax administered or collected by the department that has been finally assessed.

(2) Determination of the Ability To Pay.

(a) Taxpayers must be able to provide financial statements indicative of available assets, including but not limited to cash, real property, or personal property to determine whether an installment agreement will facilitate the collection of the tax.

(b) Agreements extended to corporations for the payment of trust fund taxes require a personal guarantee of the responsible corporate officer(s) who have personal liability under §§40-29-72 and 40-29-73, Code of Ala. 1975, as amended.

(3) Taxpayer Required Documentation.

(a) Taxpayers requesting an installment payment agreement from the department may be required to complete a Collection Information Statement and submit proof of financial information using the forms prescribed by the department. These forms must:

1. Disclose all assets and expenses.
2. Be signed under penalties of perjury.
3. Provide accurate and complete information.

(b) Any inaccurate or incomplete information provided by the taxpayer will result in the termination,

alteration, or modification of the agreement, upon notice provided in accordance with paragraph (5) of this rule.

(c) The department may request updated Collection Information Statements whenever there is reason to believe that the taxpayer's ability to pay has significantly changed.

(4) Requirements and Terms of Installment Payment Agreements.

(a) Any taxpayer entering into an installment payment agreement with the department is responsible for making payments according to the terms of the installment payment agreement. The installment agreement will specify:

1. The payment amounts.
2. The payment due dates.
3. The address to which the payment are to be directed.
4. The agreement termination date.

(b) Any refund that may be due from the department while an installment payment agreement is in affect may be credited against the tax liability that is the subject of the installment payment agreement.

(c) During the course of the installment payment agreement, additional interest as provided by law will accrue on the total unpaid balance at the rate established under the authority of §40-1-44, Code of Ala. 1975.

(d) All tax returns for taxes administered or collected by the department that become due while the agreement is in effect must be filed by the due date, and all taxes due in connection with the return must be timely remitted, unless the taxpayer has contested the validity or amount of the tax pursuant to the terms of Chapter 2A of Title 40, Code of Ala. 1975.

(e) During the course of the installment payment agreement, taxpayers are required to provide notification to the department of any significant change in financial condition that would affect the ability to pay the liability.

(5) Alteration, Modification, or Termination of the Agreement.

(a) The following circumstances may result in termination, alteration, or modification of an installment payment agreement:

1. Failure to make a payment according to the terms of the agreement.

2. Failure to notify the department of any significant change in financial condition that would affect the taxpayer's ability to pay or to provide updated Collection Information Statements as requested by the department pursuant to paragraph (3) of this rule.

3. A determination by the Commissioner or the Commissioner's delegate that there is reason to believe that the collection of the tax liability which is the subject of the agreement is in jeopardy.

Note: Jeopardy is a condition that would prohibit or impede collection of a tax assessment characterized by the concealment or transfer of assets or the attempt to flee the state with assets.

4. Failure to file or pay any taxes administered by the department that come due while the installment payment agreement is in effect.

(b) Except in the case of jeopardy, prior notice will be given to the taxpayer should it become necessary to alter, modify, or terminate an installment payment agreement. Notice of termination of an installment payment agreement shall include a statement indicating that the department may collect the balance due by any method allowed by law. Notice may be provided by any of the following methods:

1. Written notice to the taxpayer's last known address.

2. Delivery of written notice in person.

3. Electronic notification.

(6) Recording of Liens and Notice to Taxpayers. An installment payment agreement will in no way prevent the

department from recording liens with the Secretary of State, county probate offices, or any other location necessary to protect the state's interest in property of the taxpayer. Liens may not be released until the final payment has been received and cleared, unless the Commissioner elects otherwise.

Author: Miriam L. Dingman

Statutory Authority: Code of Ala. 1975, §§40-1-44, 40-2A, 40-2A-7(a) (5), 40-2A-4(b) (6), 40-29-72, 40-29-73.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed June 29, 2000; effective August 3, 2000. **Repealed and New Rule:** Published January 29, 2021; effective March 15, 2021.

810-14-1-.05 **Procedure For Abatement Of Penalties.**

(1) If the Department fails to substantially comply with Code of Ala. 1975, Section 40-2A-4, the Commissioner or his delegate is hereby empowered to abate any penalty otherwise arising from an examination or assessment upon written application for abatement of penalties by the taxpayer or for other good cause shown.

(a) The taxpayer's written application should outline the basis of the request for the abatement.

(b) Written application by the taxpayer should be made to the supervisor of the appropriate assessing section or division. The written application should be attached to an audit or tax return when it is presented to the supervisor for assessment proceedings or when the audit is paid.

(c) Upon receipt of a written application for abatement or upon request by a taxpayer assistance officer, the supervisor shall request that a recommendation be submitted from the employee who determined that additional taxes are due.

(d) The supervisor shall then make a recommendation regarding the abatement to the appropriate division chief; and the division chief, in turn, shall then be responsible for making a final recommendation for abatement of penalties to the Commissioner or his delegate.

(e) Failure by the Department to comply with any provision of Code of Ala. 1975, Section 40-2A-4, shall not

prohibit the Department from assessing any tax, nor excuse the taxpayer from timely complying with any time limitations.

(2) The Department may abate any penalties attributable to erroneous written advice furnished to a taxpayer by an employee of the Department if:

(a) the employee provided the written advice in good faith while acting in an official capacity;

(b) written advice was reasonably relied on by the taxpayer;

(c) the written advice was given in response to a specific written request of the taxpayer; and

(d) the penalties did not result from the taxpayer's failure to provide adequate or accurate information.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.06 **Revenue Rulings.**

(1) The Commissioner of Revenue may, at his or her discretion, issue Revenue Rulings as authorized by Section 40-2A-5, Code of Ala. 1975. Revenue Rulings apply only to the recipient of the request and have no precedential value to other taxpayers.

(2) (a) Any request for a revenue ruling must be written in letter form with a duplicate of the request and supporting documents attached.

(b) A ruling request shall be addressed to the Secretary, Department of Revenue, and must be signed by the taxpayer or the taxpayer's authorized representative. The term "authorized representative" has the meaning ascribed to it in Section 40-2A-3(2), Code of Ala. 1975.

(c) Each question or subpart of a question shall be considered a separate revenue ruling request and must be accompanied by a \$200.00 fee, in accordance with the provisions of §40-2A-5, Code of Ala. 1975.

(d) The ruling request and applicable fee should then be mailed to the following address:

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

(3) A ruling request must include the following:

(a) A statement of all facts relevant to the determination. The statement of relevant facts must include the following:

1. names, addresses, telephone numbers, and social security numbers of all relevant parties;

2. a full and precise statement of the business reasons for the transaction; and

3. a complete, detailed description of the transaction.

(b) A statement of the taxpayer's views regarding the tax consequences of the transaction.

1. A taxpayer may seek a certain determination on the issues raised in the ruling request. In such instance, the taxpayer must furnish an explanation of the grounds for that determination.

2. Even if the taxpayer does not request a specific determination on the issues raised in the ruling request, the taxpayer still must submit an opinion on the tax consequences of the proposed transaction.

(c) The authority upon which the taxpayer's position regarding the proposed transaction is based.

1. The taxpayer should inform the Department in its ruling request of any statute, regulation or court decision that the taxpayer believes is contrary to the position taken by the Department on the issue and discuss the implications of these authorities.

2. If no contrary authority is found, the taxpayer should submit a statement to this effect to facilitate the ruling request.

(d) Copies of all documents relative to the transaction. The following list is illustrative, but not exhaustive, of the types of documents that should be attached: contracts, wills, deeds, agreements, and legal documents.

(e) A statement that to the best of the taxpayer's knowledge, the identical issue or a similar issue has not been ruled on by the Department with regard to the taxpayer or a predecessor. If such a ruling request has been made, the taxpayer must furnish the date and result of the revenue ruling. In addition, the taxpayer must include a statement as to whether an identical issue was submitted previously by that taxpayer and was later withdrawn prior to the issuance of a revenue ruling.

(f) A statement that the request is for a proposed transaction or event, and that no taxes have accrued or will accrue prior to the issuance of the ruling with respect to the transactions, events, or facts contained in the request. If the transaction or event subject to the ruling request is in the nature of a series of transactions or events whereby some of the transactions or events have occurred in the past and some of the transactions or events are prospective in nature, a ruling will not be issued.

(g) The following perjury declaration:

1. "Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete."

2. The perjury declaration must be signed by the taxpayer and the taxpayer's authorized representative. Changes in the ruling request or additional factual information sent at a later time must also include the perjury declaration.

(4) (a) All revenue rulings shall be maintained in the office of the Secretary of the Department, and shall be available for public inspection and copying, within 60 days following their issuance (except as provided in subparagraph (c) of this paragraph (4)), at a cost to be determined by the Secretary.

(b) "Issuance" of a revenue ruling occurs upon the mailing of the revenue ruling to the taxpayer to whom it pertains.

(c) Within thirty (30) days after the revenue ruling was issued, a taxpayer may submit a request for delay of public inspection. A request for delay shall contain the date on which it is expected that the underlying transaction will be completed. The request for delay shall contain a suggested issuance date and a statement from which the Commissioner may determine that good cause exists to warrant such delay.

(5) (a) Prior to making any such publication, the Department shall delete from the text of such revenue ruling all names, addresses, titles, figures, dates, and other information which may identify the particular taxpayer who requested the revenue ruling. If a revenue ruling contains trade secrets or other confidential information, the Department shall, upon written request of the taxpayer, delete such information prior to publication.

(b) If information other than names, addresses, and identifying information needs to be deleted, the taxpayer must include with the ruling request a separate statement of proposed deletions and the statutory basis for each deletion.

(c) The statement of proposed deletions must accompany the ruling request, but should not be included in or referred to in the request. The material to be deleted should be placed in brackets.

(d) The taxpayer may request additional deletions after the ruling request is submitted by submitting an additional statement of proposed deletions.

(6) (a) Either the taxpayer or the Department may request a conference regarding a ruling request.

(b) The Department may grant or deny the request by the taxpayer. Generally, the Department will grant the request only if holding a conference will help the Department make a determination with respect to the revenue ruling.

(7) It shall be the practice of the Department to process ruling requests in the order received. Requests for processing out of order, made in writing in a separate letter

submitted with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant.

(8) (a) Ruling requests that do not comply with the requirements set out in this rule will be returned to the taxpayer. The requirements that have not been met or additional information that is needed will be explained to the taxpayer so that the request may be modified to meet the requirements of this rule.

(b) The taxpayer shall have thirty (30) days from the date the ruling request was returned to modify the request or to provide the additional information requested. If the taxpayer fails to do so in the specified time period, the Department may close the file and reopen it after the taxpayer modifies the request or the additional information has been received. If the ruling request is closed and reopened, the ruling request will be treated as a new request for purposes of determining when the ruling request was received.

(9) If the taxpayer withdraws a ruling request, all exhibits and correspondence submitted with the request or pertaining to the request may be retained by the Department. The Commissioner may furnish his or her views to the division which has or will have audit jurisdiction of the taxpayer's return.

(10) Revenue rulings may be revoked or modified by the commissioner at any time; but any revocation or modification shall not be effective retroactively unless one of the following has occurred:

(a) The person making the request misstated or omitted facts material to the ruling.

(b) The ruling was issued with respect to a matter involving the computation or payment of a tax that was due and payable at the time the ruling was requested.

(c) The law applied by the commissioner in the revenue ruling is changed in a manner to alter the commissioner's conclusions in the ruling and the change in the law is made effective as of the date of the ruling.

(11) Notice of the revocation or modification of a revenue ruling shall be mailed by either first-class U.S. mail,

U.S. mail with delivery confirmation, or certified U.S. mail to the last known address of the taxpayer and the taxpayer's authorized representative, if any.

Authors: Michael D. Gamble, Michael E. Mason

Statutory Authority: Code of Ala. 1975, §§40-2A-5(b), 40-2A-7(a) (5).

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed June 19, 1995; effective July 24, 1995. **Amended:** Filed August 2, 2002; effective September 6, 2002. **Amended:** Filed December 15, 2004; effective January 19, 2005. **Amended:** Filed June 5, 2015; effective July 10, 2015.

810-14-1-.07 Maintenance Of Records.

(1) Taxpayers subject to a tax or determination of value must keep and maintain an accurate and complete set of permanent books of accounts and records, including inventories, that are sufficient to establish the correct amount of tax or value, deductions, credits, exemptions, and other matters required to be shown for any tax or determination of value. Taxpayers must keep all documentation that proves the amounts shown on a tax return or for the determination of value. Copies of tax returns or determinations of value, schedules, and statements should be retained as part of the taxpayer's records. In the absence of sufficient records, the burden of proof shall remain with the taxpayer to verify amounts shown on a tax return or for the determination of value.

(2) Such records and books shall be made available to the Department at a reasonable time and location. "Reasonable time" shall be considered to be during normal business hours of the Department. "Reasonable location" shall be considered to be the taxpayer's place of business or the offices of the taxpayer's authorized representative. Failing or refusing to maintain such records and books may be punishable as contempt, as provided in cases of contempt in circuit court. Also possible are the penalties for negligence, fraud, intentional disregard of rules and regulations, or failure to file a return.

(3) The required books or records must be kept available at all times for inspection by the Department and must be retained as long as the Department has legal authority to assess tax to which the books or records pertain. Generally,

books and records that support an item of tax, value, deduction, credit, or exemption on a tax return should be kept for at least the period of limitations for that return. Usually this is three years from the date the return was due or three years from the date on which the return was paid, whichever is later. Exceptions to this period of limitations include, but are not limited to the following:

(a) taxes may be assessed at any time if the taxpayer fails to file a return or files a false return with the intent to evade tax;

(b) taxes may be assessed within six years on all tax returns from which more than 25 percent of the taxable base, as stated in the return, is omitted; and

(c) if a taxpayer appeals an audit/denial/revocation, which is under examination, or currently in litigation for a period beyond three years after, records for all periods in question should be maintained.

Authors: George Mingledorff, Charla Doucet

Statutory Authority: Code of Ala. 1975, §40-2A-7(b)(2)b Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996, effective May 7, 1996.

810-14-1-.07.01 Model Recordkeeping And Retention Regulation In An Electronic Environment.

(1) **PURPOSE**

(a) The purpose of this regulation is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Section 40-2A-7(a)(5), Code of Ala. 1975. It is also the purpose of the regulation to address these requirements where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

(2) **DEFINITIONS**

(a) For purposes of this regulation, these terms shall be defined as follows:

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.
2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.
3. "Hard copy" means any documents, records, reports or other data printed on paper.
4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.
5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.
6. "Taxpayer" as used in this regulation means any person subject to or liable for any tax administered by the department; any person required to file a return with respect to, or to pay, or withhold and remit any tax administered by the department or to report any information or value to the department; or any person required to obtain or holding any interest in any license, permit, or certificate of title issued by the department, or any person that may be affected by any act or refusal to act by the department, or to keep any records required by Chapter 2A, Title 40, Code of Ala. 1975.

(3) **RECORDKEEPING REQUIREMENTS-GENERAL**

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records must be made available on request by the Alabama Department of Revenue. Such records shall include all records needed to make a proper determination of tax liability.

(b) If a taxpayer retains records required to be retained under this regulation in both machine-sensible and

hard-copy formats, the taxpayer shall make the records available to the Alabama Department of Revenue in machine-sensible format upon request of the Alabama Department of Revenue.

(c) Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with paragraph (3) (b) of this regulation.

(4) **RECORDKEEPING REQUIREMENTS - MACHINE-SENSIBLE RECORDS**

(a) General Requirements

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Alabama Department of Revenue upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(b) Electronic Data Interchange Requirements

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all

of the data elements, provided that the taxpayer provides a method which allows the Alabama Department of Revenue to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy paragraph (4)(b)1. at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Alabama Department of Revenue. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(c) Electronic Data Processing Systems Requirements

1. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(d) Business Process Information

1. Upon the request of the Alabama Department of Revenue, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

2. The taxpayer shall be capable of demonstrating

(i) the functions being performed as they relate to the flow of data through the system;

(ii) the internal controls used to ensure accurate and reliable processing; and

(iii) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

- (i) record formats or layouts;
- (ii) field definitions (including the meaning of all codes used to represent information);
- (iii) file descriptions (e.g., data set name); and
- (iv) detailed charts of accounts and account descriptions.

(5) **RECORDS MAINTENANCE REQUIREMENTS**

(a) The Alabama Department of Revenue recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, edition.]

(b) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(6) **ACCESS TO MACHINE-SENSIBLE RECORDS**

(a) The manner in which the Alabama Department of Revenue is provided access to machine-sensible records as required in paragraph (3) (b) of this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the Alabama Department of Revenue with the hardware, software and personnel resources to access the machine-sensible records.

2. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.

3. The taxpayer may convert the machine-sensible records to a standard record format specified by the Alabama Department of Revenue, including copies of files, on a magnetic medium that is agreed to by the Alabama Department of Revenue.

4. The taxpayer and the Alabama Department of Revenue may agree on other means of providing access to the machine-sensible records.

(7) **TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY**

(a) In conjunction with meeting the requirements of paragraph (4), a taxpayer may create files solely for the use of the Alabama Department of Revenue. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of paragraph (4). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(8) **ALTERNATIVE STORAGE MEDIA**

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

1. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

2. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under paragraph (10).

3. Upon request by the Alabama Department of Revenue, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

4. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

5. All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

6. There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

(9) **EFFECT ON HARD-COPY RECORDKEEPING REQUIREMENTS**

(a) Except as otherwise provided in this section, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in paragraph (8) of this regulation.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in paragraph (4)(b)1.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section shall prevent the Alabama Department of Revenue from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

(10) **RECORDS RETENTION - TIME PERIOD**

(a) All records required to be retained under this regulation shall be preserved pursuant to Section 40-2A-7(a)(5), Code of Ala. 1975 unless the Alabama Department of Revenue has provided in writing that the records are no longer required.

Author: Mike Mason

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5).

History: New Rule: Filed August 6, 1998; effective September 10, 1998.

810-14-1-.08 Fees And Costs For Witnesses.

(1) SCOPE. This regulation applies to the Department's authority to make payments to certain persons who are asked to provide information to the Department. Also, it specifies that witnesses, in general, will not be reimbursed for actual expenses incurred, but instead will be paid in accordance with the payment rates established by regulations.

(2) DEFINITIONS. The following terms have the meanings ascribed to them for purposes of this regulation:

(a) Directly incurred costs. Directly incurred costs are costs incurred solely and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(b) Reproduction costs. Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(c) Search costs. Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not to be included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(d) Third party. A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(e) Third party records. Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(f) Transportation costs. Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination.

(3) PURPOSE. The purpose of this regulation is to outline the reimbursement procedures for third parties to follow in providing summoned records and to outline the reimbursement procedures for summoned witnesses.

(4) Conditions and rates of payments.

(a) Basis for payment. Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for these costs that are both directly incurred and reasonably necessary. Search, reproduction, and transportation costs must be considered separately in determining whether costs are reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted to the Department employee before whom the third party was summoned an itemized bill or invoice showing specific details concerning the costs. If a third party charges any other person for any cost for which the third party is seeking payment from the Department, the amount charged to the other person must be subtracted from the amount the Department may pay.

(b) Payment rates. The following rates are established:

1. Search costs. For the total amount of personnel time required to locate records or information, \$8.50 per person hour may be reimbursable. For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies may be reimbursed, except that personnel time for computer search is payable as provided above.

2. Reproductions costs. For copies of documents, \$.20 per page for summoned materials may be reimbursable. For photographs, films and other materials, actual cost may be reimbursed, except that personnel time is payable only under subparagraph (4) (b)1. above.

3. Transportation costs. For transportation costs, actual cost may be reimbursed, except that personnel time is payable only under subparagraph (4) (b)1. above.

(5) Attendance fees. A summoned person shall be paid an attendance fee for each day's attendance. The attendance fee shall apply to the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is equivalent to the amount paid

under 28 USC Section 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(a) Travel allowances. A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the State of Alabama has prescribed for official travel of employees of the state government shall be paid to each summoned person who travels by privately owned vehicle. Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be reimbursed in full to a summoned person incurring those expenses.

(b) Subsistence allowances. A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum per diem allowance prescribed for official travel by employees of the state government.

Author: George Mingledorff, Charla Doucet

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.09 Entry Of Preliminary Assessment; Final Assessment Of Uncontested Tax; Execution Of Preliminary And Final Assessments.

(1) Should the Department determine that the amount of tax reported on a return is incorrect or if no return is filed, the Department is authorized to calculate the correct tax based on the most accurate and complete information reasonably obtainable by the Department. After the Department makes a

determination of the correct amount of tax, a preliminary assessment, including applicable penalties and interest, may be entered.

(a) A tax return may be deemed "incorrect" for the following reasons:

1. The taxpayer fails to properly complete a return as required;
2. The taxpayer fails to attach supporting documentation and/or schedules as required;
3. The taxpayer fails to sign a return;
4. The taxpayer fails to calculate the amount(s) due correctly;
5. The taxpayer fails to properly substantiate credits, deductions, and/or discounts;
6. The taxpayer provides false or fraudulent information and/or data on a return; or
7. The taxpayer fails to meet other statutory requirements regarding the reporting of any items used in calculating a taxable base for state tax purposes.

(2) When the Department has required information necessary to formulate a determination of value, the Department shall issue a preliminary assessment to the respective taxpayer in accordance with the rules and regulations contained herein, while also complying with the procedures required under Code of Ala. 1975, Sections 40-14-70, 40-21-23, and 40-21-52.

(3) In the event any of the following occurs: the amount of tax reported on a return is undisputed by the Department; the taxpayer consents in writing to the amount of any deficiency; or the taxpayer consents to the amount of any preliminary assessment in writing as provided by regulation, the Department may enter a final assessment without first having entered a preliminary assessment. The final assessment shall be for the amount of said tax, plus applicable penalty and interest; provided, however, that the Department may at any time enter a final jeopardy assessment pursuant to the provisions of Code of Ala. 1975, Sections 40-17A-12, 40-29-90, and 40-29-91.

(a) For purposes of this regulation, "deficiency" means the amount by which the tax, penalties, and interest imposed exceed the amount of tax, penalties, and interest already paid by the taxpayer.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.10 Time Limitation For Entering Preliminary Assessment.

(1) Any preliminary assessment must be entered within three years from the due date of the return, or three years from the date the return is filed with the Department, whichever is later, or if no return is required to be filed, within three years of the due date of the tax. Where a properly filed extension has been granted, the "due date" shall be the last day allowed by the extension to file the return.

(a) The 100 percent penalty assessments entered under the authority of Code of Ala. 1975, Sections 40-29-72 and 40-29-73, shall be subject to the five-year statute of limitations as provided for in Code of Ala. 1975, Section 40-2A-7(b)(2)c.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.11 Six-Year Time Limitation For Omission Of 25 Percent Or More Of Taxable Base.

(1) DEFINITION. The following term has the meaning ascribed to it for purposes of this regulation:

(a) Taxable Base. This means the gross income, gross proceeds from sales, gross receipts, capital employed or other amounts on which the tax paid with a return is computed.

(2) A preliminary assessment may be entered within six years from the due date of the return or six years from the date the return was filed with the Department on all tax returns

from which more than 25 percent of the taxable base, as stated in the return, was omitted.

(3) For purposes of this regulation, the amount omitted from the taxable base shall not include any amounts disclosed in the return or the attachments to the return which would identify to the Department the nature and amount of the item.

(a) If the omitted amount of taxable base is stated in the return or in a statement attached to the return in a manner adequate to apprise the Department of the nature and amount of the item, then a preliminary assessment must be entered within three years from the date the return was due or three years from the date on which the return was filed, whichever is later. Where a properly filed extension has been granted, the "due date" shall be the last day allowed by the extension to file the return.

Author: Charla Doucet

Statutory Authority: Code of Ala. 1975, §40-2A-7(b)(2)b.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996; effective May 7, 1996.

810-14-1-.12 Second Inspection Of A Taxpayer's Books And Records. Only one inspection of a taxpayer's books and records relating to each type of tax administered by the Department shall be made for each taxable period, unless the Department is requested in writing by the taxpayer, or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional examination is necessary. Normally, one of the three following conditions will exist before the Department will conduct a second examination of a taxpayer's books and records:

(1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) A prior examination involved a substantial error based on an established Department position that existed at the time of the previous examination; or

(3) Other circumstances exist that indicate that failure to conduct a second examination would be a "serious administrative omission."

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.13 Service Of Preliminary And Final Assessments.

(1) SCOPE. This regulation relates to the authority of the Department to use varying methods of service when notifying a taxpayer that a preliminary or final assessment has been entered.

(2) PURPOSE. The purpose of this regulation is to establish procedures regarding the methods of service by which a preliminary or final assessment may be delivered to a taxpayer.

(3) PROCEDURE.

(a) Whenever the Department determines that a preliminary assessment should be entered, the notice or copy of the notice shall be mailed to the taxpayer's last known address, promptly after entry of the assessment, by one of the following methods:

1. first class U.S. mail, or
2. certified mail with return receipt requested

(b) At the option of the Department, however, any preliminary or final assessment may be delivered to the taxpayer and/or the taxpayer's representative in person by an agent of the Department.

(c) The service of a final assessment varies depending upon the type of assessment (i.e., tax or value) and the amount of the assessment, specifically:

1. final assessments of tax of \$500 or less shall be sent by first class U.S. mail to the taxpayer's last known address and/or the taxpayer's authorized representative;

2. final assessments of tax greater than \$500 shall be sent certified mail with return receipt required to the taxpayer's last known address and/or the taxpayer's authorized representative; and

3. final assessments of value shall be sent by first class U.S. mail to the taxpayer's last known address and/or the taxpayer's authorized representative.

(d) The taxpayer's "last known address" shall be deemed to be the last address provided to the Department by the taxpayer unless, the Department determines that such address has changed subsequent to the last return having been filed.

(e) In the event that the taxpayer has never furnished the Department with an address, as in the case of out-of-state residents being assessed with the "100 percent penalty," the Department may rely on the best information available in determining where the notice is to be sent. Those sources may include city directories, post office verification letters, current telephone directories, records of the U.S. Bankruptcy Court, motor vehicle records, county tax assessors' records, IRS records, and records of the Department of Industrial Relations.

(f) A preliminary or final assessment is deemed to have been properly served by the Department if the assessment is served promptly after entry in accordance with (a), (b), (c), (d), or (e) above. If a preliminary or final assessment sent by certified mail is returned to the Department "unclaimed" or "refused," the Department will remail the assessment by first class U.S. mail.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.14 Filing A Written Petition For Review.

(1) If a taxpayer disagrees with a preliminary assessment as entered by the Department, the taxpayer may file a written petition for review with the Department within thirty (30) days from the date of entry of the preliminary assessment. Accordingly, if the thirtieth (30th) day falls on a Saturday, Sunday, or state holiday, the taxpayer has until the next business day to file his/her written petition for review.

(a) For purposes of this regulation, the term "written petition for review" shall mean any written response to

a preliminary assessment which raises the issue of an incorrect liability as established by the assessment. The petition should include the following:

1. a statement that the taxpayer wants a review of the preliminary assessment,
2. specific objections to the preliminary assessment,
3. the taxpayer's name and address,
4. the date of the preliminary assessment,
5. the tax periods or years involved,
6. an itemized schedule of the adjustments and findings protested,
7. a statement of facts supporting the taxpayers position regarding any factual issue, and
8. a statement outlining the law or authority relied upon.

(b) If a petition for review is timely filed, the Department shall, upon written request of the taxpayer or if the Department otherwise deems it necessary, schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the Department to present their respective positions, discuss any omissions or errors, and attempt to reach an agreement. The taxpayer will be notified by first class U.S. mail of the conference date. All notices shall include the conference time, the address where the conference is to be held and, if the conference is not at the request of the taxpayer, the items in dispute which will be discussed during the conference.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.15 Entry Of Final Assessment.

(1) The Department may enter a final assessment for determinations of value, or for the nonpayment or underpayment

of any tax administered by the Department, including any applicable interest and penalty, when:

- (a) a petition for review is not timely filed;
- (b) a petition for review is filed, and upon review the Department determines that the preliminary assessment is due to be upheld in whole or in part; or
- (c) the Department determines that a final assessment is due to be entered pursuant to the provisions contained in Code of Ala. 1975, Section 40-2A-7(b)(1)b.

(2) The Commissioner is authorized to make all final assessments of all taxes and determinations of value administered by the Department. The Commissioner is further authorized to delegate such authority to other employees of the Department such as the Assistant Commissioner, the Department Secretary, division chiefs, and other employees, as appropriate. The Commissioner may appoint one or more such employees of the Department as an assessment officer for the purpose of entering final assessments.

(3) The final assessment must include, but may not be limited to, the following information:

- (a) the name and tax identification number of the taxpayer, if known;
- (b) the last known address of the taxpayer;
- (c) character or type of tax/value of the liability assessed;
- (d) the taxable period or periods;
- (e) the amount of the final assessment, including applicable interest and penalty; and
- (f) the date of entry of the final assessment.

(4) The final assessment shall be entered by the Commissioner or an assessment officer by signing the final assessment document. A final assessment document may be signed by facsimile or electronic signature.

Author: Brandee B. Tickle, CPA

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a) (5), 40-2A-7(b) (1) c.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed March 7, 2014; effective April 11, 2014.

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

(1) SCOPE. The provisions contained herein shall govern appeals to the 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. 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 Ala. 1975.

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

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

(a) Tax Tribunal, or

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

(5) APPEALS TO ALABAMA TAX TRIBUNAL. If the taxpayer chooses to appeal to the Tax Tribunal, the taxpayer must notify the Tax Tribunal Judge in writing of the intent to appeal. The written appeal notice must be filed with the 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. 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 Assessment. A copy of the Final Assessment should be attached to the notice of appeal. The appeal should be sent to the address specified in the rules promulgated by the Tax Tribunal.

(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 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 Ala, 1975. 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 Ala. 1975, 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 two hundred fifty-thousand dollars (\$250,000) or less, including his or her homestead.

(7) APPEALS TO CIRCUIT COURT FROM A FINAL ORDER OF THE TAX TRIBUNAL JUDGE. Either the taxpayer or the department may appeal to circuit court from a final order issued by the Tax Tribunal Judge by filing a notice of appeal with the 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, 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, 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, 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, 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 two hundred fifty thousand dollars (\$250,000) or less, including his or her homestead.

Authors: Patricia Toles, Michael Mason

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-7(b)(4)d, , 40-2A-7(b)(5)b.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996; effective May 7, 1996. **Amended:** Filed

October 4, 2007; effective November 8, 2007. **Amended:** Filed December 5, 2014; effective January 9, 2015.

810-14-1-.17 Procedure For Refund Of Local Taxes.

(1) If the Department is required to make a refund of a county or municipal tax administered by the Department, the refund shall be made from the taxes currently collected and undistributed from the local government's account with the Department. If the money on hand is insufficient to pay the refund in full, the Department may "accrue future collections" until the amount of the refund can be made. Alternatively, a taxpayer may be allowed to claim a credit on any future county or municipal returns, up to the amount of refund due.

(2) In the case of refunds involving county hazardous waste fees, overpayments shall only be made from current collections until the overpayment is satisfied.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.18 Petitions For Refund Allowed.

(1) Any taxpayer or consumer/purchaser may file a petition for refund of any taxes erroneously paid to the Department. Such petition should include the following:

(a) a statement that the taxpayer and/or consumer\purchaser is requesting a refund;

(b) the taxpayer's name and/or consumer\purchaser name, social security number or FEIN, and address;

(c) the type of tax;

(d) the tax periods or years involved;

(e) the amount of refund requested;

(f) a statement of the relevant facts and the reason the payment was erroneous; and

(g) an attachment of any documentation sufficient to provide proof of an erroneous payment. (Examples of documentation may include: invoices, receipts, check copies, accrual records, copies of returns, etc.)

(2) Any petition for refund providing the foregoing information shall be sufficient to satisfy the statutory time limits for requesting refunds. However, the Department may subsequently require the taxpayer to provide additional information as necessary. An amended tax return reflecting a refund of taxes due shall be considered a petition for refund.

(3) A petition for refund of public utility tax, sales and use tax, and transient occupancy tax that is equal to twenty-five dollars (\$25.00) or more and otherwise satisfies the requirements of paragraphs (1) and (2) shall be processed upon submission. Petitions of refunds of less than twenty-five dollars (\$25.00) shall be requested by the taxpayer or consumer/purchaser on an annual basis by either a single petition for refund or multiple combined petitions for refunds.

(4) In the case of a refund request by a seller, the seller may file a direct petition for refund if the seller remitted in excess of the tax due, but never collected the tax from the consumer/purchaser, or if the seller has previously refunded, credited, or repaid the tax directly to the consumer/purchaser.

(5) In the case of an individual, refunds requested in a petition for refund required to be filed annually under the provisions of paragraph (3) shall first be reduced by the amount of the state use tax due to be reported on the individual's income tax return for the calendar year in which the refund is requested.

(6) The Department shall develop and make available forms for annual refund petitions required to be filed under paragraphs (3) and (4).

Author: George Mingledorff, Cameran L. Clark

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed January 11, 2019; effective February 25, 2019.

810-14-1-.19 Time Limitations For Filing Petitions For Refund.

(1) A petition for refund must be filed with the Department or an automatic refund pursuant to Section 40-29-71_ Code of Ala. 1975, or a credit allowed, within three years from the date the return was filed, or two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax.

(a) Limit where petition filed within three-year period. If the petition for refund made on a return (or a subsequent amended return) is filed within the three-year period from the date the return is due, the amount of the refund shall not exceed the portion of the tax paid (or deemed paid) within that three-year period, plus that amount paid within the period of any extension of time for filing the return.

(b) Limit where petition not filed within three-year period. If the petition was not filed within such three-year period, the amount refunded may not exceed the portion of the tax paid within two (2) years before the petition was filed.

(c) Limit where petition filed for refund/credit of final assessment. A petition for refund or credit of a final assessment must be filed by the taxpayer within two years from the date the final assessment was paid.

(d) In cases involving gasoline, motor fuels, tobacco, and playing cards taxes, certain entities other than the taxpayer who originally paid the taxes to the Department may file a petition for refund. These entities include those associations, nonprofit corporations, and organizations who are expressly exempt by the following sections: 40-9-9 through 40-9-13, 40-9-23, 40-17-104, 40-17-122, 40-17-220, 22-51-13, 11-50-412, and 11-88-16, Code of Ala. 1975. In such cases, the petition for refund must be filed within two years from the date of the purchasing invoice for said taxes.

(2) The return shall be considered as filed on the original due date if the tax is paid or the return was actually filed before the original due date. For purposes of this paragraph, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer. An original return filed after the due date shall be considered as filed on the original due date for purposes of petitioning for refund.

(3) Date of payment. Any tax deducted and withheld at the source during any calendar year under Section 40-18-71_ Code of Ala. 1975, shall, in respect of the recipient of the income from which the tax was withheld, be deemed to have been paid by the taxpayer on the due date of the return, whether or not timely filed.

(a) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the income tax return for the tax year in question, whether or not timely filed. This shall be determined without regard to any extension of time for filing such return.

(b) EXAMPLE. On June 15, 1992, the taxpayer filed an amended individual income tax return for calendar year 1988 reflecting an overpayment of taxes paid through withholding. Since such taxes are considered to have been paid on April 15, 1989, the refund of such withholding taxes will be denied since more than three years have passed since the original return was filed and more than two years have passed since such taxes are considered as having been paid.

(c) For purposes of this regulation, the date of payment for privilege licenses shall be the date the license was issued by the appropriate probate judge or license issuing official, whether the license was issued for current or delinquent license years. A license date of payment is evidenced by the issuing date, which appears on the face of the license.

(4) Limitation in case an extension agreement is executed. If an agreement under the provisions of Section 40-2A-7(b) (2) i. Code of Ala. 1975, extending the period for assessment of a tax administered by the Department is made within the period prescribed in paragraph (1) of this regulation for the filing of a petition for credit or refund, then the period within which a petition for refund may be filed or a refund may be allowed, or made if no petition is filed, is the period within which the Department may make an assessment pursuant to such agreement or any extension thereof.

(5) In the case of loss years which began before January 1, 1990, nothing in this regulation shall preclude the application for refund of income taxes pursuant to the provisions of Section 40-18-15 Code of Ala. 1975, relating to the carryback of a net operating loss deduction.

(6) If payments are made after the due date of a return (such as under an extension of time or by examination adjustments), the three-year limitation period prescribed in paragraph (1) of this regulation begins on the date the payments are made, to the extent of those payments. For example, if a taxpayer files his/her calendar year 1988 income tax return on October 15, 1989, under an approved extension and includes a final payment of \$1,000 with the return, a petition for refund not in excess of \$1,000 may be filed after April 15, 1992, but before October 15, 1992. Thus, the taxpayer must file the petition for refund within three years of the extension date on which the taxes were paid.

Authors: George Mingledorff, Charla Doucet

Statutory Authority: Code of Ala. 1975, 40-2A-7(c)(2), Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996, effective May 7, 1996.

810-14-1-.20 **Limitation With Respect To Net Operating Loss Carrybacks.**

(1) If a petition for refund or credit relates to an overpayment of tax attributable to a net operating loss carryback, then in lieu of the three-year period described in Code of Ala. 1975, Section 40-2A-7(c)(2)a., the period shall be whichever of the following two periods expires later:

(a) the period which ends on the expiration of the fifteenth day of the fortieth month following the end of the taxable year in which of the net operating loss was incurred which resulted in the carryback; or

(b) the period which ends with the expiration of the period prescribed in 26 USC Section 6511(c) (relating to an agreement (waiver) extending the period for assessment of tax) within which a petition for refund may be filed with respect to the taxable year in which the net operating loss was incurred which resulted in the carryback, except that:

(i) with respect to an overpayment attributable to a net operating loss carryback to any year because of a certification issued to the taxpayer under 26 USC Section 317 (the Trade Expansion Act of 1962), the period shall not expire

before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss as a result of the elimination of the excessive profits by a renegotiation (as defined in 26 USC Section 1481(a)(1)(A)), the period shall not expire before September 1, 1959 or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is later.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.21 Procedures If Refunds Granted; Credit Of Refund; Payment Of Other Taxes; Payment Of Interest.

(1) If a petition is granted, or the Department, the Alabama Tax Tribunal, or a court otherwise determines that a refund is due, the overpayment shall be refunded to the taxpayer by the state, county, municipality, etc. Interest at the rate established by Section 40-1-44 Code of Ala. 1975, will be accrued and included in such refund.

(2) Whenever any petition for refund is granted, the Department may first credit any overpayment, plus applicable interest, against any other outstanding final tax liabilities due and owing by the taxpayer. In the case of income taxes, any overpayment shall also be subject to the setoff provisions of Code of Ala. 1975, Section 40-18-100, et. seq. Any balance which might then be due to the taxpayer shall be refunded. The taxpayer shall be provided with written notice as to the amount of overpayment, the amount credited for payment to other taxes, and the amount being refunded.

(3) An outstanding final tax liability is:

(a) a final assessment;

(b) an admitted liability on a tax return filed by or on behalf of the taxpayer;

(c) a liability to which the taxpayer has consented in writing to the amount due; or

(d) a liability resulting from an attempted payment of taxes by a check that was not honored by the bank for any reason.

Author: Patricia Toles

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-7(c)(4).

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996, effective May 7, 1996. **Amended:** Filed December 5, 2014; effective January 9, 2015.

810-14-1-.22 Denial Or Revocation Of Licenses, Account Numbers, Permits And Certificates (Including Motor Vehicle Certificates Of Title).

(1) Denial of Licenses, Account Numbers, Permits, and Certificates (including Motor Vehicle Certificates of Title).

(a) If upon a review and/or investigation of an application for any license, account number, permit, or certificate it is determined that the requested license, account number, permit, or certificate should not be issued, applicants for each license, account number, permit, or certificate shall be notified in writing of the denial of their application by the Department.

(b) The Code of Ala. 1975, contains multiple reasons for denying the issuance of a motor vehicle license plate. These reasons include, but are not limited to the following:

1. failure to prove payment of ad valorem taxes (Section 40-12-253, Code of Ala. 1975);
2. failure to prove payment of sales or use taxes (Section 40-23-104(e), Code of Alabama 1975);
3. failure to prove payment of the federal heavy vehicle excise tax (Code of Ala. 1975, Section 32-6-58); or
4. failure to present a copy of an application for certificate of title to the vehicle, a duplicate title to the

vehicle, or a copy of the application for a replacement certificate of title (Code of Ala. 1975, Section 32-8-32).

(c) The Department may deny the issuance of a motor vehicle license plate by written notification, if any one or more of the prerequisites noted in paragraph (b) above has not been met.

(d) Written notification of a denial shall be by first class mail, U.S. mail with delivery confirmation or U.S. certified mail to the applicant's last known address. This notification shall reference the nature of the denial, state the reason(s) or basis for the denial, and advise the applicant of the right to appeal the denial to the Alabama Tax Tribunal within thirty (30) days from the date the notice is mailed.

(2) Revocation of License, Account Numbers, Permits, and Certificates (including Motor Vehicle Certificates of Title).

(a) Whenever any license, account number, permit, or certificate is revoked by the Department, the holder shall be notified in writing of the revocation. However, the notice of revocation of a designated agent's status or a motor vehicle dealer's regulatory license can be sent electronically pursuant to Section 40-2A-8(c), Code of Ala. 1975.

(b) Written notification of the revocation shall be by first class mail, U.S. mail with delivery confirmation, or certified U.S. mail to the holder's last known address. This notification shall reference the license, account number, permit, or certificate being revoked; state the reason(s) for the revocation; state the effective date of the revocation; and advise the holder of the right to appeal the revocation to the Alabama Tax Tribunal within thirty (30) days of the date the notice is mailed.

(c) When a revocation results from the written request (e.g., completed business closing form, etc.) of the holder of any license, account number, permit, or certificate, the department shall not be required to send written notification of the revocation.

(d) The revocation of any motor vehicle certificate of title or license by the department shall not be final until either the titled owner and lien holder, if any, consent to the

revocation or the time for filing an appeal to the Alabama Tax Tribunal has expired.

Author: Patricia Toles

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-4.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed December 5, 2014; effective January 9, 2015.

810-14-1-.23 Procedures For The Use And Acceptance Of Electronic Signatures Under The Uniform Electronic Transactions Act (UETA).

(1) Pursuant to §8-1A-18, Code of Ala. 1975, of the Uniform Electronic Transactions Act (UETA), codified at §8-1A-1, et seq., Code of Ala. 1975, any document submitted to the department that requires a signature may be signed with an electronic signature, subject to the following requirements and limitations.

(2) A document submitted to the department with an electronic signature must comply with the requirements of the UETA.

(3) The person creating and submitting an electronically signed document is solely responsible for ensuring that the method used complies with all the requirements of the UETA.

(4) All electronic signatures are subject to verification by the department. The department may request additional information from the signer to establish the identity and signature authority of the signer. The department reserves the right to reject a document filed with an electronic signature if it determines that the signature was not affixed by a method that complies with requirements of the UETA or has reason to suspect that the electronic signature was not affixed by the person purporting to sign the document.

(5) Among the factors the department will consider when verifying an electronic signature are whether the electronic signature was affixed to a document with a method that:

(a) Uniquely identifies the signer or creator of the record.

(b) Prevents others from using the same identifier.

(c) Provides a mechanism for determining whether the data contained in the record was changed after it was signed or created.

(6) This rule does not supersede any existing rule issued by the department or statute relating to the electronic filing or signing of documents including, but not limited to the electronic filing of tax returns.

(7) The department may, by rule, provide more specific requirements for the electronic filing or signing of a document or class of documents.

(8) The department may, by rule, exclude a document or a class of documents from submission with an electronic signature.

(9) Any document distributed or issued by the department that must be signed by a department official or employee may be signed with an electronic signature.

Author: Craig Banks

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5); Title 8, Chapter 1A.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed October 28, 2005; effective December 2, 2005. **Repealed:** Filed October 22, 2010; effective November 26, 2010. **Re-Repealed:** Filed January 10, 2013; effective February 14, 2013. **New Rule:** Published August 31, 2021; effective October 15, 2021.

810-14-1-.24 **Proper Time To File A Tax Lien.**

(1) **Definitions.** The following terms have the meanings ascribed to them for purposes of this rule:

(a) **Lien.** As defined in §40-1-2 and §40-29-20.

(b) **Final Assessment.** As defined in §40-2A-7.

(2) **Procedures.**

(a) Except as provided in paragraph (b), a lien arising under §40-1-2 or §40-29-20 may not be filed by the department in accordance with the provisions of §§40-1-2(c) and 40-29-22 until an assessment becomes final and is no longer subject to appeal.

(b) This rule shall not apply if the Commissioner has made a finding under §40-29-23(a) that collection of the delinquent tax giving rise to the lien is in jeopardy or to the filing of liens for jeopardy assessments entered under § 40-29-90 or § 40-29-91. The circumstances under which a lien is filed prior to a final assessment must be documented by the department.

Author: Meagan Barrett.

Statutory Authority: Code of Ala. 1975, §§40-1-1, 40-1-2, 40-2A-7, 40-29-20, 40-29-22.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Repealed:** Filed December 5, 2014; effective January 9, 2015. **New Rule:** Filed August 10, 2018; effective September 24, 2018.

810-14-1-.25 **Release Of Lien Information To Third Parties.**

(1) SCOPE. This regulation establishes a procedure whereby third parties may be given information regarding the amount required to release the state tax lien. It further provides for the release of such information to purchasers and sellers of properties, and their agents, on which a state tax lien has attached.

(2) DEFINITIONS. The following terms have the meanings ascribed to them for purposes of this regulation.

(a) Third parties. Any entity or individual which holds a lien on real or personal property of the taxpayer which competes with any lien held by the Department. Such third parties may include mortgagees, the Internal Revenue Service, judgment creditors, and other holders or prospective holders of a security interest in property of the taxpayer. Third parties may also mean any purchaser, closing attorney, escrow agent, or real estate agent who is a party to a transaction in which the real or personal property of a taxpayer is being transferred subject to the Department's lien.

(b) Verifiable electronic request. A request made through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting the information.

(3) PURPOSE. The purpose of this regulation is to provide for the orderly determination of the amount of competing liens attaching to property of the taxpayer.

(4) PROCEDURE.

(a) Whenever any third party wishes to secure information regarding an outstanding tax lien, he shall provide the Department with a written or verifiable electronic request for the information.

(b) Each written or verifiable electronic request made by a third party must specify the following:

1. the party making the request;
 2. the party's relationship to the taxpayer;
 3. the reason for the request;
 4. the property which is being purchased or sold;
- and
5. provide a copy of any instrument giving the third party a competing interest in the property of the taxpayer.

(c) Whenever it is determined that the withholding of such information pending receipt of a written or verifiable electronic request will impair the ability of the taxpayer to close a transaction relating to the transfer of property, such requirement may be waived at the discretion of the Department.

(d) The Department reserves the right to deny any request for information when it has not been adequately established to the Department's satisfaction that the requesting party has a legitimate need for the requested information.

Author: George E. Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS June 30, 1993; effective June 30, 1992. Refiled May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.26 Release Of Information Necessary To Comply With Sections 40-23-25, 40-23-82, and 40-12-224, Code Of Ala. 1975.

(1) SCOPE. This regulation relates to the authority of the Department to release information necessary for sellers of a business or stock of goods to comply with Code of Ala. 1975, Sections 40-23-25, 40-23-82, and 40-12-224.

(2) DEFINITIONS. The following terms have the meanings ascribed to them for purposes of this regulation.

(a) Taxes. Unless otherwise stated, this term refers to sales, use, and leasing taxes.

(b) Purchaser. An individual, partnership or corporation which is purchasing or has purchased a business or stock of goods.

(c) Seller. An individual, partnership or corporation, which is selling or has sold a business or stock of goods.

(d) Verifiable electronic request. A request made through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting the information.

(3) PURPOSE. The purpose of this regulation is to establish a specific procedure whereby the purchaser or seller of a business or stock of goods may be provided with specific information regarding taxes paid or taxes due and unpaid by the seller so as to comply with Code of Ala. 1975, Section 40-23-25, 40-23-82 or 40-12-224.

(4) PROCEDURE.

(a) A seller of a business or stock of goods subject to the provisions of Section 40-23-25, 40-23-82, or 40-12-224 Code of Ala. 1975, may obtain a certificate from the Department within 30 days of the date he sold his business or stock of goods showing that all taxes have been paid or that no taxes are due. The certificate may be furnished to the seller upon payment of all taxes which have accrued prior to the date of the sale.

(b) A purchaser of a business or stock of goods subject to the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Ala. 1975, may request and obtain a certificate from the Department prior to the purchase showing that all outstanding tax, penalty, and interest has been paid over to the Department as of the date of the request.

1. Whenever a purchaser wishes to secure information in order to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Ala. 1975, the purchaser shall provide the Department with a written or verifiable electronic request for the information.

2. Each written or verifiable electronic request made by a purchaser shall provide the following:

(i) the legal name, mailing address, phone number, and signature of the party making the request;

(ii) an affirmative statement that the requesting party is entitled to the information requested pursuant to Section 40-2A-10, Code of Ala. 1975, and that the request is necessary in order for the requesting party to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Ala. 1975;

(iii) the legal name and address of the party from whom the purchaser is purchasing a business or stock of goods; and

(iv) if available, the state sales, state use, state rental, local sales, and/or local use tax account number(s) and the social security number or federal employer identification number of the party from whom the purchaser is purchasing a business or stock of goods.

3. The Department reserves the right to deny any request for information when it has not been adequately established to the Department's satisfaction that the requesting party has a legitimate need for the requested information. The Department may contact the seller of a business or stock of goods to establish the legitimacy of the requesting party's request for information.

(c) If the taxes are not current, the Department may issue the purchaser or seller a "Certificate of Noncompliance," which will specify the type of tax and the periods of tax which

have not been paid. The Department may also send a letter of noncompliance to the purchaser or seller of the business which will contain, if known, the amount required to bring the business into compliance with the sales and use tax laws up to the anticipated date of purchase.

(d) In the event the Department learns, or otherwise has reason to believe that a business or stock of goods has been sold and that the purchaser has not complied with the provisions of Sections 40-23-25, 40-23-82, or 40-12-224, Code of Ala. 1975, the Department may make a demand for payment, and, if not paid, enter an assessment against the successor. Any demand or assessment so entered shall clearly identify the successor as such, as well as the previous business entity.

(e) Any disclosure of amounts of tax due made by the Department to a business entity that is believed to be a successor, and which is subsequently determined not to be a successor as contemplated by Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Ala. 1975, shall be deemed to have been made for the proper administration of the taxes and is an exception to the disclosure restrictions as provided at Section 40-2A-10, Code of Ala. 1975.

Authors: George E. Mingledorff, Charla Doucet

Statutory Authority: Code of Ala. 1975, §40-2A-10, Act 92-186.

History: Filed with LRS June 30, 1992. Refiled May 20, 1993. Certification filed with LRS July 16, 1993, effective August 19, 1993. Filed as Emergency Rule September 24, 1993, Effective September 24, 1993. Filed: **Amended** October 18, 1993, December 21, 1993, effective January 25, 1994. **Amended:** Filed April 2, 1996, effective May 7, 1996.

810-14-1-.27 **Confidentiality Of Tax Returns And Tax Return Information.** **(REPEALED)**

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Repealed:** Published January 29, 2021, effective March 15, 2021.

810-14-1-.28 **Disclosure Of Statistical Information.**
(REPEALED)

Author: Michael Mason

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-10.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed January 20, 2011; effective February 24, 2011. **Repealed:** Published January 29, 2021, effective March 15, 2021.

810-14-1-.29 **General Disclosure And Exchange Of Information Guidelines.**

(1) SCOPE. Safeguarding state tax return information is critical. All tax returns, forms, and supporting documents filed with the department, are confidential. Specific information filed with the department relating to a taxpayer is not public information. Return information use is restricted solely for the purpose of tax administration, collection, and enforcement purposes and access shall only be allowed to employees of the department and authorized persons as defined in this rule.

(a) It is unlawful to print, publish, or disclose, without the written permission or approval of the taxpayer, in any manner information pertaining to tax returns except as follows:

1. Upon an order of any court.

Note: A subpoena or an administrative order is not sufficient for the release of tax information.

2. The exchange between the department and authorized tax officers of foreign, federal, state, municipal, or county governments solely for tax administration purposes upon approval of the commissioner.

(2) Definitions. The following terms have the meaning ascribed to them for purposes of this rule, unless the context clearly indicates otherwise.

(a) Inspection. A review of tax returns and/or return information allowed under §40-18-53, Code of Ala. 1975.

(b) Return. Any tax or information return or report, estimated tax payments, claim or petition for refund or credit, or petition for reassessment or protest that is required by, or

provided for, or permitted, under the provisions of the tax laws of this state whether filed on paper or filed electronically.

(c) Return Information. With the exception of provisions 1. and 2. below, any information that is derived from any return or any supporting documents such as the taxpayer's identity, the nature, source, or amount of their income, gains, losses, formulary apportionment factors, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, over-assessments, or tax payments, whether the taxpayer's return was, is being, or will be, examined or subject to other investigation for processing. This term also includes any other data received, recorded by, prepared by, furnished to, or collected by the department whether acquired by audit, or by any other means under the laws of this state with respect to a tax return or with respect to the determination of the existence, or possible existence of liability (or the amount thereof); provided, that this information will be used only for administration, collection, or enforcement of the tax laws, including tax, additions to tax, penalty, interest, fine, or other imposition, or offense.

1. "Return information" does not include statistical information, nor does it include information obtained from the Internal Revenue Service (IRS). Disclosure of IRS information—is prohibited by the terms of the agreement between the IRS and the department.

2. For purposes of Sales Tax and Use Tax, "return information" also includes whether the taxpayer is authorized to use a direct pay permit and any information related thereto; and the names of customers and any other relevant information related to specific sales and use tax transactions.

(d) Statistical Information. Any aggregate tax information which is compiled or assembled in a form that cannot be reasonably associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(e) Authorized persons. Any duly authorized tax officer of the department or another state, municipal, or county governmental agency, federally government agency,—association of state government tax agency, who has been authorized to request, inspect, or receive tax returns, forms, and supporting documents—through the official custodian of the records.

Note: Tax officers are defined as employees and elected officials of the tax agency and do not include contractors of the tax agency.

(f) Official custodian of the records. The department Disclosure Officer or other designated department employees.

(g) Verifiable electronic means. This term refers to tax information which is requested or submitted through electronic transmissions that has some means of verification as to the authority of the party requesting or submitting the tax information.

(3) Procedure. An agreement to allow inspection of tax returns and return information or an exchange of tax returns and return information must be approved by the Commissioner or their delegate.

(a) An agreement may provide for the inspection or exchange of information for a specific return or may provide for the regular or routine exchange of returns or information on such basis as the parties may agree.

(b) Requests for tax returns or return information by authorized persons must be either in writing or by verifiable electronic means and must indicate, if ascertainable, the following:

1. Reason for the exchange.
2. Name and address of each taxpayer for whom tax returns and/or return information is requested.
3. Social security number or federal identification number.
4. Inclusive dates for tax information requested.
5. Any information deemed necessary to help facilitate the exchange.

(c) Any agreement approved by the Commissioner or their delegate shall be valid for the term specified in such agreement, or as may be mutually agreed to by the parties. An agreement may be canceled or revoked at any time by the Commissioner or their delegate upon due notice to the other

party. An agreement will be revoked immediately if confidentiality of information is violated. Any such agreement will automatically be revoked if the other party terminates the reciprocal privileges of the department.

(d) All agreements entered into by the Commissioner or their delegate pursuant to this rule shall be available for public inspection in the Disclosure Officer's office.

(e) Inspection of income tax returns, forms, and supporting documents by county and municipal representatives or by federal agencies, other than the IRS, is prohibited. Inspection by other authorized persons is allowed, provided that each party allows the department the reciprocal privilege of inspecting income tax returns and receiving income tax information. Inspection of income tax returns, forms, and supporting documents in possession of the department by any person, other than authorized persons, is prohibited except upon order of a court.

(f) Authorized persons accessing tax returns, forms, and supporting documents through the department must sign a Nonemployee Confidentiality and Disclosure Statement acknowledging the department's confidentiality statute provisions and a copy of the signed Nonemployee Confidentiality and Disclosure Statement shall be kept on file with the department. Authorized persons allowed to receive or disclose tax information under an exchange of information agreement with the department must sign a Nonemployee Disclosure and Exchange Statement acknowledging the department's confidentiality statute provisions. A copy of the signed Nonemployee Disclosure and Exchange Statement must be kept on file with the state, county, or municipal governmental agency.

(g) The department may issue a certificate of compliance to a requesting person with respect to whether an entity has any outstanding liabilities for state taxes administered by the department and whether the entity is up to date with all required state tax filings as of the time of the request. A fee as prescribed in §40-2A-10 must accompany each certificate request.

(h) Inspection of third party records in possession of the department through subpoena or other legal means by persons other than employees or agents of the department is prohibited, except upon order of a court, issuance of an IRS

summons, or with the consent of the third party which supplied the records to the department in compliance with its subpoena.

(i) If any employee or agent of the department discloses any tax return information, including statistical information in a manner that is not provided for by rule, then such employee or agent shall be subject to disciplinary action in accordance with the Alabama Personnel department rules and regulations.

Authors: Kelly M. Graham

Statutory Authority: Code of Ala.1975, §§40-2A-7(a)(5), 40-2A-10.

History: Filed with LRS June 30, 1992. Refiled May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996; effective May 7, 1996. **Amended:** Filed October 27, 2003; effective December 1, 2003. **Amended:** Published January 29, 2021; effective March 15, 2021.

810-14-1-.30 **Penalty For Failure To Timely Pay Tax.**

(1) SCOPE.

(a) The provisions contained herein shall govern the application of the Failure to Timely Pay penalty to all taxes administered by the department, except for:

1. Penalties relating to registration and titling of motor vehicles; and

2. Penalties related to ad valorem taxes on real or personal property. Notwithstanding the preceding sentence, ad valorem taxes related to the property of public utilities are included within the scope of this regulation.

(b) This penalty shall be applied to the net tax liability (tax amount shown due on a return less any payments or credits) that remains unpaid after the due date prescribed for the payment of the tax.

(c) This penalty shall also be applied to tax due in a "Notice and Demand" notification sent to a taxpayer.

(2) DEFINITIONS.

(a) Return. Any form or return that is defined in Sections 40-1-1(2), 40-1-1(14) and 40-2A-3(19).

(b) Notice and Demand. Written notification to a taxpayer of unpaid taxes stating the amount of tax due, the type of tax, the period for which tax is due, and demanding the payment thereof.

(3) PENALTY PROVISIONS. The Failure to Timely Pay Penalty shall be calculated on annual returns differently from monthly or quarterly returns, as follows:

(a) Annual Returns.

1. In the event a taxpayer fails to pay the tax shown as due on an annual return on or before the due date prescribed for the payment of the tax, a penalty of 1 percent of the tax per month or 1 percent of the tax for each fraction of a month thereof, shall be added. However, this penalty shall not exceed 25 percent of the tax. For example, where a taxpayer timely files an income tax return due on April 15, but fails to pay the amount shown as due on the return until September 30, a nonpayment penalty of 6 percent plus interest applies.

2. In the event a taxpayer fails to pay any amount of tax required to be shown on an annual return within 30 calendar days from the date of the first notice and demand, as defined in paragraph (2)(b), a penalty of 1 percent of the amount of tax due per month or 1 percent of the tax for each fraction of a month thereof, shall be added. However, this penalty shall not exceed 25 percent of the tax. For example, where a taxpayer receives a notice and demand on June 1, for tax which was required to be shown on a return, but was not so shown, a penalty of 4 percent of the unpaid tax plus interest will be added if the tax remains unpaid until October 16.

(b) Taxes for which Monthly or Quarterly Returns are Required.

1. In the event the taxpayer fails to pay the tax shown due on a monthly or quarterly return on or before the due date prescribed for the payment of the tax, a penalty of 10 percent of the amount of the tax not paid on or before the due date shall be added. For any tax for which no return is required until an event triggers a liability, there shall be a penalty of 10 percent of the tax not paid on or before the due date.

2. In the event the taxpayer fails to pay any amount of tax required to be shown on a monthly or quarterly return, or any amount of tax for which no return is required, within 30 calendar days from the date of the first notice and demand, a penalty of 10 percent of the unpaid tax stated in the notice and demand shall be added.

3. The following are examples of taxes which are subject to the 10 percent penalty:

- (i) gasoline tax, Section 40-17-33, Code of Ala. 1975;
- (ii) motor fuels tax, Section 40-17-5, Code of Ala. 1975;
- (iii) lubricating oil excise tax, Sec. 40-17-186, Code of Ala. 1975;
- (iv) tobacco tax, Section 40-25-4, Code of Ala. 1975;
- (v) hazardous waste fee, Section 22-30B-5, Code of Ala. 1975;
- (vi) dog race track pari-mutuel pool tax, Section 40-26A-3, Code of Ala. 1975;
- (vii) horse wagering fee, Section 11-65-29, Code of Ala. 1975;
- (viii) state sales tax, Section 40-23-7, Code of Ala. 1975;
- (ix) state use tax, Section 40-23-68, Code of Ala. 1975;
- (x) state rental or leasing tax, Section 40-23-7, Code of Ala. 1975;
- (xi) state utility gross receipts tax, Section 40-23-7, Code of Ala. 1975;
- (xii) state lodgings tax, Section 40-26-3, Code of Ala. 1975;

(xiii) state contractors gross receipts tax, Section 40-23-7, Code of Ala. 1975;

(xiv) mobile telecommunications services tax, Section 40-21-121, Code of Ala. 1975;

(xv) state hospital tax, Section 40-26B-61, Code of Ala. 1975;

(xvi) state nursing facility tax, Section 40-26B-22, Code of Ala. 1975;

(xvii) state pharmaceutical providers tax, Section 40-26B-3, Code of Ala. 1975;

(xviii) counties sales, use, and lodgings taxes, Section 40-23-7, Code of Ala. 1975;

(xix) municipalities' sales, use, and lodgings taxes, Section 40-23-7, Code of Ala. 1975;

(xx) utility license tax, Section 40-21-50, Code of Ala. 1975;

(xxi) coal severance tax, Section 40-13-3, Code of Ala. 1975;

(xxii) forest products severance tax, Section 9-13-86, Code of Ala. 1975;

(xxiii) withholding tax, Section 40-18-74, Code of Ala. 1975;

(xxiv) income tax estimate payments, Section 40-18-83, Code of Ala. 1975; and

(xxv) oil and gas severance taxes, Sections 9-17-26(b) and 40-20-5, Code of Ala. 1975.

(xxvi) international fuel tax agreement, Sections 40-17-270 through 40-17-275, Code of Ala. 1975.

(4) The "Failure to Timely Pay" penalty shall apply for any tax in which attempted payment is made via:

(a) a check that is returned by the bank due to insufficient funds, or

(b) electronic media when the transaction is subsequently dishonored or invalidated as a result of actions or inactions by the taxpayer.

(5) The "Failure to Timely Pay" penalty may be waived in whole or in part by the Department upon a determination of "reasonable cause" following the guidelines in Rule 810-14-1-.33.01, entitled Assessment and Waiver of Civil Penalties.

Authors: Ann F. Winborne, Michael Mason

Statutory Authority: Code of Ala. 1975, §40-2A-11(b), Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993. **Amended:** Filed April 2, 1996; effective May 7, 1996. **Amended:** Filed December 4, 2007; effective January 8, 2008. **Amended:** Filed April 14, 2010; effective May 19, 2010.

810-14-1-.30.01 Penalty For Failure To Timely File Tax.

(1) When a taxpayer fails to file any form or return required to be filed with the Department, including:

(a) Refund Returns; or

(b) Returns that indicate no tax is due; on or before the statutory due date (determined with regard to any extensions of time for filing), a failure to file penalty shall be imposed.

(2) The failure to file penalty shall equal the greater of:

(a) 10 percent of any additional tax due after prepayments made on or before the due date, or

(b) Fifty dollars (\$50).

(3) For the purposes of this Rule, a "form" or "return" includes:

(a) An income Tax Return; including non-timely filed returns for which a refund is due;

(b) A Withholding Tax Return; including returns filed with no tax amount filled-in, or returns which indicate no tax is due;

(c) A Sales Tax Return; including returns filed with no tax amount filled-in, or returns which indicate no tax is due;

(d) Form W-2, or

(e) Any other "form" or "return" that is defined in Section 40-1-1(2) and Section 40-1-1-(14).

(4) The "failure to timely file" penalty may be waived in whole or in part by the Department upon a showing by the taxpayer of "reasonable cause" as delineate in Rule 810-14-1-.33.01.

Authors: Michael E. Mason

Statutory Authority: Code of Ala. 1975, §40-2A-7(a)(5).

History: New Rule: Filed June 8, 2007; effective July 13, 2007.

810-14-1-.31 Penalty For Underpayment Due To Negligence.

(1) If any part of an underpayment of any tax is due to negligence or disregard of rules and regulations, but without intent to defraud, a 5 percent penalty on the underpayment attributable to negligence or disregard shall be added.

(a) The term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of Title 40, and the term "disregard" includes any careless, reckless, or intentional disregard.

(2) The "negligence" penalty may be imposed for, but is not limited to, the following situations:

(a) failure of the taxpayer to keep or maintain adequate records as required by law and/or Department rules and regulations;

(b) a significant discrepancy between actual and reported taxable measures in the absence of an adequate explanation by the taxpayer;

- (c) the omission of a specific item of income for income tax purposes;
 - (d) the significant overstatement of deductions, exemptions, and/or credits;
 - (e) failure by the taxpayer to provide all pertinent data to his/her agent for preparing tax returns. Even if all data is furnished to the tax return preparer, the taxpayer still has a duty to read the return for accuracy; or
 - (f) a mistake of law or fact not made in good faith or based on reasonable grounds.
- (3) The following are examples of situations in which the negligence penalty shall not be imposed:
- (a) a minor discrepancy due to a clerical error,
 - (b) a minor understatement of reported taxable measure,
 - (c) a minor overstatement of deductions, exemptions, and/or credits.
- (4) The negligence penalty will not be imposed if the essential facts are disclosed on the return to allow for full disclosure of transactions in such a manner that the facts are sufficient to enable an auditor to spot any possible discrepancies.
- (5) The negligence penalty will generally not be imposed where failure to report income or to overstate a deduction is in good faith reliance on advice of a competent tax expert.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.32 Penalty For Underpayment Due To Fraud.

- (1) Any person who willfully filed a false or fraudulent return shall be assessed for the amount of tax as determined by the Department from the best available information

with respect to such taxpayer. To the amount of tax due, the Department shall add a penalty in an amount equal to 50 percent of that portion of such underpayment which is attributable to fraud. This penalty is in lieu of all other civil penalties.

(2) The term "fraud" shall include instances where there is intentional wrongdoing, usually involving an element of deception. Where direct evidence of fraud is not available, fraud may be determined from the circumstances surrounding the taxpayer's acts or omissions. The burden of proof on the issue of fraud shall be upon the Department. To establish fraud, the Department must clearly and convincingly prove that a tax deficiency is due to fraud with a deliberate intent to evade taxes. Negligence, even if it is gross, does not necessarily establish fraud.

(3) The fraud penalty may be imposed for, but is not limited to, the following situations:

(a) the taxpayer devises a fictitious scheme to evade taxes (examples of this include setting up sham partnerships, doing business under a fictitious name, making fictitious sales of stock to claim a loss, etc.);

(b) the taxpayer deliberately conceals income with the intent to evade taxes;

(c) the taxpayer claims excessive deductions, exemptions, and/or credits (examples of this include claiming a false filing status, taking exemptions for nonexistent children, taking clearly personal expenses as business expenses, etc.).

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.33 Penalty For Frivolous Return.

(1) A "frivolous return" penalty of up to \$250 may be imposed if any return:

(a) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(b) contains information that on its face indicates the self-assessment is substantially incorrect and is due to either a position which is frivolous or a desire (which appears on the purported return) or delay or impede the administration of the state tax laws.

(2) The frivolous return penalty may be imposed for, but is not limited to, the following situations:

(a) returns filed with only the date and signature;

(b) returns filed which contain altered or incorrect descriptions of line items or other altered provisions;

(c) knowingly filed on a form not compatible with the Department's processing system;

(d) returns filed which have references to spurious constitutional arguments instead of the required completion of the tax form;

(e) returns filed on which there is insufficient information to calculate the tax;

(f) returns filed on which the information presented is clearly inconsistent; or

(g) returns filed which show deliberate use of incorrect tax tables.

(3) The "frivolous return" penalty may not be imposed in the following situations:

(a) for an inadvertent mathematical or clerical error(s) or

(b) where the taxpayer files a substantially complete return, shows the correct amount of tax due, but refuses or is unable to pay the tax.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.33.01 Assessment And Waive Of Civil Penalties.

(1) **SCOPE**. This regulation applies to the assessment and waiver of civil penalties and does not include cases of negligence or fraud. Additionally, this regulation does not apply to penalties abated under Regulation 810-14-1-.05 dealing with the failure of the Department to comply with Section 40-2A-4 of the Code of Ala. 1975.

(2) **PROCEDURE - Assessment**.

(a) The Department may not assess civil penalties in instances in which the taxpayer acted in good faith. For purposes of this regulation, good faith includes, but is not limited to the following:

1. instances in which the taxpayer has been cooperative during an audit and has a history of timely filing tax returns and timely paying tax due; or

2. instances in which the taxpayer relied upon erroneous written advice furnished to the taxpayer by an employee of the Department if:

(i) the employee provided the written advice in good faith while acting in an official capacity;

(ii) the written advice was reasonably relied on by the taxpayer;

(iii) the written advice was given in response to a specific written request of the taxpayer; and

(iv) the penalties did not result from the taxpayer's failure to provide adequate or accurate information.

(b) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it makes adjustments to a tax return(s) for a prior year(s) resulting in additional tax liability.

(c) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it realizes that a tax return(s) should have been filed in a previous year(s); and the taxpayer voluntarily files the return(s) and pays the tax liability prior to being

contacted by the Department or the taxpayer files the return(s) and pays the tax liability after notification.

(3) **PROCEDURE - Waiver.**

(a) If the Department assesses civil penalties, such Civil penalties shall be waived upon a determination of "reasonable cause." The burden of proving reasonable cause shall be on the taxpayer. The taxpayer should submit in writing a request that the civil penalty or penalties be waived for reasonable cause.

1. The taxpayer's written request for waiver of civil penalties should outline the "reasonable cause" basis of the request for waiver. The following events are sufficient to constitute "reasonable cause":

- (i) death, major illness, unavoidable absence;
- (ii) casualty or natural disaster;
- (iii) inability to obtain necessary records;
- (iv) nonrecurring honest mistake;
- (v) reliance on the advice of a competent tax advisor, and
- (vi) reliance on erroneous advice of ADOR personnel.

2. The above events are not be considered all-inclusive in establishing "reasonable cause." Taxpayers are not foreclosed from clearly establishing other reasons that constitute "reasonable cause."

3. The taxpayer's written request for waiver of civil penalties should be made to the supervisor of the appropriate assessing section or division. The written request for waiver of civil penalties should be attached to an audit or tax return when it is presented to the supervisor for assessment proceedings or when the audit is paid.

4. Appeals made to the Administrative Law Division solely involving a request for penalty waiver shall be referred to the Department's Director for Taxpayer Advocacy for disposition.

Author: Michael Mason

Statutory Authority: Code of Ala. 1975, §40-2A-11(h).

History: New Rule: Filed January 19, 1996; effective February 23, 1996. **Amended:** Filed January 12, 1999; effective February 16, 1999.

810-14-1-.34 Interest On Underpayment Of Tax.

(1) Interest shall be added to any tax or other amount due the Department which is not paid by the due date. Interest on any delinquency shall be charged from the due date of the tax, except for the following:

(a) interest on delinquent license taxes levied under Code of Ala. 1975, Chapter 12 of Title 40, shall be charged from the delinquent date as provided in Code of Ala. 1975, subsection (e) of Section 40-12-10;

(b) interest on delinquent license tax and registration fees levied on motor vehicles shall be charged beginning after the period allowed for registration or renewal; and

(c) interest on the freight lines and equipment companies tax levied in Code of Ala. 1975, Section 40-21-52, shall be charged from the delinquent date thereof.

(2) Interest shall be computed based on the underpayment rate established by the Secretary of the Treasury from time to time under the authority of 26 USC Section 6621.

(3) In determining the last date prescribed for payment, any extension of time granted for payment of tax or any other amount due shall be disregarded. The granting of an extension of time for filing a return does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.34.01 Interest On Underpayment Of Tax-Large Corporations. For "large corporate underpayment" as defined in

I.R.C. Sec. 6621, the interest rate on underpayment shall be as prescribed by I.R.C. Sec. 6621(c)(1).

Author: Michael Mason

Statutory Authority: Code of Ala. 1975, §40-1-44, and Internal Revenue Code 26 U.S.C. 6621.

History: New Rule: Filed January 12, 1999; effective February 16, 1999.

810-14-1-.35 **Interest On Refunds.**

(1) The Department shall pay interest on any refund computed from the date of overpayment to the Department, except as follows:

(a) Interest on a refund resulting from a net operating loss carryback shall be computed from the date the claim (amended return) giving rise to the refund is filed.

(b) Interest on a refund of any income tax previously paid through withholding or estimated payments, including a refund of such tax resulting from a net operating loss carryover deduction, shall be paid beginning 90 days after the due date of the return for which the refund is claimed, or the date such return is actually filed, whichever is later.

(2) Interest shall not be paid on any overpayment of the following taxes:

(a) taxes paid by entities for which a refund is allowed by Code of Ala. 1975, Sections 40-9-12 and 40-9-13;

(b) license taxes which are refunded pursuant to Code of Ala. 1975, Sections 40-12-23 and 40-12-24;

(c) gasoline taxes paid on gasoline used for agricultural purposes for which a refund is allowed by Code of Ala. 1975, Division 3, Article 2, Chapter 17 of Title 40;

(d) gasoline taxes paid on gasoline used for the static testing of engines for which a refund is allowed by Code of Ala. 1975, Division 4, Article 2, Chapter 17 of Title 40;

(e) the motor fuels excise tax levied by Code of Ala. 1975, Section 40-17-141, for which a refund or credit is allowed by Code of Ala. 1975, Section 40-17-142; and

(f) the tobacco taxes levied by Code of Ala. 1975, Chapter 25 of Title 40.

Author: George Mingledorff

Statutory Authority: Act 92-186.

History: Filed with LRS May 20, 1993. Certification filed with LRS July 20, 1993, effective August 24, 1993.

810-14-1-.36 Government Contract For Examination Of Taxpayer's Records Where Compensation Contingent Upon Tax, Interest, Etc. Assessed Or Collected.

(1) It is the policy of this State to prohibit any arrangement between the Department of Revenue, a county, a municipality, or any other taxing authority within the State and a private auditing firm for the examination of a taxpayer's books and records, if the firm's compensation is determined, in whole or in part, by the amount of taxes assessed or collected. Any arrangement whereby the private auditing firm agrees or has an understanding with the taxing authority that all or a part of the firm's compensation otherwise payable will be waived or otherwise not paid if there is no assessment or no collection of tax or if less than a certain amount is assessed and/or collected is prohibited.

(2) For the purposes of this regulation, "tax" means and includes any tax, license fee, or other charge payable to the State of Alabama, any agency thereof, any county or municipality or agency thereof, or any other taxing authority within the State including, but not limited to, sales and use taxes, rental taxes, business license taxes, or franchise or any other fees or charges payable by the taxpayer on account of its activities or property in, or income, sales, gross receipts or the like derived from sources within, the State or any county or municipality. For purposes of this regulation, "private auditing firm" means and includes any person, firm or corporation that is not a governmental entity and that is engaged in the business, in whole or in part, on behalf of the State or any other taxing authority within the State such as counties, municipalities or any agency thereof, of auditing or examining the books and records of a taxpayer to determine whether one or more taxes have been properly collected, paid and/or remitted by the taxpayer.

Authors: George Mingledorff, Mark Griffin

Statutory Authority: Code of Ala. 1975, §40-2A-6.

History: New Rule: Filed December 28, 1994; effective February 1, 1995.