

1 SB128
2 182676-3
3 By Senator Melson
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 09-FEB-17

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To require tax preparers to include their federal
12 preparer tax identification number on Alabama income tax
13 returns prepared; to provide penalties for violations; ensure
14 that business privilege tax returns are due at the same time
15 as the corresponding federal income tax return, for financial
16 institutions the due date will correspond with the Alabama
17 excise tax return due date; Section 12 of Act 99-665, as
18 amended by Act 2000-705, is codified by this bill as part of
19 Section 40-14A-22, these changes include, but are not limited
20 to, codifying the maximum business privilege tax amount for a
21 Real Estate Investment Trust (REIT); the name of the Taxpayer
22 Advocate is being changed to the Taxpayer Assistance Officer,
23 and allows for multiple Taxpayer Assistance Officers.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. A new Article is hereby added to the Code
26 of Alabama 1975, and shall be known and may be cited as the
27 "Alabama Taxpayer Protection and Assistance Act."

1 Section 2. The Alabama Taxpayer Protection and
2 Assistance Act is enacted to protect consumers by establishing
3 a mechanism to ensure that qualified individuals provide tax
4 preparation services in Alabama.

5 Section 3. When used in this act, the following
6 terms shall have the following meanings:

7 (1) DEPARTMENT. The Alabama Department of Revenue.

8 (2) INCOME TAX RETURN PREPARER.

9 (a) A person who prepares for compensation, or who
10 employs one or more persons to prepare for compensation, any
11 income tax return or claim for refund, required to be filed
12 pursuant to Title 40, Chapter 18, Code of Alabama 1975. The
13 preparation of a substantial portion of a return or claim for
14 refund shall be treated as the preparation of that return or
15 claim for refund.

16 (b) A person is not an income tax preparer if all he
17 or she solely performs the following duties:

18 1. furnishes typing, reproducing, or other
19 mechanical assistance;

20 2. prepares returns or claims for refunds for the
21 employer by whom he or she is regularly and continuously
22 employed, or for an affiliate of that employer, including a
23 subchapter K entity for which he or she prepares a return;

24 3. prepares as a fiduciary, returns or claims for
25 refunds for any person; or

26 4. prepares claims for refunds for a taxpayer in
27 response to any notice of deficiency issued to that taxpayer

1 or in response to any waiver of restriction after the
2 commencement of an audit of that taxpayer or of another
3 taxpayer if a determination in the audit of the other taxpayer
4 directly or indirectly affects the tax liability of the
5 taxpayer whose claims he or she is preparing.

6 (3) PERSON. An individual, firm, proprietorship,
7 association, corporation, or another entity.

8 (4) PTIN. Preparer Tax Identification Number issued
9 by the Internal Revenue Service and referenced in Internal
10 Revenue Service Notice 2011-6.

11 Section 4. No person may provide tax preparation
12 services for Alabama income tax returns, unless an IRS issued
13 Preparer Tax Identification Number is provided by such
14 preparer when submitting a return and signing as a paid
15 preparer.

16 Section 5. Duties of the Department.

17 (a) For taxable years beginning on or after January
18 1, 2018, the Department shall, by rule, require any income tax
19 return preparer, as defined in this act, to include his or her
20 PTIN on any tax return prepared by the income tax return
21 preparer and filed under Title 40, Chapter 18, Code of Alabama
22 1975, or any claim for refund of tax imposed by Title 40,
23 Chapter 18, Code of Alabama 1975.

24 (b) The Department shall develop and by rule
25 implement a program using the PTIN as an oversight mechanism
26 to assess returns, to identify high error rates, patterns of

1 suspected fraud, and unsubstantiated basis for tax positions
2 by income tax return preparers.

3 (c) The Department shall, by rule, establish formal
4 and regular communication protocols with the Commissioner of
5 the Internal Revenue Service to share and exchange PTIN
6 information on income tax return preparers who are suspected
7 of fraud, disciplined, or barred from filing tax returns with
8 the Department or the Internal Revenue Service. The Department
9 may, by rule, establish additional communication protocols
10 with other states to exchange similar enforcement or
11 discipline information.

12 Section 6. Enforcement.

13 (a) The Department may investigate the actions of
14 any income tax return preparer filing Alabama income tax
15 returns and may bar or suspend an income tax return preparer
16 from filing returns with the Department for good cause,
17 subject to the appeal rights under Chapter 2A of Title 40.

18 (b) In addition to all other penalties provided by
19 law, any person violating this act by failing to provide his
20 or her PTIN shall pay a civil penalty to the Department in the
21 amount of \$50 per offense, but not to exceed \$25,000 per
22 calendar year; however, no penalty shall be imposed if the
23 failure is due to reasonable cause and not due to willful
24 neglect, as determined by the Department.

25 Section 7. Section 40-14A-22 is hereby amended as
26 follows:

27 "§40-14A-22.

1 "(a) Levy of tax. There is hereby levied an annual
2 privilege tax on every corporation, limited liability entity,
3 and disregarded entity doing business in Alabama, or
4 organized, incorporated, qualified, or registered under the
5 laws of Alabama. The tax shall accrue as of January 1 of every
6 taxable year, or in the case of a taxpayer organized,
7 incorporated, qualified, or registered during the year, or
8 doing business in Alabama for the first time, as of the date
9 the taxpayer is organized, incorporated, registered, or
10 qualifies to do business, or begins to do business in Alabama,
11 as the case may be. The taxpayer shall be liable for the tax
12 levied by this article for each year beginning before the
13 taxpayer has been dissolved or otherwise ceased to exist or
14 has withdrawn or forfeited its qualification to do business in
15 Alabama. The amount of the tax due shall be determined by
16 multiplying the taxpayer's net worth in Alabama by the rate
17 determined in subsection (b).

18 "(b) Rate of tax. For all taxable years of taxpayers
19 that begin after December 31, 1999, the rate of tax shall be
20 as set forth below.

21 If taxable
22 income of the
23 taxpayer is:

24 at least but less The tax rate
 than shall be

1		\$1	\$0.25 per
			\$1,000
2	\$1	\$200,000	\$1.00 per
			\$1,000
3	\$200,000	\$500,000	\$1.25 per
			\$1,000
4	\$500,000	\$2,500,000	\$1.50 per
			\$1,000
5	\$2,500,000		\$1.75 per
			\$1,000

6 "(c) Minimum tax. Except as provided in subsection
7 (f), the privilege tax levied by this article on certain
8 corporations, business trusts, limited liability entities, and
9 disregarded entities shall not be less than \$100.

10 "(d) Maximum tax.

11 "(1) Except as provided in subdivision (2), the
12 privilege tax levied by this article shall not exceed \$15,250
13 for any taxpayer for the taxable year beginning January 1,
14 2000. For each taxable year thereafter, the maximum tax shall
15 not exceed \$15,000 for any taxpayer, except as provided in
16 subdivision (2).

17 "(2) With respect to any (i) financial institution
18 groups as defined in subsection (f) (1); (ii) insurance
19 company that is subject to the premium taxes levied by Chapter

1 4A of Title 27; and (iii) corporation, company, limited
2 liability entity, or association whose property is assessed
3 for taxation pursuant to the provisions of Chapter 21 and is
4 ~~also~~ obligated to serve the general public, but is not subject
5 to the Alabama Corporate Income tax, the privilege tax levied
6 by this article shall not exceed \$3,000,000, for any taxpayer
7 or, for a financial institution group, for the financial
8 institution group as a whole each year except as provided in
9 subsection (e). ~~With respect to any real estate investment~~
10 ~~trust as defined in Chapter 13 of Title 10, the privilege tax~~
11 ~~levied by this article shall not exceed \$500,000, for any~~
12 ~~taxpayer each year except as provided in subsection (e).~~ The
13 privilege tax levied by this article on any electing family
14 limited liability entity shall not exceed \$500.

15 "The privilege tax levied by this article on any
16 corporation organized as a not-for-profit corporation that
17 does not engage in any business other than holding title to
18 property and paying the expenses thereof, including, without
19 limitation, a property owners' association or a corporation
20 organized solely to hold title to property on a temporary
21 basis, shall not exceed \$100.

22 "(e) Short taxable years. If any taxpayer's taxable
23 year is less than 12 months because the taxpayer is
24 incorporated or organized within the taxable year, or if any
25 foreign corporation or foreign limited liability entity
26 qualifies, registers, or begins to do business in this state
27 within the taxable year or converts to a taxable year other

1 than the calendar year, the amount of the tax levied by this
2 article shall be determined in the manner specified in this
3 article but apportioned to the short taxable year in same
4 proportion as the number of days in the short taxable year
5 bears to 365, but in no event less than \$100 nor more than the
6 applicable amount specified in subsection (d).

7 "(f) Minimum taxes for financial institution groups.

8 "(1) For purposes of this subsection, the following
9 terms shall mean:

10 "a. Affiliated Group. (i) One or more chains of
11 corporations or limited liability entities connected through
12 the ownership of stock or ownership interests with a common
13 parent which is a corporation or limited liability entity, but
14 only if the common parent owns directly stock or ownership
15 interests meeting the requirements of item (ii) in at least
16 one of the other corporations or limited liability entities,
17 and only if stock or ownership interests meeting the
18 requirements of item (ii) in each of the corporations or
19 limited liability entities (except the common parent) is owned
20 directly by one or more of the other corporations or limited
21 liability entities. (ii) The ownership of stock or ownership
22 interests of any corporation or limited liability entity meets
23 the requirements of this paragraph if it possesses at least 80
24 percent of the total voting power or capital and profits
25 interest of the corporation or limited liability entity.

26 "b. Financial Institution. The meaning given in
27 Section 40-16-1.

1 "c. Financial Institution Group. All taxpayers in an
2 affiliated group where at least one member of the group is a
3 financial institution that is subject to the provisions of
4 Chapter 16. In the event a financial institution taxpayer is
5 not a member of an affiliated group, that financial
6 institution shall be treated as a financial institution group.

7 "(2) To the extent that the members of a financial
8 institution group have different taxable years, the group
9 shall be deemed, for purposes of the business privilege tax
10 ~~and corporate shares tax~~ levied by ~~Articles~~ Article 2 and 3,
11 to have a calendar taxable year.

12 "(3) Taxpayers who are members of a financial
13 institution group shall complete their ~~corporate shares tax~~
14 ~~and~~ business privilege tax returns without regard to this
15 subsection. Those taxpayers shall submit their returns
16 together, and the minimum tax amount provided in subdivision
17 (5) shall apply to the aggregate business privilege tax ~~and~~
18 ~~corporate shares tax~~ liability of the group. To the extent
19 that the minimum amount provided in subdivision (5) applies to
20 determine the liability of the group, each taxpayer which is a
21 member of the group shall be liable for that portion of the
22 group liability which is equal to the amount multiplied by the
23 ratio of the taxpayer's liability without regard to this
24 subsection over the liability of the group without regard to
25 this subsection. Upon the annual election of the common
26 parent, a financial institution group may file a single
27 return, executed by the common parent of that financial

1 institution group. The return shall be completed as if the
2 financial institution group were a single taxpayer. Each
3 member of the financial institution group shall be jointly and
4 severally liable for the group's business privilege tax and
5 corporate shares tax liabilities.

6 ~~"(4) For the taxable year beginning January 1, 2000,~~
7 ~~the tax returns of all members of a financial institution~~
8 ~~group shall be due July 10, 2000. For taxable years beginning~~
9 ~~after December 31, 2000, the tax returns for all members of a~~
10 ~~financial institution group shall be due March 15 of the~~
11 ~~taxable year. The tax returns for all members of a financial~~
12 ~~institution group shall be due no later than the corresponding~~
13 ~~Alabama financial institution excise tax return due date.~~

14 Extensions for filing these returns shall not be granted for
15 more than six months. ~~beyond September 15 of the taxable year.~~
16 ~~For the return due July 10, 2000, any corporate shares taxes~~
17 ~~and business privilege taxes accrued and paid by any member of~~
18 ~~the financial institution group before July 10, 2000, shall be~~
19 ~~applied against the minimum tax amount provided in subdivision~~
20 ~~(5).~~

21 "(5) For taxable years beginning on or after January
22 1, 2000, the minimum aggregate business privilege ~~and~~
23 ~~corporate shares taxes~~ tax levied by ~~Articles~~ Article 2 ~~and 3~~
24 on all members of a financial institution group shall be:

25 "a. For financial institutions with total deposits
26 inside Alabama of less than one billion dollars
27 (\$1,000,000,000) within that financial institution group, as

1 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
2 immediately preceding taxable year, the tax rate shall be
3 \$.125 per one thousand dollars (\$1,000) of such deposits. For
4 deposit rate purposes for all future periods, the deposits
5 shall in no event be less than the deposits listed as of June
6 30, 1999.

7 "b. For financial institutions with total deposits
8 inside Alabama of one billion dollars (\$1,000,000,000) or
9 greater up to and including six billion dollars
10 (\$6,000,000,000) within that financial institution group, as
11 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
12 immediately preceding taxable year, the tax rate shall be \$.17
13 per one thousand dollars (\$1,000) of such deposits. For
14 deposit rate purposes for all future periods, the deposits
15 shall in no event be less than the deposits listed as of June
16 30, 1999.

17 "c. For financial institutions with total deposits
18 inside Alabama greater than six billion dollars
19 (\$6,000,000,000) within that financial institution group, as
20 reported to the FDIC, OTS, or the NCUSIF as of June 30 of the
21 immediately preceding taxable year, the tax rate shall be
22 \$.225 per one thousand dollars (\$1,000) of such deposits. For
23 deposit rate purposes for all future periods, the deposits
24 shall in no event be less than the deposits listed as of June
25 30, 1999.

26 "d. Provided, however, that in the case of a
27 financial institution group that, as of June 30, 1999, (i) had

1 total deposits of less than one billion dollars
2 (\$1,000,000,000) and (ii) derived at least a majority of its
3 deposits, as reported to FDIC, OTS, or NCUSIF, that were
4 booked to one or more branches or offices located within
5 Alabama from account holders whose addresses of record on the
6 books of the financial institution group were outside the
7 State of Alabama, the phrase "total deposits in Alabama," for
8 purposes of calculating the minimum aggregate business
9 privilege ~~and shares tax~~ levied by ~~Articles~~ Article 2 ~~and 3~~
10 for all taxable years beginning on and after January 1, 2000,
11 shall only include deposits of account holders whose addresses
12 of record on the books of the financial institution group are
13 inside the State of Alabama.

14 "e. In the event a financial institution group sells
15 Alabama deposits to another financial institution group that
16 reports those deposits in Alabama for purposes of Act
17 2000-705, those deposits shall not be taxed more than once
18 pursuant to the provisions of Act 2000-705 in the same taxable
19 year. The liability for such taxes shall be the responsibility
20 of the purchaser, and the tax base for the selling group shall
21 be adjusted accordingly.

22 "f. In the event an existing financial institution
23 group reports deposits in any year less than 96.5 percent of
24 the deposits reported as of June 30, 1999, the alternative
25 minimum tax shall be based on the deposits reported as of June
26 30, 1999. In the event an existing financial institution group
27 reports deposits in any year more than 96.5 percent of the

1 deposits reported as of June 30, 1999, the alternative minimum
2 tax shall be based on the deposits reported for that taxable
3 year. For financial institutions coming into existence after
4 June 30, 1999, the deposits upon which the alternative minimum
5 tax is based shall not be less than the deposits reported the
6 first full year that financial institution reported deposits
7 to the FDIC, OTS, or NCUSIF."

8 Section 8. Section 40-14A-25 is hereby amended as
9 follows:

10 "§40-14A-25.

11 "(a) Every taxpayer shall file a privilege tax
12 return, which shall include the public record disclosures
13 required by Section 10-2B-16.22, with the department for every
14 taxable year for which it is subject to the tax levied by this
15 article. A disregarded entity that is owned by an individual,
16 general partnership, or other entity not subject to the tax
17 levied by this article shall file a return and pay the tax
18 levied on it by this article. Except as provided in Section
19 40-14A-22(f) (4), the return required by this section is due
20 not no later than the corresponding federal income tax return
21 as required to be filed as provided under federal law.~~March 15~~
22 ~~of the taxable year for all taxpayers except limited liability~~
23 ~~entities for which the due date of the return shall be April~~
24 ~~15 of the taxable year, or, in In the case of a taxpayer's~~
25 ~~initial return, 30 days two and one half months after the~~
26 ~~taxpayer comes into existence, qualifies or registers to do~~
27 ~~business, or commences doing business in Alabama as the case~~

1 may be. ~~For all taxable years beginning after December 31,~~
2 ~~2000, a corporation shall file the return required by this~~
3 ~~section not later than two and one-half months after the~~
4 ~~beginning of the corporation's taxable year; a limited~~
5 ~~liability entity shall file the return required by this~~
6 ~~section not later than three and one-half months after the~~
7 ~~beginning of the limited liability entity's taxable year; and~~
8 ~~a~~ A disregarded entity that is required to file a return by
9 this section shall file the return not later than the time its
10 owner is required to file its return. If a taxpayer is
11 required to change its taxable year pursuant to the previous
12 sentence, then it shall file a return for the short taxable
13 year beginning January 1, 2001, and ending on the day before
14 the beginning of its new taxable year, and the return shall be
15 filed ~~not~~ no later than the corresponding federal income tax
16 return as required to be filed as provided under federal law.
17 ~~two and one-half months, if a corporation, and three and~~
18 ~~one-half months, if a limited liability entity, after the~~
19 ~~beginning of its new taxable year.~~ In cases where receivers,
20 trustees in bankruptcy, or assignees are operating the
21 property or business of taxpayers, those receivers, trustees,
22 or assignees shall file returns for the taxpayers in the same
23 manner and form as the taxpayers are required to file returns.
24 Any tax due on the basis of returns filed by receivers,
25 trustees, or assignees shall be collected in the same manner
26 as if collected from the taxpayers for whose business or
27 property they have custody and control. The department may

1 grant a reasonable extension of time for filing returns under
2 rules and regulations prescribed by the department. No
3 extension shall be for more than six months.

4 "(b) The tax provided in this article shall be
5 reported on forms and in the manner as prescribed by the
6 department. The failure to receive a form from the department
7 shall not relieve a taxpayer from liability for any tax,
8 penalty, or interest otherwise due. The tax due, as reported,
9 shall constitute an admitted liability for that amount. The
10 department may compute and assess additional tax, penalty, and
11 interest against a taxpayer as provided in Chapter 2A.
12 Interest on overpayments of business privilege tax will be
13 computed and paid in the manner provided in Section
14 40-1-44(b)(1)b.

15 "(c) A corporation that is a member of an Alabama
16 affiliated group that has elected to file a consolidated
17 return pursuant to Section 40-18-39 or Section 40-16-3(b), if
18 it is subject to the tax imposed by this article, shall file a
19 separate return reporting and paying tax on its net worth
20 without regard to other members of the affiliated group."

21 Section 9. The Code Commissioner, pursuant to
22 Section 29-7-8, Code of Alabama 1975, shall change all
23 references to the Taxpayer Advocate in Title 40, Chapter 2A,
24 to Taxpayer Assistance Officer or Taxpayer Assistance
25 Officers.

26 Section 10. The Department shall adopt rules to
27 assist with the implementation and enforcement of this act.

1 Section 11. If any part of this act is declared
2 invalid or unconstitutional, that declaration shall not affect
3 the part which remains.

4 Section 12. All laws or parts of laws which conflict
5 with this act are hereby repealed.

6 Section 13. This act shall become effective for tax
7 returns due on or after January 1, 2018, following its passage
8 and approval by the Governor, or upon its otherwise becoming
9 law.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 09-FEB-17

Read for the second time and placed on the calen-
dar with 1 substitute and..... 23-FEB-17

Read for the third time and passed as amended 09-MAR-17

Yeas 29
Nays 0

Patrick Harris,
Secretary.