

1 SB20  
2 171723-1  
3 By Senator Melson  
4 RFD: Finance and Taxation General Fund  
5 First Read: 08-SEP-15

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8 SYNOPSIS: This bill would provide for an amnesty  
9 program for all taxes administered by the  
10 Department of Revenue, except the motor fuel taxes.  
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12 A BILL  
13 TO BE ENTITLED  
14 AN ACT  
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16 To enact the Alabama Tax Delinquency Amnesty Act of  
17 2016; to provide for definitions; to require the Department of  
18 Revenue to establish a tax amnesty program as provided for in  
19 this Bill; to provide for terms and conditions of the program;  
20 to provide for the disposition of the monies collected  
21 pursuant to the tax amnesty program; to provide for an  
22 effective date; and to provide for related matters.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This Act shall be known as and may be  
25 cited as the "Alabama Tax Delinquency Amnesty Act of 2016".

1           Section 2. Definitions. As used in this bill, the  
2 following terms have the meaning ascribed to them in this  
3 Section, except when the context clearly indicates otherwise:

4           (1) "Commissioner" means the Commissioner of the  
5 Department of Revenue.

6           (2) "Contact" or "Contacted" means previous contact  
7 of any kind by the Department or an agent of the Department  
8 within five years prior to the initial written request for  
9 amnesty. This includes returns filed for the tax types  
10 included in the application for tax periods beginning before  
11 the look-back period. Contact includes, but is not limited to,  
12 with regard to potential liability for the type of tax  
13 identified in the amnesty application: receipt of a nexus  
14 questionnaire, an audit or notice of audit, payment of tax,  
15 registration for tax, registration with the Secretary of  
16 State, request for extension of time to file, making a payment  
17 of estimated tax, filing a return, and non-compliance issued  
18 in response to an application for a certificate of good  
19 standing or a certificate of compliance by the taxpayer, or on  
20 behalf of the taxpayer.

21           (3) "Courier" means a messenger other than the  
22 United States Postal Service that delivers parcels, packages,  
23 and the like, containing returns, reports, and other documents  
24 or payments.

25           (4) "Department" means the Department of Revenue.

26           (5) "Look-back Period" means the last three full tax  
27 years (or 36 months) of tax returns which are delinquent.

1           (6) "Postmark" means an official mark made by the  
2 United States Postal Service on a piece of mail to cancel the  
3 stamp and to indicate the place and date of sending.

4           (7) "Tax period" means any period for which a tax  
5 return is required by law to be filed with the department.

6           (8) "Taxpayer" means any individual or entity  
7 subject to any tax imposed by any law of the state of Alabama,  
8 payable to the state of Alabama, and collected by the  
9 department.

10           Section 3. (A) The department shall develop and  
11 implement a tax amnesty program in accordance with the  
12 provisions of this bill. The Commissioner may provide by  
13 regulation as necessary for the administration and  
14 implementation of this amnesty program. The Commissioner shall  
15 publicize the tax amnesty program in order to maximize the  
16 public awareness of and participation in the program. The  
17 Commissioner may, for purpose of publicizing the tax amnesty  
18 program, contract with any advertising agency within or  
19 outside this state and use public service announcements,  
20 pamphlets, mail notices, and print, television, and radio  
21 announcements. Such publications shall include increasing  
22 public awareness that the tax amnesty program will provide  
23 amnesty for sales and use tax due on internet, mail order, or  
24 other purchases made from out-of-state vendors for which  
25 Alabama sales or use tax was not charged at the time of  
26 purchase. In furthering the collections of amnesty, the  
27 Commissioner may procure amnesty program administration

1 services on a fee basis; however, the fee shall not exceed ten  
2 percent of the total dollars collected.

3 (B) The amnesty program shall be effective for a  
4 period of at least two months duration in 2016 occurring prior  
5 to August 31, 2016. The tax amnesty program shall apply to all  
6 taxes administered by the department except for motor fuel  
7 taxes, penalties imposed by § 40-29-73, and penalties for  
8 failure to submit information reports that are not based on an  
9 underpayment of tax.

10 (C) Notwithstanding the provisions of any other Act  
11 or other provisions of law to the contrary, and except as  
12 provided in Subsection (B), the following taxes are eligible  
13 for amnesty:

14 (1) Taxes due prior to January 1, 2015; or

15 (2) Taxes for taxable periods that began before  
16 January 1, 2015.

17 (D) Participation in the amnesty program shall be  
18 conditioned upon the agreement of the taxpayer that the right  
19 to protest or initiate an administrative or judicial  
20 proceeding is barred. The agreement shall only apply to the  
21 specific tax and the tax period for which amnesty is granted.

22 (E) Amnesty will be granted only for eligible taxes  
23 to eligible taxpayers who apply for amnesty during the amnesty  
24 period on forms prescribed by the Commissioner and who pay all  
25 of the tax, all fees and costs, if applicable, and any  
26 interest due upon filing the amnesty application. A standard  
27 look-back period, as defined in this Act, will apply for all

1 tax types eligible for amnesty. If the taxpayer has collected  
2 any tax without remitting such tax to the Department, the  
3 look-back period will be extended to include all periods, back  
4 to the point of collection. The Commissioner shall reserve the  
5 right to require taxpayers to file tax returns with the  
6 amnesty application. Notwithstanding the provisions of any  
7 other Act or other provisions of law to the contrary, if the  
8 amnesty application is approved during the amnesty period the  
9 Commissioner shall waive one-half of the interest and all of  
10 the penalties associated with the tax periods for which  
11 amnesty is applied. An amnesty payment or application  
12 submitted in a properly addressed envelope with sufficient  
13 postage delivered by the United States Postal Service is  
14 deemed paid or received on the date it is postmarked. An  
15 amnesty payment or application delivered by courier or  
16 taxpayer is deemed paid or received on the date it is  
17 delivered to the department's headquarters or a regional  
18 office. No installment agreements will be entered into for tax  
19 periods that are approved for amnesty.

20 (F) Ineligible taxpayers. Amnesty shall not be  
21 granted to taxpayers who have been contacted by the  
22 department, who are parties to any criminal investigation or  
23 criminal litigations in any court of the United States or the  
24 state of Alabama pending on the effective date of this Act for  
25 nonpayment, delinquency, or fraud in relation to any state tax  
26 imposed by a law of the state of Alabama and administered by  
27 the department. Further, a taxpayer who delivers or discloses

1 any false or fraudulent application, document, return, or  
2 other statement to the department in connection with an  
3 amnesty application shall be ineligible for amnesty and shall  
4 be subject of the fraud penalty under Section 40-2A-11(d),  
5 Code of Alabama 1975, or a penalty of ten thousand dollars,  
6 whichever is greater.

7 (1) Amnesty applications shall include a written  
8 waiver of all rights, restrictions, and delays for assessing,  
9 collecting, or protesting taxes and interest due as set forth  
10 in Title 40, Chapter 2A and Chapter 2B of the Code of Alabama,  
11 1975. The filing of such applications shall make the tax,  
12 interest, and penalty immediately due and payable; subject to  
13 the notice and due process procedures provided for by law;  
14 ineligible for refund, credit, or claim against the state; and  
15 ineligible for redetermination; however, a taxpayer shall be  
16 eligible for a refund or credit if the overpayment arises  
17 after the amnesty application is submitted and is attributable  
18 to a properly claimed Alabama net operating loss or  
19 attributable to an adjustment made by the Internal Revenue  
20 Service to the taxpayer's federal income tax, and the taxpayer  
21 provides notice of the adjustment to the Commissioner within  
22 sixty days of receipt of the adjustment from the Internal  
23 Revenue Service. A taxpayer who files an application for  
24 amnesty retains all administrative and judicial rights of  
25 appeal with respect to any additional tax assessed by the  
26 department.

1 (G) No interest shall be paid on refunds for those  
2 amounts previously collected by the department from the  
3 taxpayer for a tax period for which amnesty is granted.

4 (H) Post amnesty collection penalty. If, following  
5 the termination of the tax amnesty period, the Commissioner  
6 issues a deficiency assessment for a period for which amnesty  
7 was taken, the Commissioner shall have the authority to impose  
8 penalties and institute civil proceedings or criminal  
9 proceedings as authorized by law only with respect to the  
10 difference between the amount shown on the amnesty application  
11 and the correct amount of tax due. The Commissioner may by  
12 regulation impose after the expiration of the tax amnesty  
13 period a cost of collection penalty not to exceed twenty  
14 percent of any additional deficiency assessed for any taxable  
15 period for which amnesty was taken. This penalty shall be in  
16 addition to all other applicable penalties, fees, or costs.  
17 The Commissioner shall have the right to waive any or all of  
18 the collection penalty when it is demonstrated that any of the  
19 deficiency of the taxpayer was not due to negligence,  
20 intentional disregard of administrative rules and regulations,  
21 or fraud. The imposition of penalties or civil proceedings or  
22 criminal proceedings shall not invalidate the amnesty that was  
23 previously granted. No penalty shall be imposed if the  
24 deficiency results from an adjustment made by the Internal  
25 Revenue Service to the taxpayer's federal income tax and the  
26 taxpayer provides written notice of the adjustment to the  
27 Commissioner within sixty days of receipt of the adjustment

1 from the Internal Revenue Service or if the taxpayer's  
2 application for amnesty was based on a proposed assessment or  
3 notice of assessment.

4 (I) For taxable periods beginning on or after  
5 January 1, 2016, and before December 31, 2023, taxpayers that  
6 participate in the amnesty and later fail to comply with  
7 anypayment or filing provision administered by the  
8 Commissioner shall be subject to the negligence penalty under  
9 Section 40-2A-11(c), Code of Alabama 1975, or a penalty of one  
10 hundred dollars, whichever is greater.

11 Section 4. (A) The Commissioner shall also retain an  
12 amount not to exceed two hundred fifty thousand dollars for  
13 advertising expenses from monies collected from taxes paid  
14 pursuant to this Act. Such amount is hereby appropriated to  
15 the Department and shall be in addition to any and all other  
16 funds heretofore or hereafter appropriated, for the fiscal  
17 year beginning October 1, 2015.

18 (B) After satisfaction of the requirements of  
19 Subsection A of this Section, all remaining monies collected  
20 pursuant to this bill shall be paid into the state treasury  
21 and placed in the appropriate state funds for the specific tax  
22 collected pursuant to current law.

23 Section 5. This Act shall become effective  
24 immediately following its passage and approval by the  
25 Governor, or its otherwise becoming law.