

1 SB426
2 138798-2
3 By Senator Irons
4 RFD: Finance and Taxation Education
5 First Read: 20-MAR-12

1 SB426

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4 ENROLLED, An Act,

5 To amend Section 40-2A-11, Code of Alabama 1975, to
6 eliminate a minimum penalty provision in the failure to file
7 tax law when there is no tax due on an individual income tax
8 return.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 40-2A-11, Code of Alabama 1975,
11 is amended to read as follows:

12 "§40-2A-11.

13 "(a) Failure to timely file return. Except in the
14 case of an individual income tax return filed with no tax due
15 at the time of filing, if a taxpayer fails to file any return
16 required to be filed with the department on or before the date
17 prescribed therefor, determined with regard to any extension
18 of time for filing, there shall be assessed as a penalty the
19 greater of 10 percent of any additional tax required to be
20 paid with the return or fifty dollars (\$50).

21 "(b) Failure to timely pay tax.

22 "(1) If a taxpayer fails to pay to the department
23 the amount of tax shown as due on a return required to be
24 filed on or before the date prescribed for payment of the tax,
25 determined with regard to any extension of time for payment,

1 there shall be added as a penalty one percent of the amount of
2 the tax due if the failure to pay is for not more than one
3 month, with an additional one percent for each additional
4 month or fraction thereof during which failure to pay
5 continues, not exceeding 25 percent in the aggregate. In lieu
6 of the penalty provided in the immediately preceding sentence,
7 for any tax for which a monthly or quarterly return is
8 required, or for which no return is required, the department
9 shall add a failure to timely pay penalty of 10 percent of the
10 unpaid amount shown as tax due on the return or the amount
11 stated in the notice and demand.

12 "(2) If a taxpayer fails to pay to the department
13 any amount of any tax required to be shown on any return,
14 which is not so shown, within 30 calendar days from the date
15 of the first notice and demand therefore, there shall be added
16 as a penalty one percent of the amount of the tax due if the
17 failure to pay is for not more than one month, with an
18 additional one percent for each additional month or fraction
19 thereof during which failure to pay continues, not exceeding
20 25 percent in the aggregate. In lieu of the penalty provided
21 in the immediately preceding sentence, for any tax for which a
22 monthly or quarterly return is required, or for which no
23 return is required, the department shall add a failure to
24 timely pay penalty of 10 percent of the unpaid amount stated

1 in the notice and demand unless payment is received within 30
2 calendar days from the date of the first notice and demand.

3 "(c) Underpayment due to negligence. If any part of
4 any underpayment of tax is due to negligence or disregard of
5 rules or regulations, there shall be added to the tax an
6 amount equal to five percent of that part of the tax
7 attributable to negligence or disregard of rules or
8 regulations.

9 "For purposes of this subsection, the term
10 "negligence" includes any failure to make a reasonable attempt
11 to comply with Title 40, and the term "disregard" includes any
12 careless, reckless, or intentional disregard.

13 "(d) Underpayment due to fraud. If any part of any
14 underpayment of tax required to be shown on a return is due to
15 fraud, there shall be added to the tax an amount equal to 50
16 percent of that portion of the underpayment which is
17 attributable to fraud.

18 "For purposes of this section, the term "fraud"
19 shall have the same meaning as ascribed to the term under 26
20 U.S.C. Section 6663, as in effect from time to time.

21 "(e) Frivolous return penalty. If a taxpayer files a
22 "frivolous return," as that term is used in 26 U.S.C. Section
23 6702, that taxpayer may be liable for a penalty of up to two
24 hundred fifty dollars (\$250).

1 "(f) Frivolous appeal penalty. If any appeal to the
2 administrative law division or circuit court is determined to
3 be frivolous or primarily for the purpose of delay or to
4 impede collection of any tax, a penalty of two hundred fifty
5 dollars (\$250) or 25 percent of the tax in question, whichever
6 is greater, shall be assessed in addition to any tax due.

7 "(g) Penalties not exclusive. The penalties provided
8 in this section for failure to timely file a return, failure
9 to timely pay tax, filing a frivolous return, filing a
10 frivolous appeal, or negligence may be asserted against the
11 same taxpayer for the same tax period. If the fraud penalty is
12 asserted, no other penalties shall be asserted.

13 "(h) Waiver of penalties. Notwithstanding the
14 foregoing, any penalty under this title or Section 10-2B-15.02
15 shall be waived upon a determination of reasonable cause.
16 Reasonable cause shall include, but not be limited to, those
17 instances in which the taxpayer has acted in good faith. The
18 burden of proving reasonable cause shall be on the taxpayer.

19 "(i) Discount sustained for just causes. All other
20 provisions of tax laws notwithstanding, the Commissioner of
21 the Department of Revenue, upon review of the circumstances
22 involved, may authorize continuance of a statute-allowable
23 discount when timely payment is made, but filing is delayed
24 for just causes.

1 "(j) Penalty and interest assessed as tax. All
2 penalties and interest administered by the department shall be
3 assessed and collected in the same manner as taxes.

4 "(k) Penalty not to apply to registration and
5 titling of motor vehicles. The penalties provided herein shall
6 not apply to the registration or titling of motor vehicles."

7 Section 2. The provisions of this act are severable.
8 If any part of this act is declared invalid or
9 unconstitutional, that declaration shall not affect the part
10 which remains.

11 Section 3. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law, for the tax returns
14 filed for the 2011 and subsequent tax years.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB426
Senate 26-APR-12
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 08-MAY-12

By: Senator Irons