

Alabama ACT 2014-146

Taxpayer Fairness Act

What do you know about TBORII?

- Open Discussion

History of Taxpayer Fairness Act

- New ACT passed in the 2014 Alabama Legislative Session
- House of Representatives Bill Passed – HB105
 - Sponsored by DeMarco and Hubbard (M)
- Senate Bill Passed – SB74
 - Sponsored by Taylor

History of Taxpayer Fairness Act

- This is a “substitute” bill. The Alabama Tax Tribunal portion of the bill was rewrote to closely follow the American Bar Association’s Model State Administrative Tax Tribunal Act.
- The previous version of the bill contained special interest benefits such as burden of proof on ADOR, advance notice of audits, penalty limitations, etc.

What does this Act establish?

- “To create an independent executive branch agency, the Alabama Tax Tribunal; to replace the Administrative Law Division with the tribunal and Administrative Law Judge within the Department of Revenue for hearing appeals of tax matters and other matters of the Department of Revenue as well as certain participating self-administered counties and cities; to provide a judge or judges of the tribunal and for the functions of the tribunal;.....” pg 1, line 3

What does this Act establish?

- “To increase public confidence in the fairness of the state tax system, the state shall provide an independent agency to be known as the Alabama Tax Tribunal to hear appeals of tax and other matters administered by the Department of Revenue and certain self-administered counties and municipalities that chose to participate with the Alabama Tax Tribunal to hear appeals of taxes levied by or on behalf of self administered counties or municipalities.” pg 1, section 1, line 17

Law Amendments, Repeals, and Additions

pg 2, Section 3

- Amends Code of Alabama 1975, Sections
 - 40-2A-3, 40-2A-4, 40-2A-5, 40-2A-7, 40-2A-8; Alabama Taxpayer Bill of Rights and Uniform Revenue Procedures Act
 - 40-18-27; Income Taxes
- Repeals Code of Alabama 1975, Section 40-2A-9; Procedures governing appeals to the Administrative Law Division; authority of administrative law judge
- Adds a new Chapter 2B to Title 40, Code of Alabama 1975; providing for the creation and operation of the Alabama Tax Tribunal.

Effective Dates

- Alabama Tax Tribunal established and placed in effect on October 1, 2014.
- Chief Judge to be appointed by July 1, 2014.
 - On May 19, 2014, Governor Bentley officially appointed Chief Administrative Law Judge Bill Thompson as the first Chief Judge of the Alabama Tax Tribunal.
- Local taxing jurisdictions will have to participate unless an election is made to opt-out and furnish a written resolution to the Alabama Tax Tribunal by October 1, 2014.

Alabama Tax Tribunal (ATT) Judges

- Chief Judge (and associates) are appointed for a 6-year term by the Governor. The Governor can also appoint temporary judges for a 6-month term.
- The Chief Judge serves at the pleasure of the Governor.
- Judge is given same due process rights as any other merit state employee.
- Judge can be removed from office in limited circumstances such as, neglect of duty, inability to perform duties, or malfeasance in office.
- Judge is subject to the Canons of Judicial Ethics and prosecution by the Judicial Inquiry Commission.

Local Jurisdictions

- Section 1 of Act= “Any judge of the Alabama Tax Tribunal shall have the requisite knowledge and experience to hear and resolve disputes between taxpayers and the Department of Revenue or taxpayers and any self-administered county or municipality that has elected to participate with the Alabama Tax Tribunal.” pg 1, line 24

Local Jurisdictions

- If the local does not opt-out, the Alabama Tax Tribunal will have jurisdiction over appeals of final assessments or denied refunds in whole or in part.

Local Jurisdictions Election to Opt-Out

- Election to opt-out will be published by the ADOR. The ATT may also publish the list on its own website. Pg 60
- Each calendar year an election to opt-out can be made. Pg 60

Local Jurisdictions Election to Opt-Out

- If a local jurisdiction certifies to opt-out; “The hearing or appeals officer shall function and conduct hearings in a manner similar to the Chief Judge of the Alabama Tax Tribunal and must be impartial and reasonably knowledgeable of the sales, use, rental, and lodgings tax laws and the taxing jurisdiction’s applicable code or ordinances.” pg 61

Statute of Limitations pg 31

- The three year statute of limitations shall be extended in the following situations:
 1. ADOR has filed a Final Assessment for additional sales, use, rental or lodgings tax.
 2. Taxpayer owes same type of tax to local for the same tax period.
 3. Taxpayer has not contacted a local pursuant to its voluntary disclosure program prior to the date of entry of the Final Assessment.

Statute of Limitations pgs 31-32

- If a Preliminary Assessment is not withdrawn or made final within five years from the date of entry, the taxpayer may appeal to the ATT or Circuit Court.
- Locals have either six months from the date of the ADOR Final Assessment or 60 days from the date of mailing of the Final Assessment, whichever expires first, to enter a Preliminary Assessment against the Taxpayer.
- Any tax assessed by the Locals within the additional time period allowed is limited to items changed and adjustments in the ADOR Final Assessment.

Time Limitations on Appeals pg 34

- Appeal must be filed (postmarked) within 30 days of the date of government mailing (not date entered) of the Final Assessment. If no Final Assessment is entered, an appeal must be taken within 30 days following the 5th year anniversary of the entry of the Preliminary Assessment.
- ADOR must file the Answer within 45 days from the receipt of the notice from the ATT.

Time Limitations on Appeals pg 34

- Local jurisdictions must file its Answer to the appeal within 45 days of mailing of the notice from ATT to the local jurisdiction.
- A 45 day Answer extension can be requested.
- Answers must be sent to the Taxpayer with proof of service.
- Taxpayers have 30 days from receipt of Answer to respond.

Hearing Locations pg 55

- The Alabama Tax Tribunal shall conduct hearings at its principle office or at any place within the state. Cost efficiency and convenience to the taxpayer is a priority.
- Local taxing jurisdictions can have hearings at the local ADOR taxpayer service center or at county seat or in the county seat in which the affected municipality is located.

Hearings

- No filing fees will be imposed on any appeal filed with the ATT.
- Hearings shall be open to the public
- Shall be tried de novo and without a jury

Discovery in cases pending in ATT

- “The parties to a proceeding shall make every effort to achieve discovery by informal consultation or communication, before invoking the discovery mechanisms authorized in this section.” Pg 67
- Parties are expected to stipulate to facts.
- Party may obtain discovery: 1) written interrogatories; 2) production of returns, books, papers, etc; 3) non-party witnesses and experts; 4) requests for admissions.

Discovery in cases pending in ATT

- Judge can issue subpoenas on witnesses
- Most appeals will be decided without a hearing
- “The Alabama Tax Tribunal may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party.” Pg 68

Evidence in Appeals pg 69

- ATT is not bound to the Alabama Rules of Evidence
- Rules of Privilege do apply
- Hearsay will be admissible if “relevant”

Decisions pg 70

- ATT shall render its decision in writing.
- “The Alabama Tax Tribunal’s decision, subject to law, shall grant such relief, invoke such remedies, and issue such orders as it deems appropriate to carry out its decision.”
- No later than 6 months after the last brief has been filed or completion of hearing, the ATT shall have rendered its decision. This period can be extended up to 3 additional month for good cause.

Decisions pg 70

- If the ATT fails to render an order within the time period allowed, their parties and institute a proceeding in Circuit Court to compel the issuance of such decisions.
- Any decision made by the ATT shall be followed in subsequent cases involving the same issues.

Rehearing pg 72

- Any party may apply for rehearing on any final order, final opinion and preliminary order.
- The rehearing must be applied for within 15 days from the entry of the final order, final opinion and preliminary order.
- The application shall specify the reasons and arguments why such order is incorrect and should be reconsidered.
- Timely filing of application suspends time period of filing an appeal to Circuit Court.

Appeals from ATT pg 73

- All appeals of the ATT shall be appealed to the appropriate Circuit Court within 30 days of the decision by the ATT.
- Notice of the appeal must be filed with the ATT within 30 days.
- ATT will prepare a record of the appeal.
- Appeals can be filed to the Montgomery County Circuit Court or the Circuit Court of the county in which the taxpayer resides or has a principle place of business.
- If taxpayer does not reside in Alabama or have a principle place of business in Alabama, any appeal shall be filed with Montgomery County Court.

Installment Payments Locals

- Locals have the same authority as commissioner on establishing an installment payment agreement with respect to administered and collected taxes. Pg 17, line 6
- Commissioner has authority to: 1) enter into written agreement not to exceed 12 months; 2) terminate, modify or alter any agreement. Pg 15, line 19
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Taxpayer Advocate

- “At the request of the Alabama Tax Tribunal, the taxpayer advocate shall review a final order issued by the Alabama Tax Tribunal that was not appealed pursuant to Section 40-2B-1, if there is newly discovered evidence which by due diligence could not have been discovered in time to file an application for rehearing pursuant to Section 40-2B-1, and may propose relief as the taxpayer advocate deems appropriate and approved by the commissioner or the assistant commissioner.” pg 13, line 17
- The Commissioner will issue an annual report to the Legislature of all taxpayer assistance orders approved. Pg 14

Effective Dates

- Alabama Tax Tribunal shall be established and placed in effect on October 1, 2014.

Pros of Act

- Creates an independent panel to hear appeals
- Increase taxpayer confidence in appeal decisions
- Access to a Judge with specialized knowledge in tax
- Freezes the Statute of Limitations for a time period on shared audits

Cons of Act

- Creates a new appeal process
- Unknown questions; brand new law
- What happens when a new Judge is appointed?
- Third party and municipalities hearing location.