

Section 40-2A-7**Uniform revenue procedures.**

(a) Maintenance of records; audit and subpoena authority; authority to issue regulations.

(1) In addition to all other recordkeeping requirements otherwise set out in this title, taxpayers shall keep and maintain an accurate and complete set of records, books, and other information sufficient to allow the department to determine the correct amount of value or correct amount of any tax, license, permit, or fee administered by the department, or other records or information as may be necessary for the proper administration of any matters under the jurisdiction of the department. The books, records, and other information shall be open and available for inspection by the department upon request at a reasonable time and location.

(2) The department may examine and audit the records, books, or other relevant information maintained by any taxpayer or other person for the purpose of computing and determining the correct amount of value or correct amount of any tax, license, or fee administered by the department, or for any other purpose necessary for the proper administration of any matter under the jurisdiction of the department.

(3) A taxpayer, or any officer of a corporation or association, or partner of a partnership, or fiduciary of a trust, or responsible individual of any entity under a duty to maintain books and records pursuant to this subsection who fails or refuses to maintain such records and books, or permit inspection, shall be subject to contempt proceedings in the circuit court of the judicial circuit in which the person resides or has a principal place of business, and upon proof of the fact to the court, may be punished for contempt as provided in cases of contempt in circuit court.

(4) The department may summon any witness to appear and give testimony, and summon by subpoena duces tecum any records, books, or other information of any kind relating to any matter which the department has authority to administer. The witness may be summoned by subpoena issued by the secretary of the department, any circuit judge, any magistrate, or any district judge, in the name of the department, directed to any sheriff of Alabama and returnable to the department. The subpoena may be served in like manner as subpoenas issued out of any circuit court, or the subpoena may be served by an authorized employee of the department or by either U.S. mail with delivery confirmation or certified mail, return receipt requested. A fee shall be paid to banking institutions, other similar entities, or any other person except the taxpayer, for copying, searching for, reproducing, and transporting any records, books, papers, or other documents requested or subpoenaed by the department and to persons who are required to appear as a witness equal to the fee authorized to be paid by the Internal Revenue Service for similar services or appearances pursuant to Section 7610 of the Internal Revenue Code of 1986, as amended. If any witness has been subpoenaed to appear and testify or appear and produce records, books, or other information, and fails or refuses to appear or testify or to produce the books, records, or other information, that witness shall be subject to contempt proceedings in the circuit court of the judicial circuit in which the witness resides, and upon proof of the fact to a circuit court may be punished for contempt as is provided in cases of contempt in circuit court.

(5) The department may issue forms and make reasonable regulations concerning any matter administered by the department. Regulations promulgated by the department shall be issued in

accordance with the procedures set forth in the Alabama Administrative Procedure Act, Chapter 22 of Title 41.

(b) Procedures governing entry of preliminary and final assessments; appeals therefrom.

(1) ENTRY OF PRELIMINARY ASSESSMENT; FINAL ASSESSMENT OF UNCONTESTED TAX; EXECUTION OF PRELIMINARY AND FINAL ASSESSMENTS.

a. If the department determines that the amount of any tax as reported on a return is incorrect, or if no return is filed, or if the department is required to determine value, the department may calculate the correct tax or value based on the most accurate and complete information reasonably obtainable by the department. The department may thereafter enter a preliminary assessment for the correct tax or value, including any applicable penalty and interest.

b. Where the amount of tax or value reported on a return is undisputed by the department, or the taxpayer consents to the amount of any deficiency, determination of value, or preliminary assessment in writing as provided by regulation, the department may immediately enter a final assessment for the amount of the tax or value, plus applicable penalty and interest; provided, the department may at any time enter a final jeopardy assessment pursuant to Sections 40-17A-12, 40-29-90, and 40-29-91.

c. All preliminary and final assessments issued by the department shall be executed as provided by regulations promulgated by the department.

(2) TIME LIMITATION FOR ENTERING PRELIMINARY ASSESSMENT. Any preliminary assessment shall 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, except as follows:

a. A preliminary assessment may be entered at any time if no return is filed as required, or if a false or fraudulent return is filed with the intent to evade tax.

b. A preliminary assessment may be entered within six years from the due date of the return or six years from the date the return is filed with the department, whichever is later, if the taxpayer omits from the taxable base an amount properly includable therein which is in excess of 25 percent of the amount of the taxable base stated in the return.

For purposes of this paragraph:

1. The term taxable base means the gross income, gross proceeds from sales, gross receipts, net worth, or other amounts on which the tax paid with the return is computed; and

2. In determining the amount omitted from the taxable base, there shall not be taken into account any amount which is omitted from the taxable base stated in the return if the amount is disclosed 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.

c. A preliminary assessment entered pursuant to Sections 40-29-72 and 40-29-73, may be entered within five years from the due date of the return on which the underlying tax is required to be reported or within five years of the date the return is filed, whichever is later.

d.1. In the case of income received during the lifetime of a decedent, or by his or her estate during the period of administration, the preliminary assessment of any income tax shall be entered within 18 months after written request therefor, filed after the return is made, by the executor, administrator, or other fiduciary representing the estate of the decedent, but not after the expiration of 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.

2. In the case of income received by a corporation contemplating dissolution, a preliminary assessment of any income tax shall be entered within 18 months after written request, by the corporation, filed after the return is made, but not after the expiration of 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. This subparagraph shall not apply to any corporation unless dissolution is completed within 18 months of the date of the written notice.

e. If a taxpayer has made the election provided in subsection (d) or (e) of Section 40-18-8, a preliminary assessment based on the gain realized as a result of the involuntary conversion [in the case of subsection (d) of Section 40-18-8] or a rollover of gain on the sale of a personal residence [as provided in subsection (e) of Section 40-18-8] may be entered within three years from the date the taxpayer notified the department of the replacement of the property in accordance with subsection (d) or (e) of Section 40-18-8, as the case may be, or of his or her intention not to replace the property.

f. If a taxpayer has validly elected to have the provisions of subdivision (a) (7) of Section 40-18-6 and subsection (l) of Section 40-18-8 apply to an acquisition of stock before January 1, 1985, any liability of the taxpayer under this title, solely from amendment of its returns to be consistent with that election may be assessed at any time within five years from the date on which the taxpayer filed the amended returns with the department.

g.1. When the Internal Revenue Service changes the amount of federal income tax or federal estate tax in any manner and the change results in an increase in additional income tax or estate tax owed under this title, the department may, at any time within one year after the department is notified or otherwise learns that the change has become final, enter a preliminary assessment for additional tax due. The department shall be allowed to assess the tax within the time period otherwise allowed by this section. Any tax assessed within the additional one year period allowed shall be limited to those items changed on the federal income tax return or federal estate tax return that affect the income tax liability or the estate tax liability imposed by this title.

2. When a federal income tax return or federal estate tax return is changed in any manner after it has been filed with the Internal Revenue Service, other than by an amended return, and the change results in an overpayment of taxes imposed by this title, a petition for refund of the overpayment may be filed within the later of one year after the federal changes become final, or within the time allowed for the filing of a petition for refund as provided in this chapter. The refund shall be limited to those items changed on the federal income tax return or federal estate tax return that affect the income tax liability or estate tax liability imposed by this title.

3. For purposes of this subdivision, the date that a federal change becomes final is the date on which the taxpayer and the Internal Revenue Service formally agree to the changes, or the date of any administrative or judicial order, judgment, or decree from which no further appeal was or may be taken.

h. The running of the period of limitations provided herein for entering a preliminary assessment shall be suspended for the period that:

1. The taxpayer or the assets of the taxpayer are involved in a case under Title 11 of the United States Code, Bankruptcy, and for a period of six months thereafter; or

2. The assets of the taxpayer are in the control or custody of a court in any proceeding, and for a period of six months thereafter.

i. The department and the taxpayer may, prior to the expiration of the period for entering a preliminary assessment or the filing of a petition for refund, agree in writing to extend the time provided for entering the assessment or filing the petition in this chapter. The tax may be assessed, or the petition for refund may be filed, at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

j. Additional tax may be assessed by the department within any applicable period allowed above, even though a preliminary or final assessment has been previously entered by the department against the same taxpayer for the same or a portion of the same tax period. No taxpayer, however, shall be subject to unnecessary examination or investigation, and 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 year, unless the taxpayer requests otherwise or unless the commissioner after investigation, notifies the taxpayer in writing that an additional inspection is necessary. The commissioner shall promulgate regulations consistent with those followed by the Internal Revenue Service with respect to second inspection of a taxpayer's books and records.

k. The three-year statute of limitations provided by this subdivision for entering a preliminary assessment shall be extended as provided in the following sentence, for the benefit of a self-administered county or municipality, in cases where: 1. the department has audited a taxpayer and has entered a final assessment against the taxpayer for additional sales, use, rental, or lodgings tax; 2. the taxpayer owes the same type of tax to the self-administered county or municipality for the same tax period or periods; and 3. the taxpayer or its authorized representative has not contacted the county or municipality or its private auditing firm, pursuant to its voluntary disclosure program, prior to the date of entry of the final assessment. In such cases, the statute of limitations shall not expire until the earlier of six months from the date of entry of the final assessment or 60 days following the date of mailing or transmittal by electronic mail by the department to the self-administered county or municipality or its private auditing firm of a copy of the notice of final assessment and any attachments thereto. Any tax assessed by the self-administered county or municipality within the additional time period allowed by this subdivision shall be limited to those items changed or adjustments included in the final assessment entered by the department. The Alabama Tax Tribunal, during the months of January and July of each year, shall publish a list of pending appeals and the tax or taxes at issue.

(3) SERVICE OF PRELIMINARY ASSESSMENT UPON TAXPAYER. The preliminary assessment entered by the department, or a copy thereof, shall be promptly mailed by the department to the taxpayer's last known address by either first class U.S. mail or certified mail with return receipt requested, but at the option of the department, the preliminary assessment may be delivered to the taxpayer by personal service.

(4) PROCEDURE FOR REVIEW OF DISPUTED PRELIMINARY ASSESSMENTS; ENTRY AND NOTICE OF FINAL ASSESSMENT.

a. 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 30 days from the date of mailing or personal service, whichever occurs earlier, of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, or if the department otherwise deems it necessary, the department shall 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 to attempt to agree upon any changes or modifications to their respective positions.

b. If a written petition for review:

1. Is not timely filed, or

2. Is properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department may make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment.

c. If a preliminary assessment is not withdrawn or made final by the department within five years from the date of entry, the taxpayer may appeal the preliminary assessment to the Alabama Tax Tribunal or to the appropriate circuit court as provided by subsection (b)(5) for an appeal of a final assessment.

d. The final assessment entered by the department, or a copy thereof, shall be mailed by the department to the taxpayer's last known address by either (i) first class U.S. mail or certified mail with return receipt requested in the case of assessments of tax of five hundred dollars (\$500) or less or (ii) certified mail with return receipt requested in the case of assessments of tax of more than five hundred dollars (\$500). In either case and at the option of the department, the final assessment, or a copy thereof, may be delivered to the taxpayer by personal service.

(5) PROCEDURE FOR APPEAL FROM FINAL ASSESSMENT.

a. A taxpayer may appeal to the Alabama Tax Tribunal from any final assessment entered by the department by filing a notice of appeal with the Alabama Tax Tribunal within 30 days from the date of mailing or personal service, whichever occurred earlier, of the final assessment, and the appeal, if timely filed, shall proceed as provided in Chapter 2B for appeals to the Alabama Tax Tribunal.

b.1. In lieu of the appeal under paragraph a., at the option of the taxpayer, the taxpayer may appeal from any final assessment 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, as appropriate, by filing notice of appeal within 30 days from the date of mailing or personal service, whichever occurs earlier, of the final assessment with both the secretary of the department and the clerk of the circuit court in which the appeal is filed.

2. If the appeal is to the circuit court, the taxpayer, also within the 30-day period allowed for appeal, shall do one of the following:

(i) Pay the tax, interest, and any penalty shown on the final assessment.

(ii) File a supersedeas bond with the court for 125 percent of the amount of the tax, interest, and any penalty shown on the final assessment. The supersedeas bond shall be executed by a surety company licensed and authorized to do business in Alabama and shall be conditioned to pay the amount of tax, interest, and any penalties shown on the final assessment, plus applicable interest and any court costs relating to the appeal, payable to the department, or the self-administered county or municipality, if applicable.

(iii) 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 Security for Alabama Funds Enhancement (SAFE) Program pursuant to Chapter 14A, Title 41. The department or the self-administered county or municipality, if applicable, 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 a final assessment entered against the same taxpayer.

(iv) File a pledge or collateral assignment of securities with the circuit court that constitute eligible collateral under Chapter 14A, Title 41, 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 in favor of the department or the self-administered county or municipality, if applicable, and conditioned to pay the assessment plus applicable interest and any court costs relating to the appeal.

(v) 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.

3. A taxpayer may appeal a final assessment to either the Alabama Tax Tribunal or to circuit court as provided herein, even though the taxpayer has paid the tax in issue prior to taking the appeal.

c.1. The filing of the notice of appeal with the Alabama Tax Tribunal or, in the case of appeals to the circuit court, the filing of the notice of appeal with both the secretary of the department and the clerk of the circuit court in which the appeal is filed and also the payment of the assessment in full and applicable interest or the filing of a supersedeas bond, an irrevocable letter of credit, or a pledge or collateral assignment of securities as provided herein, are jurisdictional. Except as set forth in subparagraph 2., if such prerequisites are not satisfied within the time provided for appeal, the appeal shall be dismissed for lack of jurisdiction.

2. Notwithstanding subparagraph 1., should the circuit court determine that the taxpayer has not satisfied the requirements of subparagraph b.2., the circuit court shall order that the taxpayer satisfy such requirements. The taxpayer may satisfy such requirements at any time within 30 days after service of the court order. No order of dismissal for lack of jurisdiction shall be entered within 30 days after service of the court order, and no order of dismissal shall thereafter be entered if such requirement is satisfied within such 30-day period.

3. On appeal to the circuit court or to the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.

d.1. The Alabama Tax Tribunal, circuit court, or the appellate court on appeal may increase or decrease the assessment to reflect the correct amount due.

2. If a final assessment is reduced on appeal, any overpayment of tax paid by the taxpayer shall immediately be refunded to the taxpayer by the state, county, municipality, or other entity to which the overpayment was distributed.

3. No court shall have the power to enjoin the collection of any taxes due on an assessment so appealed or to suspend the payment thereof.

(c) Procedure governing petitions for refund; appeals therefrom.

(1) PETITION FOR REFUND ALLOWED, GENERALLY. Any taxpayer may file a petition for refund with the department for any overpayment of tax or other amount erroneously paid to the department or concerning any refund which the department is required to administer. If a final assessment for the tax has been entered by the department, a petition for refund of all or a portion of the tax may be filed only if the final assessment plus applicable interest has been paid in full prior to or with the filing of the petition for refund. The department may also issue automatic refunds pursuant to Section 40-29-71. In the case of a petition for refund of public utilities taxes pursuant to Chapter 21, sales or use taxes pursuant to Chapter 23, and any transient occupancy tax pursuant to Chapter 26, a petition may be filed by the consumer/purchaser who paid the tax directly to the taxpayer that collected the tax, or by the taxpayer if the taxpayer remitted in excess of the tax due, however never collected the tax from the consumer/purchaser, or by the taxpayer if the consumer/purchaser paid the tax directly to the taxpayer, provided that a refund shall not be paid to the taxpayer until after the tax has been credited or repaid to the consumer/purchaser by the taxpayer. The department may adopt rules and establish procedures regarding petitions for refund, including establishing procedures for claiming such refunds on an annual basis when the amount of a refund is less than twenty-five dollars (\$25.00) and offsetting any state use tax liability against any refund otherwise due prior to paying a refund.

(2) TIME LIMITATION FOR FILING PETITION FOR REFUND; AUTOMATIC REFUND.

a. Generally. A petition for refund shall be filed with the department or an automatic refund issued pursuant to Section 40-29-71, or a credit allowed, within (i) three years from the date that the return was filed, or (ii) 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. For purposes of this paragraph, taxes paid through withholding or by estimated payment shall be deemed paid on the original due date of the return.

b. Net Operating Loss Carryback. In lieu of the periods provided in paragraph a., in the case of a net operating loss carryback, the period for filing a petition for refund, the department making an automatic refund or allowing a credit shall be the period prescribed in 26 U.S.C. Section 6511(d)(2) for the claiming of a credit or refund.

(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS; TIME LIMITATIONS. The department shall either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the department. The taxpayer shall be notified of the department's decision concerning the petition for refund by first class mail, or by either United States mail with delivery confirmation or by certified mail, return receipt requested, sent to the taxpayer's last known address. If the department fails to grant a refund within the time provided herein, the petition for refund shall be deemed to be denied.

(4) PROCEDURED IF REFUNDS GRANTED; CREDIT OF REFUND; PAYMENT OF OTHER TAXES; PAYMENT OF INTEREST. 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, or other entity to which the overpayment was distributed. If the department determines that a refund is due, the amount of overpayment plus accrued interest may first be credited by the department against any outstanding final tax liabilities due and owing by the taxpayer to the department, and the balance of any overpayment shall, subject to the setoff provisions of Article 3 of Chapter 18, be refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the department, the department shall provide a written detailed statement to the taxpayer showing the amount of overpayment, the amount credited for payment to other taxes, and the amount refunded.

(5) PROCEDURES IF REFUND DENIED; APPEAL.

a. A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the Alabama Tax Tribunal within two years from the date the petition is denied, and the appeal, if timely filed, shall proceed as hereinafter provided for appeals to the Alabama Tax Tribunal.

b. In lieu of appealing to the Alabama Tax Tribunal, the taxpayer may appeal from the denial of a petition for refund by filing a notice of appeal with the Circuit Court in Montgomery County, Alabama, or the circuit court of the county in which the taxpayer resides or has a principal place of business in Alabama, as appropriate, by filing the notice of appeal within two years from the date the petition is denied. The circuit court shall hear the appeal according to its own rules and procedures and shall determine the correct amount of refund due, if any.

c. If an appeal is not filed with the Alabama Tax Tribunal or the circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

(d) The Department of Revenue shall revise existing regulations or administrative guidance, or issue new regulations or administrative guidance, as appropriate, in conformance with this section.

(e) This section shall apply to all appeals filed after June 15, 2007. Notwithstanding the prior sentence, in any appeal to a circuit court which is pending on June 15, 2007, and in which a supersedeas bond was filed pursuant to, and in compliance with, the requirements of this section, for double the amount of the tax, interest, and any penalty shown on the final assessment, or for double the amount of the final order of the administrative law judge, such bond may be reduced to 125 percent of such amount shown on the final assessment or in the final order of the administrative law judge.

(Acts 1992, No. 92-186, p. 349, §6; Acts 1995, No. 95-607, p. 1279, §2; Act 2007-504, p. 1086, §§1-3; Act 2014-146, p. 378, §3; Act 2018-180, §1.)