

Section 40-2A-4

Taxpayers' bill of rights.

(a) Rights of the taxpayer.

(1) For purposes of this subsection and subsections (c) and (d), the term "department" shall include the Department of Revenue, a self-administered county or municipality, or a private examining or collecting firm, depending on whether the Department of Revenue, a self-administered county or municipality, or private examining or collecting firm is conducting the examination of the taxpayer.

(2) At or before the commencement of an examination of the books and records of a taxpayer, the department shall provide to the taxpayer the current version of Publication 1A. Publication 1A shall provide, in simple and non-technical terms, a statement of the taxpayer's rights. Those rights include the right to be represented during an examination, an explanation of their appeal rights, and the right to know the criteria and procedures used to select taxpayers for an examination.

(3) At or before the issuance of a preliminary assessment, the department shall provide to the taxpayer in simple and non-technical terms:

a. A written description of the basis for the assessment and any penalty asserted with respect to the assessment.

b. A written description of the method by which the taxpayer may request an administrative review of the preliminary assessment.

(4) At or before the issuance of a final assessment, the department shall inform the taxpayer by a written statement of his or her right to appeal to the Alabama Tax Tribunal or to circuit court.

(5) Except in cases involving suspected criminal violations of the tax law or other criminal activity, the department shall conduct an examination of a taxpayer during regular business hours after providing reasonable notice to the taxpayer. A taxpayer who refuses a proposed time for an examination on the grounds that the proposed examination would cause inconvenience or hardship must offer reasonable alternative times and dates for the examination.

(6) At all stages of an examination or the administrative review of the examination, and in any appeal to the Alabama Tax Tribunal, a taxpayer is entitled to be assisted or represented, at his own expense, by an authorized representative. The department shall prescribe a form by which the taxpayer may designate a person to represent him or her in the conduct of any proceedings, including collection proceedings, resulting from actions of the department. In the absence of this form, the department or the Alabama Tax Tribunal may accept such other evidence that a person is the authorized representative of a taxpayer as it considers appropriate. This provision shall not be construed as authorizing the practice of law before the department, Alabama Tax Tribunal, or any court in this state by a person who is not a licensed attorney.

(7) A taxpayer shall be allowed to make an audio recording of any in-person interview with any officer or employee of the department relating to any examination or investigation by the department, provided, however, the taxpayer must give reasonable advance notice to the department of his or her intent to record and the recording shall be at the taxpayer's own expense and with the taxpayer's own equipment. The department shall also be allowed to record any interview if the taxpayer is recording

the interview, or if the department gives the taxpayer reasonable advance notice of its intent to record the interview. The department shall provide the taxpayer with a copy of the recording, but only if the taxpayer provides reimbursement for the cost of the transcript and reproduction of the copy. The cost shall be reasonable as prescribed by regulations issued by the department.

(8) This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the department.

(b) Department responsibilities generally.

(1) The commissioner shall appoint a Taxpayer Advocate from among the employees of the department. This officer shall receive and review inquiries or complaints concerning matters that have been pending before the department for an unreasonable length of time, or matters where the taxpayer has been unable to obtain a reasonable response after several attempts to communicate with the department employee assigned to the taxpayer's case, or his or her immediate superiors. In addition, this officer shall review and have the authority to waive a penalty for reasonable cause as provided in subsection (h) of Section 40-2A-11, shall promptly review inquiries concerning release of property levied upon, the erroneous filing of liens, the failure to release a lien for good cause, or other matters complained of by a taxpayer or other affected party. The Taxpayer Advocate shall have no authority nor issue any ruling with regard to any taxes collected by or on behalf of a self-administered county or municipality.

a. The Taxpayer Advocate shall, subject to the approval of the commissioner or the assistant commissioner, issue taxpayer assistance orders in the form and manner prescribed herein and by department regulations.

b. Notwithstanding any statute of limitation or other provision in this title, a taxpayer assistance order may declare that any tax, including a final assessment, was erroneously assessed or reported and is not a liability due the state, or that a petition for refund was erroneously denied by the department.

c. A taxpayer assistance order shall grant relief as deemed appropriate, including the voiding of any erroneously issued final assessment for a tax which was not a debt due the state, granting of any refund due the taxpayer, or abating an assessment of interest that has accrued because of undue delay by department personnel.

d. 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-2, 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-2, and may propose relief as the taxpayer advocate deems appropriate and approved by the commissioner or the assistant commissioner.

e. All taxpayer assistance orders shall be dated and signed by the Taxpayer Advocate and approved either by the commissioner or the assistant commissioner, and shall state the underlying facts, the reasons for granting relief, and the relief granted. Any taxpayer assistance order may, for good cause, be modified or rescinded in writing by the Taxpayer Advocate and either the commissioner or the assistant commissioner.

f. The Taxpayer Advocate shall have full access to department personnel, books, and records subject, however, to the confidentiality restrictions imposed by this chapter.

g. Taxpayer assistance orders shall not be subject to the confidentiality provisions of this title, and shall be maintained by the secretary of the department and shall be open to review upon written request. The Taxpayer Advocate shall have no authority nor issue any ruling with regard to any taxes collected by or on behalf of a self-administered county or municipality.

h. The commissioner shall make an annual report to the Legislature of all taxpayer assistance orders approved in accordance with the provisions of this section and Sections 40-2A-2 and 40-2A-3. Such report shall contain the total amount of relief granted and the types of taxes for which relief was granted.

(2) The department shall maintain a continuing education program to train employees of the department and to provide them with a current knowledge of state and applicable federal tax laws.

(3) In addition to any other information provided by law, the commissioner shall include in the department's annual report information about the number or kind of audits or assessments conducted in the year covered by the report.

(4) The department shall not use the amounts of taxes assessed by an employee of the department as:

a. The basis of a production quota system for employees; or

b. The basis for evaluating an employee's performance.

(5) The department shall establish procedures for monitoring the performance of department employees which may include the use of evaluations obtained from taxpayers.

(6) **INSTALLMENT PAYMENTS.**

a. The commissioner is authorized to enter into written agreements to allow any taxpayer to pay any tax in installment payments if the commissioner determines that such agreement will facilitate collection of such tax. Notwithstanding the preceding sentence, such agreements shall be entered into only regarding a tax that has been finally assessed by the department and not appealed, and such agreements shall not extend for a period exceeding 12 months, provided, that any such agreement may be renewed at the discretion of the commissioner for succeeding periods not to exceed 12 months. The commissioner shall only be authorized to enter such an agreement with regard to a tax administered or collected by the department.

b. The commissioner may terminate, alter, or modify any agreement entered into hereunder if:

1. Information provided by the taxpayer to the commissioner prior to the date of such agreement was inaccurate or incomplete;

2. The taxpayer fails to pay any installment at the time such installment payment is due under such agreement;

3. The taxpayer fails to pay any other tax liability due the department at the time such liability is due, unless the taxpayer has appealed such other liability pursuant to the terms of this chapter;

4. The financial condition of the taxpayer has significantly changed;

5. The taxpayer fails to provide a financial condition update as requested by the commissioner; or

6. The commissioner believes that collection of any tax to which an agreement under this provision relates is in jeopardy.

c. The commissioner shall have sole authority or discretion to enter into or amend, modify, or terminate any installment payment agreement provided for herein. The commissioner shall promulgate regulations necessary for the implementation of this provision.

d. Any self-administered county or municipality shall have the same authority as provided to the commissioner by this subdivision relating to installment payments with respect to taxes administered or collected by the self-administered county or municipality.

(c) Department failure to comply with this section. The failure of the department to comply with any provision of this section shall not prohibit the department from assessing any tax as provided in this chapter, nor excuse the taxpayer from timely complying with any time limitations under this chapter. However, if the department fails to substantially comply with the provisions of this section, the commissioner shall, upon application by the taxpayer or other good cause shown, abate any penalties otherwise arising from the examination or assessment.

(d) Abatement of penalty. The department shall abate any penalty attributable to erroneous written advice furnished to a taxpayer by an employee of the department. However, this section shall apply only if the department employee provided the written advice in good faith while acting in his or her official capacity, the written advice was reasonably relied on by the taxpayer and was in response to a specific written request of the taxpayer, and the penalty did not result from the taxpayer's failure to provide adequate or accurate information.

(Acts 1992, No. 92-186, p. 349, §3; Act 2000-233, p. 368, §1; Act 2014-146, p. 378, §3.)